

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 341 of 2020**

**IN THE MATTER** of an application for the possession of land under Section 165 and 168 of the Land Transfer Act 1971

**BETWEEN :** **PRANIL SHARMA**, of 4 Luke Street, Nabua, Suva

**PLAINTIFF**

**AND :** **RATU INOKA TAKIVEIKATA** of Fiji Corrections Services

**FIRST DEFENDANT**

**AND :** **ITAUKEI LAND TRUST BOARD**

**SECOND DEFENDANT**

<b>Counsel:</b>	<b>Plaintiff:</b>	<b>In Person</b>
	<b>First Defendant:</b>	<b>Ms. N. Mishra</b>
	<b>Second Defendant:</b>	<b>Ms. Q. Vakanauwa</b>

**Date of Hearing:** **14.7.2022**

**Date of Judgment:** **24.2.2023**

**JUDGMENT**

**INTRODUCTION**

1. Plaintiff filed the originating summons seeking certain orders relating to iTaukei land held by second Defendant. The area of the land is over 715 acres or (1,024.68 ha) and land is owned by six different Mataqali, which consisted more than nine hundred

registered owners. It contains iTaukei Reserve area as well. It also consisted approximately two hundred and fifty existing leases issued to third parties for the purposes of agriculture, residential and commercial etc. Plaintiff in the amended originating summons seeks an order to obtain legal title (order 2 in the originating summons) to a land and for that purpose directions (order 3, 4 of the originating summons) of the court to second Defendant. Plaintiff filed, originating summons is in terms of Section 165 and 168 of Land Transfer Act 1971. According to Section 165 of Land Transfer Act 1971, an action can only be filed by Registrar or Deputy Registrar of Titles. Similarly Section 168 of Land Transfer Act grants power to the court to direct Registrar of Land to do certain actions, in order to give effect to a judgment.

Plaintiff cannot maintain this action in law in terms of the abovementioned provisions.

## **FACTS AND ANALYSIS**

2. First Defendant is in prison at the time of hearing of this action. He is represented by Legal Aid. According to Plaintiff he had granted a land to Plaintiff for ‘business and education’. Plaintiff is seeking to obtain that land from second Defendant.
3. First Defendant denies that he granted any land to Plaintiff, but state that he signed a documents while in prison to allow Plaintiff to reside in iTaukei Land as he came to know Plaintiff as an inmate.
4. First Defendant had further stated in the affidavit that he had told Plaintiff to obtain consent of majority of the members of land owning unit before an application is made to second Defendant.
5. Plaintiff filed an Amended Originating Summons and an Amended Affidavit in Support in terms of Section 165 and 168 of Land Transfer Act 1971, seeking the following Orders:
  - “1. An Order, that this Honourable High Court to issue a Production Order to Fiji Correction Service for Mr Inoke Takiveikata, the paramount chief of Naitasiri, who is a serving inmate to appear before this Honourable High Court and reasons are provided in the Affidavit of this Amended Originating Summons.
  2. An Order that this Honourable High Court to order for First Defendant/Respondent that has signed legal documents for land on Pranil Sharma for business and educational reasons, who is the Plaintiff of this proceeding, and for the First Defendant/Respondent to provide written agreement to this Honourable High Court as required law. A copy of the signed legal documents provided in the Affidavit of this amended Originating Summons.

3. An order, that this Honourable High Court to order and demand Second Defendant/Respondent a explanation as to why the Constitutional Body has failed in their constitutional obligation to process Plaintiff application.
4. An order, that this Honourable High Court to order First Defendant/Respondent to provide explanation to Plaintiff as to why iTLTB has failed to act on the signed documents provided by Plaintiff to Fa company barristers solicitors, commissioners for attorney at law notary public, wrote could you please process our clients application for lease of the said Land which we understand has already been lodged with your office.
5. An Order, that this Honourable High Court to order under special jurisdiction of the High Court of Fiji, on the racist action of Second Defendant/Respondent on Plaintiff for not providing proper access to information, which | understand that its proper right of the Plaintiff under 2013 Constitution and this Honourable High Court to make orders and declaration on the failure of the action by Second Defendant/Respondent for compensation and cost for 100 million dollars.”
6. On 25 .11. 2021, the First Defendant’s Affidavit in Opposition was filed.
7. Plaintiff and first Defendant had filed written submissions and they are considered accordingly.
8. First Defendant’s affidavit in opposition, admitted signing of a form to allow Plaintiff a piece of iTaukei land. He stated that he had requested Plaintiff to consult second Defendant and also obtain consent of the members of land owning unit.
9. On 31 .1. 2022, the Second Defendant’s Affidavit in Opposition was filed and stated among other things:
  - a. The land area Plaintiff seeks to obtain contains more than 250 leases issued to various purposes including agricultural, commercial, industrial, etc.
  - b. It also consists of iTaukei Reserve land. Which can only be leased if de-reserved with the consent of land owners.
  - c. Plaintiff had failed to submit any business plan or necessary approvals for ‘educational and commercial’ use.
10. From the above undisputed facts it is clear that application of Plaintiff made to second Defendant to obtain more than seven hundred acres of land for ‘educational and business’ cannot be practically dealt by second Defendant as the trustee of iTaukei lands .

11. Plaintiff relied on sections 165 and 168 of the Land Transfer Act 1971, for the relief sought under the originating summons.
12. Section 165 of the Land Transfer Act 1971, relates to reference of legal issue for determination by the court by Registrar of Title or the Deputy Registrar. Plaintiff cannot rely on the said provision and or seek relief under said provision. It reads;

**“Reference to court on legal points etc**

Whenever any question arises with regard to the performance of any duties or the exercise of any of the functions by this Act conferred or imposed upon the **Registrar** or, in the exercise of any of the duties of the Registrar, any question arises as to -

- (a) the true construction or legal validity or effect of any instrument; or
- (b) as to the persons entitled or to the extent and nature of the estate, right or interest, power or in authority, of any person or class of persons; or
- (c) the mode in which any entry ought to be made in the register or any endorsement made on any instrument of title; or
- (d) any doubtful or uncertain right or interest stated or dealt with by the Registrar,

**it shall be competent for him or her to refer the same to the court in the prescribed form,** which shall require all the parties interested to appear and show cause in relation thereto, and if, upon such reference, the court, having regard to the parties appearing before it, **shall think proper to decide the question, it shall have power so to do or to direct any proceedings to be instituted for that purpose or, at the discretion of the court, and without deciding such question, to direct such particular form of entry or endorsement to be made in the register or on the instrument of title,** as the case may be, as in the circumstances shall appear to be just.” (Emphasis added)

13. So, the scope of the said provision is clearly stated and who can make an application under said provision is also limited to Registrar or Deputy Registrar of Titles, in terms of the interpretation of word “Registrar”.
14. This section relate to certain situations where the Registrar or the Deputy Registrar can refer such matters stated from (a) to (d) in the said section. It cannot be expanded to allow any person other than Registrar of Deputy Registrar of Titles, to seek relief under said provision, due to exclusive manner of interpretation by use of word ‘means’.

15. According to interpretation section 2(1) Land Transfer Act 1971,

"Registrar" means the **Registrar of Titles** appointed under the provisions of this Act, and includes any Deputy Registrar;"(emphasis added).

16. Plaintiff not being the Registrar or Deputy Registrar of Titles, cannot seek relief by way of originating summons, in terms of Section 165 of Land Transfer Act 1971.

17. Plaintiff had also relied on Section 168 of the Land Transfer Act 1971. It reads;

#### **“Power of court to direct Registrar”**

In any proceedings respecting any land subject to the provisions of this Act, or any estate or interest therein, or in respect of any transaction relating thereto, or in respect of any instrument, memorial or other entry or endorsement affecting any such land, estate or interest, the court may by decree or order direct the Registrar to a cancel, correct, substitute or issue any instrument of title or make any memorial or entry in the register or any endorsement or otherwise to **do such acts as may be necessary to give effect to the judgment or decree or order of such court.**”(emphasis is added)

18. Above provision applies to court to give effect to the judgments of the court. So it is an enabling provision to ‘give effect’ to determination of the court and cannot stand alone to give directions to Registrar or Deputy Registrar. In this action there is no judgment or order of the court to rely on the said provision.

19. So, Plaintiff cannot rely on the said provision of the court to seek relief sought in the originating summons.

20. So this application is struck off as the court cannot grant relief to Plaintiff in terms of Section 165 or 168 of Land Transfer Act 1971.

21. Without prejudice to above, provisions contained in iTaukei Land Trust Act 1940, are briefly dealt for completion, of the matter on merits.

22. Section 4 of the iTaukei Land Trust Act 1940, states:

#### **“Control of iTaukei land vested in Board**

4(1) **The control of all iTaukei land shall be vested in the Board and all such land shall be administered by the Board for the benefit of the iTaukei owners or for the benefit of the iTaukei.**

[subs (1) am Act 12 of 2002 s 3, effective 30 November 2000; Decree 31 of 2010 s 4, effective 2 July 2010; Decree 8 of 2011 s 3, effective 1 March 2011]

(2) The Minister may, by notice in the Gazette, appoint for any division specified in such notice a local committee consisting of the Commissioner as chairperson and such other persons as the Minister may select, for the purpose of advising the Board on any matters affecting iTaukei land within such division.

*[subs (2) am LN 112 of 1970 O 76, effective 8 October 1970; Decree 8 of 2011 s 3, effective 1 March 2011]*

(3) The Commissioner shall report the recommendations of the committee to the Secretary for the consideration of the Board.” [emphasis added]

*[subs (3) am Ordinance 30 of 1945 s 5, 1946]*

23. The above provision recognizes obligation on the part of second Defendant to act as trustee, for the benefit of iTaukei owners or iTaukei. So Plaintiff cannot seek orders to obtain iTaukei Land, only because he submitted an application.

24. According to Plaintiff the purpose of obtaining more than seven hundred acres was for ‘educational and business’ purpose but had not even submitted details about the said business and or educational purpose.

25. Plaintiff had not even identified proper vacant land area, but his application consisted of reserves and already existing leases, according to second Defendant.

26. Regulation 4 of the iTaukei Land Trust (Leases and Licenses) Regulations 1984 provides:

*“Purposes for which, and terms, conditions and covenants subject to which, leases may be granted.”*

4. iTaukei land may be leased by the Board for such purposes as it deems proper and subject to such terms as to rent, premium or otherwise and to such conditions and covenants as the Board shall determine, being terms, conditions and covenants which are not inconsistent with any of the provisions of these Regulations.”

*[reg 4 am Decree 8 of 2011 s 3, effective 1 March 2011]*

27. Second Defendant is vested with the control of all iTaukei Lands as trustee as it needs to consider benefit of the iTaukei land owners, for “purposes it deems proper”.

28. It is undisputed that land area sought by plaintiff, is over seven hundred acres and contained iTaukei Reserve and some existing leases issued to third parties.

29. Section 16 of the iTaukei Land Trust 1940 Act deals land in the iTaukei reserve not being alienated. It states:

***“Land in iTaukei reserve not to be alienated***

(1) Subject to the provisions of the State Acquisition of Lands Act 1940, the Forest Act 1992, the Petroleum (Exploration and Exploitation) Act 1978, the Mining Act 1965, and to the provisions of this section, no land in any iTaukei reserve shall be leased or otherwise disposed of.  
[subs (1) am Decree 8 of 2011 s 3, effective 1 March 2011]

(2) ***Leases or licences may with the consent of the iTaukei owners be granted by the Board to iTaukei in accordance with regulations made under section 33.***  
[subs (2) am Decree 31 of 2010 s 4, effective 2 July 2010; Decree 8 of 2011 s 3, effective 1 March 2011]

(3) *Leases may with the consent of the iTaukei owners be granted by the Board to the Land Development Authority as if it were an iTaukei, in accordance with the aforesaid regulations and subject to the following conditions—*

(a) *no land leased under this subsection shall be transferred, sublet or in any other manner disposed of by the Land Development Authority except to an iTaukei;*

(b) *no lease shall be granted under the provisions of this subsection in respect of any land which is in use by, or required by, or likely to be required by the iTaukei owners or any member of the land owning unit or dependant of such member during the currency of the lease for the use, maintenance or support of members of the land owning unit or to enable it or its members to fulfil obligations under iTaukei custom or under any regulations made under the iTaukei Affairs Act 1944;*

(c) *whenever the consent of iTaukei owners is necessary under this or any other section of this Act, such consent shall be obtained by the Board in such manner and after such consultation with the iTaukei owners, and shall be signified by the iTaukei owners in such manner, as may be prescribed by regulations made under section 33, or in default of any such regulations as the Board may consider appropriate.*

[subs (3) am Decree 31 of 2010 s 4, effective 2 July 2010]

[s 16 subst Ordinance 58 of 1962 s 4, effective 13 December 1962]” [emphasis added]

30. From section 16(2) of the iTaukei Land Trust Act 1940, reserve land can only be granted leases if they are de reserved in terms of the. In the absence of that such land cannot be leased.
31. Section 17 of the Itaukei Land Trust Act 1940, provides for the exclusion of land from iTaukei reserve with the consent of the iTaukei owners. This section states:

***“Exclusion of land from iTaukei reserve with consent of iTaukei owners***

- (1) *The Board may, upon good cause being shown and with the consent of the iTaukei owners of the land, exclude either permanently or for a specified period any portion of land from any iTaukei reserve.*  
*[subs (1) subst Ordinance 19 of 1968 s 5 effective 25 April 1969 ; am Decree 8 of 2011 s 3, effective 1 March 2011]*
- (2) *Every such exclusion as aforesaid shall be published in the Gazette and in a newspaper published in the iTaukei language and circulating in Fiji.*  
*[subs (2) subst Ordinance 19 of 1968 s 5, effective 25 April 1969 ; am Act 1 of 1978 s 2, effective 7 April 1978; Decree 31 of 2010 s 4, effective 2 July 2010]*
- (3) *When any iTaukei land has been excluded from an iTaukei reserve for a specified period such land shall upon the expiration of such period resume the same character and incidents as were attached to it before its exclusion from the iTaukei reserve.”*  
*[subs (3) am Decree 8 of 2011 5 3, effective 1 March 2011]*
32. Plaintiff’s application to second Defendant had not fulfilled above requirements hence cannot be processed. Accordingly, even on merits Plaintiff’s application to seek land for ‘educational and business’ purpose fails.
33. Due to above reasons, orders 3, 4 and 5 of originating summons are struck off on merits.

**CONCLUSION**

34. Plaintiff cannot bring this action in terms of Section 165 and or 168 of Land Transfer Act 1971 for the reasons given. So this application is struck off. No cost ordered considering circumstances of this case.



## **FINAL ORDERS**

- a. Originating Summons struck off.
- b. No costs.

**Dated at Suva this 24<sup>th</sup> day of February, 2023.**

