IN THE HIGH COURT OF FIJIAT LABASA
CIVIL JURISDICTION

Judicial Review No. HBJ 2 of 2014

BETWEEN	**:**	**THE STATE**
AND	**:**	**SALEN DEO**
		1ST RESPONDENT
	:	**ITAUKEI LAND TRUST BOARD**
		2ND RESPONDENT
	:	**CENTRAL AGRICULTURAL TRIBUNAL**
		3RD RESPONDENT
EX-PARTE	**:**	**JAI WATI**
		APPLICANT
BEFORE	**:**	**His Lordship Hon. Justice Kamal Kumar**
COUNSEL	**:**	Mr S. Sen for the Applicant Mr P. Lomaloma for the 1st Respondent No Appearance for the 2nd and 3rd Respondents
DATE OF RULING	:	3 June 2016

JUDGMENT

(Application for Judicial Review)

Introduction

1. Pursuant to leave granted on 9 February 2015, the Plaintiff by Originating Notice of Motion dated 13 February 2015, and filed on 19 February 2015, applied for Judicial Review of Central Agricultural Tribunal's decision dated 31 July 2014, dismissing Applicant's appeal filed on 7 February 2012 and seeking following relief:-

   "a. An Order of Certiorari to quash the purported decision/decisions and/or orders of the Central Agricultural Tribunal dated the 31st day of July 2014 in dismissing applicants appeal filed on 7th February 2012 and such decision was made ultra vires the powers and/or jurisdiction of the Central Agricultural Tribunal and Central Agricultural Tribunal misinterpreted and/or misconstrued the effects of the relevant provisions of ALTA referred above and accordingly erred in law and further that the decision of the Central Agricultural Tribunal was arbitrary and/or capricious and/or unreasonable and being contrary to the provisions of the Agricultural Landlord and Tenant Act.

   b. An Order of mandamus to order that the Central Agricultural Tribunal to quash the orders of Agricultural Landlord and Tenants Tribunal dated 30th January 2012 and allow the applicants appeal contained in her grounds of appeal and filed at Central Agricultural Tribunal dated 7th February 2012.

   c. And/Or for an Order under Order 53 Rule 8 of the said Rules directing the Respondent to make and serve on the Applicants a list of documents which are or have been in its possession custody or power relating to any matter in question in these proceedings and to make and file an affidavit verifying such list and to serve a copy thereof on the Applicants.

   d. And/Or for an Order that the costs awarded by Central Agricultural Tribunal and Agricultural Landlord and Tenants Tribunal be paid by the 1st and 2nd Respondents.

   e. And/Or for an Order for costs and damages.

   f. Further declaration or other relief as this Honourable Court may deem just.

g. And the costs of an incidental to this application be paid by the respondents and further take notice that the grounds of this application are contained in the affidavits of the applicant filed before this Court."

2. This Application was first called on 30 March 2015, before Master Robinson when Counsel for 1st Respondent was granted fourteen (14) days to consider the Application and the Application was adjourned to 17 April 2015.

3. On 17 April 2015, only Applicant's Counsel appeared and as such the Application was adjourned to 27 April 2015.

4. On 27 April 2015, Master Robinson granted leave for Applicant to file Supplementary Affidavit and directed 1st Respondent to file and serve Affidavit in Opposition upon receipt of Applicants Supplementary Affidavit. The Application was adjourned to 22 May 2015, to refer the file to Judge.

5. On 22 May 2015, the Application was called before Master Ms. Bull when she directed Applicant to serve the Application on all persons directly affected and file comprehensive Affidavit of Service as required by Order 53 Rule 5(2)(5) of High Court Rules and adjourned the Application to 29 May 2015, to fix hearing date. Counsel for the 3rd Respondent informed Court that 3rd Respondent need not be filing any Affidavit in Opposition.

6. On 25 May 2015, Applicant filed Affidavit of Service to prove service of the Application on all the Respondents.

7. On 29 May 2015, Master Bull noted that Applicant complied with Order 53 Rule 5(5) of High Court Rules by filing Affidavit of Service and adjourned the Application to 9 July 2015, for hearing.

8. On 9 July 2015, Applicant and 1st Respondent made Oral Submissions in addition to Submissions filed by them and the 2nd Respondent.

9. Only Affidavits filed in respect to the Application were Affidavit of Applicant sworn on 21 October 2014 in Support of Application for Leave to Apply for Judicial Review and Supplementary Affidavit of Prem Lata (daughter and Attorney of the Applicant) sworn on 4 May 2015.

Background Facts

10. Bisessar, late of Seaqaqa, Macuata pursuant to his last will and testament dated 25 October 1969, bequeathed all his property both real and personal to his sons Ram Lakhan, Suruj Prasad, Deo Charan and his defacto wife Budhia in equal shares, share and share alike.

11. Pursuant to the said Will, Ram Lakhan was appointed a Sole Executor and Trustees of the Estate of Bisessar.

12. On 18 September 1970, Probate in respect to the Estate of Bisessar (hereinafter referred to as **"the Estate"**) was granted in favour of Ram Lakhan.

13. Ram Lakhan as Executor and Trustee of the Estate became the registered lessee of all that land known as NATUA SUBDIVISION Lot 24 as shown Lot 4 and 8 on M2738, Tikina of Sasa, Province of Macuata containing 22 acres and 31 perches comprised and described in Native Lease No. 17695 (**"the Lease"**).

14. Jai Wati is the wife of Ram Lakhan.

15. Salen Deo, the 1st Respondent is the lawful son of Deo Charan.

16. Deo Charan on 5 October 1992, caused caveat to be registered against the lease which Caveat was extended by High Court until further Orders of the Court.

17. Ram Lakhan died in 1989, without fully administering the Estate and subsequently Letter of Administration De-Bonus Non (LA) was granted in favour of Jai Wati, the wife of Ram Lakhan.

18. On 28 October 1998, Transmission by Death in respect to the LA was registered on the Lease.

19. Deo Charan, 1st Respondent's father and one of the beneficiaries in the Estate died on 20 May 2007.

20. On 30 August 2010, 1st Respondent filed Application for Tenancy over land subject to the Lease against the Applicant.

21. The Application for Tenancy was heard by the then Agricultural Tribunal (**"AT"**) and his Decision was delivered on 25 November 2011, whereby the 2nd Respondent was ordered to grant Instrument of Tenancy over whole of land subject to the Lease in favour of the 1st Respondent with no order as to costs.

22. The Applicant appealed the Decision to Central Agricultural Tribunal (**"CAT"**) which appeal was dismissed by CAT.

Application for Judicial Review

23. Order 53 Rules 1 and 2 of High Court Rules provide as follows:-

> ***"1.(1) An application for an order of mandamus, prohibition or certiorari shall be made by way of an application for judicial review in accordance with the provisions of this Order.***
>
> ***(2) An application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the court may grant the declaration or injunction claimed if it considers that having regard to:-***
>
> ***a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari.***
>
> ***b) the nature of the persons and bodies against whom relief may be granted by way of such an order, and***

c) all the circumstances of the case, it would be just and convenient for the declaration for injunction to be granted on an application for judicial review.

2. On an application for judicial review any relief mentioned in rule 1(1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

3.-(1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule."

24. The Applicant seeks the following relief:-

"a. An Order of Certiorari to quash the purported decision/decisions and/or orders of the Central Agricultural Tribunal dated the 31st day of July 2014 in dismissing applicants appeal filed on 7th February 2012 and such decision was made ultra vires the powers and/or jurisdiction of the Central Agricultural Tribunal and Central Agricultural Tribunal misinterpreted and/or misconstrued the effects of the relevant provisions of ALTA referred above and accordingly erred in law and further that the decision of the Central Agricultural Tribunal was arbitrary and/or capricious and/or unreasonable and being contrary to the provisions of the Agricultural Landlord and Tenant Act.

b. An Order of mandamus to order that the Central Agricultural Tribunal to quash the orders of Agricultural Landlord and Tenants Tribunal dated 30th January 2012 and allow the applicants appeal contained in her grounds of appeal and filed at Central Agricultural Tribunal dated 7th February 2012.

c. Damages.

d. Further declaration or other relief as this Honourable Court may deem just.

e. Costs."

25. The AT made the following Order:-

"Therefore Order is hereby granted that the 2nd Respondent do issue the Applicant an Instrument of Tenancy over the whole land described as NL 17695 Natua Subdivision Lot 26 as shown Lot 4 and 8 on M2827, Tikina Sasa Province Macuata having an area of 22 acres 0 roods and 31 perches.

26. The reason the AT made the Order was stated at paragraphs 48 and 49 of the Decision in following terms

"48. Since the lease expired in 2005, it can no longer be part of the Estate. As such the applicant does have locus to apply for a declaration of tenancy and the onus of rebutting the presumption of tenancy was placed on the 2nd Respondent and not the 1st Respondent.

49. The Applicant succeeds in his application as having satisfied Section 4 ALTA, the 2nd Respondent has not rebutted the Applicant's application but has in fact supported the Applicant's application, in exercise of its statutory function to act in the best interests of the native owners of the subject land."

27. The Appeal by Applicant to CAT was dismissed on the ground that it was without merit.

28. The relevant provisions are sections 4, 13, 37 and 61 of ALTA which provide as follows:-

"s4-(6) Notwithstanding the provisions of any Act or agreement to the contrary but subject to the other provisions of this Act-

(a) any contract of tenancy created after the commencement of this Act but before the commencement of the Agricultural Landlord and Tenant (Amendment) Act 1976 shall be deemed to be a contract of tenancy for a term of not less than 10 years;

(b) any contract of tenancy created after the commencement of the Agricultural Landlord and Tenant (Amendment) Act, 1976 shall be deemed to be a contract of tenancy for a term of not less than 30

years; and the provisions of this Act shall apply to any such contract."

"13.-(1) Subject to the provisions of this Act relating to the termination of a contract of tenancy, a tenant holding under a contract of tenancy created before or extended pursuant to the provisions of this Act in force before the commencement of the Agricultural Landlord and Tenant (Amendment) Act, 1976, shall be entitled to be granted a single extension (or a further extension, as the case may be) of his contract of tenancy for a period of twenty years, unless-

(a) during the term of such contract the tenant has failed to cultivate the land in a manner consistent with the practice of good husbandry; or

(b) the contract of tenancy was created before the commencement of this Act and has at the commencement of the Agricultural Landlord and Tenant (Amendment) Act, 1976 an unexpired term of more than thirty years:*

Provided that, notwithstanding the provisions of section 14, a premium equivalent to one year's rent shall be payable in full in advance on the first day of the first year and of the eleventh year of such extension.

(2) For the purposes of this Act, the expression "practice of good husbandry" means having regard to the character and location of an agricultural holding-

(a) the maintenance in good order of such terraces, drains, barriers, bunds and hedges and the carrying out of such measures of contour cultivation and cropping as the Permanent Secretary for Agriculture or his nominee shall consider to be the minimum standard necessary for the protection and conservation of the soil;

(b) the cultivation of the land in a husband like manner and the maintenance of the fertility of the agricultural holding to the

minimum standard considered necessary by the Permanent Secretary for Agriculture or his nominee;

(c) the avoidance of any practice commonly known to have an effect harmful to the soil or which may lead to a reduction in the fertility of the agricultural holding;

(d) the control of pests, diseases and noxious weeds to the minimum standard considered necessary by the Permanent Secretary for Agriculture or his nominee;

(e) the maintenance and clearing of ditches, and of drains other than those specified in paragraph (a);

(f) the maintenance and repair of buildings, fences, walls, gates, windbreaks and hedges other than those specified in paragraph (a);

(g) such other practices as may be prescribed:

Provided that the foregoing definition shall not imply an obligation on the part of the tenant to carry out work described in paragraphs (e) and (f) unless such work is required to be done by him under the provisions of his contract of tenancy.

(3) Where the landlord has notice of a mortgage or charge affecting an agricultural holding, he shall serve upon the mortgagee or the chargee, as the case may be, a copy of any notice served upon the tenant in accordance with the provisions of this section."

"37.-(1) A landlord may terminate his contract of tenancy and may recover possession of an agricultural holding-

(a) without notice where the tenant deserts such holding and leaves it uncultivated and unoccupied for a period of not less than twelve months and owes rent for a period of twelve months or more;

(b) by one months' written notice to quit-

(i) where the tenant sublets, assigns or subdivides such holding without having previously obtained the consent in writing of the landlord which consent shall not be unreasonably withheld; or

(ii) where the tenant commits a breach of any term or condition of the tenancy which is not capable of being remedied and the interests of the landlord are materially prejudiced thereby;

(c) by three months' written notice to quit-

(i) where the tenant is not cultivating or operating such holding according to the practice of good husbandry and the interests of the landlord are materially prejudiced thereby; or

(ii) if any part of the rent in respect of the holding is in arrear for a period of three months or more or if any lawful term or condition of the tenancy which is capable of being remedied is not performed or observed by the tenant:

Provided that, if the tenant pays the rent in arrear or, in the case of breach or non-observance of any lawful term or condition of the tenancy, the tenant makes good such breach or non-observance within three months of the notice to quit, the notice to quit shall deemed to be cancelled and of no force and effect.

(2)(a) The tenant may, at any time before the expiry of a notice lawfully given and served upon him under the provisions of paragraphs (b) and (c) of subsection (1) and of section 39, apply to the tribunal for relief against forfeiture and pending the award of the tribunal, such tenant shall not be evicted.

(b) The tribunal shall consider and decide upon any application made to it under the provisions of this section within the period of 12 months specified in sub-paragraph (ii) of paragraph (f) of subsection (1) of section9.

(3) Where the landlord has notice of a mortgage or charge affecting the land the subject of the tenancy the landlord shall serve upon the mortgage or chargee, as the case may be, a copy of any notice served upon the tenant in accordance with the provisions of subsection (1).

(4) For the purposes of sub-paragraph (i) of paragraph (b) of subsection (1) the expression "subdivide" has the same meaning as in the Subdivision of Land Act.

(5) All applications for relief against forfeiture which may be made under the provisions of any Act shall be made to the tribunal, and for this purpose, the tribunal shall possess all the powers and jurisdiction of the court to which such application may be made under the provisions of such Act.

(6) For the purpose of avoiding doubt, it is hereby declared that on the termination of a contract of tenancy any tenancy made or granted by the tenant prior to such termination shall be deemed to terminate at the same time."

"61.-(1) The proceedings, hearing, determination, award, certificates or orders of the central agricultural tribunal or of a tribunal shall not be called in question in any court of law nor shall any person appointed as the central cultural tribunal or as a tribunal be sued in respect of any act lawfully done or lawfully ordered to be done in the discharge of his duties under this Act.

(2) Any person who is bound to execute or serve the lawful awards, orders or certificates of the central agricultural tribunal or of a tribunal shall not be liable to be sued in any court of law for any act lawfully done in the execution or service of such awards, orders or certificates."

29. Before this Court proceeds any further it is prudent to consider Section 61 of ALTA.

30. The section and those similar to that have been subject to much litigation.

31. The Applicant relies on the case of **Pioneer Aggregates v. Secretary of State** (1984) 2 ALL ER 358.

32. In **Anisminic** (Supra) the Appellant was a British Company which owned mining property in Egypt worth more than £4,000,000.00. Due to Israel-Egypt hostilities property owned by Appellant and other British nationals in Egypt were sequestrated by Egyptian Government.

Soon after sequestration Appellant sold its property to T.E.D.O., and Egyptian Company but reserved its right to compensation they may be entitled to against any Government authority excluding Egyptian Government.

Under treaty respective governments agreed that compensation be paid to British government and those whose properties were listed could claim compensation. The application had to be made to Foreign Compensation Commission. Section 4(4) of the Foreign Compensation Act provided as follows:-

"The determination by the Commission of any application made to them under this Act shall not be called in question in any court of law."

The Commission made a provisional determination that Appellant was not entitled to compensation on the grounds that its successor was not a British Company.

The Appellant challenged the Commission's decision, and it was ruled that Commission's provisional determination was made without or, in excess of jurisdiction and as such was a nullity.

The Commission's appeal to Court of Appeal was upheld. The Appellant then appealed to the House of Lords which appeal was allowed.

33. In **Anisminic** (Supra) Lord Pearce at page 237 (paragraphs F to I) and page 238 (paragraphs A to C) stated as follows:-

> *"It has been argued that your Lordships should construe "determination" as meaning anything which is on its face a determination of the commission including even a purported determination which has no jurisdiction. It would seem that, on such an argument, the court must accept and could not even enquire whether a purported determination was a forged or inaccurate order which did not represent that which the commission had really decided. Moreover, it would mean that, however far the commission ranged outside their jurisdiction or that which they were required to do or however far they departed from natural justice, their determination could not be questioned. A more reasonable and logical construction is that by "determination" Parliament meant a real determination, not a purported determination. On the assumption, however, that either meaning is a possible construction and that, therefore, the word "determination" is ambiguous, the latter meaning would accord with a long established line of cases which adopted that construction. One must assume that Parliament in 1950 had cognizance of these in adopting the words used in s.4(4).*
>
> *In 1829 in* ***Campbell v. Brown*** *(77), this House upheld a decision of the Lord Ordinary (Lord Alloway) that although by the statute 43 Geo. 3 c. 54, s. 21, the judgment of the presbytery is declared to be final without appeal or review by the court, civil or ecclesiastical, yet if the proceedings on which judgment was pronounced were contrary to law or if that court exceeded the powers committed to it by statute, they may be reversed and set aside by the court.*

Lord Lyndhurst, L.C., in dealing with the argument that the court's power was ousted by the statute, said (78):

"But I apprehend that (particularly from the circumstances of the appeal being taken away) a jurisdiction is given in this case to the Court of Session, not to review the judgment on its merits but to take care that the Court of Presbytery shall keep within the line of its duty and conform to the provisions of the Act of Parliament. There is in the Court of Session in Scotland that superintending authority over inferior jurisdictions which is requisite in all countries, for the purpose of confining those inferior jurisdictions within the bounds of their duty; and the only question here is whether this case is of such a nature and description as to justify the calling into action that authority of the Superior Court. Cases were cited at the Bar and mentioned in the printed papers now on your Lordships' table in which the Court of Session has exercised a superintending authority over inferior jurisdictions when they have been guilty of excess of their jurisdiction or have acted inconsistently with the authority with which they were invested."

34. Lord Wilberforce at page 247 (paragraphs E to H) stated as follows:-

"This shows very clearly that, as and when machinery should be set up enabling the commission to deal with compensation under future agreements, this should be within fixed and determined limits which the legislature itself would lay down; thus Parliament might (under s. 2 (2) (a)) define qualified persons and impose conditions, and (under s. 2 (2) (b)) prescribe matters to be established to the commission's satisfaction. There could be no doubt that if, so far as such power was exercised, and such definitions, conditions and prescribed matters were laid down, these would be architectural directions binding the commission, so that if they departed from them, they would be acting beyond their powers. Moreover, when one compares the terminology of s. 4 (4)-"The determination by the Commission of any application made to them under Act …"-with that of s.3 (b)-"the determination of …claims…" -and appreciates that the power to determine claims is to be subject to such limits (as to definitions, conditions or prescribed matters) as might be approved by Parliament, the conclusion

must follow that the preclusive clause can have no application except to a determination made within the limits, whatever they turn out to be, fixed by Parliament. The respondents' argument that they have only to make a self-styled "determination" in order to enjoy automatic protection is thus at once seen to be unsustainable."

35. Lord Pearson at page 250 (paragraph D, E) stated as follows:-

"I agree with what they have said and have nothing to add. I agree with them also that what has been called the "ouster provision" in s. 4 (4) of the Foreign Compensation Act 1950, does not exclude the court's intervention in a case where there is a merely purported determination given in excess of jurisdiction. Also in relation to the present case I would join with my noble and learned friends to this extent, that, if the appellants' contentions as to the true construction of the relevant Order in Council are upheld, it must follow that the commission have acted in excess of jurisdiction and the court should intervene in the exercise of its supervisory function."

36. In **Padfield & Ors. v. Minister of Agriculture, Fisheries and Food and Others** (1968) 1 ALL ER 694; the Appellants being members of south east regional committee of Milk Marketing Board made a complaint to the Minister pursuant to provision of Agricultural Marketing Act 1958 about the price of milk sold to the Board by south east region producers and for the Minister to refer the complaint to the committee of investigation established under the Act. The Minister declined to refer the complaint to the investigation committee in exercise of his unfettered discretion.

Lord Hudson at page 710 (paragraphs A to D) stated as follows:

"If the Minister has a complete discretion under the Act of 1958, as n my opinion he has, the only question remaining is whether he has exercised it lawfully. It is on this issue that much difference of judicial opinion has emerged, although there is no divergence of opinion on the relevant law.

As Lord Denning, M. R., said, citing Lord Greeene, M. R., in Associated Provincial Picture Houses, Ltd. v. Wednesbury Corpn. (14):

> *"a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider."*

In another part of this judgment Lord Greene drew attention (15) to that which I have mentioned above, namely, the necessity to have regard to matters to which the statute conferring the discretion shows that the authority exercising the discretion ought to have regard. The authority must not, as it has been said, allow itself to be influenced by something extraneous and extra-judicial which ought not to have affected its decision."

Lord Upjohn at page 717 (paragraph F) stated as follows:

> *"I adopt the classification of Lord Parker, C.J., in the divisional court:*
>
> *(a) by an outright refusal to consider the relevant matter, or*
>
> *(b) by misdirecting himself in point of law, or*
>
> *(c) by taking into account some wholly irrelevant or extraneous consideration, or*
>
> *(d) by wholly omitting to take into account a relevant consideration?"*

37. In **Re Azmat Ali** [1986] 32 FLR 30 the 1st Respondent leased 194 acres of native land from Native Land Trust Board (now known as iTaukei Land Trust Board (**"NLTB"**). The 1st Respondent entered into an Agreement with Appellant

whereby Appellant was to cultivate twenty-five (25) acres of subject land for ten (10) years.

The 1st Respondent attempted to terminate the Agreement and evict the Appellant which resulted in the Appellant seeking declaration of tenancy under ALTA.

NLTB's position was that it was not aware about the Agreement between the Appellant and the 1st Respondent.

The AT made an Order declaring tenancy in favour of the Appellant over twenty-five (25) acres of the subject land and ordered NLTB to issue Instrument of Tenancy in favour of the Appellant.

1st Respondent's appeal to CAT was dismissed.

1st Respondent then applied for review of AT and CAT's decision by High Court. His Lordship Justice Dyke (as he then was) in the High Court proceedings in relation to s61 of ALTA stated as follows:-

> *"But clauses such as this have never deterred the courts from entertaining actions for judicial review of tribunal proceedings or decisions where there has been excess of jurisdiction or where there has been a breach of natural justice. The decision itself cannot be appealed against and in case tribunals have powers not possessed by the courts, including powers to assign land which is the subject of an unlawful tenancy (see section 18(2)), but the proceedings can be quashed and the case sent back for hearing."*

His Lordship further went to state that:

> *"There can be no question that in England the High Court has powers of review over all inferior courts or tribunals, and there is no tribunal that is*

not inferior to the High Court and no court that is not inferior except the Court of Appeal and the House of Lords.

Similarly there can be no question that in Fiji both the agricultural tribunals and the central agricultural tribunal are inferior to the Supreme Court.

It is to be noted that the powers of tribunals and the central agricultural tribunal are by section 18 of ALTA stated to be those exercise by magistrate's courts, and there is no power given for enforcing awards or decisions of tribunals except in so far as this is covered by section 57 of the Act and by reference to the courts."

His Lordship went on to state that since the tenancy declared by AT was in relation to iTaukei land it should have been subject to consent of NLTB.

The Appellant appealed to Fiji Court of Appeal. The Court of Appeal upheld the High Court's view in respect to s61 (1) of ALTA but allowed the appeal on the ground that declaration of tenancy by AT under ALTA does not have to be subject to NLTB's consent.

38. In **Singh v. Udit** [2006] Civil Appeal No. ABU0091U 2005S (24 November 2006) (High Court Civil Action NO. 7 of 2004S), one Santa Singh was registered proprietor of 177 acres of freehold land and when he died his wife Parvati was appointed Executrix and Trustee of his Estate.

The Appellant, Sarban Singh became registered proprietor of one undivided third share of the subject land as beneficiary subject to transfer dated 8 November 1966. On 1 March 1975, Parvati as Executrix and Trustee executed a lease over the Estate land in favour of the Respondent for twenty (20) years at annual rental of $300.00. Parvati and the Appellant informed the Respondent that his lease will not be extended beyond 1995.

The Respondent then sought declaration of tenancy from AT. The Appellant in AT submitted that when Parvati entered into the lease agreement with the Respondent for twenty years she breached section 23(1)(e)(ii) of the Trustees Act Cap. 66 which provided that the Trustee may grant a lease over the Estate land for any term not exceeding ten (10) years and therefore the lease Agreement was illegal and void. The Lease granted by Parvati to Respondent was for twenty (20) years.

AT refused to extend the tenancy on the ground that the lease agreement was illegal and void because it breached s23(1)(e)(ii) of Trustees Act. The appeal to CAT was dismissed for same reason.

The Respondent then filed proceeding in High Court.

The High Court held that breach of s23(1)(e)(ii) which is an enforcing provision does not make the lease illegal or void, which decision was upheld by Fiji Court of Appeal.

In respect to s61(1) of ALTA the Fiji Court of Appeal stated as follows:-

> *"We with respect agree with Jiten Singh J that the two Tribunals made an error of law in rejecting Ram Udit's application on the ground of illegality through contravention of s.23(1) of the Trustee Act, or s.59 of ALTA read with s.23(1)(e)(ii) of the Trustee Act. That error was central to the rejection in those Tribunals of Ram Udit's applications to them, and certiorari is therefore available in respect of it; see* ***Re Azmat Ali*** *(1986) 32 FLR 30, at 41, in which a declaration issued to the Central Agricultural Tribunal from the Court of Appeal."*

39. The Court of Appeal in respect to **Anisminic** case stated as follows:-

> *"The impact of a clause in precisely this form, so far as material, was considered and determined by the House of Lords in* ***Anisminic Ltd. v***

Foreign Compensation Commission *[1969] 2 AC, 147. The effect of it, briefly stated is that exclusionary provisions like s.61(1) do not extend to protecting an error of law that affects the jurisdiction of a tribunal to make the determination it did. In this instance, the result of the error of law about the illegality of the lease, which was committed by both tribunals, was to induce them wrongly to refuse jurisdiction to hear Ram Udit's application. It was not merely an error committed in the course of validly exercising their undoubted jurisdiction to hear and determine matters committed to them by ALTA, but a rejection altogether, and for a reason erroneous in law, to perform that duty."*

40. From what has been said in the abovementioned cases, it is clear that Section 61(1) of ALTA does not affect this Court's supervisory jurisdiction over the decision of CAT where CAT's decision:-

(i) Was made without or in excess of jurisdiction conferred upon it;

(ii) AT and CAT has committed an error of law;

(iii) AT and CAT has denied a party natural justice.

41. In this instant Appellant's main contention is that the AT committed an error of law by declaring tenancy in favour of 1st Respondent which tenancy was to be issued by the 2nd Respondent, when there was evidence that Appellant was still a lessee of the Estate land by virtue of the twenty year extension of the lease.

42. It appears that the AT placed lot of weight on the evidence of Mr Waisake Naduki, the then Estate Officer with 2nd Respondent.

43. I fail to understand why the AT gave so much weight to Mr Naduki's evidence when it was clear from cross-examination, that he was not aware about the relevant file and did not know if the 1st Respondent was cultivating the Estate

land or not. On the issue of cultivation of Estate land Mr Naduki relied on what was said to him by the 1st Respondent.

Mr. Naduki also gave evidence that the lease was not extended for twenty (20) years because the Applicant breached the terms of the lease.

44. I fail to understand how Mr. Naduki could have said that the lease was not extended when there was clear evidence that the 2nd Respondent had extended the lease for twenty (20) years under the provision of Section 13 of ALTA. The evidence was in the form of letter dated 23 August 2010, from 2nd Respondent to Seaqaqa Police Station (page 141 of Copy Records) which letter was in following terms:-

> *"Re: Natua S/D Lot 26 - Jai Wati and Salend Deo*
> *Further to your letter dated 23/08/2010 and our discussion this morning, this is to confirm that Jai Wati f/n Ram Singh is the legal tenant of the Board vide Transmission by Death Dealing No. 45122 registered on 28th October, 1998.*
>
> *Further note she was offered the statutory twenty (20) years extension with effect from 01st January, 2005 and has fully paid the required fees.*
>
> *The Board will proceed with the necessary documentation to facilitate the above."*

45. In this regard I think it is appropriate to re-produce Annexure "AA1" and AA2" of Supplementary Affidavit of Prem Lata sworn on 4 May 2015, filed in this action with leave.

Annexure AA1

"Our Ref. 4/9/5136

October 30, 2003

JAI WATI F/N RAM SINGH
PO BOX 177
NATUA
SEAQAQA

Dear Sir,

EXTENSION OF YOUR AGRICULTURAL TENANCY
NL.17695 Known as NATUA S/D Lot 26
District : SASA NLTB No.: 4/9/5136

Under Section 13(1) of the Agricultural Landlord and Tenant Act you are entitled to a 20-year extension of your tenancy, subject to your having farmed in accordance with the practice of good husbandry, and subject to your paying a premium of one year's rent on or before the first day of such extension, and on before the first day of the eleventh year thereof.

A member of my staff recently inspected your holding, and I am satisfied that at the present time you are farming in accordance with good husbandry practice.

Your present tenancy expires on 31/12/2004, and if you wish to have an extension for 20 years from 1/1/2005, I should be glad if you would please let me have your remittance of the premium of one year's rent together with other costs set out below, (i.e. $4,633.58 on or before that date:-

Fees	***Amount***	***VAT***	***Total***
Premium	*$ 2,000.00*	*$ 37.50*	*$ 2,037.50*
Stamp Duty	*$ 92.00*	*$ 0.00*	*$ 92.00*
Registration Fee	*$ 3.00*	*$ 0.38*	*$ 3.38*
Processing Fee	*$ 500.00*	*$ 62.50*	*$ 562.50*
Documentation Fee	*$ 200.00*	*$ 25.00*	*$ 225.00*
Rent to 31/12/2003	*$ 1,712.20*	*$ 0.00*	*$ 1,713.20*
TOTAL	*$ 4,508.20*	*$ 125.38*	*$ 4,633.58*

If you do not pay the required premium on or before the due date, I shall have to assume that you do not wish to have an extension to your present tenancy and it will, therefore, expire on 31/12/2004, and I shall have to take steps to repossess the holding.

Yours faithfully,

…….
E Ravaga
Manager Northern

cc: The Manager, Fiji Development Bank, Seaqaqa"

Annexure AA2

"Our Ref. 4/09/5136/mc

19 April 2005

The Branch Manager
Fiji Development Bank
SEAQAQA

Attention: Mr Radike

Dear Sir,

Re: EXTENSION OF LEASE 4/09/5136. - 321/08515
JAI WATI F/N RAM SINGH AS ADMINISTRATIX

This is to confirm that the above lease is entitled to statutory extension of 20 years with effect from 01st January, 2005.

Mrs Wati has been requested to call into our office and sign the extension documents after which the Board shall proceed with registration.

In the meantime, we are grateful for any assistance rendered to Mrs. Wati.

Yours faithfully,

MarikaColamoto

for Manager Northern"

46. There is clear evidence that Estate lease was extended for twenty (20) years from 1st January 2006.

47. CAT followed, following statement of Madam Justice Wickramasinghe in **Arjun v. Director of Lands** [2011] FJHC 353; HBC 207.2010L (21 June 2011):

"[21] Receipt No. 258773 ….paid as renewal fees is evidence of the fact that the plaintiff made an application for extension after the lease period … an application for extension should be made before it expires, as thereafter it reverts back to the State.

[22] As held in the case of Ministry of Lands and Mineral Resources v Rafiqan Bi et al (supra) upon termination, a lease cannot be extended. The rationale of this principle is that after the expiration of the lease the rights of the parties cease to exist. Therefore, the application for an extension must necessarily be made before the lease expires.

An application made after the expiry of the lease would have to be considered by the Director of lands as a new lease. I therefore determine that when the lease ….expired, it reverted to the State….."

48. With all due respect, I cannot agree with her Ladyship's reasoning for the following reasons:-

(i) Under Section 13 of ALTA the extension of the Agricultural Lease is mandatory. This section states that the lessee "….*shall be entitled to be*

granted a single extension (or a further extension, as the case may be) of his contract of tenancy for a period of twenty years…."

(ii) The extension of Agricultural lease is not to be treated the same way as the extension of any other ordinary lease.

(iii) The mere fact that the extension is not registered against the lease does not affect the extension in any way whatsoever.

49. The CAT have entirely missed this point and held that just because the Applicant did not apply for extension prior to expiry of the lease she then cannot seek extension of lease after the lease has expired.

50. I repeat what I said at paragraph 48 of this Judgment and in any event I fail to understand on what basis CAT held that the lease had expired prior to extension when there is clear evidence before the AT that the Second Respondent was processing the extension of the lease well before its expiry and the fact that the Applicant paid the fees for extension of lease on 7 July 2004 which is well before the lease expiry date which is 31 December 2005.

51. Therefore, CAT also made an error of law in this regard.

52. I agree with Applicant's submission that mere fact that the Extension of Lease was not registered does not affect the validity of the extension.

53. In any event after the Applicant paid the required fees and charges stated in letter reproduced at paragraph 45 of this Judgment it was incumbent upon the 2nd Respondent to attend to preparation and registration of Extension of Lease.

54. There is no question that the Estate Lease was not extended and as such the AT by holding that the Estate Lease was not extended erred in law.

55. The Art could not or should not have made the orders he made on the face of documentary evidence before it. In fact Mr Naduki confirmed that letter dated 30 October 2003 from 2nd Respondent to the Applicant was "genuine".

56. In view of what has been said here before this Court and in exercise of its supervisory jurisdiction have no alternative but to set aside and quash the AT and CAT Decisions.

Costs

57. In have taken into consideration the Affidavits and Submissions filed by the Applicant, and 2nd Respondent and also the Oral Submissions made by Applicant and 1st Respondent.

Orders

58. I make following Orders:-

(i) Decision of Agricultural Tribunal made on 7 February 2012 and Central Agricultural Tribunal made on 31 July 2014 are quashed and set-aside;

(ii) That the 2nd Respondent, iTaukei Land Trust Board forthwith attend to registration of extension of Native Lease No. 17695 in favour of the Applicant;

(iii) That the Tribunal Action in respect to Application for Tenancy by the 1st Respondent against the Applicant be re-heard by the Tribunal;

(iv) That the 2nd Respondent serve on the Applicant a list of documents which are relevant to Native Lease No. 17695 and its extension including all the correspondences except for any internal memorandums of the 2nd Respondent or confidential documents;

(v) 1st Respondent pay Applicant's cost of this action assessed in the sum of $1,000.00 within twenty-one (21) days from date of this Judgment;

(vi) The 2nd Respondent pay Applicant's costs of this action assessed in the sum of $500.00.

K. Kumar
JUDGE

At Suva
3 June 2016

Maqbool & Co. for the Applicant
P. R. Lomaloma Esquire for the 1st Respondent
No Appearance for the 2nd and 3rd Respondents