

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 61 of 2022

BETWEEN : **DAYALS SAWMILLERS PTE LIMITED** a limited liability company duly incorporated under the Companies Law Act 2015 (Fiji) having its registered office at 1 Kings Road, Yalalevu, Ba, Fiji Islands.

PLAINTIFF

AND : **SAKEASI DRAVO** of Koroua Village, Nadroga/Navosa in his personal capacity and as the Licensee and Representative of **MATAQALI NAVUNUMA**

1ST DEFENDANT

AND : **PETERO RAVOUVOU** as the Turaga ni Mataqali of **MATAQALI NAVUNUMA** of Koroua Village, Nadroga/Navosa, Nadi, Fiji.

2ND DEFENDANT

AND : **IMPERIUM TIMBER PTE LIMITED** a limited liability company duly incorporated under the Companies Law Act 2015 (Fiji) having its registered office at Palace Building, Nakavu, Nadi, Fiji.

3RD DEFENDANT

AND : **LORIMA DUAKA** of Nalebaleba Village, Navosa

4TH DEFENDANT

AND : **ITAUKEI LAND TRUST BOARD**

NOMINAL DEFENDANT

Appearances: Mr. Chandra V. with Mr. Swamy V. for the Plaintiff
Mr. Chand for the Defendants
Mr. Rasiga M. for the Nominal Defendant
Date of Hearing: 22 April 2024
Date of Ruling: 21 January 2026

R U L I N G

INTRODUCTION

1. The *Mataqali Navunuma* of Nadroga/Navosa" ("*Mataqali*") is the beneficial owner of some native land in Nadroga/Navosa. A natural raintree forest covers a large part of the *Mataqali*-land.

2. Dayal Sawmillers Pte Limited ("**Dayals**") had been (and remains) interested in logging the raintrees on the *Mataqali* land. In April 2021, Dayals initiated discussions with a member of the *Mataqali* about acquiring timber from a designated portion of the *Mataqali's* forested land.
3. The following happened in April 2021:

12.04.21	Mr. Petero Ravouvou (second defendant and Head of <i>Mataqali</i>) sent a letter to inform Dayals that the <i>Mataqali</i> has nominated the first defendant Mr. Sakeasi Dravo (" Dravo ") to be the licensee.
12.04.21	Ravouvou sent letter on behalf of the <i>Mataqali</i> to the Department of Forests to seek a license.
12.04.21	Ravouvou sent letter to Dayals confirming the <i>Mataqali's</i> consensus on allowing Dayals to fell and log trees on the <i>Mataqali</i> land.
13.04.21	Ravouvou lodged an application with the <i>i-Taukei</i> Lands Trust Board. The application sets out: <ol style="list-style-type: none"> (i) that the <i>Mataqali</i> seeks <i>i-TLTB</i> approval for the cutting of trees on <i>Mataqali</i>-land. (ii) that the <i>Mataqali</i> approves of Dayals to fell and harvest trees on 4,000 acres of land. (iii) the signatures of twenty-three (23) members of the <i>Mataqali</i>.
13.04.21	the <i>i-Taukei</i> Affairs Board wrote a letter to the Department of Forests supporting the <i>Mataqali's</i> application for a license.

THE AGREEMENT WITH IMPERIUM

4. On 22 December 2021, the *Mataqali* entered into an agreement with Imperium Timber Pte Limited ("**Imperium**"). The agreement conferred upon Imperium the *Mataqali's* support in securing the very logging rights that Dayals had previously expressed interest in. At that time, no formal agreement had been executed between the *Mataqali* and Dayals.
5. Imperium in fact paid Ravouvou the sum of two thousand dollars (\$2,000). The said \$2,000 is described in the following terms in a letter dated 22 December 2021 from Imperium¹:

¹ Annexed as **SD2** in the affidavit of Dravo sworn on 24 November 2022.

This is to confirm that Turaga ni Yavusa Mr. Petero Ravouvou of Navunuma village Nadroga hereby receiving (sic) two thousand dollars (\$2,000.00 FJD) advance for his Christmas spending and the said amount is to be deducted from the commission once the logging operations begin.

WAS A LOGGING LICENCE OBTAINED?

6. It is not clear to me as to when exactly Dravo secured the logging license. However, at paragraph 12 of the statement of claim, Dayals pleads that:

*Once the logging license was obtained, the Plaintiff entered into a formal written agreement with the First Defendant on or about **25 January 2022**.*

THE AGREEMENT WITH DAYALS

7. Dayals, Ravouvou and Dravo (representing the *Mataqali*) did in fact sign an Agreement on **25 January 2022**. Upon execution, Dayals remitted the sum of \$7,000 -00 (seven thousand dollars only) to Dravo. Notably, on Dayal's payment voucher, the *Payment Details* describes the remittance as follows:

*Advance \$7,000-00
(\$5,000 – Mataqali
\$2,000 – return to Chinese*

COMMENTS

8. On the material before me, it appears that both Agreements concerned the same forested area.
9. The question arises as to why the *Mataqali* would execute an Agreement with Imperium in December 2021 and then, barely four weeks thereafter, enter into another one with Dayals in January 2022.
10. According to Dravo², Dayals only showed a fleeting interest in April 2021. However, talks between the *Mataqali* and Dayals ended later that month because the parties could not agree on a price. Thereafter, throughout 2021, nothing further happened between Dayals and the *Mataqali*.
11. Dravo states that Dayals became aware of the *Mataqali's* agreement with Imperium in January 2022. Dayals then immediately set about to supplant and

² As per his affidavits sworn on 25 March 2022 and 24 November 2022.

override that arrangement. A Dayals' spokesman then contacted Dravo. According to Dravo, the spokesman:

"...threatened me with litigation if I did not renege on my contract with Imperium"³.

12. On 26 January 2022, Dayals engaged a consultant to carry out an Environment Impact Assessment (EIA).

Purported Termination of the Agreement with Dayals.

13. On 08 February 2022, exactly two weeks after the execution of their agreement, Dravo informed Dayals that he has terminated their Agreement. The reason, as alleged by Dayals, is that Dravo has made a deal with Imperium Timber Pte Limited ("**Imperium**").
14. Ten days later, on 18 February 2022, Dayals issued a Notice to Dravo. The said Notice emphasises the following points:
 - (i) Dayals has been dealing with Dravo in good faith since 2021.
 - (ii) Dayals expected that Dravo will honour the Agreement (which was progressively negotiated since April 2021 and culminated in the execution in February 2022)
 - (iii) the \$7,000 advance was made on the back of their Agreement.
 - (iv) Dravo has received the money and then proceeded to terminate the Agreement.
 - (v) Dravo purported termination of the Agreement is not lawful.
 - (vi) Dravo must, accordingly, retract his termination and refrain from any further dealing with Imperium or face legal action.

Institution of Legal Proceedings.

15. On 03 March 2022, Dayals filed two processes. The first is a Writ of Summons supported by a Statement of Claim. The claim was later amended twice. The principal relief sought against Dravo and Ravouvou is an order for specific performance. Imperium is alleged to have tortiously interfered with the agreement between Dayals and Dravo. Dayals seeks damages in respect of this.

³ As per paragraph 11 of his affidavit sworn on 24 November 2022.

16. The second process is an *ex-parte* Notice of Motion by which Dayals had sought some injunctions to preserve the rainforest in question until the case is finally determined.

Interim-Injunctions

17. On 04 March 2022, I granted orders restraining the first and second defendants from charging, encumbering, damaging, or altering the trees and/or from taking any steps to sell or transfer them. I also granted orders restraining the other defendants from interfering in any way with the relationship between Dayals and the first and second defendants. The Orders remain in effect until the case is finally decided. In his affidavit of service sworn on 14 March 2022, Ravikesh Reddy confirms that on **07 March 2022, he served all Court documents together with the sealed Orders** of 04 March 2022, on each of the four defendants.

Dravo's & Ravouvou's Purported breach of the Injunctive Orders

18. On **11 March 2022**, Dravo and Ravouvou wrote the following letters to the Manager (West) of the *i-Taukei* Lands Trust Board:

We the undersigned ask that you not process any application that may be or has been submitted by Dayals Sawmillers PTE Limited for a licence to fell and extract forest produce (Vaivai) from our area Koroua as they failed to comply with and enter into a proper agreement with our Mataqali Navunuma and provide consideration.

We have now entered into an agreement with Imperium PTE Limited and ask that the Application for Licence by Imperium Timber PTE Limited dated 24th December 2021, be processed and granted.

DATED *this 11th day of March, 2022*

Signed after interpretation in i-Taukei language

Leave to Issue Committal Proceedings

19. On 14 April 2022, Dayals filed an *ex-parte* Notice of Motion seeking *Leave to Issue Committal Proceedings* against Dravo and Ravouvou on the ground that their letter of 11 March 2022 was in direct violation of the 04 March 2022 injunctive orders.
20. Leave was granted on 26 April 2022 and the Registry entered the Motion for hearing on 12 May 2022. However, on 04 May 2022, Millbrook Hills Law Partners filed an *ex-parte* Notice of Motion to redate the hearing to 10 May 2022 instead of

12 May 2022 to bring it in compliance with Order 52 Rule 3 (2). On 10 May 2022, I did set a timetable for the filing of affidavits and then adjourned the matter to 29 June 2022 for hearing.

21. The records will show that the matter was then adjourned for a total of twenty-four times between 29 June 2022 to 22 April 2024 when the two applications were finally heard (i.e. the *inter-partes* hearing of the injunction granted *ex-parte* and the committal proceedings).

ISSUES

22. In the amended statement of defence and counter-claim of all the defendants filed on 14 July 2023, the defendants allege at paragraph 10 *inter-alia* that the first and second defendants:

“...had entered into a legally binding agreement for valuable consideration with [Imperium] on 22 December 2021”

23. In paragraph 11, the defendants allege that the \$7,000 which Dayals paid Dravo on 08 February 2022 was given:

“...in bad faith and solely for the purpose of coercing and inducing the first defendant and the second defendant to break the Imperium Timber Contract by returning the consideration sum paid to them by [Imperium] and that the first defendant and second defendant subsequently returned to [Dayals] its monies in full”

24. There is nothing in any of the affidavits filed by the defendants to suggest that the agreement between Imperium and Dravo (representing the *Mataqali*) was ever consented to by the *i*-TLTB. Similarly, an issue has been raised as to whether or not the agreement between Dayals and Dravo was ever consented to by the *i*-TLTB.

25. What is before me at this time are two interlocutory issues:

- (i) whether or not the leave granted on 26 April 2022 to Dayals to issue committal proceedings against Dravo and Ravouvou and the hearing of which was redated to 10 May 2022 instead of 12 May 2022 to bring it in compliance with Order 52 Rule 3 (2) – had lapsed on 10 May 2022?
- (ii) whether or not the Agreement dated 22 February 2022 between Dravo (in his capacity as the representative of the *Mataqali*) and Dayals is *void* because the *i*-Taukei Lands Trust Board’s consent was not obtained prior to execution.

26. I shall deal with the second issue first.

WHETHER OR NOT THE AGREEMENT BETWEEN DRAVO & DAYALS IS VOID BECAUSE THE *i*-TLTB's CONSENT WAS NOT OBTAINED PRIOR TO EXECUTION

27. Mr. Chandra submits that, although section 12 of the *i*-Taukei Lands Trust Act⁴ prohibits the formation or performance of any contract amounting to a dealing in any *i*-taukei land without the prior consent of the *i*-TLTB, an agreement expressed to be conditional upon such consent does not offend the section. In support, he relies on **Graham v Inspired Destinations (Inc) Ltd** [2019] FJCA 251; ABU123.2018; ABU126.2018 (29 November 2019).

28. I am unable to accept that submission for two reasons. Firstly, assuming that section 12 is relevant (which I say it is not), the Agreement between Dayals and the *Mataqali* contains no clause or stipulation making its operation subject to the consent of the *i*-TLTB.

29. Secondly, section 12 is irrelevant in any event. In my view, section 12 is limited in scope to leaseholders with an existing *i*-TLTB lease. It imposes a stipulation to prevent the leaseholder from entering into an arrangement to sell, transfer, or deal with the leased land without *i*-TLTB's prior consent. The *Mataqali*, in this case, does not hold a lease under the Act. As such, section 12 does not apply to the Agreement in question.

30. Mr. Chand cites **Matasau Holdings Ltd v Feint Investment Ltd** [2002] FJHC 252; HBC0310D of 2002S (2 August 2002), where Mr. Justice Jitoko (as he then was) reiterated that timber extraction from *i*-taukei land is strictly regulated and contingent upon proper licensing:

The law stipulates that no person is permitted to extract log from native land except in accordance with a licence prescribed under the Land (Forest) Regulations.

⁴ Section 12 provides:

12. - (1) Except as may be otherwise provided by Regulations made hereunder, it shall not be lawful for any lessee under this Act to alienate or deal with the land comprised in his lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever without the consent of the Board as lessor or head lessor first had and obtained. The granting or withholding of consent shall be in the absolute discretion of the Board, and any sale, transfer, sublease or other unlawful alienation or dealing effected without such consent shall be null and void; (The proviso and sub section (2) not reproduced).

31. Indeed, section 8 (1)(c) of the Forest Act 1992 expressly prohibits the felling, removal, or clearing of trees on any *i-taukei* land unless duly authorized under a licence issued by the licensing officer:

Unless authorised under this Decree by a license or otherwise, no person shall, on native land not being alienated land or land in a forest reserve or nature reserve:

- (i) fell or extract timber;*
- (ii) take other forest produce;*
- (iii) clear land;*

32. A licence is issued under section 9 of the Forest Act 1992. Sections 13 and 14 then set out *inter alia* the licensing officer's powers and the requirements of an applicant (see comments of Mr. Justice Jiten Singh in paragraphs [7] and [8] of **Tiva v Native Land Trust Board** [2007] FJHC 117; HBC 81 of 2006 (18 January 2007) – as cited by Mr. Chand).

33. Section 10 subsections (1), (3) and (4) of the Act require the prior consent of the *i*-TLTB before the licensing officer may issue any licence to fell or extract timber on any category of *i-taukei* land mentioned therein:

10.-(1) A licence relating to native land which is part of a forest reserve, if no provisions for royalties are made or royalties envisaged at a rate lower than that prescribed, shall only be issued with the prior consent of the Native Land Trust Board.

(2)

(3) A licence relating to native land other than native land in a forest reserve shall only be issued with the prior consent of the Native Land Trust Board.

(4) A licence to fell or extract timber on alienated native land shall only be issued with the prior consent of the Native Land Trust Board and the lessee of such land.

(5)

(6)

34. Clearly, the above provisions forbid the felling, removal, or clearing of trees on any *i-taukei* land without a license. And the licensing officer will not issue a licence without the prior consent of the *i*-TLTB.

35. The question is - whether the Forest Act 1992 prohibits a *mataqali*, acting through its representative, from formalising an agreement with an entity, prior to and in advance of the grant of a logging licence, and before *i*-TLTB consent thereto, and under which the *mataqali*'s representative undertakes to procure the licence and,

upon its issuance, to then outsource or delegate the licensed activity to that entity?

36. As stated above, the Forest Act 1992 prohibits only the felling, removal, or clearing of trees on *i*-Taukei land without a licence. It does not extend to forbid the making of an *executory* contract—that is, an agreement whose performance is contingent upon the future grant of a licence.
37. While mindful that I am only dealing with an interlocutory issue at this time, I will say that it is arguable that the obtaining of a licence in such an arrangement is a *condition precedent* to performance, rather than formation (see **Port Denarau Marina Ltd v Tokomaru Ltd** [2006] FJCA 27; ABU0026U.2005S (6 December 2006)).
38. Having said that, it is, in any event, common ground between the parties that Dravo has been granted a licence, although no copy of that licence is exhibited in any of the affidavits filed⁵.
39. On that footing, and subject to the Agreement not being invalid on any other account, the outsourcing arrangement contemplated therein is, arguably, now specifically enforceable by Dayals.
40. The only issue for trial, perhaps, is whether or not the Agreement is vitiated by the duress and undue influence which the first and second defendants allege.
41. For the reasons stated above, I am of the view that the Agreement between Dayals, Dravo and Ravouvou does not require the prior issuance of a license (or consent of the *i*-TLTB) in order to be valid.
42. However, the extent to which the Agreement is enforceable must remain contingent upon the eventual grant of a licence (and consent).

WHETHER OR NOT THE LEAVE GRANTED TO ISSUE COMMITTAL PROCEEDINGS HAD LAPSED ON 10 MAY 2022?

43. Order 52 Rule 3 of HCR provides:

3. – (1) *When leave has been granted under rule 2 to apply for an order of committal, the application for the order must be made by motion and,*

⁵ The Agreement between Dravo and Dayals expressly describes Dravo as the “licensee”. This suggests that the Agreement was executed subsequent to the grant of the licence.

unless the Court granting leave has otherwise directed, there must be at least 8 clear days between the service of the notice of motion and the day named therein for the hearing.

(2) *Unless within 14 days after such leave was granted the motion is entered for hearing the leave shall lapse.*

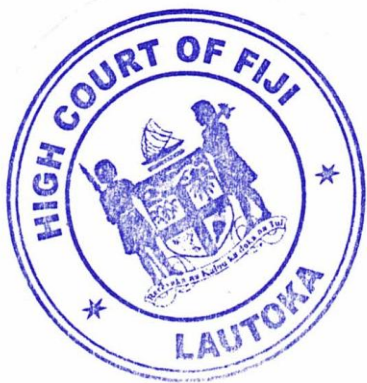
44. Leave to issue committal proceedings was granted on 26 April 2022. Following that, Millbrook Hills then filed a Notice of Motion for an Order of Committal on 29 April 2022 which the Registry issued with the returnable date for hearing being 12 May 2022. As this fell outside the fourteen-day stipulation prescribed under Order 52 Rule 3, Millbrook Hills then filed an *ex parte* Notice of Motion on 04 May 2022 seeking to correct the error and to have the hearing date advanced to 10 May 2022, thereby ensuring compliance with the fourteen-day requirement. I gather that Millbrook Hills served the Motion with the corrected date to the defendants. On 10 May 2022, by consent, the matter was adjourned to 29 June 2022 for hearing and a timetable was set for the filing of affidavits.
45. As stated in paragraph 21 above, the matter was thereafter adjourned for a total of twenty-four times between 29 June 2022 to 22 April 2024 when the two applications were finally heard (i.e. the *inter-partes* hearing of the injunction granted *ex-parte* and the committal proceedings).
46. There is nothing in the records to suggest that leave was extended after 10 May 2022. Mr. Chand argues that the leave had lapsed on 10 May 2022 unless extended by the Court.
47. I have considered the following cases: Naidu v Naicker [2017] FJHC 94; HBM14.2016 (10 February 2017); Nasinu TC v Khan [2012] FJHC 1464; HBC8.2011 (5 December 2012) and Janardhan v Khan [2011] FJHC 299; HBM1.2010L; Credit Corporation (Fiji) Ltd v Oamer [2013] FJHC 675; HBC89.2013 (10 December 2013).
48. It appears to be well established that a Motion for Hearing must be entered within fourteen days of the grant of leave, as the proceedings concern a party's liberty. While Order 3 Rules 4(1) and (2) of the HCR confer a discretion to extend time, that discretion is rarely (if ever) exercised to allow the entering for hearing of a committal application beyond the fourteen-day limit.
49. As I have said, in this case, the matter was first entered for hearing on 10 May 2022. However, it was subsequently adjourned several times over (mostly on the

defendants' request) to extend time for compliance with the filing of affidavits. There was no specific request to extend leave beyond May 2022.

50. Every adjournment after 10 May 2022 was granted on the exercise of the court's discretion. That power is available under **Order 3 Rule 4** of the HCR and under the inherent jurisdiction of this court.
51. The question is – was there a need for the Millbrook Hills to keep seeking an extension of leave before every adjournment after 10 May 2022?
52. Order 52 Rule 3 (2) provides that *“unless within 14 days after such leave was granted the motion is entered for hearing the leave shall lapse.”* The wording is, admittedly, capable of at least two interpretations.
53. The first interpretation is that leave lapses only if the motion for committal is not entered for hearing within fourteen days of its initial grant. If the motion is entered within that period, the leave remains effective thereafter, notwithstanding any subsequent adjournment of the hearing. On this view, no extension is required once leave has been validly granted and the motion duly entered for hearing within the prescribed time.
54. The second interpretation is that leave is premised on the expectation that the committal application will be entered for hearing within fourteen days of its grant. On this view, the returnable date stated on the Motion is the hearing date itself. If the hearing does not proceed and is adjourned for any reason, the leave lapses and an extension must be sought.
55. The first interpretation ties the lapsing of leave to the “entering” for hearing of the motion. Arguably, it avoids penalising an applicant for an adjournment beyond their control (e.g., court scheduling, or respondent's situation).
56. The second interpretation would lay emphasis on the timing of the hearing. Arguably, it could prove problematic as it would entail repeated applications for leave and/or extension of leave on account of unavoidable adjournments. An otherwise diligent applicant, as the plaintiff has been in these interlocutory proceedings - would have to bear additional procedural hurdles.
57. Erring on the side of caution, I will say that even if the second interpretation is to be preferred, I would treat every adjournment I have made in this case as an exercise of my discretion under Order 3 Rule 4 to: (i) extend the time for compliance with the affidavits and (ii) extend leave.

CONCLUSION

58. The injunctions granted on 04 March 2022 are to continue until the matter is finally determined.
59. The Notice of Motion for an Order for Committal is to be set for hearing when the parties appear before me for this Ruling. For the avoidance of doubt, leave is extended.
60. Costs in the cause.



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Anare Tuilevuka
JUDGE

21 January 2026