

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
EXERCISING CIVIL JURISDICTION**

CIVIL ACTION NO. HBJ 7 OF 2023.

BETWEEN : **SALWENDRA KALI NAIDU**
APPLICANT

AND : **ANIL DEO**
1ST RESPONDENT

AND : **PRAVIN DEO**
2ND RESPONDENT

AND : **DIRECTOR OF LANDS**
3RD RESPONDENT

AND : **CENTRAL AGRICULTURAL TRIBUNAL**
4TH RESPONDENT

BEFORE : Mr. A.M. Mohamed Mackie-J

APPEARANCE : Ms. R. Prasad, for the Applicant
Mr. N. Padarath, for the 1st & 2nd Respondent
Mr. S. Kant, for the 3rd Respondent
No appearance or representation for the 4th Respondent.

DATE OF HEARING : 25th July 2025.

DECIDED ON : 11th November 2025.

RULING

(On leave to Apply for Judicial Review)

A. INTRODUCTION:

1. This is an application seeking for leave to apply for judicial review a decision of the 4th Respondent – Central Agricultural Tribunal (“CAT”) pronounced on 29th June 2023.
2. By the impugned decision dated 29th June 2023, the 4th Respondent (“CAT”) had set aside the earlier Orders of the Agricultural Tribunal of Lautoka that had been made on 3rd November 2022.
3. The 4th Respondent’s (CAT’s) Orders dated 29th June 2023, against which leave is sought to judicially review, are in the following terms;

- i. *The Appeal of the Appellant is allowed and the judgment of the Tribunal dated the 3rd of November 2022 is set aside.*
- ii. *The 1st Respondent is ordered to pay the Applicants \$2,000.00 (\$ as cost 1,000.00 to each Appellant) as cost of this Appeal.*
- iii. *The matter is referred back to the Agricultural tribunal.*

B. THE RELIEF SOUGHT PURSUANT TO LEAVE:

4. Being aggrieved of the above Orders of the CAT, the Applicant SALWENDRA KALI NAIDU on 18th September 2023 filed his INTER - PARTE SUMMONS (“the Application”) in order to seek the following reliefs, after obtaining necessary leave through this Application in hand

- i. ***AN ORDER OR CERTIORARI*** to remove the said decision of the **CENTRAL AGRICULTURAL TRIBUNAL** dated 29th June 2023 into this Honorable Court and that the same be quashed.
- ii. *A Declaration that the Agricultural Tribunal does have jurisdiction to make the Orders dated 3rd November 2022.*
- iii. *An Order that the 1st and the 2nd Respondents and their Counsel jointly and/or severally do deposit the sum of \$50,693.00 unto the Fiji Sugar Corporation Limited at Lautoka and the sum to be withheld by the Fiji Sugar Corporation Limited until the final determination of reference W D 11 of 1028.*
- iv. *Further declaration or such other relief as this Honorable Court deems just and equitable.*
- v. *The 1st and 2nd Respondents do pay costs of this application.*

C. THE AFFIDAVIT IN SUPPORT & STATEMENT:

5. The Application is supported by the Affidavit sworn by the Applicant SALWENDRA KALI NAIDU on 13th September 2023 and filed on 18th September 2023 along with annexures marked as “SKN-1” to “SKN-8”. In his Statement, filed along with the Application, pursuant to Order 53 Rule 2(A) of the High Court Rules, the Applicant states as follows;

- a. *The Appellant filed Agricultural Tribunal Reference No- WD 11 of 2018 on 29th November 2018.*
- b. *The Appellant then on 5th December, 2018 also filed an application to maintain status quo; that is the Appellant to continue occupation and cultivation and the Sugarcane proceeds to be held by the Fiji Sugar Corporation Limited at Lautoka.*
- c. *The Appellant (more correctly, the 1st & 2nd Respondents) did not file a defence to the Appellant’s claim and instead filed an Application to strike out reference No- W D 11 of 2018.*

- d. *On the 20th On the 20th October 2020 the Appellant's reference is dismissed for non-appearance of the Appellant or counsel*
- e. *Immediate to the above the Appellant filed an application for re-instatement of reference WD -11 2018 on the 13th November 2020.*
- f. *The 2nd Respondent filed an opposition to the said application on the 20th January 2021.*
- g. *The Appellant in the meantime continued in the occupation and in cultivation.*
- h. *Around September 2021, unbeknown to the Appellant, the 1st and 2nd Respondent's counsel pressures Fiji Sugar Corporation Limited at Lautoka to release the sum of \$50,693.00 unto his trust account.*
- i. *The above sum represents the Appellant's production of Sugar cane on the farm subject of WD 11 of 2018.*
- j. *On 4th October 2021, the agricultural Tribunal at Lautoka ordered the re-instatement of reference WD 11 of 2018.*
- k. *On 17th December 2021, the Agricultural Tribunal ordered that the status quo be maintained and made an additional order that the 1st and 2nd Respondent's Striking Out application be dismissed.*
- l. *The 1st and 2nd Respondent's Counsel did not at the time alert the Tribunal that they have uplifted the cane proceeds.*
- m. *Around June 2022, the appellant disclosed that the funds of the Sugar cane proceeds had been uplifted by the 1st and 2nd Respondents Counsel and the appellant around the same period filed an application for orders that the 1st and 2nd Respondents Counsel reimburse the Fiji Sugar Corporation Limited at Lautoka in the sum of \$50,693.00 and the Fiji Sugar Corporation do hold the same until final determination of reference WD 11 of 2018.*
- n. *The Tribunal after hearing both the Appellant and the 1st and 2nd Respondents on the 3rd of November 2022 ordered that the Respondents and their Counsel reimburse the Fiji Sugar Corporation Limited at Lautoka in the sum of \$50,693.00*
- o. *The 1st and 2nd Respondents then approached the Central Agricultural Tribunal (CAT) and on the 29th June 2023, the CAT made the following orders;*
 - i. *The Appeal of the Appellant is allowed and the judgment of the Tribunal dated the 3rd of November 2022 is set aside.*
 - ii. *The 1st Respondent is ordered to pay the Applicants \$2,000.00 (\$1,000.00 to each Appellant) as cost of this Appeal.*
 - iii. *The matter is referred back to the Agricultural tribunal.*

D. THE GROUNDS:

6. The grounds upon which the leave is sought are as follows;

- a) *The Central Agricultural Tribunal (CAT) erred in law and misinterpreted the provisions of section 22(1)(j) and (k) of the Agricultural Landlord and Tenant Act (ALTA).*
- b) *The CAT erred in law and misinterpreted in not considering the provisions of section 3 and 13 of the Agriculture Landlord and Tenant Regulations (Tribunal Procedure) 1967 and Order 3 Rule 2 of the Magistrates Court Rules 1945.*
- c) *The CAT erred in law by going against its own pronouncement in the case of Devi -v- Pal & Ors CAT appeal No. 05 of 2020 wherein it dismissed an appeal against orders for payment of sugar cane proceeds made by the Agricultural Tribunal*

E. AFFIDAVIT IN OPPOSITION:

7. Opposing the Application, the 2nd Respondent, PRAVIN DEO, on 08th November 2023, as the Power of Attorney Holder of the 1st Respondent ANIL DEO, filed the Affidavit in opposition, together with annexure thereto marked as “PD-1” to “PD-10”. He also filed an “IMPORTANT” stating, *inter alia*, the following grounds upon which they **oppose** the Application.

1. ***That the decision of the CAT was not an error of law, and it did not misinterpret the provisions of 22(1) (J) and (k) of the Agricultural Landlord and Tenant Act (ALTA) because;***
 - a. *Section 22 (1) (j) and (k) of the Agricultural Landlord and Tenant Act (ALTA) does not specifically provide a power to the Tribunal to adjudicate on disputes relating to the cane proceeds;*
 - b. *The power or jurisdiction under section 22 is limited to powers provided for under ALTA and it does not extend or allow the Tribunal to extend jurisdiction to include cane proceeds;*
 - c. *Section 22(1) (j) and (k) of the ALTA includes general powers which clearly state that the Tribunal can exercise any other power or duty conferred under the provisions of the Act;*
 - d. *As per section 3 of the Act, it is clearly stated that the Act only applies to agricultural holdings. There is no statutory provision that states a tribunal has jurisdiction to dictate or adjudicate upon cane proceeds.*
2. ***The CAT has considered the relevant provisions of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations 1967, and regulations 3 and 13 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations 1967, are not relevant to the issue at hand because;***
 - a. *The Act itself does not deal with the issue of cane proceeds and this means the Tribunal does not have authority to decide on matters of cane proceeds.*

- b. *As per regulation 14 of ALT (Tribunal Procedure) Regulations 1967, the Tribunal did not have jurisdiction to hear the application to hear the application filed by the applicant dated 27th June 2022, when jurisdiction was with the CAT.*
3. ***The decision of the CAT was not an error of law and it did not go against its own pronouncements in the case of Devi v Pal [2021] FJCAT 1; WD 04 and 05 of 2010 (19th January 2025) because;***
- a. *The Regulation dictates procedures of how application and issues are to be determined. The Act is the governing legislation and to apply the regulation, one must first see whether the Act provides for such power. There is no power to deal with cane proceeds in the Act, as such, the regulation cannot be relied on to outline procedures to deal with cane proceeds.*
4. ***The Respondents reserve the right to argue further grounds at the hearing.***
8. The Applicant filed his Reply Affidavit on 21st November 2023 together with further annexures marked as “SKN-1” to “SKN-10”.

F. RELEVANT PROVISION OF ALTA:

9. Section 22 (1) (j) & (k) of the Agricultural Landlord and Tenant Act states as follows;

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

....

....

(j) decide any dispute between a landlord and tenant of agricultural land relating

to such land and to the provisions of this Act, and to exercise any power or duty, including the power to specify the period of time a decision shall be in force, necessary for the implementation of any power, duty or function conferred by or imposed under the provisions of this subsection or of this Act:

Provided that the tribunal shall not adjudicate upon the length of the term contained in any contract of tenancy or extension there;

(k) exercise any other power or duty conferred or imposed by or under the provisions of this Act.

G. THE DETERMINATION:

10. The Applicant seeks leave to review a decision of the 4th Respondent made on 29th June 2023. The impugned decision is reproduced in paragraphs 3 (i), (ii) & (iii) and Paragraph 5 (o) above.

11. Order 53 Rule 3(1) states that no application for judicial review shall be made unless the leave of the Court has first been obtained. The purpose behind this is to eliminate frivolous, vexatious or hopeless applications.
12. The test for Application for Leave for Judicial Review was stated by Justice Scutt in ***Nair v Permanent Secretary for Education & Ors in Judicial Review No. 2 of 2008*** as follows:
 - a. *Does the applicant have sufficient interest in the application?*
 - b. *Does the material available disclose an arguable case favoring the grant of the relief sought, or what might, on further consideration, be an arguable case?*
 - c. *Is the decision susceptible to judicial review – that is, is it of a private or public nature?*
 - d. *Are alternative remedies available to the applicant and, if so, have they been pursued by the applicant?*

Sufficient Interest:

13. The question whether the Applicant has **sufficient interest** warrants the foremost determination here. The subject matter of the proceedings and decision before the tribunal, and the subsequent impugned decision by the 4th Respondent on Appeal was the sum of \$50,693.00, being the cane proceeds that was held by the FSC and withdrawn by the 1st&2nd Respondents and their Solicitors, allegedly, unbeknown to the Applicant.
14. The substantive proceeding before the tribunal, wherein the Applicant is claiming for declaration of Tenancy in respect of the land in question, is yet to be proceeded before the Tribunal. Thus, the consideration of sufficient interest hereof has to be confined to the said sum of \$50,693.00 being the cane proceeds claimed by the Applicant on the basis that he has made contribution towards it.
15. On careful scrutiny of the sections in the ALTA, I haven't found any single provision therein that empowers and/ or confers jurisdiction to the Tribunal to adjudicate any dispute with regard to cane proceeds or that of any kind of cultivation in the subject land.
16. The jurisdiction conferred , as per the Act , is confined only in relation to the specific provisions under Section 22(1) (a) to (k) , namely **to**; Assess , fix and certify the maximum rent, - Determine whether compensation is payable- Grant leave to the landlord to resettle the tenant- Parcel and Relocate the agricultural land specified in the Application- Grant leave to reduce the size of the holding- Authorize and direct the recovery of the holding- Grant Relief against eviction- Authorize and direct transfer or subletting – Specify the area and boundaries in case of any dispute between the landlord and tenant, and to exercise any other power or duty conferred or imposed by or under the provision of this Act.
17. In view of the above, it is abundantly clear that the above section does not confer jurisdiction on the Tribunal for the adjudication of the dispute in relation to the cane

proceeds as correctly observed by the 4th Respondent in its impugned decision. So, the Applicant's interest, if any, in the said sum of money which is, obviously, not the subject matter before the Tribunal, cannot be considered by this Court for any relief by this Court with the leave being granted as prayed for.

18. If the Applicant has any interest or claim in the said sum of money, in my view, he is at liberty to pursue such claim or interest therein against the 1st & 2nd Respondents by adducing required evidence in an appropriate forum. The relevant sections of the Act make it abundantly clear that the Tribunal or the ALTA cannot be made use for this purpose.
19. Further, the cane proceeds hereof cannot be even claimed and ordered as compensation by the Tribunal, though the Tribunal has the power to order the same pursuant to Section 22(1) (b) of the Act. The reason is that the cultivation of the subject land, with sugarcane or any other crops for that matter, does not fall under the category of "improvements" identified in the relevant provisions of the Act.
20. If the Tribunal or the CAT or this Court is to go against the provisions of the ALTA and order the reimbursement and retention of the said sum of cane proceeds pending the litigation hereof, the result at the end of the day will be that it would remain undisposed since none of the said forums will have any say on it due to lack of jurisdiction. Had a contrary order been made by these forums, the provisions of the ALTA will not protect such an Order. If done so, it will only amount to be an order for sequestration of property before the judgment in a proceeding for money recovery for which ALTA cannot be made used.
21. Thus, I am of the firm view that any interest of the Applicant in the subject matter, being the said cane proceeds in a sum of \$50,693.00, cannot have any influence or impact in this matter for it to proceed with the leave being granted. Therefore, the applicant fails in this test.

Arguable Case:

22. The next issue is whether Applicant has an arguable case. The test for arguable case was stated by Lord Diplock in ***Inland Revenue Commission v National Federation of Self Employed and Small Businesses Ltd [1981] UKHL 2; [1981] UKHL 2; [1982] AC 617*** as follows: -

"The whole purpose of requiring that leave should first be obtained to make the application for judicial review would be defeated if the court were to go into matter at any depth at that stage. If, on a quick perusal of the material then available, the court thinks that it discloses what might on further consideration, turn out to be an arguable case in favour of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him, leave to apply for that relief. The discretion that the court is exercising at this stage is not the same as that which is it is called upon to exercise when all the evidence is in and the matter has been fully argued at the hearing of the application."

23. The leading Fijian authority on this issue is the Supreme Court in **Matalulu & Anor. v Director of Public Prosecutions [2003] 4 LRC 712** which stated as follows: -

*"The Judge granting leave to issue judicial review proceedings has discretion, once a sufficient interest is shown by the applicant. That discretion has to be informed by the evident purpose of Order 53. It is not an occasion for a trial of issues in the proposed proceedings. The judge is entitled to have regard to a variety of factors relevant to the purpose of the rule. These include: 1. **Whether** the proposed application is frivolous or vexatious or an abuse of the process of the Court? 2. **Whether** the application discloses **arguable grounds** for review based upon facts supported by affidavit? 3. **Whether** the application would serve any useful purpose? (eg whether the question has become moot). 4. **Whether** there is an obvious alternative remedy, such as administrative review or appeal on the merits, which has not been exhausted by the applicant? 5. **Whether** a restrictive approach to the grant of leave is warranted because the decision is one which is amenable to only limited judicial review?"*

The question whether there are arguable grounds for review is not to be determined by the resolution of contestable issues of law. But where a proposed application for judicial review depends upon grounds involving assertions of law or fact which are manifestly untenable, then leave should not be granted."

24. When the subject matter of the impugned decision by the 4th Respondent, which is the said sum of money in \$50,693.00, does not fall under the purview of the ALTA, and when the correct legal position in that regard, as per the Act, has been clearly articulated by the 4th Respondent's impugned decision, I don't find that the Applicant has an arguable case for this Court to proceed with leave being granted.
25. In my view, the 4th Respondent reached a correct conclusion on the applicability of the ALTA in respect of the present dispute. The Applicant has failed to present an arguable case that warrants the leave.
26. In **Maisamoa v Chief Executive Officer for Health**, the judgment of the Court stated:

*...All that needs to be demonstrated at the leave stage is that there is an arguable case. In **State v Connors Shah [2008] FJHC 64 Sc** correctly observed about the process at the leave stage:*

*At this stage a full review of the facts is unnecessary. Nonetheless, a court is obliged to sufficiently pursue material provided to determine whether an applicant raises an issue arguably involving **an error in law, a serious error in fact; a violation of natural justice or procedural fairness, or an excess of jurisdiction by the decision-maker** the subject of the application. (Emphasis added)*

27. In the light of the above, it is my considered view that the Applicant's act of seeking leave, to proceed for judicial review of the impugned decision by the 4th Respondent and his exercise before the Tribunal and CAT in relation to the said sum of cane proceeds, is only a "**wild goose chase**".

Alternative Remedy:

28. If, the Applicant has any rightful claim against the said sum of \$50,693.00, it can be pursued before an appropriate forum as alluded to above . Thus, the Applicant has an alternative remedy.
29. I find that no useful purpose will be served by proceeding with the leave being granted and I am of the firm view that the impugned decision by the 4th Respondent is not susceptible for judicial review.

H. CONCLUSION:

30. For the reasons discussed above, I find that all four (4) grounds adduced by the Applicant are devoid of merits and the matter before me does not warrant the granting of leave in order to judicially review the 4th Respondent's impugned decision dated 29th June 2023 and the Application for leave has to be dismissed, however, with no order for costs .

I. FINAL ORDERS:

- (a) The Application for Leave to Apply for Judicial Review fails.
- (b) The Application, preferred by the Applicant on 18th September 2023, is hereby dismissed and struck out.
- (c) No orders as to costs.




A.M. Mohamed Mackie
Judge

At the High Court of Lautoka on this 11th day of November 2025.

SOLICITORS:

For the Applicant:

For the 1st & 2nd Respondents:

For the 3rd Respondent-

For the 4th Respondent-

Messrs. FAZILAT SHAH LEGAL- Barristers & Solicitors

Messrs. SAMUEL RAM LAWYERS- Barristers & Solicitors

Attorney General's Office

No Appearance or Representation