

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**APPELLATE JURISDICTION**

**CIVIL APPEAL NO. HBA 21 OF 2018**

**IN THE MATTER** of an Appeal from the decision of the Ba Magistrate's Court, in Civil Action No. 38 of 2015.

**BETWEEN** : **SHARDHA MANI** of Veisaru, Ba, Fiji, Domestic Duties.

**APPELLANT/(ORIGINAL PLAINTIFF)**

**AND** : **PALAMEI** and/or **THE OCCUPIERS OF INSTRUMENT OF TENANCY NO. 12280** land known as Veisaru No. 2 Lot 1 in the Tikina of Bulu in the Province of Ba.

**RESPONDENT/(ORIGINAL DEFENDANT)**

**Appearances** : Mr N. Padarath with Ms S. Shafique for the appellant  
No appearance for the respondent  
**Date of Hearing** : 23 January 2019  
**Date of Judgment** : 6 February 2019

## **J U D G M E N T**

### **Introduction**

- [01] This is a timely appeal against a decision of the Learned Magistrate (*the Magistrate*) sitting at Ba. The Magistrate delivered his decision on 8 June 2018, where he dismissed a claim brought by the plaintiff/appellant (*the appellant*) against the defendant/respondent (*the respondent*).
- [02] Notice of hearing of the appeal was served on the respondent's solicitor, Messrs Nacolawa & Company who are the registered solicitors for the respondent. An affidavit of service in proof thereof has been filed by the appellant. However, the

notice of the hearing was not served on the respondent personally. Mr Padarath counsel appearing for the appellant told the court that he can still proceed with hearing on the basis that the service was proper as it was served on the solicitor on record for the respondent. Accordingly, the hearing proceeded in the absence of the respondent or his solicitor.

- [03] The Magistrate's Court Rules, as amended ('MCR'), O 37, R 14, enables the court to hear an appeal in the absence of any party. Rule 14 states that: if the respondent fails to appear, in person or by barrister and solicitor, when the appeal is called on for hearing, the appellate court shall, on proof of the service upon him or her of notice of the hearing, proceed to hear the appeal *ex parte*.
- [04] At the hearing, the appellant counsel argued the appeal orally. In addition, he filed a written submission.

### **Background**

- [05] As a holder of Instrument of Tenancy, Shardha Mani, the plaintiff/appellant ('*the appellant*') commenced an action against Palamei, the defendant/respondent ('*the respondent*') for the recovery possession of an agricultural land known as Veisaru No.2 Lot one having an area of 11.666 hectares. ('*the land*'). The appellant's claim was that the respondent is a trespasser and despite notice being served on him to vacate, he has refused to do so. The respondent pleaded that he is the holder of the power of attorney of Milika Waqaura of Veisaru, Ba, the administratrix to the Estate of Joveci Ravato whose Instrument of Tenancy is described as NLTB No. 4/01/3338 and also known as Veisaru 2, containing an area of approximately 6.3854 hectares. After hearing the matter, the Magistrate dismissed the action on the ground that the Magistrate's Court did not have jurisdiction to hear and determine the matter. The appellant appeals to this court.

### **Grounds of Appeal**

- [06] The appellant has preferred the appeal on the following grounds:

- a. *The Learned Magistrate erred in law and in fact when he held that the application is misconceived and that the Magistrate Court lacked jurisdiction when Section 16 (1) (d) of the Magistrate Court Act gave a specific power to hear and exercise jurisdiction in all suits involving trespass to land or for the recovery of land (including any building or part thereof) irrespective of its value, where no relationship of landlord and tenant last has at any time existed between any of the parties to the suit in respect of the land or any part of the and (including any building or part thereof).*
- b. *The Learned Magistrate erred in law at paragraph 7 of the Judgment by misdirecting and misinterpreting the powers provided for under Section 18(1) of the Agricultural Landlord and Tenant Act. The powers outlined under Section 18(1) do not provide for hearing of matters for trespass to land and recovery of land.*
- c. *The Learned Magistrate erred in law and in fact at paragraph 10 in relying on Section 37 of the Agricultural Landlord and Tenant Act, when;*
  - i. *It was not established by the Respondent that he was a tenant of the Appellant.*
  - ii. *There was no evidence to establish any landlord and tenant relationship between the Appellant and Respondent.*
- d. *The Learned Magistrate erred in law by misdirecting and misapplying the principles established in Kumar v Devi (2017) FJHC 269 HBC 202 of 2013. The principles in Kumar v Devi (Supra) was specific to the issue of the meaning of the term registered proprietor under the Land Transfer and the evidence required to prove registered proprietorship under the Land Transfer and it did not have any relevance to the current case.*
- e. *The Learned Magistrate erred in law and in fact in holding that the Agricultural Landlord and Tenant Act applied when there is no provision in the Act to evict or recover land from a trespasser.*

### **The decision in the Court below**

[07] In his analysis, the Magistrate states at paragraph 8-11 that:

- “8. Evaluating the provisions of the ALTA, it is absolutely clear that agricultural leases are subject to the provisions of the ALTA. Firstly, Section 9 (2) of the ALTA mandates that all Agricultural Leases are subject to the provisions of the ALTA. Section 16 establishes the Agricultural Tribunal to resolve disputes arising out of the Agricultural Leases Agreements.*
- 9. Section 18 of ALTA provides that the Tribunal shall exercise powers of the Magistrate Courts to deliberate on these issues.*
- 10. Section 37 (1) (c) (ii) refers specifically to procedures of terminating a tenancy agreement when rent is in arrears. In the event that the Tenant is served with the Notice to Quit, subsection (2) provides that the tenant with procedures to seek relief against forfeiture from the Tribunal.*
- 11. Having taken a holistic view of the ALTA, I am driven to conclude that any Agricultural Lease is subject to ALTA. It naturally follows that disputes arising from agricultural leases should be dealt with by the Agricultural Tribunal.*

[08] The Magistrate then concluded that this application is misconceived and is dismissed for want of jurisdiction.

### **The Issue**

[09] The principle issue at hearing of this appeal was whether or not the Magistrate erred in law and in fact when he held that the Magistrate’s Court lacked jurisdiction to hear and determine the claim for recovery of the agricultural land from a trespasser and that such claim should be decided by Agricultural Landlord and Tenant Act (‘ALTA’), especially when there was no Landlord – Tenant relationship between the parties to the suit ever existed.

### **The Law**

[10] The law relevant to this appeal is the Magistrates’ Court Act (‘MCA’), Section 16(1) (d) and ALTA, section 18.

[11] MCA, S. 16(1) (d) spells out that:

16.-(1) *Without prejudice to the jurisdiction of a Magistrate under this Act or other written law, a Resident Magistrate shall have an exercise jurisdiction in the following civil causes-*

*(d) in all suits involving trespass to land or for the recovery of lands (including any building or part thereof) irrespective of its value, where no relationship of landlord and tenant has at any time existed between any of the parties to the suit in respect of the land or any part of the land (including any building or part thereof); [Emphasis provided]*

[12] ALTA, S. 18 (1), dealing with the powers of the Tribunal, states that:

*“Powers of tribunal those of Magistrates Court*

*18.-(1) A tribunal shall have power-*

*(a) to exercise all the powers of a Magistrates Court in its summary jurisdiction of summoning and enforcing the attendance of witnesses, examining witnesses on oath, and enforcing the payment of costs and the production of documents; [Emphasis provided]*

*(b) to admit evidence whether written or oral, and whether or not such evidence would be admissible in civil or criminal proceedings;*

*(c) to award costs;*

*(d) to extend any period of time, whether in relation to a notice or otherwise, specified in this Act.”*

## **The Argument**

[13] Mr Padarath counsel appearing for the appellant forcefully contended that: the Magistrate was in major error when he struck out the claim for want of jurisdiction when there was no relationship of landlord and tenant existed between the parties and that section 18 and 19 of ALTA are not relevant to these proceedings.

## Discussion

- [14] The appeal raises an important issue whether or not the Magistrates Court has jurisdiction to hear and determine a claim brought seeking recovery of possession of an agricultural land from a trespasser in the circumstances where there is no landlord-tenant relationship between the parties.
- [15] It was the common ground before the Court below that the land in dispute is an agricultural land.
- [16] The Magistrate held that since the claim is related to an agricultural land he had no jurisdiction to deal with the claim and make a determination. He further held that only Agricultural Tribunal could deal with the issue. He has heavily relied on section 18 of the ALTA in basing his decision.
- [17] It would be necessary to look at the preamble of ALTA to understand the purpose for which the Act has been enacted. The preamble of ALTA clearly explains the purpose and applicability of the Act. It says:
- “An act to provide for the relations between landlords and tenants of agricultural holdings and for matters connected therewith.” [Emphasis provided]*
- [18] It would be obvious that ALTA is meant to deal with the relations between landlords and tenants of agricultural lands and matters connected therewith.
- [19] Undoubtedly, MCA Section 16 (1) (d) vests jurisdiction in the Magistrates Court to deal and determine all suits involving trespass to land or for the recovery of lands (including any building or part thereof) irrespective of its value, where no relationship of landlord and tenant has at any time existed between any of the parties to the suit in respect of the land or any part of the land (including any building or part thereof).
- [20] The conditions precedent to exercise jurisdiction under section 16 (1) (d) include: firstly, the suit must involve trespass to the land or for the recovery of lands (including any building or part thereof) irrespective of its value and secondly,

there must not be relationship of landlord and tenant has existed at any time between any of the parties to the suit in respect of the land or any part of the land.

[21] In this case, the appellant had pleaded trespass to the land and recovery of the land was sought on that basis and there was no pleading before the Magistrate that there existed at any time a landlord-tenant relationship between the parties to the action in respect of the subject land or part of it. I am of the opinion that the two conditions precedent have been met to exercise jurisdiction under section 16 (1) (d) of the MCA. The Magistrate could have safely exercised his jurisdiction over the claim brought by the appellant. However, the Magistrate did not exercise the jurisdiction. He said the Magistrates Court did not have jurisdiction to deal and determine a claim involving an agricultural land as the agricultural tribunal has the special jurisdiction to deal with any dispute arising out of an agricultural lease. I would disagree with the Magistrate for the reasons I would follow shortly.

[22] It is true that the tribunal has jurisdiction in all disputes arising out of a contract in respect of an agricultural land. Section 9 (2) of ALTA, the section the Magistrate heavily relied upon, states:

*“every contract of tenancy shall be deemed to contain the following clause-  
This contract is subject to the provisions of the Agricultural Landlord and Tenant Act 1966, and may only be determined, whether during its currency or at the end of its term, in accordance with such provisions. All disputes and differences whatsoever arising out of this contract, for the decision of which that Act makes provision, shall be decided in accordance with such provision.”*

[23] The above section will be triggered when there is a contract of tenancy respecting an agricultural land. Admittedly, the land in dispute is an agricultural land for which the appellant has been issued with the contract of tenancy.

[24] The issue here is whether or not the agricultural tribunal has jurisdiction to make an eviction order against a trespasser to an agricultural land.

- [25] The appellant brought the action for the recovery of the land from the respondent on the basis that he (the respondent) is a trespasser to the land. The respondent maintained that he is occupying the land under a power of attorney given to him by a Milika Waqaura.
- [26] The Magistrate found that the tribunal has all the powers that a Magistrates Court has. He relied on section 18 (1) of ALTA. That section states that a tribunal shall have powers of a Magistrates Court in certain things and matters such as summary jurisdiction of summoning and enforcing the attendance of witnesses, examining witnesses on oath and enforcing the payment of costs and the production of documents, admitting evidence, awarding costs and extending any period of time. This means a tribunal could exercise the powers as a Magistrates Court in the matters stated in the section. It should not be construed as a tribunal could exercise the entire jurisdiction that a Magistrates Court possesses. I would, therefore, accept the appellant's contention that the tribunal does not have all the powers of the Magistrate, it only has the powers as defined in section 18 (1).
- [27] I now turn to the issue whether the tribunal is empowered to issue eviction order against a person who has trespassed upon any agricultural land.
- [28] There is no specific provision in the ALTA which gives jurisdiction to the tribunal to issue eviction order against a person who is occupying the land as a trespasser.
- [29] The Magistrate seems to have relied on the case authority of *Kumar v Devi* [2017] FJHC 269 (HBC 202) of 2013. This was an appeal from the Master's decision to a Judge of the High Court, where the High Court held that an instrument of tenancy not registered with the Registrar of Title cannot be used as evidence to establish registered proprietorship in an action under section 169 of the Land Transfer Act. The facts in Kumar's case are different from the present case. The dispute in the present case involves around the recovery of the land from a trespasser. Therefore, *Kumar* case has no application to the present case.



[30] Similarly, in *Chand v Ram* [FJHC] 453 HBA 8.2013, the Magistrate dismissed the plaintiff's claim for recovery of an agricultural land on the ground that an application was pending before the tribunal for declaration of tenancy. The High Court dismissed the appeal against that order. In the present case, nothing of that nature arose. There was no relationship of landlord and tenant ever existed between the parties. As such, *Chand* case also not applicable to the present case.

### **Conclusion**

[31] The MCA section 16 (1) (d) explicitly confers jurisdiction on the Magistrate to hear and determine all suits involving trespass or for the recovery of land irrespective of its value where no relationship of landlord and tenant has at any time existed between any of the parties to the suit in respect of the land or any part of the land.

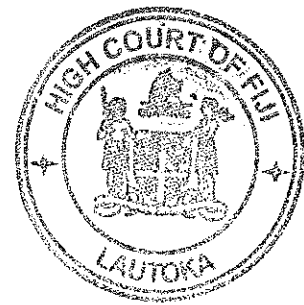
[32] In the matter at hand, it will be noted that: (1) the respondent never alleged that he was a tenant of the appellant and (2) there was nothing before the Magistrate to suggest that a relationship of landlord and tenant has at any time existed between the appellant and the respondent. In the circumstances, the Magistrate could have heard and determined the matter invoking his jurisdiction under section 16 (1) (d) of the MCA, but he had failed to do so.

[33] For the reasons set out above, I hold that the Magistrate fell into error when he held that the Magistrates Court lacked jurisdiction to hear and determine the claim for recovery of the agricultural land from a trespasser and that such claim should be decided by the Agricultural Tribunal, especially when there was no Landlord – Tenant relationship ever existed between the parties. I would, therefore, allow the appeal and set aside the Magistrate's order dated 8 June 2018, striking out the appellant's claim and send back the matter to the Magistrates Court for trial and determination on the merits of the case. I would make no order as to costs.

**Final Orders:**

1. Appeal allowed.
2. Magistrate's order dated 8 June 2018 be set aside.
3. Matter sent back to the Magistrates Court, Ba for trial and determination on merits.
4. There will be no order as to costs.

*M.H. Mohamed Ajmeer*  
..... 6/2/19.....  
**M.H. Mohamed Ajmeer**  
**JUDGE**



**At Lautoka**  
**6 February 2019**

Solicitors:

For the appellant; M/s. Samuel K. Ram, Barristers & Solicitors