

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

**Civil Action No. HBC 106 of 2022**

**BETWEEN:** **USAIA GAUNAVOU** of Nakalawaca Village, Tailevu, Turaga ni Mataqali Bureniwau of the Yavusa Nasau suing for himself and on behalf of Yavusa and its members.

**1<sup>st</sup> Plaintiff**

**AND:** **AMENA MARARUA** of Nakalawace Village, Tailevu, Mataqali Bureniwau Representative suing for himself and on behalf of Yavusa Nasau and its members.

**2<sup>nd</sup> Plaintiff**

**AND:** **MALELI SAVAI** of Nakalawace Village, Tailevu, Mataqali Bureniwau Representative suing for himself and on behalf of Yavusa Nasau and its members.

**3<sup>rd</sup> Plaintiff**

**AND:** **SEMISI ROKOTUILOMA** of Veinuqa Village, Tailevu, Yavusa Navitilevu Representative suing on behalf of Yavusa and its members.

**4<sup>th</sup> Plaintiff**

**AND:** **SEREMAIA TAMANI** of Veinuqa Village, Tailevu, Yavusa Daviko Representative suing on behalf of Yavusa and its members.

**5<sup>th</sup> Plaintiff**

**AND:** **MIKAELE KOLILEVU** of Nakodu Village, Koro Island, Mataqali Nailikowai Representative in the Yavusa Nasau suing and on behalf of Yavusa Nasau and its members.

**6<sup>th</sup> Plaintiff**

**AND:** **THE ATTORNEY GENERAL CHAMBERS AND MINISTER FOR JUSTICE** sued on behalf of the Republic of Fiji Islands, through its Solicitor General responsible for legal advice to Minister for Lands and Mineral Resources, The Director of Lands and Surveyor General. The Registrar of Titles and Minister for Fijian Affairs pursuant to Section 12 of State Proceedings Act 1951.

**1<sup>st</sup> Defendant**

**AND:** **iTAUKEI LANDS & FISHERIES COMMISSION** a duly constituted body under the iTaukei Lands Act 1905 and the Fisheries Act 1941.

**2<sup>nd</sup> Defendant**

**AND:** **iTAUKEI LANDS TRUST BOARD** as a duly constituted body under the iTaukei Land Trust Act 1940.

**3<sup>rd</sup> Defendant**

**Representation:**

**Plaintiffs:** Mr. V. Kumar (Sunil Kumar Esquire).

**1<sup>st</sup> Defendant & 2<sup>nd</sup> Defendant:** Not Present.

**3<sup>rd</sup> Defendant:** Ms. K. G Nauwakarawa (*i*TLTB).

**Date of Hearing:** 3<sup>rd</sup> November 2025.

**Judgment**

**A. Introduction**

[1] On 30<sup>th</sup> January 2025 I granted leave to the Plaintiff to appeal the orders of the Acting Master. On 4<sup>th</sup> April 2025 when on second occasion the Plaintiff did not appear in court the matter was struck out. The matter was reinstated on 19<sup>th</sup> May 2025. This matter deals with the Ruling of the Learned Acting Master to strike out the statement of claim against the 3<sup>rd</sup> Defendant.

**B Brief History of the Matter**

[2] Writ of summons with statement of claim was filed on 4<sup>th</sup> April 2022. The declarations sought by the Plaintiffs relate to native land. It is for land administration by the 2<sup>nd</sup> Defendant dating 1936. It claims breach of legal duty of care, fraud, breach of fiduciary duty of care and deceit. The Plaintiffs are seeking that the native title ownership of Yavusa Nasau. They are seeking damages, royalties and compensation.

[3] On 30<sup>th</sup> September 2022, the Plaintiffs filed Summons for leave to enter judgment. It was called on 18<sup>th</sup> October 2022 before Acting Master. Parties were given time to respond. It was fixed for hearing on 6<sup>th</sup> February 2023. On 6<sup>th</sup> February 2023, the matter was adjourned to be heard on 11<sup>th</sup> July 2023. It was called on 11<sup>th</sup> July 2023 and then on 22<sup>nd</sup> August 2023.

[4] On 5<sup>th</sup> September 2023, *i*TLTB filed summons to strike out the Plaintiffs claim. On 4<sup>th</sup> June 2024, Acting Master noted “*Orders by consent (on Sum dated 30/09/22 & 05/06/23)*”

- (1) *P’s summons for entering D/J against 1<sup>st</sup> and 2<sup>nd</sup> Defendant is hereby S/O & dismissed.*
- (2) *1<sup>st</sup> & 2<sup>nd</sup> D’s given leave to file and serve S/O/D out of time & to be filed and served within 07 days, subject to costs – 13/06/24.*
- (3) *07 days to file and serve reply S/O/D – 24/06/24.*
- (4) *1<sup>st</sup> & 2<sup>nd</sup> D’s shall pay cost of \$1000 as costs as costs of these proceedings to P’s as summarily assessed.”*

[5] The strike out application as dealt with by way of written submissions. Acting Master delivered a Ruling on 5<sup>th</sup> August 2024. The summons to strike out filed by *i*TLTB succeed. The Plaintiff’s statement of claim against 3<sup>rd</sup> Defendant (*i*TLTB) was struck out pursuant to Order 18 Rule 18 (1) of the High Court Rules 1988. The Plaintiffs summons to enter default judgment against 3<sup>rd</sup> Defendant (*i*TLTB) was struck out and dismissed.

### C. Determination

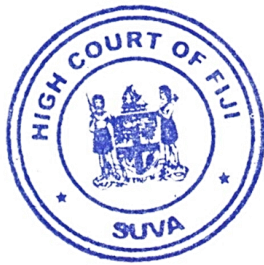
- [6] The Plaintiff relies on 6 grounds of appeal in challenging the ruling of the Learned Acting Master. I will go over each ground in turn.
- [7] The first ground is “*that the Learned Acting Master erred in law and in fact to fully consider and rule upon all the submissions made on behalf of the Appellant/Plaintiff that has seriously caused prejudice to the Appellant/Defendant.*”
- [8] The first four ground of appeal have been submitted upon by the Plaintiff’s lawyers under the head whether the Acting Master’s ruling was wrong and biased towards the Plaintiff. The submission does not cover the first ground of appeal of the Plaintiff. I have perused the ruling of the Learned Acting Master I find that he properly considered and ruled upon the submissions made on behalf of the parties. I did not find the Learned Acting Master erred in this ground. This ground is not made out.
- [9] The second ground is “*that the Learned Acting Master erred in law and in fact in accepting the statute of limitation application when the Plaintiff/Appellant claim was a roll up claim and it was pleaded by the Appellant in his Writ of Summons and the Statement of Claim as the Act of Parliament enacted the Act establishing the 3<sup>rd</sup> Defendant vested with duty to control the use of Native Land for the benefit of owners and has imposed fiduciary duty to act in the best interest of native owners in this case the Plaintiffs;*”
- [10] The argument for the Plaintiff is that they are claiming their rights and/or entitlements and/or ownership to be recognized in the lands stated in the Statement of Claim. They assert that when their rights and/or entitlements and/or ownership is recognized, then the role of the 3<sup>rd</sup> Defendant (Board) comes into play. Which is to reimburse and restore the Plaintiff/Appellant to a position that they had had the Veitarogi Vanua recognized their rights and/or entitlements and/or ownership in the first place. It is further argued for the Plaintiff that the Learned Acting Master needed to consider the provisions of the *i*Taukei Lands Act 1905 and that the 3<sup>rd</sup> Defendant role in the proceedings is for restitution and administrative purposes.
- [11] In order to deal with this ground of appeal. It is crucial that we look at the two bodies that is being mentioned in this matter. The first is the ***i*Taukei Land Trust Board** (Board). There are the 3<sup>rd</sup> Defendants in this matter. The Board was established under Section 3 of the *i*Taukei Land Trust Act 1940. The control of *itaukei* is vested in the Board and the Board administers the land for the benefit of the *i*Taukei owners and for the benefit of the *i*Taukei: **Section 4 (1) *i*Taukei Land Trust Act 1940.**
- [12] The other body is the ***i*Taukei Lands Commission** (Commission). The Commission is established by Section 4 of the *i*Taukei Lands Act 1905. The Commission consists of one or more commissioners each of whom has the powers of the Commission, they are charged with the duty of ascertaining what lands in each province of Fiji are the rightful and hereditary property of *i*Taukei owners, whether of mataqali or in whatever manner or way or by whatever divisions or subdivision of the people the same may be held: **Section 4 *i*Taukei Lands Act 1905.**

- [13] The above facts are not in dispute. The Plaintiff's in this matter is suing the Commission and the Board, apart from the AG. The Plaintiff's claim that they hold hereditary and native title to their land due to their kinship from time immemorial. The Plaintiff's in their Writ have made claims before the establishment of the Board. The claim relates to *i*Taukei land. The Commission was in existence. However since 1940, the Board is vested with the control and administration of *i*Taukei land. What is before the Court relates to *i*Taukei land. Any matter dealing with *i*Taukei land need to have the Board as a party. The Board need to be involved. The land is vested in the Board. Any orders or directions given by the Court relating to *i*Taukei Land would need to be acted upon by the Board. For this reason I find that the Acting Master erred in striking out the Board as a Party in this proceedings.
- [14] It should be noted that should the Plaintiff succeed in this action against the Commission (2<sup>nd</sup> Defendant), the Commission (2<sup>nd</sup> Defendant) will not be able to vest the land to the mataqali or the Plaintiff. It is the role of the Board. With this in view I find that the Board should be party to the proceedings.
- [15] The third and fourth grounds of appeal are "*that the Learned Acting Master erred in law and in fact in failing to act judiciously by having closed mind and being Bias without reading the Statement of Claim in its entirety thus the ruling which was delivered is contrary to the pleading filed in court and which has seriously prejudiced the Plaintiff/Appellant to look into all Native Land whether it being given the powers of ascertaining how the land was dealt with before;*" and "*That the Learned Acting Master erred in law and in coming to a decision so unreasonable Master would have delivered in the interest of justice in Wednesburys sense.*" .
- [16] Both these grounds are baseless and add nothing to the grounds of appeal except it is wordy. The Learned Master gave a reasoned ruling. He erred on the part I have mentioned. He was not biased or unreasonable. These are baseless grounds.
- [17] The fifth and sixth grounds of appeal are "*that the Learned Acting Master erred in law and in fact when he failed to consider that section 3,4, 6(1) to 9 inclusive and section 18 (1) to (3) inclusive of the iTaukei Land Trust Act 1940 and sections 3,4, 5 and 6 of the iTaukei Lands Act 1905 which has seriously prejudiced the Plaintiff/Appellant.*" and "*That the Learned Acting Master erred in law and in fact when he failed to properly analyze section 4 of the iTaukei Land Trust Act 1940 when he held that the Commission had no liability in the claim as it was established after the commission of the claim wherein in fact, the Commission was established to control the alienation of the iTaukei land and investigate both the **dealing prior** to and commencement of the Act.*"
- [18] The sixth ground is dismissed as the Acting Master did hold as is being stated in the grounds of appeal. The grounds refers to the Board as the Commission. The grounds need to be correct. It is important that the grounds of appeal are correct with the names, terms and other reference. It is the lawyer's duty to see that the grounds are properly and accurately put to the Court. The sixth ground of appeal is dismissed.

- [19] The fifth ground is also not made out. The Acting Master considered the law. However his reasons for deciding otherwise was stated in his ruling. The fifth ground is also dismissed.
- [20] The Plaintiff succeeds with the appeal. The ruling of the Acting Master striking out the Plaintiff's SOC is set aside. The 3<sup>rd</sup> Defendant (Board) is re-instated in the matter. Costs to be paid by the 3<sup>rd</sup> Defendant to the Plaintiff is summarily assessed as \$2000.00. To be paid within 21 days.

**D. Court Orders**

- (a) The Plaintiff succeeds with the appeal.
- (b) The 3<sup>rd</sup> Defendant (Board) is re-instated in the matter.
- (c) Costs to be paid by the 3<sup>rd</sup> Defendant to the Plaintiff is summarily assessed as \$2000.00. To be paid within 21 days.



A handwritten signature in blue ink, appearing to be "Chaitanya S. C. A. Lakshman".

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Hon Justice Chaitanya S. C. A. Lakshman  
**Puisne Judge**

30<sup>th</sup> January 2026