

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

CIVIL ACTION NO. HBC 138 OF 2024

BETWEEN : **JONE LEBOBO NO. 2** of Mataqali Nacobicibici Qasekinagone
Namegai, Ra.

PLAINTIFF

AND : **RAVULACA TURAGA, ACA SUGUTURAGA, NETANI
NAVUTOVUTO NO. 2 and NETANI NAVUTOVUTO NO. 3** of
Nasavusavu Village, Nalawa, Ra.

1ST DEFENDANTS

AND : **THE CHAIRMAN, NATIVE LAND COMMISSION** of Head Office,
Suva.

2ND DEFENDANT

BEFORE : A.M. Mohamed Mackie- J.

COUNSEL : Mr. Radrodro A for the Plaintiff
Mr. Tamanikasaqa I. for the 1st Defendant
Mr. Kant S. for the 2nd Defendant

HEARING : 19th August, 2025

WRITEN SUBMISSIONS: Filed by the Plaintiff on 19th August 2025.
Filed by the 1st Defendant on 21st July 2025.
Filed by the 2nd Defendant on 19th August 2025.

DATE OF RULING : 20th November, 2025

RULING

1. The Plaintiff, on 25th June 2024, filed his Originating Summons against the Defendants seeking the following reliefs;

1. *That Nacobicibici Tokatoka entry no. 603 B, Tikoivatu Vusokinawaqa (603 B) be revoked.*

2. *That Lot 31 comprising of 14 acres and Lot 34 comprising of 1968 acres known as Nacobicibici, Vusokinawaqa registered as NLC 372 A and 383 be transferred to the Mataqali Nacobicibici Qasekinagone (603 A)*

2. The Originating Summons is supported by the Affidavit sworn by the Plaintiff, JONE LEBOBO, on 25th June 2024 and filed along with annexures marked as "JL-1" to "JL-6".

3. The first Defendants filed their Affidavit in opposition sworn by the 4th named 1st Defendant, with the authority from the other Defendants, by denying the averments in the Affidavit in support and putting the Plaintiff to prove those at the trial. The First

Defendants also, simultaneously, filed a Summons, supported by an Affidavit in support seeking for the striking out of the Originating Summons pursuant to Order 18 R18 (1) (b) of the High Court rules 1988.

4. The Plaintiff, on 11th November 2024, filed his Affidavit in opposition to the said Striking out Summons by the first Defendants.
5. On 19th November 2024, the Attorney General also filed an application for striking out the Plaintiff's action on behalf of the 2nd Defendant on the grounds that;
 - a. The dispute between Mataqali Nacobicibici (Namegai) and Nacobicibici (Vusukinawaqa) over land comprised in Register of iTaukei Lands Folio .393 Vol. 3 must be determined in accordance with section 16 of iTaukei Land Act 1905 and this Honorable Court lacks jurisdiction in that respect.
 - b. Alternatively, the Plaintiff's purported claim premised on fraud;
 - (i) Must be instituted by Writ of summons and not Originating summons, pursuant to Order 5v Rule 2(b) of the High Court Rules 1988.
 - (ii) Is time barred pursuant to section 4 of the Limitation Act 1971; and
 - (iii) Consequent to the above, the Plaintiff's Originating Summons and Affidavit in Support thereof discloses no reasonable cause of action.
6. Thereafter, the Plaintiff on 21st January 2025, while filing his Affidavit in opposition to the strike out Application, also filed his Summons seeking leave to convert his Originating Summons into Writ of Summons and to consolidate the hearing thereof with that of the Defendants' Strike out Applications.
7. Finally, the First Defendants, on 13th February 2025, filed an Affidavit to serve as a Reply in relation to their Striking Out Application and as opposition to the Plaintiff's Summons for conversion and consolidation.
8. When the matter came up on 21st February 2025, the Court decided to go into the Striking out Applications, by putting the Plaintiff's Application for conversion on hold and accordingly, the hearing into the Striking out Applications were taken up for hearing on 19th August 2025. At the hearing, in addition to the Oral submissions, parties filed their respective written submissions as well.
9. The primary argument advanced by the Counsel for the 2nd Defendant in the Summons to Strike Out was that the High Court does not have jurisdiction to deal with such an issue as stated in the Summons to strike out.
10. Counsel for the 2nd Defendant also raises an issue that as the Plaintiff is alleging fraud, the action must be commenced by way of Writ of Summons and not by way of Originating Summons pursuant to Order 5 Rule 2(b) of the High Court Rules 1988. Another issue raised on behalf of the 2nd Defendant was that the action is time barred pursuant to section 4 of the Limitation Act. Accordingly, Counsel argues that there is no reasonable cause of action for the Plaintiff.

11. The Summons for Strike out by the 1st Defendant is pursuant to Order 18 Rule 18 (1) (b) of the High Court Rules 1988 and moves to dismiss the Originating Summons on the ground that it is scandalous.
12. The Plaintiff in his Originating summons states, inter alia;
 - a. *THAT he is the head of Mataqali Nacobicibici and one of the descendants of Eliko Tabualoto, who died on 4th January 1919. Prior to that on 23rd October 1918, he had been appointed by the members of Mataqali to administer their land at an oath ceremony held in Nanukulao Ra as evidenced by the annexure marked as "JL-3".*
 - b. *THAT the 1st Defendants are the descendants of Eloni Roteri , who held the position of Buli Nalawa during that time, now referred to as Roko administered another oath of allocation concerning the Plaintiff's Land.*
 - c. *THAT during the said administration, Eloni Rateri altered the allocation of the Plaintiff's land. In proof of said administration, the annexure "JL-4" is marked and tendered.*
 - d. *THAT Eloni Rateri obtained the Land through fraudulent means, resulting its wrongful transfer from us to his Tokatoka. The original number of the title is 383 and this was fraudulently change to 393 by Eloni Rateri . Annexed as "JL-5" is the copy of the Title.*
 - e. *THAT we have had multiple meetings with the chairman of the Native Land Commission in June, July and September as a part of our ongoing efforts to rectify and correct the records.*
 - f. *THAT the current Chairman of the Native Land Commission, despite being aware of Eloni Rateri's fraudulent alteration of land ownership records, has failed to address the matter with my Mataqali and the first Defendants.*
13. From the above averments it is clear that the dispute hereof between the Plaintiff and the first Defendants is in relation to the title / ownership of a native Land.
14. Section 6 of the iTaukei Lands Act states as follow;

'Commissioners to enquire into titles and describe boundaries of lands claimed'

6.-(1)The Commission shall institute inquiries into the title to all lands claimed by mataqali or other divisions or subdivisions of the people and shall describe in writing the boundaries and situation of such lands together with the names of the members of the respective communities claiming to be owners thereof.'
15. The said Commission is appointed by the Minister in terms of Section 4 of the iTaukei Lands Act. The Plaintiffs admit, that the land in dispute belongs to iTaukei Land.
16. The 2nd Defendant, instead of filing an Affidavit in opposition to the Plaintiff's Affidavit in Support of the originating summons, has preferred the Summons in hand to strike out the Plaintiff's action. The 1st Defendants also move for striking out.
17. So, the issue before this court is determining as to who are the title holders of the subject matter land. At the hearing Defendants did not lead any evidence, but objected to the jurisdiction of the court. This legal position is raised in the 2nd Defendants Summons for strike out.

18. Fiji Court of Appeal in *Namatua v Native Lands and Fisheries Commission* [2005] FJCA 85; ABU0020.2004S (4 March 2005) had held that;

'We have concluded that the real dispute between the parties relates to the extent of the boundaries described in the determination by NLC in 1930. The dispute remains to be resolved and it can only be resolved by 1st Respondent in accordance with s 16 of NLA.

19. The Court of Appeal further said that High Court has no jurisdiction to determine the dispute in that case (see, paragraph 32 of the Court of Appeal decision in ***Namatua v Native Lands and Fisheries Commission [2005] FJCA 85; ABU0020.2004S (4 March 2005)***).

20. It was a case of dispute between two Mataqalis as to the boundary of the respective lands, but it need not confine only to boundary disputes as Court of Appeal relied on Section 16 of iTaukei Lands Act, to exclude jurisdiction of High Court.

21. Section 16 of the iTaukei Lands Act state as follows

'16.-(1) In the event of any dispute arising the parties to which are Fijians in connection with land tikina province or tikina in which the proprietorship of the Fijian owners has been ascertained by the Commission or in a province or tikina which it may be inconvenient or inexpedient for the Commission to visit without delay or in any other case when he may deem it expedient, the Minister may delegate a member of the Commission or some other proper person to inquire into the same.

22. If the ratio of Fiji Court of Appeal decision in ***Namatua v Native Lands and Fisheries Commission [2005] FJCA 85; ABU0020.2004S (4 March 2005)***, is applied, it is iTaukei Lands and Fisheries Commission that needs to determine as to who holds the title to the subject land and High Court has no jurisdiction to deal with the dispute, in terms of section 16 quoted above.

23. It should also be noted that procedure as laid down in iTaukei Lands Act regarding such an inquiry before the Commission and the appeal process are specially provided, hence the intention of the legislation was to exclude jurisdiction of High Court in such disputes. (see Sections 6,7,7A,8,9,10,11,13,14,15, and 16 of iTaukei Lands Act).

24. In Fiji High Court decision in ***Ketenilagi v Kolikata [2016] FJHC 416; HBC40.2013 (16 May 2016)*** Justice Tuilevuka held that High Court has no jurisdiction to declare the claimant's mataqali was the holder of iTaukei Land. For this judgment his lordship also relied on the Court of Appeal decision of *Namatua v Native Lands and Fisheries Commission [2005] FJCA 85; ABU0020.2004S (4 March 2005)*.


CONCLUSION:

25. I accept the objection raised by the 2nd Defendant's Counsel as to the jurisdiction of this Court in this matter, as stated in the Summons for strike out. Though, they are not prevented from raising this at any time, it would have been prudent if such purely legal objection be dealt, before the substantive Application is attended, by way of an application for strike out in terms of Order 18 rule 18 of the High Court Rules of 1988 and/ or for a determination in terms of Order 33 rule 3 of High Court Rules of 1988.

26. High Court Rules also serves for proper case management and the issue of jurisdiction is paramount and should have been dealt much earlier with much saving to both parties. The Originating Summons by the Plaintiff must be struck out, and considering the circumstances of the case each party is to bear their own costs.
27. In view of the above finding, the other grounds raised by the 2nd Defendant's Counsel as to the propriety of the mode of commencing the proceedings, and the application of the relevant provisions of the Limitation Act 1971 need not warrant consideration. I also hold the view that, in the light of the above findings, the Application by the first Defendants for strike out pursuant to Order 18 Rule 18 (b) also should stand disposed in favor of the 1st Defendants.

FINAL ORDERS:

- a. The 1st and 2nd Defendants' Striking out Applications succeed.
- b. The Plaintiff's Originating Summons is hereby Dismissed.
- c. The Plaintiff's Application for conversion also dismissed.
- d. No costs ordered and parties shall bear their own Costs.


A.M. Mohamed Mackie
Judge



At the High Court of Lautoka on this 20th day of November 2025.

SOLICITORS:

For the Plaintiff	Messrs. CROWN LAW- Barristers & Solicitors.
For the first Defendants	Messrs. LAZEL LAWYERS – Barristers & Solicitors.
For the Second Defendant	The Attorney General's Office.