IN THE HIGH COURT OF FIJI AT SUVA
CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. HBC 108 of 2015

BETWEEN: **ITAUKEI LAND TRUST BOARD**

PLAINTIFF

AND: **WATISONI RATULEVU**

FIRST DEFENDANT

AND: **MATAQALI VATUWAQA**

SECOND DEFENDANT

AND **PERIA SEVENTH DAY ADVENTIST CHURCH OF FIJI**

THIRD DEFENDANT

For the Plaintiff : **Mr. Tuicolo V.**

For the 1st Defendant : **Mr. Nair D.**

For 2nd and 3rd Defendant : **Ms. Neha R.**

Date of Trial : **2 June 2025**

Before : **Waqainabete-Levaci, S.L.T.T, Puisne Judge**

Date of Judgement : **13 March 2026**

J U D G E M E N T

(CLAIM FOR UNLAWFUL OCCUPATION)

PART A - BACKGROUND

1. The Claim centers around a large piece of itaukei (meaning 'indigenous Fijians') owned lands (14.1620 acres to be exact) (hereinafter referred to as the 'said itaukei land') owned by the 2nd Defendant, the Yavusa (meaning 'Tribe') Vatuwaqa of the Tikina (meaning 'District') of Suva in the Yasana O Rewa (meaning 'Province of Rewa').

2. In 2007, the President of Fiji, by Gazettal, proclaimed that the Yavusa Vatuwaqa was the registered native landowners of the Tokatoka No. 610 to 618 of the Tikina of Suva, in Rewa Province in the land known as Nacovu (Kaunikuila) registered as Lot 1 SO 1642 Nacovu Park. This was in accordance with section 18 of the iTaukei Lands Trust Act 1940.

3. The Plaintiff is a statutory body constituted under the iTaukei Land Trust Act Cap 134 to administer and control itaukei lands for the benefit of the itaukei landowners.

4. The First Defendant is a member of the Tokatoka (meaning 'Sub-Clan') Namailavo which is part of the Mataqali (meaning 'Clan') of Vatuwaqa, the 2nd Defendant, which approved the occupation and construction of the SDA church on the said itaukei land.

5. The Yavusa Vatuwaqa consists of five Mataqali's – (1) Mataqali Vunimocelolo; (2) Mataqali Vatuwaqa; (3) Mataqali Bautaci; (4) Mataqali Nasau and (5) Mataqali Daunicakau., each containing family units (Tokatoka).

6. The 3rd Defendant is a branch which on its own is not a registered entity or body but falls under the ambit of the Seventh Day Adventist Church (referred to as 'SDA Church'). The SDA Church is registered in Fiji under the Religious Bodies Act, as a religious charitable organization.

7. The Plaintiff claims that the 3rd and 4th Defendants have no colour of right to build on the property as there was no lease, licence or consent granted. Two letters were issued to the 3rd and 4th Defendants for unlawful construction and unlawful occupation, and time was given for the 3rd and 4th Defendants to vacate and

dismantle the said constructed Church. The Defendants have not complied with them on date.

8. In Defence, the Defendant argued that as members of the Mataqali and Yavusa Vatuwaqa that owned the said itaukei lands, they had consented to the building of the church and a licence or a consent or a lease was not necessary.

9. In reply to Defence, the Plaintiff argued that since the land was built on itaukei land and not on native reserve, consent was required from the Plaintiffs for any construction on the said lands.

PART B - EVIDENCES

10. Plaintiff called his only witness, the regional manager for the Central Division. He confirmed that he had worked for 15 years commencing as a project officer until he finally became a Regional Manager in the North and transferred to Suva. In their role, they look after all leases and operations. He explained the land was owned by Yavusa Vatuwaqa. The 3rd and 4th Defendants had built a church on the said land known as Peria SDA Church. The said land was earmarked for development to maximize the benefits shared to the members. He confirmed the land was owned by the Yavusa Vatuwaqa which was setaside by the President of Fiji in 2007 by a gazette proclamation for the registered native landowners of the Tokatoka No. 610 to 618 of the Tikina of Suva, in Rewa Province in the land known as Nacovu (Kaunikuila) registered as Lot 1 SO 1642 Nacovu Park. It was setaside for the Yavusa Vatuwaqa in accordance with section 18 of the iTaukei Lands Trust Act 1940. The gazette proclamation was tendered as evidence. PSDA Church is constructed on Lot 1. To get to the church entrance is from Rewa Street and exit via Nacovu Street where the church is located. The church is used by members including those not a member of the church. It is recommended for religious organizations that are not members of the land-owning unit, to obtain a land lease through the Plaintiff. The Defendants have not applied for a lease at any time but have constructed a church on the said land. In February 2012 a letter was written by the Defendants signed by S Rabuka and Ratu Vitu Delairewa representing PSDA Church. in their letter they confirmed traditionally approaching Mataqali Vuniwaqa for occupation and development of the land and obtained approval. The letter was tendered as evidence. The Plaintiff then wrote a response in May of 2012 and signed by the General Manager responding to PSDA church letter. It informed PSDA Church to obtain a lease through the normal processes. The letter by the Plaintiff

was tendered as evidence. Finally in April of 2014 a letter by Plaintiff was served on PSDA Church for unlawful construction tendered as exhibit. The Plaintiff seeks court orders for vacation and dismantling of improvements and the structure on the said land.

11. The following Exhibits were tendered by the Plaintiff:

(i)The Gazetted Proclamation No 2 of 2007 - Exhibit 1;
(ii)Letter in February 2012 from the 3rd Defendants to the Plaintiffs - Exhibit 2;
(iii) Letter from Plaintiff to respond to 3rd Defendants in May of 2012 - Exhibit 3;
(iv) Notice to vacate by Plaintiff to 3rd Defendant dated 29 April 2014 - Exhibit 4;

12. In cross-examination he admitted the mataqali landowners were at liberty to construct a church on their land. However, that a proper lease was required for the PSDA to continue to operate on Nacovu.

13. The land was owned by the Yavusa Vatuwaqa and proper consent needed to be obtained by the Yavusa and not the mataqali to construct on the land. He confirmed the Plaintiff also needed to approve and register the lease. However, there are churches constructed on mataqali land that does not have any approval.

14. The 1st Defendant gave his evidence for the Defendants. He admitted he was a member of the mataqali which was part of Yavusa Vatuwaqa, the landowning unit. He admitted the PSDA church continued to have services and activities in church on the said location. He admitted there were 15 of his mataqali members that were church members and had built a double-storey church building on the said land. He admitted 2 of the office bearers were not members of the mataqali, 3 including the pastor were mataqali members.

15. In cross-examination he had never seen the letter of May 2012 from Plaintiff to the PSDA Church requiring them to apply for lease. He did admit members of the mataqali were also attending church including those in Suvavou, who were members of the mataqali and yavusa as well. He admitted that was the reason they built the church. He admitted they required a lease.

16. In re-examination he stated that since mataqali members were also church members, they had decided not to lease the land on which the church stood at and allowed the Defendants to build the church building on that location.

LAW AND ANALYSIS

17. Having heard the parties and their evidence, the Court thereafter considered their submissions.

18. The Plaintiff claims that the Defendant had no colour of right, no lease, no license, no consent or authority from the Plaintiff to occupy and possess the said lands. The Plaintiff submits that it hinders development and jeopardizes the benefits and returns to the landowners. The Plaintiff seeks that the Defendant dismantle the structure on the property.

19. The Plaintiff argues that by virtue of Section 4 of the Act, they are empowered to control and administer all itaukei owned lands, including the lands held in trust for the Yavusa Vatuwaqa. The said itaukei land is described as Nacovu, (Kaunikuila) registered as Lot 1 SO 1642 Nacovu Park, which is itaukei land. The land is earmarked for further investments by the Plaintiff for the benefit of the Yavusa Vatuwaqa for which the 2nd Defendant is a member thereof.

20. In Williams J in Radreu v Gold Mining Co Ltd (1978) FJSC 84 discussed section 4 of the Native Land Trust Ordinance (Act) as –

> 'Section 4 of the Native Land Trust Ordinance places the Board, as trustees, in the position of legal owners of all native land including native reserves.'

21. Volavola -v- Attorney General of Fiji [2011] FJHC 277; HBC 88.2005L (20 May 2011) Inoke J expounded 3 principles on what section 4 meant in so far as the iTLTB's role was which this court concurs is relevant and applicable:

> 77] Having considered the above cases, I have come to the conclusion that under s 4(1) of the Native Land Trust Act the NLTB's duty to act "for the benefit of the Fijian owners" is as follows:
>
> (i) To take such care as an ordinary prudent man would take if he were minded making an investment for the benefit of other people for whom he felt morally bound to provide.
> (ii) To seek advice on matters which the NLTB does not understand, such as the making of investments, and on receiving that advice to act with the same degree of prudence. This requirement is not discharged merely by showing that the trustee has acted in good faith and with sincerity.

(iii) Its duty may be discharged even when the benefit to the Fijian owners does not involve a financial advantage. The benefit may include protection of the land in question and prevention of waste and loss.'

22. Section 8 and 9 of the Act empowers the Plaintiff to issue licenses or leases for itaukei land **not** held in reserve. No provision in the Act requires the Plaintiff to obtain consent from the itaukei landowners prior to licensing or leasing the said itaukei lands. Section 9 requires that such lands be leased or licensed (i) not be beneficially occupied by landowners or (ii) is not likely during the currency of the said lease or license to be required by the Fijian owners for their use, maintenance and support.

23. However, case precedent requires that consultation with landowners of the itaukei lands **not** held in reserve is conducted prior to exercising statutory powers. Williams J in Radreu v Gold Mining Co Ltd (1978) FJSC 84 said:

'Section 9 merely enacts that the Board has to be satisfied that the grant of a lease or license is not averse to the interests of the Fijian owners. It does not set out the special procedure to be adopted by the Board in order to ensure that the interests of Fijian owners shall not be adversely affected.

24. In Cullinan J in Waisake Ratu No 2 v Native Land Development Corp and NLTB, (1987) 37 FLR 146. In that case, the Court said that the "satisfaction" referred to in the section must be "viewed objectively, that is, as with the exercise of all statutory powers such satisfaction must be formed on reasonable grounds.

25. Cullinan J declared further at page 163:

'The section (9) quite clearly imposes a duty upon the Board of at least consultation in the matter certainly with respect to the second limb of the section. Indeed, it seems to me that even with the first limb, to ensure that the land is not beneficially occupied, the Board would need to consult with the native owners in the matter.'

26. The Plaintiff therefore claims that no consent was given to the 3rd Defendant to occupy the said itaukei land since they had not applied for a lease or license from the Plaintiffs.

27. The Plaintiff also gave evidence and tendered a Gazettal Proclaimation confirming that the said itaukei lands were no longer reserved. As lands no longer reserved, the iTLTB did not need to consult with the landowners prior to issue leases or licenses.

28. The Plaintiffs evidence was that given that the itaukei lands was located in a prime suburban area of Suva, within the city and closer to schools, shopping and to the city Centre, that there were plans for further developments on the itaukei land for the benefit of all the landowners so as to obtain premium financial returns.

29. These they argued fell within their powers as statutory provided for in section 4 of the Act.

30. The Defendants, on the other hand, gave evidence that Yavusa Vatuwaqa, in the Village of Suvavou, had given verbal consent to the 3rd Defendants to build and occupy the said itaukei lands for church activities. They argue that the consent by the 1st and 2nd Defendants enabled the 3rd Defendant to build their church on the said itaukei lands to host church services and meetings and that these activities were beneficial for the clansmen and women.

31. The Defendant also gave evidence that the Church they had formally written to the Plaintiffs on 1st February 2012, the excerpts in paragraphs 4,5 and 6 of the letter are as follows:

> *'The purpose of this letter is to seek clarification on the status of the land in question. Has Government returned the land and to whom? Secondly, we seek your help in terms of further directions we follow is not correct or complete. Lastly this letter is to register our interest in acquiring a piece of land for the purpose of leasing the same.*
>
> *We are currently looking at ways of approaching members of the Mataqali Vatuwaqa and Yavusa Vatuwaqa. In this kind of issue, we need to be culturally sensitive because everything has to be done right from the beginning. In this communication, we need your guidance.'*

32. The common law relief for vacant possession arises where the Plaintiff can establish that as the owner of the property, the person on the property has impeded on his undisturbed enjoyment of the property is unlawfully occupying the property. The English Courts of Appeal in Chamberland Consolidated Holdings Limited -v- Ireland [1946] KB 264 270-271 described the principle of vacant possession as follows:

> 'Subject to the rule *de minimis* is a vendor who leaves property of his own on the premises on completion cannot….be said to give vacant possession, since by doing so he is claiming a right to use the premises for his own purposes, namely, as a place of deposit for his own goods inconsistent with the right which the purchaser has on completion to undisturbed enjoyment…

….[the] right to unimpeded physical enjoyment is comprised in the right to vacant possession. We cannot see why the existence of a physical impediment to such enjoyment to which a purchaser does not expressly or impliedly consent to submit should stand in a different position to an impediment caused by the presence of a trespasser. It is true that in each case the purchase obtains the right to possession in law, notwithstanding the presence of the impediment. But it appears to us that what he bargains for is not merely the right in law, but the power in fact to exercise that right. When we speak of a physical impediment, we do not mean that any physical impediment will do. It must be an impediment that substantially prevents or interferes with the enjoyment of the right of possession of a substantial part of the property, and there would normally (what there is not here) waiver or acceptance of the position by the purchaser…'

33. In the case of Northern Hotels Limited -v- Oliver [1980] FijiLawRp 2; [1980] 26 FLR 2 (2 January 1980) Madhoji J where a Sale and Purchase Agreement was **not consented** to by the Itaukei Lands Trust Board prior to constructing the buildings, it was held that the Defendant was unlawfully occupying the itaukei lands and stated:

> 'In this case there has been not only agreement to lease Ex. 20 but possession and performance of the agreement and carrying it into effect without the requisite consent as in the case of Chalmers v. Pardoe (1963) I W L R 677 where it was said (p 684/5).
>
> > "But even treating the matter simply as one where a licence to occupy, coupled with possession was given, all for the purpose, as Chalmers and Pardoe well knew, of erecting a dwelling house and accessory buildings it seems to their Lordships that when this purpose was carried into effect a "dealing" with the land took place. .....and since the prior consent of the Board was not obtained it follows that under the terms of section 12..... this dealing with the land was unlawful. It is true that in *Harnam Singh v Bawa Singh* the Court of Appeal said that it would be an absurdity to say that a mere agreement to deal with land would contravene section 12 for there must necessarily be some prior agreement in all such cases. Otherwise, there would be nothing for which to seek the Board's consent. But in the present case, there was not merely agreement, but, on one side, full performance.... the dealing was accordingly unlawful and that in such circumstances equity cannot lend its aid to Chalmers".

In Phalad v Sukhraj 24 F L R 170. The appellant had obtained full and complete possession of Native Land, without obtaining consent, under a sale and purchase agreement. The agreement provided by clause 23 that it was subject to the consent of the Native Land Trust Board. In this judgement Henry J. at page 9 he says:

> "If before consent acts are done pending the granting of consent which come within the prohibited transactions, then the section has been breached, and later consent cannot make lawful that which was earlier unlawful and void.....the acts of the parties in entering into and implementing an agreement for sale and purchase before the granting of consent were done in contravention of section 12 and the said agreement was at all times null and void."

34. The Plaintiffs evidence is that they had responded to the 3rd Defendants letter by formally advising them to obtain a lease of the said lands and that no consent could be given to occupy or build the said lands with a licence or lease.

35. The Defendants' witness admitted at Trial that having perused the Plaintiffs response to their letter for the first time, it was clear the 3rd Defendant's previous church elders, some of which had passed away, had wanted to lease the said lands for further church developments.

36. Therefore, having heard and weighed the evidence as well as the purposes and principles elucidated by Inoke J as the role of the iTLTB, the court finds there is no colour of right to the 3rd Defendants to remain in occupation over the said itaukei lands without a license or a registrable lease issued by the Plaintiffs on behalf of the landowners.

37. There was no consent as yet issued by the Plaintiffs to allow the 3rd and 4th Defendants a license to occupy the lands. The 3rd Defendants have also not applied for lease for which the Plaintiffs are empowered to consider and issue if all conditions are met.

38. The 3rd has not provided evidence that written consent was obtained from the Yavusa Vatuwaqa, as itaukei landowners, to remain in occupation over the said itaukei lands for the benefit of the itaukei landowners. No signatures were tendered of the consent.

39. Given that the 3rd Defendant has not provided sufficient and satisfactory evidence to prove that they have a legal or equitable legitimate interest to remain on the

itaukei lands, the Court finds that the 3rd Defendant is unlawfully occupying the said itaukei lands.

40. Even if consent was obtained the ultimate authority to determine the usage and benefits of land was the Plaintiff, having consulted the landowners.

41. An Order for vacant possession will automatically destabilize the goodwill and traditional relationships established between the 3rd Defendants and the landowners, the Court will grant sufficient time for the Defendants to dismantle their buildings and all fixtures and fittings built or placed on the said itaukei land or to formalize their arrangements with the landowners by obtaining a registrable lease.

42. The Court Order should set precedence's to itaukei lands consented to be used and occupied by churches or ministry that have not been formalized with the landowners together with iTLTB

43. Finally, this matter could have been settled if parties had collectively sat together to see the common purpose and benefits it would have derived from. The fact that it has dragged for some time will incur costs against the Defendants.

PART D: ORDERS

44. **The Court Orders as follows:**

(a) That the 3rd Defendants are unlawfully occupying the said itaukei lands;

(b) That the Court grants vacant possession under the following conditions:

(a) That vacant possession Orders shall be suspended for a period of 6 months;

(b) That at the end of 6 months, the 3rd Defendants are required to dismantle all their church buildings, fixtures and fittings on the said itaukei land with immediate effect;

(c) Costs of $1500 in total awarded to the Plaintiff to be paid by the Defendants within 3 months from today.

.....

Ms. Senileba LTT Waqainabete-Levaci

Puisne Judge