

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 119 of 2018
[In the High Court Case No. HBC 124 of 2016]

BETWEEN : **AISAKE RAVUTUBANANITU**
Appellant

AND : **OVINI BOKINI**
01st Respondent

: **ANJALI DEVI PRAKASH**
02nd Respondent

: **ITAUKEI LAND TRUST BOARD**
03rd Respondent

: **REGISTRAR OF DEEDS**
04th Respondent

Coram : **Prematilaka, RJA**

Counsel : **Appellant absent and unrepresented**
1nd Respondent absent and unrepresented
Ms. S. Goundar for the 2nd Respondent
Mr. J. Cati for the 3rd Respondent
Mr. A. Bauleka for the 4th Respondent

Date of Mention : **21 January 2025**

Date of Ruling : **22 January 2025**

RULING IN CHAMBERS

[1] The appellant (then plaintiff) sued the respondents (then defendants) on the alleged unlawful attempt by the 1st respondent to transfer the property (which he has been occupying and cultivating) to the 2nd respondent. The appellant claimed that, he is a member of Mataqali Navusabalavu and has been in occupation and cultivating a property being a Native Lease No. 4/4/183. IT No. 6409 which belongs to the Trustees of Navusabalavu Housing Scheme and comprising of the extent of 17 Acres and 1 Roods known as *Saunakavika*. The 1st respondent who is also a member of the said Mataqali together with Manasa Naiceru and Setareki Tinalevu allegedly attempted to transfer the same property to the 2nd respondent. The appellant therefore prayed for the following reliefs;

- a. *A declaration that the 1st defendant has no power, authority or mandate to transfer the subject land and his purported action is null and void and of no effect,*
- b. *A declaration that, the 1st defendant knew he had no power, authority or mandate to deal with the subject land but continued to do so in a manner that was clearly criminal and fraudulent,*
- c. *An order directing the 1st defendant to reinstate the plaintiff's interest in the Native Lease No. 4/4/183. IT No. 6409 comprising 17 Acres and 1 Roods and known as Saunakavika,*
- d. *Such further order and other relief as the court may deem equitable and*
- e. *Costs.*

[2] The respondents did not file their statements of defence. The 1st and 2nd respondents filed the acknowledgment and filed summons under Order 18 rule 18 (1) (a), (b), (c) and (d) of the High Court Rules and the inherent jurisdiction of the court. However, summons filed by the 2nd respondent was struck out. The 1st respondent's summons supported by his affidavit moved court to strike out the appellant's action against the 1st respondent on the grounds that, (a) the appellant claims on a transferred instrument of Tenancy when in fact such was surrendered by the Trustees and 3rd respondent issued new instrument of Tenancy to the 2nd respondent, (b) the 1st respondent is sued personally and has no authority to reinstate the surrendered instrument of Tenancy, (c) the appellant therefore has no reasonable cause of action and vexes the respondent after losing an application to Agricultural Tribunal and (d) the appellant does not have majority support of Mataqali members who had dismissed him from his position of Trustee.

- [3] The Acting Master (as he then was) in his Ruling¹ on 06 December 2017 struck out the appellant's claim and the action and he was ordered to pay a summarily assessed cost of \$300 to 1st respondent within 14 days from the ruling.
- [4] The appellant filed summons in the High Court seeking (1) enlargement of time to file an application for leave to appeal the Acting Master's decision of 6 December 2017 and leave to appeal the Acting Master's decision delivered on 06 December 2017.
- [5] The 1st and 2nd respondents opposed the application while the 3rd and 4th respondents did not file any material in relation to the appellant's application.
- [6] In his Ruling² on 21 September 2018 the High Court judge was inclined to strike out the appellant's summons and the supporting affidavit. However, in the interest of justice the court granted leave to the appellant to file a supplementary affidavit for the production of any letter or any record signed by persons claiming to be members of mataqali appointing the appellant to represent them in the application seeking an extension of time to make an application for leave to appeal.
- [7] The appellant in his notice of appeal filed in the Court of Appeal on 31 October 2018 has claimed that he had filed a supplementary affidavit showing that he had the consent of the majority members of the Mataqali Navusabalavu to institute the action.
- [8] However, the High Court judge had in his Order sealed on 30 October 2018 concluded that the written consent attached to the appellant's supporting affidavit was not from Mataqali Navusabalavu and therefore the appellant had not complied with the Orders dated 21 September 2018 and on 09 October 2018. Accordingly, the High Court *inter alia* had struck out the appellant's application for extension of time to file his leave to appeal application.

¹ **Ravutubananitu v Bokini** [2017] FJHC 925; HBC124.2016 (6 December 2017)

² **Ravutubananitu v Bokini** [2018] FJHC 884; Civil Appeal 124.2016 (21 September 2018)


- [9] The appellant's appeal before this court is against the said order by the High Court where *inter alia* he had claimed that Tokaytoka Naitokotoko and Tokaytoka Naitokoraki were component units of Mataqali Navusabalavu of Tavua Village, Tavua.
- [10] After security for cost had been determined on 20 November 2018, the appellant appeared in person in court on 31 May 2022 and stated that he needed time to retain a solicitor as his then solicitor had been convicted and could not function as his solicitor. It is on record on that day that the draft records had been vetted by the CA Registry and returned to the appellant's previous solicitor to submit the final records for certification.
- [11] The appellant's new lawyers had filed notice of change of solicitors on 21 July 2022. Thereafter, at the request of the appellant or his solicitors time and again this court had given adjournments for the records to be submitted for certification.
- [12] The appellant has changed his solicitors again on 07 March 2023. Thereafter, certified records had certified and served on the respondents. The appellant has changed his solicitors once again on 05 July 2023. It appears that the appellant had passed away in September 2023. Since then this court had given not less than 10 adjournments to effect substitution for the deceased appellant. Finally, on 26 August 2024 and 28 October 2024 two final adjournments were given for substitution to be effected to the solicitors of the appellant and on 28 October 2024 a timeline for written submissions were also given.
- [13] When the matter was mentioned on 21 January 2025, there was no appearance for the deceased appellant and no written submissions had been filed either. The counsel for the 3rd and 4th respondents moved that the appeal be struck out for non-prosecution.
- [14] It appears to me that the appellant's solicitors are not prosecuting his appeal with due diligence and the appeal should be dismissed. As no substitution had been effected, I shall order no cost.

Orders of court

[1] *Appellant's appeal is dismissed in terms of section 20(1)(g) of the Court of Appeal Act.*

[2] *No cost.*




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Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL