**IN THE HIGH COURT OF FIJI**
**AT LAUTOKA**
**CIVIL JURISDICTION**
**ACTION NO. HBJ 06 OF 2006**

**No. 210/2006**

**IN THE MATTER** of an Application for Leave to apply for Judicial Review by **RATU AKUILA KUBOU** (**"the Applicant"**)

**AND**

**IN THE MATTER** of the Decision of Native Lands Appeals Tribunal made on 3rd day of May 2006 whereby Sainivalati Toroki was decided traditional head of the Yavusa Naisogoliku of Vitawa Village in Ra.

**BETWEEN:** **THE STATE**

**AND:** **THE APPEALS TRIBUNAL**
**THE ATTORNEY GENERAL OF FIJI**

***Respondents***

**AND:** **RATU AKUILA KUBOU** of the Yavusa Naisogoliku, Mataqali Naisogoliku, Tokatoka Naisogoliku in the village of Vitawa, in the Province of Ra.

***Ex-Parte Applicant***

Mr Valenitabua S.R. Esq. for the Applicant (City Agents: Messrs Vuetaki Qoro)

Attorney General's office for the Respondents

Date of Hearing: 28 July 2006
Dates for further Affidavits & Submissions: 4 August and
11 August 2006
Date of Ruling: 20 October 2006

**FINAL RULING OF FINNIGAN J IN RESPECT OF LEAVE**

[1] This is an application for leave to commence judicial review of a decision of the Native Lands Appeals Tribunal. The Applicant was initially installed as traditional head of the Yavusa Naisogoliku whose traditional title is the Tui Navatu. His appointment was disputed before the appeals tribunal by another person Sainivalati and his appeal was upheld. It is that decision of the appeals tribunal which the applicant seeks leave to challenge.

[2] His application for leave is opposed. The Attorney-General's Office was to file an affidavit in reply to his affidavit and any submissions by 4.00pm on 4 August 2006. An affidavit only was filed. The applicant was to file any affidavit in answer by 4.00pm on 11 August 2006.

[3] The application is well prepared. Full documentation has been filed along with a submission by Mr Valenitabua in support. The Respondents have not felt it necessary to file a submission in answer. In my view this is because the central and essential focus of the application is the process by which the appeals tribunal reached the conclusion, which it did. This is not an appeal against the decision. The decision is otherwise final. It is only a challenge to the process by which the decision was reached.

[4] In deference to the considerable detailed effort made by Mr Valenitabua I might write a lengthy response to his submissions. It is however unnecessary in my view to do so. The affidavits sworn by the applicant himself and by Sevanaia Ratunaceva reveal a unified picture of the process followed by the tribunal. If I were to attempt a succinct summary of it I could do no better then repeat the sworn account of the latter (which includes references to the affidavit and documents filed by the applicant) and is set out in paragraphs (q), (r) and (s) of the affidavit.

[5] I regard these statements of fact as unchallenged by the applicant. There is no serious challenge to them. The only finding that the court can make at this preliminary stage upon the affidavits is that the applicant has shown no grounds on which he might have the decision of the appeals tribunal set aside or otherwise disturbed. He has little prospect of success.

[6] On the last page of his submissions Mr Valenitabua claimed a breach of natural justice. He claims that a passage in the decision of the appeals tribunal was a lie. This assertion cannot stand unless proved by an assessment of evidence. It is however immaterial in my view to the process by which the tribunal reached the decision that it made. Neither do I think that the 3 standard tests recited by the court in **Ratu Kaliova Dawai –v- NLFC & Ors** HBJ004/2005L are the only tests that the court may apply when considering an application for leave. It is fundamental in such an application that the court will refuse leave to claim judicial review unless the applicant satisfies it there is an arguable ground for the review with a realistic prospect of success. That is the test for me in the present case, there being no discretionary

bar such as delay or an alternative remedy. I have to be satisfied that there is an issue. In the present case the tribunal made a decision of fact after assessing evidence in which it is expert. The only challenge that can be raised is a challenge to the reasonableness and fairness of the process which it adopted. There are many decided authorities but a good starting point is **Judicial Review Handbook (4th Edition)** Michael Fordham, Hart Publishing 2004, page 426 and following. Is there an issue raised by the affidavits that the process of the tribunal was in law by reason of the facts which occurred unreasonable or unfair?. I do not detect that as an issue raised by the applicant nor on the affidavits could it be. There is no imputation of improper motives or of unreasonableness in the **Wednesbury Sense**. The applicant merely wants an opposite conclusion, claiming that he is the popular candidate. Popularity is not in itself a ground for appointment to the title, hence the proceedings of the NLFC and of the Appeals Tribunal. Apart from the submissions of law in his affidavit the applicant relies on what he claims is majority support and 6 allegations which amount to a single allegation that the tribunal refused to hear and/or failed to take into account matters which he now claims are important. I am not influenced by the fact that the annexures to his main affidavit are all in Fijian. I am overwhelmed by the impression that he simply wants to argue his case again.

**Conclusion:**

[7] For these reason the application for leave to commence judicial review is refused. Costs follow the event and are fixed in favour of the Respondents at $500.00.

[8] I should add that this ruling was prepared in September 2006. I have delayed it since then while assessing the case afresh in order to see a way of granting leave that accords with principle. But I have not been able to do that.

**D.D. Finnigan**
**JUDGE**

At Lautoka
20 October 2006