

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 176 of 2024

BETWEEN: ESITA TABUA

Plaintiff

AND: ITAUKEI LAND TRUST BOARD

First Defendant

AND: ETA MARAMA & ILAITIA SALABUCO

Second Defendant

AND: MOHAMMED TAHIR

Third Defendant

AND: THE MINISTER, I TAUKEI AFFAIRS

Fourth Defendant

AND: THE COMMISSIONER OF POLICE

Fifth Defendant

AND: THE ATTORNEY GENERAL OF FIJI

Sixth Defendant

For the Plaintiff: *Ms. T. Draunidalo*

First Defendant: *Ms. Nakarawa K*

Second Defendant: *Mr. N. Tuifagalele*

3rd Defendant: *NP*

4th 5th & 6th Defendants: *Mr. A. Bauleka*

Date of Hearing: *7th May 2025*

Date of Ruling: *19th May 2025*

RULING

Background

1. The Plaintiff has a farm on an agricultural lease in Bua under the Agricultural Landlord and Tenant Act (ALTA) registered in April 2013. The Plaintiff is a nurse who is working overseas and the farm is being looked after by her sister and other relatives.
2. The Plaintiff and the 2nd Defendants are related and were on good terms with each other until about 2017 when the Plaintiff's father died. Thereafter, the 2nd Defendants obtained a lease over the adjacent land. Both leases are on iTaukei land belonging to the 2nd Defendant's Mataqali. The Plaintiff's father was a member of the said Mataqali and the disputes arose about the boundaries which have not been surveyed for both leases.
3. The parties turned to the Defendant Board, the Roko or iTaukei Provincial Administrator in Bua, traditional iTaukei leaders and the police to resolve the issue but all these attempts failed.

The Writ

4. The plaintiff then filed this writ in the Suva High Court seeking, inter alia, 4 declarations over the said lease that can only be granted by the Agricultural Tribunal; and 6 prayers for damages for trespass, damages for breach of contract and damages for breach of statutory duty and costs.
5. The statement of claim in the writ is very confusing. There are 6 defendants and there are 106 paragraphs with no discernible structure; there are 11 prayers being sought but one is a repetition and it is confusing because of the following: -
 - a. the only heading is "Writ," and there are no other headings at all;
 - b. There are 6 defendants and there is no explanation of who they are and in what capacity they are sued;
 - c. There are a total of 11 prayers yet there are no separate group headings for each cause of action against each defendant. This would focus the attention of the court and the defendant to the facts and issues involved, the relevant law; the particulars of the breach; and the relief sought¹--the prayers should logically follow and be very specific;
 - d. All the prayers are lumped together in paragraph 106 (without a heading) and are separated from the factual matrix that the court needs to consider in deciding whether to grant the relief sought or not; and
 - e. As a result of the confusion, I can not clearly identify the cause of action against the Third Defendant.

¹ Order 18. R. 11 of HCT Rules—Particulars of Pleadings. See Ratu Osea Gavidi v Native Land Trust Board & Ors[2008] HBC 222/075 Decision 29 February 2008 per Singh J

6. The purpose of pleadings are: -
 - a. To clarify the matters in dispute between the parties so that the court can readily understand what are the real issues in the case;
 - b. To enable all sides to know in advance the allegations being made against them so that they can prepare their defence in advance of the trial.
7. In *Philipps v Philipps (1878) 4 QBD 127* at p. 139 Cotton LJ said this:

"But in my opinion it is absolutely essential that the pleading not to be embarrassing to the defendant should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial."
8. Order 18 of the High Court Rules deals with Pleadings. Order 18, r.6 requires that facts, not evidence are to be pleaded; O16 r.6(1) requires that it must contain only a statement in summary form of the material facts on which the party pleading relies for his claim or defence; and the statement must be as brief as the nature of the case admits.

THE ISSUES

9. From the statement of claim, the following issues are identified:
 - a. Which is the proper venue for each cause of action identified from the claim and the prayers?
 - b. What action is the court to take as a result of the answer to question a. above?

FIRST ISSUE---THE PROPER FORUM

10. There are 4 declarations sought by the Plaintiff:
 - a. That the plaintiff has a valid lease over the land described in the Instrument of Tenancy;
 - b. That the lease expires in 2042;
 - c. That the survey map issued with the lease in 2012 is the proper map containing the lawful boundaries of all the real property under the lease; and
 - d. That the lease granted to the second defendants in breach of the plaintiff's lawful boundaries under the lease is null and void ab-initio.
11. All the declarations sought are within the jurisdiction of the Agricultural Tribunal—see section 22 of the Agricultural Landlord and Tenant Act and once the boundaries are established, the other declarations become moot points as section 10 of the Registration Act gives priority to the first registered lease.

Clause 19 of the Instrument of Tenancy

12. Clause 19 of the Instrument of Tenancy for the plaintiff states:

This contract is subject to the provisions of the Agricultural Landlord and Tenant Act 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.

13. The plaintiff and the Defendant Board executed the lease on the 20th August 2012 and are contractually bound by Clause 19 above. Disputes about the boundary should have been referred to the Agricultural Tribunal. In determining the boundary, the procedure in the Tribunal is for the parties to pay for a surveyor to survey the land and establish the boundaries of the leases **on the ground**.

The Instrument of Tenancy

14. On the top left of the Instrument of Tenancy given to the plaintiff, are the letters: **ITLTB 4/2/23629**. This means that the Plaintiff's lease is not a Native Lease (NL) or Crown Lease (CL) that is registered under the Torrens System of Registration under the Land Transfer Act but that it is registered as a Deed under the Registration Act by the Registrar of Deeds who is also the Registrar of Titles:
15. On the bottom right of the first page appears this: *Registered on 17 Apr 2013 at 4: 02 pm; See Register of IT Book 2012 Folio 11948*. These words mean the lease is registered in the Registrar of Instruments of Tenancy (issued under ALTA) in Book 2012 Folio 119488. It was registered on 17 April 2013 at 4: 02 pm. Pursuant to section 10 of the Registration Act, the Plaintiff's lease would have precedence over later leases covering parts or the whole of the plaintiff's lease.
16. The description of the land in the Instrument of Tenancy states: -
- INSTRUMENT OF TENANCY*
- AGRICULTURAL LANDLORD ACT.*
- The iTaukei Land Trust Board (hereinafter called the Landlord) hereby leases to Esita Tabua of Lekutu Bua, Staff Nurse (hereinafter called the tenant) **all that piece of land shown for the purpose of identification only on the attached (plan)* (and) * (aerial photograph)* and known as SASAKE in the District of Lekutu in the Province of Bua and having an area of approximately 122.9130 hectares, commencing on the 1st day of January 2012..... (emphasis mine)***
17. The words emphasised above clearly show that the boundaries and the size of the lease issued to the plaintiff have not been confirmed and need to be surveyed and the boundaries on the ground identified clearly.
18. The Agricultural Tribunal was established under the Agricultural Landlord and Tenant Ordinance 1967 (ALTO) and later became ALTA after independence. Section 3 of ALTA states that it shall apply to all agricultural land in Fiji with an area of over 1 hectare.
19. The claim clearly shows that the root of the dispute is the boundary and the size of the leases issued to the plaintiff and the second defendants and this is one of the specific

functions of the Agricultural Tribunal set out in section 22 (1)(i) of ALTA. The dispute is between iTaukei Landowners on land belonging to their Mataqali and section 22 (1)(d) of ALTA is relevant. The provisions are:

Functions of Tribunal

22.-(1) *In respect of its agricultural district, a tribunal may, upon the application of a landlord or a tenant of an agricultural holding-*

.....

(d) re-parcel and re-allocate agricultural land specified in the application, as between landlord and tenant and, for the purposes of this paragraph, the expression "landlord" shall include, in the case of native land, a member or members of the proprietary unit or in the case of any other agricultural land, any of the owners thereof;

.....

(i) in the case of any dispute, specify the area and boundaries of any agricultural holding:

Provided that no appeal shall lie in relation to such decision which shall be final and conclusive for the purposes of this Act;

20. Clearly, the 4 declarations sought by the plaintiff are matters within the specific jurisdiction of the Agricultural Tribunal.

Should the Case be determined in the High Court or Agricultural Tribunal?

21. Section 15(2) &(3) of the Constitution states:

Access to courts or tribunals

15 (2) Every party to a civil dispute has the right to have the matter determined by a court of law or if appropriate, by an independent and impartial tribunal.

(3) Every person charged with an offence and every party to a civil dispute has the right to have the case determined within a reasonable time.

22. Section 15(2) of the Constitution requires that when a Tribunal has been set up under an Act to deal with a particular type of business or activity or other matter and it has been given specific powers and procedures to deal with such matters, then this Court should transfer the matter to that tribunal. The right in section 15(2) of the Constitution belongs to all the parties in this action and will not be waived just for the convenience of solicitors who practice in Suva. Section 15(2) of the Constitution extends the reach of Order 4.r1 of the High Court Rules which deals with venue:

Venue(O. 4, r 1)

- 1(1) Proceedings must ordinarily be commenced in the High Court registry located in the Division in which the cause of action arises.*
 - (2) Applications for Probate or Letters of Administration*
 - (3) Proceedings the subject matter of which is within the jurisdiction of the Magistrates Court must ordinarily be commenced in that Court;*
 - (4) Any action commenced in the High Court may be transferred by the Court from one High Court registry to another or to a Magistrates Court.*
23. The causes of action for trespass, breach of contract and breach of statutory duty arose in Bua and these are within the jurisdiction of the Magistrates Court which for civil matters is now \$50,000.00.
 24. The leases whose boundaries are disputed are in Bua; the majority of the witnesses are in Bua or Labasa, and so this matter should have been filed in the courts or Agricultural Tribunal in Lautoka and be heard in Labasa.
 25. Since the Agricultural Tribunal was set up in 1967, about 12 other tribunals have been established such as the Land Transport Appeals Tribunal, Employment Relations Tribunal, Environment Tribunal, Small Claims Tribunal, Tax Tribunal, iTaukei Land Appeals Tribunal. We can infer from the number of Tribunals set up that Parliament intends to ease the burden on the trial courts so litigants have a greater opportunity to have their matters heard within a reasonable time as required by section 15(3) of the Constitution. Specialist Tribunals build up expertise in their jurisdiction and help to ensure that litigants have their cases dealt with within a reasonable time.


Conclusion

26. For the reasons given, the following conclusions are drawn:
 - a. matters which are the subject of the declarations sought in the Writ are within the jurisdiction of the Agricultural Tribunal and should be severed from the statement of claim and filed in the Agricultural Tribunal; and
 - b. the other 5 prayers sought are matters within the jurisdiction of the Magistrates Court should be severed and filed in the Magistrates Court in Labasa: Order 4, rule 1 of the High Court Rules:
 - c. The plaintiffs should not be penalised for their solicitor's decision to file in the Suva High Court and so leave should be granted to the plaintiff to amend the pleadings to be then transferred to the Labasa Magistrates Court pursuant to O.4, r. 1 of the High Court Rules.

Orders

27. The Plaintiff is to amend his pleadings as follows:

- a. sever the matters within the jurisdiction of the Agricultural Tribunal from the pleadings and file the same as a Reference in the Agricultural Tribunal;
- b. amend the remainder of the writ to be filed in the Magistrates Court in Labasa;
- c. Costs to be determined at the next date;
- d. This matter is stayed for 28 days to permit the execution of Orders 27 a. & b. above.


Penijamini R Lomaloma
A/Judge

