

IN THE STATUTORY TRIBUNAL, FIJI ISLANDS
SITTING AS THE AGRICULTURAL TRIBUNAL
NORTHERN DIVISION AT LABASA

Reference No. ND 03 of 2019

BETWEEN: **Anil Prasad** and **Manjula Devi Prasad** of Lagalaga, Macuata.

Applicant

AND: **Govind Sami** of Labasa, Macuata.

1st Respondent

AND: **iTaukei Land Trust Board** a body corporate duly constituted under the iTaukei Land Trust Act, Cap 134 of Fiji, Lot 431 Victoria Parade, Suva.

2nd Respondent

Before: the Resident Magistrate – Mr. Jeremaia N. Lewaravu

Date of Hearing: 30th March, 2021

Date of Decision: 28th October, 2021

Appearance

Mr. Prasad of Maqbool & Co for the Applicant

Mr. Sharma of Samusamuvodre & Sharma Law for the 1st Respondent

Ms. Komaitai of iTLTB Legal Division for the 2nd Respondent

Judgment

1. The Applicant filed an application in this Tribunal on the 4th of September, 2019 seeking a declaration of tenancy in the subject land described in iTaukei Land Trust Board (herein referred to as 'iTLTB') file reference No. 4/9/16009 known as Lagalaga Tiri (pt of) on T995 with an area of 4.1603 hectare for 30 years effective on the 1st of January, 1981. The registered leasee of the subject land was the late Subramani.
2. The Respondent(s) are opposing the application and have filed Statements of Defence to that effect. The subject lease has since expired on its legal termination date on the 1st of January, 2011.

The Law

3. Section 4(1) of the Agricultural Landlord and Tenant Act (herein referred to as 'ALTA') state that:

'Where a person is in occupation of, and is cultivating, an agricultural holding and such occupation and cultivation has continued before or after 29 December 1967 for a period of not less than 3 years and the landlord has taken no steps to evict him, the onus shall be on the

landlord to prove that such occupation was without his consent and, if the landlord fails to satisfy such onus of proof, tenancy shall be presumed to exist under the provisions of this Act..'

4. Section 5(1) of ALTA further provides that:

'A person who maintains that he is a tenant and whose landlord refuses to accept him as such may apply to a tribunal for a declaration that he is a tenant and, if the tribunal makes such a declaration, the tenancy shall be deemed to have commenced when the tenant first occupied the land...'

5. In addition, section 9 of ALTA is also relevant herein.

The Hearing

6. On the day of Hearing, Mr. Prasad appearing on behalf of the Applicant sought a short adjournment to the next day on the basis that his Principal who has carriage of the matter was engaged at the Court of Appeal in Suva that day. Mr. Prasad stated that his Principal would be ready to conduct the Hearing the next day.
7. Both Respondent(s) are opposing the application for adjournment. Counsel for the 1st Respondent state that cases listed at the Court of Appeal are for call over only and there was no valid reason to adjourn the current proceedings. He further stated that he is ready to proceed and that the Applicant as a matter of courtesy should have filed a formal application given that the Hearing date was set 3 months in advance. Counsel for the 2nd Respondent state both witness and Counsel travelled specifically from Suva for the Hearing as such the 2nd Respondent will incur unnecessary legal cost under the circumstances.
8. Even though, the Hearing is set for two days, the law is clear that any adjournment of Hearing in this Tribunal is for 'good cause'. The definition of 'good cause' stipulated under the relevant Act includes settlement discussions. I have considered the oral submissions of all the parties on this point. I found that the reasons for adjournment put forward by Counsel for the Applicant did not fall within the definition of a 'good cause' required under the Act. The application was therefore denied and the matter proceeded to a Hearing.
9. Counsel for the Applicant did not call any witnesses and opted to proceed by way of oral submissions. The crux of his submission is that the Applicant has been occupying and cultivating the land since 2007. He is therefore entitled to a tenancy.
10. Counsel for 1st Respondent state that the onus lies with the Applicant to prove his case on a balance of probability. Counsel said that in the matter herein, the Applicant failed to call any evidence to prove his occupation and cultivation as required under section 4 and section 5 of ALTA. He has therefore failed to prove his case on a balance of probability. Counsel further stated that the Applicant also failed to clarify and confirm the description of the subject land in question.

The question then is whether this Tribunal can grant the relief sought under the application when the description of the subject land is not clear. Counsel further submits that the subject lease in question has expired on its legal termination date. Counsel also submits that the law is clear, upon expiry of a lease, the subject land will revert back to the landlord. In this case, the land has indeed reverted back to the 2nd Respondent who is currently in the process of issuing a new lease to the 1st Respondent. Counsel concluded by stating that the Applicant is suing the wrong party. Counsel seeks that the current application be struck out.

11. Counsel for the 2nd Respondent submits that the subject lease expired on its legal termination date on the 1st of January, 2011. The Board is currently in the process of issuing a new lease to the 1st Respondent.

Legal Matrix

12. The starting point herein is that the subject lease had expired on its original termination date on the 1st January, 2011. Similarly, the registered leasee, Subramani is deceased without any resolution to his Estate therefore there is no issue arising under section 13 of ALTA relating to the renewal or extension of lease.
13. The Applicant claims that his arrangement was with the 1st Respondent in 2007. The 1st Respondent has conceded in his Statement of Defence that the arrangement between the parties was made in 2016. There is no doubt that the Applicant is currently in occupation and cultivation over a portion of the subject land in question.
14. Notwithstanding the admission by the 1st Respondent in his Statement of Defence, the relevant question is whether the 1st Respondent is the registered leasee of the subject land in question? and/or whether the 1st Respondent hold any legal interest or a title in the subject land at any point in time?. The answer is No. He is not the registered leasee of the subject land. He is not a landlord or a Trustee or an Administrator of the Estate of Subramani. In fact, the 1st Respondent does not have any legal interest or title in the subject land at all.
15. The next question is whether the 1st Respondent is/was entitled to enter into any arrangement with the Applicant or any other third party in 2007 or 2016? The answer is again No. In essence, in regards to the subject land, the 1st Respondent had nothing to give. The legal principle known as the '*nemo dat quod non habet*' rule which means '*you cannot give a better title than the one you have yourself*' is applicable under the circumstances. This is compelling in the sense that whatever arrangement(if any and/or whether lawful or not) the parties may have in 2007 and/or 2016 cannot be formalize into any agreement under section 4 and section 5 of ALTA.
16. In his written submissions, the Applicant in paragraph 7 – 9 made reference to the law discussed in the case of **Pravin Reddy v Subramani & Director of Lands** WD 15 of 2007. The Applicant said

that the distinction in this case is that the subject land is administered by the 2nd Respondent as oppose to the Director of Lands. Be that as it may, the legal principle is still applicable even in any agriculture lease administrated by the 2nd Respondent. I will therefore reiterate the law, that upon the expiry of a subject lease, the land reverts back to the landlord absolutely, thereafter the landlord has the discretion to lease out the same in line with the legal requirements of the relevant legislation. The 2nd Respondent is currently in the process of issuing a new lease over the subject land.

17. Similarly, the expiry of the subject lease without any application for renewal either by Subramani and/or the Trustee/Administrator of his Estate is also crucial. Without any renewal application, the requirements under section 9 (2) of ALTA become applicable. In any event, the Applicant has also contradicted himself in paragraph 24 of his written submission that 'there was no relationship or arrangement between the Applicant and the 1st Respondent'. In that regard, the current application by the Applicant is now moot.
18. On a side note, the field inspection of the subject land was conducted on the 29th of March, 2021 and the Hearing was held the day after on the 30th of March, 2021. In his written submissions, the Applicant has attached a copy of the correspondence dated 1st April, 2021 from the 2nd Respondent proposing settlement between the parties. This is a matter for consideration by the parties, I will therefore not comment on it any further.
19. Be that as it may, the full Orders of the Court is as follows:
 - a. The application for tenancy is hereby dismissed.
 - b. Each party to bear own cost.
 - c. Appeal within 28 days.

Ordered Accordingly,



Jeremaia N. Lewaravu [Mr.]

RESIDENT MAGISTRATE

28th October, 2021