

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

Civil Appeal No. Misc 021 of 2006
(High Court Judicial Review No HBJ 005/03S)

BETWEEN:

NATIVE RESERVES COMMISSION

First Applicant

AND:

NATIVE LAND TRUST BOARD

Second Applicant

AND:

MANOA RATUNISIWA

Respondent

S.R. Valenitabua for the Applicants

N. Nawaikula for the Respondent

DECISION

- [1] This is an application, filed on 18 December 2006, for leave to appeal out of time against a judgment of the High Court delivered on 2 April 2004.
- [2] The only explanation put forward for the failure to file grounds of appeal on time and the delay in applying for leave to appeal out of time is the maladministration of the second Applicant's legal department: and explanation sadly all too familiar, not only to the High Court but also to the Court of Appeal. It is an

explanation which does not constitute an acceptable excuse. The only remaining questions for consideration are whether the proposed appeal raises a question which justifies further serious consideration and whether the Respondent would be prejudiced were an appeal allowed to go forward.

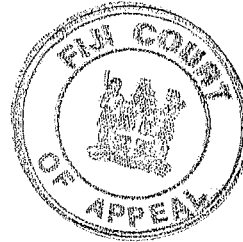
- [3] The subject matter of the proceedings is a piece of native land and the central issue is whether an allocation under the provisions of Section 18 or 19(1) of the Native Land Trust Act (Cap. 134) confers ownership or merely confers the right to usage.
- [4] The High Court, in a careful judgment, concluded that ownership, and not the mere right to usage, was conferred under Section 18. The consequence was that the re-allocation of the land in 2002 to the present Respondent, acting on behalf of his yavusa, was wrong in law.
- [5] If leave to appeal is granted and the Applicants are successful, the effect would be to return the land to the previous occupants. The Respondent would then have enjoyed the use of the land as a result of a mistake. If on the other hand an appeal fails then the Respondent yavusa would remain in occupation. I do not find any unacceptable detriment to the Respondent in these circumstances.
- [6] The delay in prosecuting the appeal is much to be regretted. Enough has, however, been said about the shortcomings of the NLTB legal department and no useful purpose would be served by repeating the criticisms already expressed. In my opinion an important legal question is raised by these proceedings which

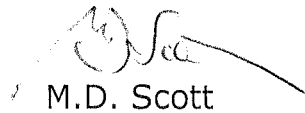
affects not only the present parties but would also affect further grantees of native land in similar circumstances.

[7] In my view it is in the interests of justice that leave to appeal should be granted. The leave is however conditional upon strict adherence with the requirements of Court of Appeal Rules and practice directions.

RESULT

1. Leave to appeal granted.
2. No order is to costs.




M.D. Scott

Resident Justice of Appeal

20 April 2007