

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 006 of 2008

BETWEEN : **SEMISI ROKOUA** for and on behalf of himself and on behalf of the
Mataqali Vitadra, Yavusa Qawa, Bulileka, Labasa.

Plaintiff

AND : **THE ATTORNEY GENERAL OF FIJI**

1st Defendant

AND : **THE DIRECTOR OF LANDS**, Ministry of Education, Marela House,
Thurston, Street, Suva.

2nd Defendant

AND : **NATIVE LAND TRUST BOARD**

3rd Defendant

AND : **NATIVE LAND COMMISSION**

4th Defendant

AND : **THE REGISTRAR OF TITLES**

5th Defendant

Counsel : **Mr Nawaikula** for the **Plaintiff**
Mr Mainavolau J. with **Mr Nair D.** for the **1st, 2nd and 4th Defendants**
Ms Raitamata E. for the **3rd Defendant**

Date of Ruling : **5th November, 2013**

RULING

1. This matter was taken up for Trial today, the 5th day of November, 2013.

2. The Plaintiff Semisi Rokoua was called to give evidence. It was revealed in the course of evidence that the document marked “SP2”, Letter of Authority was granted to Navitalai Ratu to take representative action on behalf of Mataqali Vitadra, and not to the Plaintiff and Mr Nawaikula counsel sought leave from the courts to file the proper Letter of Authority.
3. The counsel for the 1st; 2nd and 4th Defendants objected to the Application and stated no new document should be accepted by this court at this stage.
4. Nawaikula made his submissions and stated:
 - 4.1 Authority to continue with the action is not available.
 - 4.2 The Plaintiff is a member of the Mataqali Vitadra as per document marked “SP-1” which states his name as No. 47.
 - 4.3 This court has the inherent jurisdiction to have a proper trial alternatively to adjourn for tomorrow until the proper Letter of Authority is brought.
 - 4.4 The Plaintiff is a member of Mataqali Vitadra and he is entitled to continue with the action.
5. Ms Raitamata E. counsel for the 3rd Defendant submitted:
 - 5.1 Referred to paragraph 1 of the Statement of Claim which states:

“1. That the Plaintiff brings this action on behalf of himself and on behalf of Mataqali Vitadra of Yavusa Qawa of Bulileka, Labasa.”

Counsel submitted that in the document marked “SP-1” No. 47 states, the Plaintiff’s name as “Semisi Rokona” and the Statement of Claim it states as “Semisi Rokoua” and the identity is in question.
 - 5.2 The document No. 2 marked as “SP-2” does not support any authority given to the Plaintiff by the members of Mataqali Vitadra and action should be struck out.
6. Mr Mainavolau J. counsel for the 1st, 3rd and 4th Defendants submitted:
 - 6.1 He opposes the Plaintiff’s application.
 - 6.2 The Plaintiff is not a member of Mataqali Vitadra.
 - 6.3 No authority given to the Plaintiff to act for the Mataqali Vitadra by the document marked “SP-2”.

- 6.4 Discovery of the document should not be allowed under Order 24 of the High Court Rules 1988. The Plaintiff had the opportunity to produce the correct document since 30th August 2010.
- 6.5 The identity of the Plaintiff is crucial because it's a Native Land matter which comes under Customary Law and the Plaintiff is not the proper person to represent the Mataqali Vitadra. The action should be struck out and costs to be awarded.
7. In reply, Mr Nawaikula submitted:
- 7.1 This is not a matter for struck out.
- 7.2 The name was misspelt and the court should exercise its inherent jurisdiction to proceed with the Trial.
8. Considering the submissions and observations made by this court, I make the following findings:
- 8.1 It is noted that apart from the document marked "SP-1", the Plaintiff's name was stated in Document No. 2 marked "SP-2" giving authority to Navitalai Ratu as "Semisi Rokoua". The Statement of Claim the name stated as Semisi Rokoua and "SP-1" states as Semisi Rokona. As such I agree with the Plaintiff's counsel that the name being misspelt and I find the Plaintiff can continue with this action as a member of the Mataqali, as stated in paragraph 1 of the Statement of Claim. If the identity is challenged the Defendants have liberty to call evidence in that regard.
- 8.2 It is also observed by this court the Pre-trial Conference minutes dated 6th April 2011 under the heading "issues to be tried" it was stated:
- "I. Whether the Plaintiff is a member of the Mataqali Vitadra of Yavusa Qawa and whether he has the authority to initiate this action on behalf of said Mataqali."*
- The Parties have not agreed to try this issue as a Preliminary issue at the Trial.
9. For the reasons set out in the paragraphs 8 above, I conclude this matter should be proceeded with trial and there are no grounds to strike out the action.
10. This court grants leave to file a new Letter of Authority since there will be no prejudice caused to the Defendants by filing proper Letter of Authority and the said Letter of Authority should be tendered through the Plaintiff during the course of his evidence.
11. **I Order:**
- (a) ***Trial to proceed and the Plaintiff to continue with his evidence;***

- (b) *Leave granted to tender new Letter of Authority through the Plaintiff during course of his evidence;*
- (c) *No order as to costs.*

Delivered at Suva this 5th Day of November 2013.



.....
C. Kotigalage
JUDGE