

RATU FILIMONE NALIVA & 10 OTHERS

v.

RATU SAKIUSA NAISAU & 6 OTHERS

and

THE NATIVE LANDS COMMISSION

[SUPREME COURT—Kermode, J.—28 January 1985]

Civil Jurisdiction

Native Land—death of Tui Ba—dispute as to successor—Native Land Commission pursuant to s.17 of Native Lands Act appointed successor

A. R. Matebalavu for the plaintiffs
K. Govind for the first defendants

Application by plaintiffs seeking, inter alia an order restraining defendants from installing as Tui Ba, Turaga-i-Taukei and Turaga-ni-Tokatoka, Ratu Sakiusa Naisau.

The late Ratu Marika Latianara who died about 1984 held these appointments.

On his death a dispute arose as to who should be his successor. The plaintiffs represented a faction who favoured Adi Kuinimere Ranitu as successor. The defendants represented the faction who favoured Ratu Sakiusa Naisau (Naisau) the first of the seven defendants. It was decided to have the dispute resolved by the Native Land Commission (N.L.C.) (second defendant) which had jurisdiction to do so by s.17 of the Native Lands Act. This was to be done at a meeting on 31 July, 1984 but the representative of N.L.C. failed to attend, whereupon the faction representing first defendant went ahead with plans to formally instal Naisau as Tui Ba and to the other positions, this to be done formally on 27 September 1984. The case was in court on 24 September, the Chairman of the N.L.C. was present, plaintiffs and first defendants agreed the N.L.C. be asked to act under s.17. An amendment was sought to the plaintiffs' summons, set out in the Reasons for Judgment and to be more appropriate to the present state of affairs between the parties.

On 22 November 1984 the N.L.C. decided that Ratu Sakiusa Naisau was the Tui Ba: the purported installation by defendants of Ratu Sakiusa Naisau as Tui Ba by the faction representing the first defendant was totally devoid of legal effect. He became Tui Ba legally on 22 November 1984.

Declarations refused.

KERMODE, J.

A

Judgment

The second defendant was not legally represented at the hearing but the Chairman of the Commission appeared on all but the last hearing date.

All the plaintiffs and the first defendants reside at Ba.

B

The late Ratu Marika Latianara of Ba was at the time of his death Tui Ba and also held the positions of Turaga-i-Taukei, Turaga-ni-Mataqali and Turaga-ni-Tokatoka. The date of his death is not disclosed in the affidavits filed herein but it was probably in 1984.

On his death a dispute arose as to who would be his successor. The plaintiffs represent a faction who favoured Adi Kuinimere Ranitu as the successor of Ratu Marika.

C

The defendants represent the faction who favoured Ratu Sakiusa Naisau, the first of the 7 defendants.

Every effort was made by the members of the opposing factions to resolve the dispute amicably and it was finally decided that the dispute be resolved by the Native Lands Commission. Under Section 17 of the Native Lands Act the Native Lands Commission has a statutory duty to resolve any dispute which may arise between native Fijians as to the headship of Mataqali, etc. Section 17 provides as follows:

D

"17.—(1) In the event of any dispute arising between native Fijians as to the headship of any division or subdivision of the people having the customary right to occupy and use any native lands, the Commission may inquire into such dispute and after hearing evidence and the claimants shall decide who is the proper head of such division or subdivision, and such person shall be the proper head of such division or subdivision:

E

Provided that if the claimants agree in writing in the presence of the Chairman of the Commission as to who is the proper head of such division or subdivision it shall not be necessary for the Commission to hear evidence or further evidence as the case may be.

F

(2) On the conclusion of any inquiry held under subsection (1), the Chairman of the Commission shall inform the parties of the decision and shall transmit a copy of such decision to the scribe of the province in which the land belonging to such division or subdivision is situate and such decision shall be publicly read at the next meeting of the provincial council of that province."

G

Representatives of the Native Land Commission were to preside over a meeting at Sorokoba, Ba, on the 31st July, 1984, to resolve the dispute.

The meeting was held on the 31st July, 1984, but for some unexplained reason the representatives of the Commission were not present. The dispute was not resolved at the meeting held on 31st July, 1984.

H

The faction representing the first defendants despite the fact that the dispute had not been resolved, went ahead with plans to formally instal Ratu Sakiusa Naisau as Tui Ba and to the other positions. The installation was to take place on the 27th September, 1984. The plaintiffs then commenced this action seeking (inter alia) an order restraining the defendants from installing Ratu Sakiusa Naisau as Tui Ba.

The summons was for hearing on 24th September, 1984, only 3 days before the scheduled and advertised date of installation. A

On the 24th September, 1984, Mr Anil Singh appeared for the first defendants but no one appeared for or represented the second defendant.

No order restraining the first defendants was made on that date. It was pointed out to the parties that if in fact there was a dispute the law required that the Native Lands Commission resolve that dispute. It was pointed out also that the Court could not restrain the first defendants and their supporters from holding installation ceremonies but while the dispute remained unresolved the legality of the installation could be challenged. B

The Chairman of the Commission was present on the 24th September and the plaintiffs and the first defendants agreed that the Native Lands Commission be asked to act under Section 17 of the Native Lands Act. C

The Chairman of the Commission did preside over a meeting at Sorokoba, Ba, on Tuesday the 25th September, 1984, in an effort to resolve the dispute by agreement between the opposing parties. He was not successful and he informed the parties that the Commission would make a decision to resolve the dispute.

The plaintiffs then sought to amend their summons seeking the following declarations: D

(a) The Native Lands Commission is under a legal duty to conduct an enquiry regarding the dispute and upon its proper completion the Commission shall decide the proper Tui Ba, Turaga-i-Taukei, Turaga-ni-Mataqali and Turaga-ni-Tokatoka.

(b) The installation of Ratu Sakiusa Naisau as Tui Ba, Turaga-i-Taukei, Turaga-ni-Mataqali and Turaga-ni-Tokatoka at Sorokoba, Ba on Thursday 27th September 1984 is null and void and contrary to the Native Lands Act (Cap. 133). E

When the parties met at the adjourned hearing, Mr Matebalavu sought approval of the amendments which Mr Govind did not object to. Mr Matebalavu pressed strongly for hearing of the summons and objected to any further adjournment. F

The Chairman of the Commission was present and advised that the Commission was sitting on the 22nd November, 1984, to resolve the dispute. The hearing was adjourned to 30th November, 1984, and again adjourned to 6th December, 1984, when Mr Matebalavu advised that the Commission had decided that Ratu Sakiusa Naisau should be appointed. G

Mr Matebalavu still sought the declarations the plaintiffs asked for but the Court in the circumstances was not prepared to hear argument about a dispute which had been resolved. H

It can, however, be stated that there was a genuine dispute between two factions as to who should be the successor to Ratu Marika and that dispute, if it could not be resolved by agreement, could only legally be resolved by the Native Lands Commission.

The plaintiffs, ably advised by Mr Matebalavu, took the proper course of seeking the assistance of this Court. This action has resulted in the Commission finally performing the duty imposed on it by Section 17 of the Native Lands Act. The Commission had decided that Ratu Sakiusa Naisau is the Tui Ba.

- A** It is to be regretted that the first defendants should have chosen to publicly disregard the law. They can have been in no doubt that there was a dispute about who should succeed Ratu Marika.

- They chose to ignore the law, the Commission and the plaintiffs and their faction and purported to have a full ceremonial purported installation of a successor which was totally devoid of any legal effect. The installation was legally a nullity because Ratu Sakiusa Naisau only became Tui Ba legally on 22nd November, 1984,
- B** when the Commission resolved the dispute.

In the circumstances I decline to make any formal declarations.

There will be no order as to costs.

Application refused.