

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

Civil Action No. HBC 61 of 2014

BETWEEN : **LIVAI DERENALAGI** and **MANOA LABALABA** suing on their behalf and on behalf of the majority members of Mataqali Nalagi of Nawaka Village, Nadi.

PLAINTIFFS

AND : **JOELI BULU, MANASA QORO** and **SEMESA LEWAIVI** as Trustees of Mataqali Nalagi all of Nawake Village, Nadi.

1ST DEFENDANT

AND : **APENISA NAEVO, NEMANI TUBELILI** and **ALIPATE BALEBALE** as Trustees of Tokatoka Waiwaitu Trust all of Mataqali Nalagi, Nawaka Village, Nadi.

2ND DEFENDANT

AND : **MATAIASI NABAU** and **LALAI DRIU** as Trustees of Nalagi Youth Club both of Mataqali Nalagi, Nawake Village, Nadi.

3RD DEFENDANT

AND : **ITAUKEI LAND TRUST BOARD** a Statutory body formed under Cap 134.

4TH DEFENDANT

Counsel: Mr Saimoni Nacolawa for the Plaintiffs
Mr kitione Vuataki for the Defendants

Date of Ruling : Friday, 13th April, 2018

RULING

A. INTRODUCTION

1. This is the Plaintiffs Inter-Partes Motion for the following orders:-

01. *That the collection of rental proceeds of Mataqali Nalagi from their Reserve Land or ITLTB be frozen immediately until further order of this Honourable Cort.*
02. *That the leasing out of the Mataqali Nalagi land are to be immediately put on hold or frozen until further order of the Honourable Court.*
03. *That the Trustees of Mataqali Nalagi, Tokatoka Waiwaitu and Nalagi Youth Club are to refrain from withdrawing any monies from their respective Trusts or Club until further order of this Court.*
04. *That collections of rental proceeds by some members of the Mataqali and/or Trustees from properties on their Mataqali Reserve are to be stopped immediately and such rentals are to be directed to Nacolawa & Co Trust Account No. 9802761446, WESTPAC BANKING CORPORATION, Lautoka.*
05. *Costs of this Application.*
06. *Any such or other orders as this Honourable Court deems just.*

2. The application is made under Order 29, rule 1 and 2 of the High Court Rules, 1988 and under the inherent jurisdiction of the Court.

B. THE BACKGROUND

1. The application is supported by an Affidavit sworn on 29th May, 2016 by "Livai Derenalagi", the first named Plaintiff. He deposes as follows;

01. THAT I am the 1st named Plaintiff and I am authorized by the 2nd named Plaintiff to swear this Affidavit on our behalf.
02. THAT this matter was filed in June 2014 and it was hoped that by filing the action in Court would have changed the Trustees and others abusing the use of the Mataqali Nalagi rental proceeds.
03. THAT the said action only halts in small measures the abuse by some members but the continuing abuse of the Mataqali fund never stops.
04. THAT on the 4th May, 2014 the 1st, 2nd, & 3rd Defendants filed and served the Summons to Strike Out this cause of action but the Learned Master dismissed the said application by the Defendant.
05. THAT Mataqali Nalagi derives its rental proceeds from leases in the iTaukei Land Trust Act, that is those leases administered by the ITLTB and also from their iTaukei Reserve under iTaukei Land Act Cap 133 arranged by members of the Trustees of Mataqali Nalagi.

(Attached herein is a copy of the ITLTB Record of Leases Titled LOU Waiwaitu: NALAGI-TK 148 LOT 16 H123 x 4 marked "LD 1")

06. THAT the abuse by the 3 Trusts dates back a decade ago where rental proceeds were not distributed to individual members of the Mataqali but benefitted only a few of the members.

(Attached herein is a copy of signatures of the Mataqali members of Nalagi Mataqali supporting the present application marked "LD 2")

07. THAT since 2013, right thinking members of the Mataqali have been complaining of the abuse of funds to authorities such as PM's Office, ITLTB, ITL & FC FICAC, Deputy Police Commissioner Western and Officer in Charge Nadi Police Station for their help but nothing concrete has been received from them.

(Attached herein is copy of Complaints by representatives of members of Mataqali regarding the abuse of funds marked "LD 3" dated 8/8/13.)

08. THAT the said complaint outlines the various abuses made by members of the Trustees and some of their members for their own benefit.

- (a) That the Flour Mills of Fiji Limited erected a Billboard in the Mataqali Nalagi land in return, the said Company gives food vouchers to the tune of \$6,000.00 (Six Thousand Dollars) until the 20th May, 2013. The said food voucher only benefitted Apenisa Naevo and his family members, but denying the rest of the members of the Mataqali.
- (b) That Mataqali Land Ref 10/80149 Naibulu (part of) Lot 3 Industrial was sold to JK Builders by Trustees of Mataqali Nalagi for an undisclosed sum and used the said money by themselves, which by right is the property of the Mataqali. The Trustees of Mataqali Nalagi were responsible and this was confirmed by the Managing Director of JK Builders.
- (c) That the transfer and sales of Mataqali Reserve Lands to Industrial Leases were the sole responsibility of the Mataqali Nalagi Trustees namely:
- (i) Trade Furniture and Joinery Ltd
 - (ii) JK Builders LOT 1
 - (iii) JK Builders LOT 3
 - (iv) Charles Engineering Ltd (Commercial Lease)
 - (v) TYRE Centre
 - (vi) Vinod Patel Warehouse

09. **THAT** I refer and rely to my Affidavit in Opposition of the Strike Out Application of the 1st, 2nd and 3rd Defendants filed on the 17th June, 2014 – please refer to the said Affidavit in the file.

10. **THAT** I refer and rely on the Judgment of the Master regarding the said Striking Out Application which was dismissed by the learned Master and dated 10th March, 2015 and further it is pertinent to quote paragraph 12, 13 and 14 of the said Judgment.

Para 12: “The lack of transparency in accounting to the members of the Mataqali who are members of these Trusts by the Trustees is a matter in dispute. In my view, it is not necessary for them to be members of the Nalagi Youth Club for example to seek accountability for the distribution of the resources obtained or accrued or derived from customary source to which they have a legal right. It is the transparency in accountability which is at the center of the Claim”.

Para 13: “The claim not be looked up on by the Defendants as being motivated by the disappointment of the Plaintiffs.....such as assumption draws

away from the need to steer themselves to what is more equitable within their environment. It has a much larger dimension and benefit than what has been proposed as the basis of the application to Strike Out the action. It is clear in my view that there is a cause of action and it ought to be pursued”.

Para 14: “...A matter is considered frivolous if it is of little importance or weight and this matter is certainly important to the Mataqali in respect of the rental proceeds from its customary land...the fact that the Trustees have not accounted to the members of the Mataqali for the last eight years is sufficiently serious to warrant the action”.

(Attached herein is a copy of the said Judgment marked “LD 4”)

11. THAT the majority members of the Mataqali give their understanding as to damages which can be sighted from the LD 1 above- the income derived by the members and their signatures on LD 2 by their signatures.
 12. THAT I seek order in terms of our application.
2. The application is vigorously opposed. An answering Affidavit sworn on 31st August, 2016 by the Third Defendant was filed on behalf of the Defendants. In the Answering Affidavit the Third Defendant deposes as follows;
01. THAT I am the 3rd Defendant and I am authorized to depose this my Affidavit on behalf of the 1st, 2nd and 3rd Defendants herein from matters well known to me or from papers in my possession and which I believe to be true and I also rely on the Affidavit in Support filed on behalf of the Defendants on 3rd May, 2014.
 02. THAT I am a member of Tokatoka Waiwaitu and Mataqali Nalagi of Nawaka Village.
 03. THAT as to Paragraphs 5, 6, and 7 of the Affidavit in Support of the Plaintiffs, I deny the contents and further say that the Rental proceeds of Mataqali Nalagi has been distributed individually and no longer through the Trusts or the Land Owning Unit.

04. THAT as to the 3rd Defendant the membership of Nalagi Youth Club is confined to 17 years old members of Mataqali Nalagi to 40 year olds and the Plaintiffs were both born in 1948 and are therefore 66 years old.
05. THAT as to Paragraph 8 we deny the contents and put the Plaintiff to strict proof.
06. THAT as to Paragraph 11 of the Affidavit in Support the undertaking is not sufficient as the lease monies are now being distributed individually.
07. THAT if the injunction is granted the Defendants and the beneficiaries of the Trust will be greatly prejudiced as the rental proceeds are being collected individually and not through the respective Trusts.
08. THAT I humbly request that the Plaintiffs Motion be dismissed.

3. In the "Affidavit in Response" the First Plaintiff deposed as follows;

01. THAT I am the 1st named Plaintiff in the above action and have been authorized by the 2nd named Plaintiff to swear this Affidavit on our behalf.
02. THAT as to paragraph 1 of the Affidavit in Opposition, the Plaintiff admits only to the fact that he is the 2nd named 3rd Defendant herein while the rest of the contents of the paragraphs I cannot comment on therein (the said Affidavit).
03. THAT as to paragraph 2 of the said Affidavit the Plaintiff admits the contents therein.
04. THAT as to paragraph 3 of the said Affidavit the Plaintiff says as follows:-
 - (i) The Plaintiff admits that the rental proceeds are now distributed individually.
 - (ii) The Plaintiff says that those business houses renting on the Mataqali Nalagi reserve lands, including individual residential houses are still in the control of some members of the Trust.

(iii) *That since the reserve land is registered under their Tokatoka; the funds collected from those premises belong to all members of the Tokatoka/Mataqali.*

05. **THAT** *as to paragraph 4 of the said Affidavit, the Plaintiff says as follows:-*

(i) *Irrespective of age, the fund collected and use by the Youth Club Trust is owned by the land owning Tokatoka/Mataqali as a whole and that warrants for its transparency, responsibility in its usage etc, it cannot allow the abuse of such fund.*

06. **THAT** *as to paragraph 5 of the said Affidavit the Plaintiff rejects the contents therein and maintains what he stated at paragraph 8 of his main Affidavit.*

07. **THAT** *as to paragraph 6 of the said Affidavit the Plaintiff says as follows:-*

(i) *That since the filing of this case, the majority members of Mataqali members have now realized the abuse of the 3 Trustees and are now throwing their full support to the Plaintiff.*

(ii) *That since the Plaintiff is fighting for the individual right of the Mataqali Nalagi members, and also now realized that they have been duped and denied their rental monies are now part and parcel of this action, and collective contribution would be enough to pay for any damages against the Plaintiff.*

08. **THAT** *as to paragraph 7 of the said Affidavit the Plaintiff says that, it is only for the sake of transparency that it wants to apply for injunction and that is only for those properties under reserve and hence the ITLTB has no jurisdiction to collect such rental and no prejudice would result but would call for the Trustee to account the abuse they have been doing.*

09. **THAT** *I seek order in terms of this application.*

C. JURISDICTION

1. Against this factual background, I now turn to the applicable law.
2. Order 29, rule 1 provides;

Application for Injunction (O.29, r.1)

1. –(1) *An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.*

(2) *Where the applicant is the Plaintiff and the case is one of urgency and the delay caused by proceeding in the ordinary way would entail irreparable or serious mischief such application may be made ex parte on affidavit but except as aforesaid such application must be made by Notice of Motion or Summons.*

(3) *The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms of providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.*

D. PRINCIPLES TO BE APPLIED

1. Against that background, it is necessary to turn to the judicial thinking in relation to the principles governing the exercise of the discretion to make the Order the Plaintiffs now seek.
2. In the decision of Lord Diplock in "American Cyanamid Co v Ethicon Ltd" (1975) A.C. 396, the Court laid down the following principles;
 - (a) The Plaintiff must establish that he has a good arguable claim to the right he seeks to protect; it is enough if he shows that there is a serious question to be tried.

- (b) The grant or refusal of an injunction is in the Court's discretion on the balance of convenience which entails consideration of the following facts;
 - (i) If damages are a sufficient remedy, an injunction ought not to be granted.
 - (ii) Whether more harm will be done by granting or by refusing an injunction.
- (c) An undertaking from the Plaintiff to be answerable in damages if the injunction proves to have been wrongly granted is almost always required.
- (d) The purpose of an interlocutory injunction is to preserve the status quo until the rights of the parties have been determined in the action.

E. ANALYSIS

1. Bearing those principles in my mind, I turn to consider the Plaintiffs application for Interlocutory Injunction. Before passing to the substance of the Plaintiffs Inter-Partes Motion, let me record that Counsel for the Plaintiffs and the Defendants in their Written Submissions have done a fairly exhaustive study of the judicial decisions and other authorities which they considered to be applicable.

Whilst most grateful for the researches of counsel, I interpose to mention that I have given my mind to the oral submissions made by Counsel before Justice Sapuvida as well as to the Written Submissions and the judicial authorities referred to therein.

2. At the outset, the matter does require a close and detailed examination as to the admissibility of the Supporting Affidavit.
3. As noted, the Plaintiffs Inter-Partes Motion for Interlocutory Injunction is supported by an Affidavit sworn on 29th May, 2016 by "Livai Derenalagi", the First named Plaintiff.

4. In the body of the Affidavit, the deponent states that "I am the First named Plaintiff and I am authorized by the Second named Plaintiff to swear this Affidavit on our behalf."

I note with concern that the First named Plaintiff has **no written authorization** to swear the Affidavit on behalf of the Second Plaintiff. I cannot comprehend the basis on which he was deposing.

Be that as it may, **Order 41, rule 5 (2)** permits an Affidavit sworn for the purpose of being used in "interlocutory proceedings" to contain statements of information or belief with the sources and grounds. The Affidavit contains twelve (12) paragraphs and four (4) annexures. The deponent does not say that he has any knowledge at all on the subject of the statements contained in the affidavit. What is more, the deponent does not say in his Affidavit that the matters to which he deposed are on the basis of his personal knowledge and belief. It is notorious that the provisions of **Order 41, rule 5(2)** are not adhered to.

It is rather startling (as I can tell from the record) that at the hearing before Justice Sapuvinda, the Defendants did not take an objection to the admissibility of the Supporting Affidavit. They did not choose to bring the attention of the court to the defect of an affidavit made in this way, and are content to take the judgment of the court upon such an affidavit. Of course, it is not the office of the court to bring the attention of the parties the form of the affidavit they have made, and any objection that can be taken to it. In the absence of any objection being taken by Counsel for the Defendants to the admissibility of the Supporting Affidavit, I can do little about it. I do not think this court can for a single moment give countenance to the notion that any systemic neglect, of the provisions of that order (**Order 41, rule 5(2)**) can absolve persons from the consequence of disregarding them when the question is raised, by a person having a right to raise it.

5. At the outset, the Defendants raised a preliminary objection submitting that the Plaintiffs do not represent the majority of the members of the "Mataqali".
6. The following extracts taken from page 3 of the Submissions by the Defendants are pertinent.

The Plaintiffs in their Affidavit of Support do not show any annexure or evidence to show this honourable Court that they have 60% majority of members of

Mataqali Nalagi signatories to support their claims that the majority members of Mataqali Nalagi seek the Injunctive orders.

The Plaintiffs in Paragraph 10 of his Affidavit in Support refers to the decision made by the Master regarding the Defendants Striking Out Application.

Paragraph 10

That I refer and rely on the Judgment of the Master regarding the said striking out application which was dismissed by the learned Master and dated 10th March, 2015 and further it is pertinent to quote paragraph 12, 13 and 14 of the said judgment.

Para 12: (of Judgment)

“The lack of transparency in accounting to the members of the Mataqali who are members of these Trusts by the Trustees is a matter in dispute. In my view, it is not necessary for them to be members of the Nalagi Youth Club for example to seek accountability for the distribution of the resources obtained or accrued or derived from customary source to which they have a legal right. It is the transparency in accountability which is the center of the claim.”

Para 13: (of Judgment)

“The claim not be looked up on by the Defendants as being motivated by the disappointment of the Plaintiffs.....such as assumptions draws away from the need to steer themselves to what is more equitable within their environment. It has a much larger dimension and benefit than what has been proposed as the basis of the application to strike out the action. It is clear in my view that there is a cause of action and it ought to be pursued.”

Para 14: (of Judgment)

“.....A matter is considered frivolous if it is a little important or weight and this matter is certainly important to the Mataqali in respect of the rental proceeds from its customary land.....the fact that the Trustees have not

accounted to the members of the Mataqali for the last eight years is sufficiently serious to warrant the action."

The Master refused the striking out application by the Defendant on the basis that there was a cause of action to be tried by way of trial proper and does not hold any bearing on the injunctive application by the Plaintiff.

(Emphasis added)

7. It may be inferred from the above that the Defendants are challenging the Plaintiffs "locus standi" to sue and obtain an injunction for and on behalf of the members of mataqali.

Counsel for the Plaintiffs argued against the objection.

8. Counsel for the Plaintiffs relied on the Supreme Court decision in "Waisake Ratu No. 3 and Anor v Native Land Development Corporation and NLTB (1991) 37 FLR 146" and contended that a member of a Mataqali can sue in his own personal capacity and in a representative capacity in respect of a 'collective right'. The two Plaintiffs are members of the Mataqali Nalagi. They sued for damages and an injunction in their own personal capacity and in a representative capacity in respect of a collective right. The Defendants are Trustees of the Mataqali Nalagi. The case concerns the breach of trust and abuse of the Mataqali Trust Fund. More particularly, this case raises the concerns of the two Plaintiffs regarding the abuse of monthly rentals of Mataqali Nalagi Apartment blocks on reserve land and the abuse of other income generating fund of the Mataqali.
9. The Plaintiffs claimed an equitable remedy of an injunction. The question is whether the Plaintiffs have a **locus standi** to commence proceedings to obtain an injunction for and on behalf of the members of the mataqali. I shall deal first with the question of the "**locus standi**" of the Plaintiffs to bring these proceedings in their personal capacity and in a representative capacity to obtain an injunction for and on behalf of the mataqali .
10. What is the story behind the Supreme Court decision in "Waisake Ratu No.3"? I therefore turn to the facts of the Supreme Court case. I take them gratefully from

the admirably clear and succinct statement to be found in page 2 of the Judgment.

"The yavusa Nauluvatu, Nayavumata and Vatuwaqa are the owners in common of over 388 acres of native land at Navesi, Suva. One lot in particular, that, is Lot No. 15 on plan M/13,3 registered on Folio 1245 of Volume 7 of the Register of Native Lands, consists of 274 acres, with its western and eastern borders adjacent to Wailoku Creek and Tamavua River respectively, bounded on the south by Suva Harbour. On the 1st August, 1908 over 30 acres thereof was leased to Margaret Hilda Wall for a period of 50 years. On the 20th October, 1938 over 28 acres of that lease was assigned to Alfred Henry Marlow: it is convenient to refer to the latter lease and the area involved as the "Marlow lease". The Marlow lease expired on the 31st July, 1958. On the 7th April, 1959 Mr Marlow was informed by the Second Defendant, the Native Land Trust Board ("the Board") that he could stay on on part of the land, that is, over 10 acres, as a tenant-at-will on the remainder of the Marlow lease. On the 22nd February, 1978 the Board gave Mr Marlow six months' notice to quit. It would seem therefore that Mr Marlow's tenancy-at-will terminated on the 31st August, 1978.

Meanwhile the First Defendant the Native Land Development Corporation ("NLDC") had applied for a lease of over 36 acres, and on 19th October, 1979 the Board issued an approval notice in the matter, stipulating a lease for 10 years from the 1st October, 1979 at the half yearly rent of \$100 per acre. The proposed lease included the area of the Marlow lease. NLDC proceeded to develop the area, when they came across a number of people on the land, including the Plaintiffs, whom they considered to be in unlawful occupation and threatened legal eviction against them. Meanwhile the Plaintiffs filed the present Writ.

The Writ indicates that both Plaintiffs are Farmers. The First Plaintiff is a member of the Mataqali Nayavumata of the Yavusa Nayavumata and the Second Plaintiff is a member of the Mataqali Naceva of Yavusa Vatuwaqa. The Writ claims that the First and Second Plaintiffs in their capacity as native Fijians, have beneficially occupied and cultivated each one acre approximately of the land at Navesi since the 1960's and mid-1970's respectively by virtue of native custom usage and tradition. The statement of claim is very lengthy indeed, covering six pages, but as I see it, the Plaintiffs' claims can be reduced as follows:

- (1) *By virtue of the provisions of Section 3 of the Native Lands Act (Cap 133) both Plaintiffs have an estate for life in the land which they occupy.*

- (2) *The development lease issued by the Board to NLDC is void because:*
- (a) *the Board failed to comply with the provisions of Section 9 of the Native Land Trust Act (Cap. 134);*
 - (b) *the Board has no statutory power to sub-divide or develop native lands and cannot therefore issue a lease for that purpose;*
 - (c) *the Board had no power to delegate the authority of approval of the development lease to its General Manager.*
- (3) *Any attempt to remove the Plaintiffs from their land would be a violation of their rights under Sections 3(c) and 8 of the Constitution (1970).*

The prayer then seeks seven consequential declarations, a permanent injunction against NLDC, damages and costs."

11. As I understand the Supreme Court decision, in that case, the First Plaintiff has proved his **personal proprietary interest** in his house, out-house, the path leading to the house and the surrounding fruit trees. The Plaintiffs sought damages arising from their eviction from Native Land following the grant by the NLTB of a development lease over the Land. In the course of finding in favour of the First Plaintiff the Supreme Court discussed the nature of customary ownership of native land, the history of the legislation affecting it and the extent to which members of a Mataqali retained the right to deal with and litigate in respect of the land either individually or collectively.

So far as I can tell from that decision, it matters not that he acquired his ownership under customary law. His personal claim thereto cannot be defeated either in customary law or even in common law for that matter.

12. I carefully examined the Supreme Court decision. But the facts of it are different from those in the present case. In the Supreme Court case the Plaintiff brought an action seeking damages for eviction from native land which does directly infringe his personal rights. But in the present case, the two members of the mataqali (the Plaintiffs) brought an action for damages and an injunction in respect of which **"communal"** rather than **"personal rights"**. **Their grievance in the matter is not their own. It is that of a land owning unit.** I do not think that

the decision of the Supreme Court is of assistance to the Plaintiffs because it is clearly distinguishable from their case.

13. As earlier indicated, in the present case, the orders sought in the Inter-Partes Notice of Motion are in the following terms;
 1. *That the collection of rental proceeds of Mataqali Nalagi from their Reserve Land or ITLTB be frozen immediately until further order of this Honourable Court.*
 2. *That the leasing out of the Mataqali Nalagi land are to be immediately put on hold or frozen until further order of the Honourable Court.*
 3. *That the Trustees of Mataqali Nalagi, Tokatoka Waiwaitu and Nalagi Youth Club are to refrain from withdrawing any monies from their respective Trusts or Club until further order of this Court.*
 4. *That collections of rental proceeds by some members of the Mataqali and/or Trustees from properties on their Mataqali Reserve are to be stopped immediately and such rentals are to be directed to Nacolawa & Co Trust Account No. 9802761446, WESTPAC BANKING CORPORATION, Lautoka.*
 5. *Costs of this Application.*
 6. *Any such or other orders as this Honourable Court deems just.*
14. As earlier mentioned, the Plaintiffs are *“suing on their behalf and on behalf of the majority members of the Mataqali Nalagi of Nawaka Village, Nadi”*. It may be inferred from the above that the Plaintiffs are seeking an equitable remedy of an injunction against the Defendants in their own **personal capacity** as members of Mataqali and in a **representative capacity** on behalf of the Mataqali.
15. The present proceedings concerned the distribution of rental proceeds from the “Mataqali” land. I state with conviction that the Plaintiffs have no locus to commence proceedings in their personal capacity in respect of a **collective right**. The Plaintiffs have no personal rights in the matter. No personal rights have been

infringed. More precisely, a member of a mataqali cannot bring proceedings in his personal capacity in respect of a collective right. That is a far cry however from saying that, in a proper case, a member of a proprietary unit constituting the native owners cannot sue in his own right in respect of a personal right and succeed in his claim for damages and an injunction.

The Writ indicates that the Plaintiffs have claimed damages and an injunction. I state with conviction that their claim for damages in their personal capacity in respect of a cause of action (if there is any) open to mataqali of which they are members cannot succeed.

I take comfort in and adopt the following passages from the case of "Meli Kaliavu" and Others v NLTB 5 FLR 17 where Hammett J said;

The Plaintiffs are not the owners of the land in question. They are merely five members out of some 150 members of the Matanivuga Mataqali who own the land. If any damage has been suffered by the Mataqali as a result of any action by the Native Land Trust Board for which they are liable in law to pay damages, the Mataqali could undoubtedly recover them.

It is not, however, open to this member or that member to sue and recover such damages in their own personal capacity. It would be quite out of the question for this Court to award damages personally to these five Plaintiffs in respect of a cause of action (if there is one) open to the Mataqali of which they are members. Their claim to damages, therefore, cannot possibly succeed.

As regards the claim to an Injunction, this is an equitable remedy. As a general rule, equitable remedies are only granted to a Plaintiff who has established a right at law, where the legal remedy of damages is not an adequate remedy. In this case the Plaintiffs have failed to establish their personal claim in law to damages. They cannot, therefore, succeed in their personal claim to the equitable remedy of an injunction.

(Emphasis added)

16. Turning to the second issue, that is the Plaintiffs **representative capacity** to commence proceedings for and on behalf of the mataqali, in paragraph one (1) of the Affidavit of "Livai Dernalagi", sworn on 29th May, 2016, the deponent says;

"That I am the First named Plaintiff in the above action and have been authorized by the Second named Plaintiff to swear this Affidavit on our behalf."

I note with concern that there is no evidence before me to indicate that the Plaintiffs represented a majority of Mataqali Nalagi. In other words, this court has not been supplied with a document signed by persons claiming to be members of mataqali appointing the Plaintiffs to represent them on any dispute about the land. I am bound to say that the annexure "LD-2" (merely a copy of the signatures of several persons claiming to be the mataqali members) is most unsatisfactory. It is devoid of substantive information. It carries virtually no weight with the court in deciding the locus of the Plaintiffs to bring the proceedings. I can find no evidence here to show that the majority of the members of the mataqali appointed the Plaintiffs to be their authorized spokesman and representative in all legal matters pertaining to their mataqali. It is a simple matter for the Plaintiffs to produce evidence of their assertion in the form of perhaps a statement signed by the members of their mataqali or better affidavits verifying the Plaintiffs claim. Unfortunately, there is no such evidence. The individual members of a mataqali who cannot produce evidence of consent from other members of the mataqali to act on their behalf does not have locus to commence proceedings. Because that each member of the mataqali has equal rights and their consent needs to be obtained before any action is taken on their behalf. Therefore, the Plaintiffs cannot sue for an Injunction representing the proprietary unit.

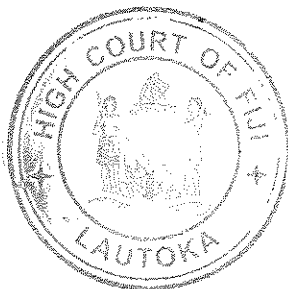
In "Timoci Bavadra v NLTB [Suva Civil. 421/1986]", the Plaintiff sought leave to institute a representative action on behalf of the Tokatoka Weracakaca, a land owning unit. The learned Judge observed that there was no evidence before him to indicate that the Plaintiff represented a majority of Tokatoka. His Honour refused leave in the matter.


17. In the result, I **uphold the preliminary objection** raised by the Defendants with regard to the "locus standi" of the Plaintiffs to bring these proceedings to obtain an equitable remedy of an Injunction.

In view of the approach I have adopted, it will be at best a matter of academic interests only or at worst an exercise in futility to discuss the submissions of the parties in relation to the threshold requirements for the interim injunction relief sought.

F. ORDERS

1. The Application for an Interlocutory Injunction is refused.
2. The Inter-Partes Motion is dismissed.
3. The Plaintiffs are ordered to pay costs of \$500.00 [summarily assessed] to the Defendants within 14 days hereof.




.....13/04/2018.
Jude Nanayakkara
Judge

At Lautoka

Friday, 13th April, 2018