

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

**Civil Action No. HBC 125 of 2022**

**IN THE MATTER** of the iTaukei  
Lands Trust Board Act 1940 and Its  
Amendments and Regulations.

**BETWEEN:** **RATU APENISA KALOKALOSERE** aka **RATU APENISA KALOKALOSERE KALOUNIVUTIA** of *iTokatoka Tuidi (203), Mataqali Tuidi (Naduru), Yavusa Nailagolaba*, suing on his own behalf and on behalf of the members of the iTaukei Landowning Unit known as *Mataqali Tuidi (Naduru)* now living in Naduru village, Kuku, Bau in Tailevu and elsewhere in and outside of Fiji.

**PLAINTIFF**

**AND:** **KAMELI RITOVA** of the iTaukei Lands Trust Board, Central/Eastern Sub Region, Team Leader, who is sued in his personal capacity and as an employee of the iTaukei Lands Trust Board.

**1<sup>st</sup> DEFENDANT**

**AND:** **ITAUKEI LANDS TRUST BOARD** established under Section 3 (1) of the iTaukei Lands Trust Act 1940 and is herein sued in its name pursuant to section 23 of the same Act.

**2<sup>nd</sup> DEFENDANT**

**Representation** : Ms. V. Filipe (Redwood Law) for the Plaintiff.  
: Mr. V. Tuicolo (*iTLTB*) for the Defendants.

**Date of Hearing** : 24<sup>th</sup> January 2024.

**JUDGMENT**

[1] The Plaintiff filed Originating Summons (Expedited Form) on 14<sup>th</sup> April 2022 pursuant to Section 23 of the iTaukei Lands Trust Act 1940 and Order 7 of the High Court Rules 1988 seeking the following reliefs:

- "1. **A Declaration** that the piece of land known as Matakuro No. 1 is owned by the Plaintiff and members of his Mataqali Tuidi (Naduru) of Naduru village in Kuku, Bau, Tailevu as a consequence of the allotment of Matakuro No. 1 to the Mataqali aforementioned as published and confirmed vide Fiji Government Gazette, Volume 6 of Friday 3 February, 2006.

2. **A Declaration** that the said Matakuro No. 1, as Schedule A land, was leased as Crown Lease No. 3016 to Bulli (father's name Kallu, cultivator and shop-keeper) on 30 September, 1957 and that the said Lease expired on 21 April, 1981, was extended for another 20 years from 21 April, 1981 and such extension had expired on 21 April, 2001.
3. **A Declaration** that, according to law, neither a further extension of Lease nor a new Lease ought to have been granted or issued to the said Bulli (f/n Kallu) and/or his Estate at any time after 30 November, 2000 on the grounds that –
  - (1) Matakuro No. 1 had vested in the TLTB and had become iTaukei land and any Lease thereon ought to have been consented to by the members of Mataqali Tuidi (Naduru) as allotted landowners.
  - (2) The said Bulli (f/n Kallu) and/or his Estate had breached the terms and conditions of their Lease on Matakuro No. 1 warranting the termination of that Lease on Matakuro No. 1, if any, after 30 November 2000.
  - (3) The TLTB ought to have considered the needs of the members of the Mataqali Tuidi (Naduru) to utilize Matakuro No. 1 and facilitate the Mataqali's use of the land rather than leasing it to others, if any.
  - (4) **A Declaration** that any Lease or Extension of Lease or Agreement to Lease or other instrument issued by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in respect of the said land after 30 November, 2000 and which may continue to be an encumbrance on Matakuro No. 1 was unlawful, invalid and of no legal effect.
  - (5) **A Declaration** that the Plaintiff and members of Mataqali Tuidi (Naduru) now need to use Matakuro No. 1 for the economic development and investment of the Mataqali and its members and that the land ought to be given to them to utilise for such development and investment as the members of the Mataqali Tuidi (Naduru) may deem fit.
  - (6) **A Declaration** that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant ought to have re-entered Matakuro No. 1, cancel the lease thereon and subsequently lease the piece of land to the Plaintiff and members of Mataqali Tuidi (Naduru) for their use, development and investment.
  - (7) **A Declaration** that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, whether jointly and/or severally, were negligent and had breached their statutory duties in failing to exercise their powers and functions under iTaukei Lands Trust Act 1940 and its Amendments and Regulations in failing to give Matakuro No. 1 to the Plaintiff and members of Mataqali Tuidi despite requests by the Plaintiffs uncle, Ratu Manasa Naisualevu Kalounivutia and their legal representative, to do so.
  - (8) **An Order** directing the 1<sup>st</sup> and 2<sup>nd</sup> Defendants whether by themselves, their agents to cancel any Lease on Matakuro No. 1 which may have been granted by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to anyone after 30 November 2000, if any, and to facilitate the Plaintiff's and the members of the Mataqali's use of the said land for their use, development and investment.
  - (9) **An Order** as to costs.
  - (10) **And any other Order** this Honourable Court may deems just."

- [2] Upon service of the summons, an affidavit in opposition was filed on 2<sup>nd</sup> August 2022 on behalf of the Defendants. A Reply was filed by the Plaintiff on 12<sup>th</sup> August 2022. The 2<sup>nd</sup> Defendant also filed a supplementary affidavit.
- [3] At the outset I would like to state that I have not been assisted with any comprehensive written submission on the issues on behalf of the parties. The counsels made brief oral submissions at the hearing and relied upon the affidavits filed. It is not in dispute that the subject land known as Matakuoro No. 1 is reverted Schedule A land, allocated to Mataqali Tuidi, in the District of Nausori and Province of Tailevu. It was gazetted on 3<sup>rd</sup> February 2006. The said land was being administered by the State/Crown and leased as State/Crown land being Crown Lease No. 3016. Upon reversion, dealing no. 799727 was endorsed on 27<sup>th</sup> June 2014 on Lease No. 3016 that the land was "*vested in the Native Lands Trust Board from 30<sup>th</sup> November 2000 pursuant to Section 6 of the Native Lands Trust (Amendment) Act, 13, 2002*".
- [4] The Public Trustee of Fiji had assumed administration of the said leased land following the demise of the Lessee in 1980. Until the land was reverted to iTaukei Lands Trust Board, it was the Public Trustee of Fiji (as Administrator) that was the lessee. In this matter they are not a party. The Lease and subsequent extension of the lease expired on 21<sup>st</sup> April 2001. Effective 30<sup>th</sup> November 2000 it was already classified as iTaukei Land. The Department of Lands and Survey issued approval Notice of Lease for the said land for a period of 30 years (from 21<sup>st</sup> April 2001) to the Public Trustee (as Administrator). It is clear from that it was not the iTLTB (2<sup>nd</sup> Defendant) that extended the lease. It was issued by the Lands Department. Once the land was reverted as iTaukei Land it no longer was State administered Land.
- [5] It should be noted that the Lands Department issued a Lease in 2001. The land was gazetted for reversion to ITLTB on 3<sup>rd</sup> February 2006. This is a number of years after the lease was renewed by the State. The reversion was endorsed on the initial Lease on 27<sup>th</sup> June 2014. There is no explanation or any reason given for these differing dates. Gazetting the reversion of the iTaukei land in 2006 and vesting it in the iTLTB from 2000, while leases continued to be issued during these period (2000 to 2006) seems to have created a lot of confusion. The Mataqali will surely be aggrieved with the knowledge that it reverted from 2000. When in fact it was gazetted in 2006. The knowledge was that the land has reverted to the Mataqali while the State (Lands Department) continued granting leases. The iTLTB alone does not shoulder an explanation. The State (Lands Department) was also involved. The State (Lands Department) is not a party to this proceeding. They have not been held to account.
- [6] The Plaintiff has pleaded negligence against the Defendants. On the materials before me, which is the affidavit evidence. I have the affidavit of the Plaintiff

and affidavits of officers of the iTLTB. The affidavits do not provide tangible evidence of negligence in order for me to make a proper determination of it. What is contained in the affidavit of the Plaintiff is not adequate for me to assess negligence of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

[7] This action commenced on 14<sup>th</sup> April 2022. The iTLTB has shown that they made effort for the Fiji Public Trustee to clear the arrears. A notice dated 7<sup>th</sup> December 2021 is to that effect. If the arrears is due, it can still be pursued. The iTLTB is waiting for the determination of this matter, to proceed with re-entry. The Plaintiff for his part is seeking a development lease for the Mataqali. All that is needed is for the parties to work together. The iTLTB has been set up for the betterment and advancement of the iTaukei. The control of all iTaukei land is vested in the iTLTB and they are required to administer the land for the benefit of the iTaukei owners and for the benefit of the iTaukei: **section 4 (1) iTaukei Land Trust Act 1940**. As the said land is vested with iTLTB the Plaintiff and his Mataqali need to work with the iTLTB to get things done in accordance with the iTaukei Land Trust Act 1940. The land in question has already reverted to the Mataqali and is controlled by iTLTB.

[8] For the reasons given I dismiss the summons seeking the various reliefs (Declarations). Given the circumstances there will be no orders as to costs

[9] **Court Orders** as follows:

(a) **The Summons seeking the various relief (Declarations) is dismissed.**

(b) **No orders as to costs.**

  
Chaitanya Lakshman  
Acting Puisne Judge  
1<sup>st</sup> March 2024

