

In the High Court of Fiji at Suva
Civil Jurisdiction
Civil Action No. 276 of 2017
Between
Ratu Tomasi Savou Qiolevu
Plaintiff
And
Hung Kee Investment (Fiji) Ltd
First defendant
And
I Taukei Land Trust Board
Second defendant

COUNSEL: Mr I.Ramanu for the plaintiff
Mr R.Matebalavu for the first defendant
Ms Q.Vokanavanua for the second defendant
Date of hearing : 7th November, 2017
Date of Decision : 13th December,2017

DECISION

1. The plaintiff, a member of Mataqali Matanikutu, alleges that the consent of some members of his Mataqali was obtained unlawfully for the issue of Tenancy-At-Will,(TLTB No.4/03/40577) of 24thAugust,2017, of native land “Vunidralakaka”,(the land) by the second defendant to the first defendant.
2. By notice of motion made inter-partes, the plaintiff seeks the following reliefs:
 - i. *That the 1st Defendant, its employees, servants and/or agents be restrained, stopped and/or to enter, occupy and/or to carry out any civil work on the land more particularly known as Native Land Vunidralakaka, Tenancy-At-Will, TLTB Ref No. 4/03/40577 (“the Lease”) located at Navuso, Naitasiri which was obtained through fraudulent activity under TLTB FORM-3 on 19 June 2017 in the issuance of the said lease until final determination of this matter.*
 - ii. *The 2nd Defendant, its employees, servants and/or agents be restrained and stopped from making, negotiating, arranging and/or approving any dealings, consent and/or issuing or any approval, consent or receiving any sum of money, premium, goodwill and/or bonus from the 1st Defendant on behalf of the Mataqali known as Matanikutu of Tokatoka Naivisere, Navoso, Naitasiri in respect of the said lease which was issued through forged signatures under the said Form and failure to comply with the necessary procedural protocols to determine and verify such signatures until this matter is fully determined by this Honourable Court.*

- iii. *The 1st Defendant be restrained from removing any machine, equipment, chattel and/or structure attached or remain on the said land until this matter is fully determined by this Court.*
 - iv. *The 2nd Defendant be ordered to convene a meeting with all members of the said Mataqali Matanikutu, Yavusa Naivisere of Navuso, Naitasiri whose names appeared on the said Form dated 19th June, 2017 with the Roko Tui Naitasiri Provincial Council, Police Commander (Central/Eastern), Nausori Police Station and the District Officer (Central/Eastern) Nausori to verify and determine the said Form and issuance of the said lease.*
 - v. *The 2nd Defendant be ordered to arrange the presence of Police at Nausori to be present at the meeting venue to maintain peace, law and order on the date of the meeting to be determined by this Court.*
3. The plaintiff, in his affidavit support, states that he files this application as a member of the Mataqali Matanikutu, Yavusa Naivisere of Navuso, Naitasiri, and with the consent and authority of its members. The signatures of some members of Mataqali Matanikutu were forged on the iTLTB Form3. The affidavit states that “*out of (11) eleven members, (the following) four are residing overseas and never visited us personally in our village for signing of the said Form*” :Adi Arieta Koila QiolevuRatu Jese Vakaruru, Ro Jone Takiveikata and Ratu Edward Russel Vitu Qiolevu. The illegal and unlawful issue of the lease and the first defendant’s presence on the land has triggered unsettlement amongst their members and caused substantial and “*untold*” damages to their resources. If the first defendant is not restrained from entering, occupying, carrying out work on the land and removing any equipment or structure, it will create continuous unsettlement of living and a wastage of their resources. The plaintiff also seeks that the second defendant be restrained from negotiating, approving any dealings or receiving any money from the first defendant on behalf of the Mataqali Matanikutu and a meeting be convened with all its members in the presence of the Nausori Police. The affidavit concludes that all efforts to address the illegal and unlawful issuance of the lease had failed.

4. Lijun Liu, a Director and shareholder of the first defendant in his affidavit in opposition states that the first defendant, in consultation with the second defendant, entered into negotiations with the land owning units to obtain their consent. The land is owned in common by Yavusa Naivisere, Yavusa Rokotuitai and Yavusa Naisaki. Mataqali Matanikutu is a part of Yavusa Naivisere. The percentage of consent required is determined on the totality of members of the landowners of the three Yavusa. The Register of Native Lands and relevant Table of Classification of Communal Units are attached. The majority of the members of Yavusa Naivisere, Yavusa Rokotuitai and Yavusa Naisaki are not before Court and have not sanctioned these proceedings. The TAW was issued lawfully upon receiving the consent of the majority of the members of the Yavusa Naivisere, Yavusa Rokotuitai and Yavusa Naisaki. The first defendant has expended substantial time, labour and expense to obtain the required consent and acquired machinery and labour to carry out the proposed development.

5. The affidavit in opposition filed by Soloveni Masi of Nadawa, Suva, Regional Manager, Central Eastern of the iTLTB states that the land “*Vunidralakaka*” is collectively owned by the landowning unit members of Yavusa Naivisere, Yavusa Naisaki and Yavusa Rokotuitai comprising six mataqalis. The plaintiff does not have locus standi to represent the other five mataqalis nor the whole three Yavusa. The first defendant lodged an application to lease the land with the required documents and consent of most of the members of the three Yavusa. The Board carried out consultations with members of the three Yavusa, received approval from the Naitasiri Provincial Council Office for the lease and verified with the Native Lands Commission, (NLC) Office that the consent of most of the members was obtained. After assessing the application, the Board made a decision that a TAW be issued for the benefit of all members of the Yavusa. An offer letter of 22nd August, 2017, was issued reflecting a premium sum of \$5,125.50 with annual rent of \$1,500.00. The Board issued a TAW Lease to the first defendant effective from 1st August, 2017, for one year. The plaintiff has failed to show that the consent of eleven members was obtained fraudulently and disclose the loss he will sustain. The plaintiff has not disclosed his assets.

6. *The hearing*

Mr Ramanu, counsel for the plaintiff submitted that the consent of members of the plaintiff's Mataqali Matanikutu was obtained by fraud. The signatures of four members were forged. They were abroad. He submitted that there was a serious issue to be tried, damages was not an adequate remedy and the balance of convenience favoured the grant of an interlocutory injunction.

Mr Matebalavu, counsel for the first defendant submitted that the plaintiff does not have locus standi to bring these proceedings, neither as a member of his mataqali nor on behalf of the other five mataqalis which own the land. There is no evidence before Court that the Mataqali Matanikutu or the other five mataqalis support the plaintiff. The plaintiff is one of 500 owners of the land. The majority have consented to the issue of the TAW.

Ms Vokanavanua, counsel for the second defendant also said that the plaintiff has not been given authority to bring these proceedings. He has not shown that four members whose signatures are alleged to be forged, were overseas. The plaintiff had given his consent. There is no evidence of the alleged damage that has been caused to him by the lease. He has not provided a list of assets of himself nor that of his mataqali, in support of his undertaking as to damages.

Mr Ramanu, in reply stated that paragraph 1 of the affidavit in support of the plaintiff avers that he has obtained the consent of Mataqali Matanikutu to bring these proceedings. An undertaking as to damages has been given by the plaintiff on 6th October, 2017

The determination

7. I will in the first instance deal with the issue of locus standi, as raised by both counsel for the defence.

8. It was submitted that the plaintiff does not have locus standi to bring these proceedings, since there is no evidence before Court, that he has obtained the consent of the members of his mataqali or the other five mataqalis which collectively own the land. He is a member of Mataqali Matanikutu. Six mataqalis own the land "*Vunidralakaka*".

9. The affidavit in opposition filed on behalf of the second defendant provides that the land belongs to six different landowning units under the following Yasuva:
- (a) Yavusa Naivisere consists of Mataqali Naivisere, Mataqali Rokotarotaro, Mataqali Mataisau and Mataqali Matanikutu .
 - (b) Yavusa Rokotuitai consists of Mataqali Korowaiwai
 - (c) Yavusa Naisaki consists of Mataqali Naisaki
10. At the hearing, Mr Ramanu accepted that the land is collectively owned by the landowning unit members of Yavusa Naivisere, Yavusa Naisaki and Yavusa Rokotuitai.
11. On the issue as to whether the plaintiff can represent his mataqali, I would refer to the decision of the Court of Appeal in *Narawa v NLTB*, [2002] FJCA 9. The judgment of the Court stated:
- Counsel for the Trust Board submitted that if an individual litigant who is a member of a proprietary unit wants to pursue an infringement which by its nature is a communal right, he needs the majority support of the proprietary unit which he seeks to represent before he can pursue such proceedings. We do not accept this submission. The authorities upon which he relied do not support the majority contention, and there is nothing in the rule to suggest that this is a requirement. On the contrary, the cases make it clear that the person seeking to bring an action in a representative capacity does not have to obtain the consent of those he purports to represent, either all or some of them, see Markt (above).*(emphasis added)
12. The Court of Appeal referred to Fletcher Moulton J's observation in *Markt & Co v Knight Steamship Co*, [1910] 2 KB 1021 at 1039 that a plaintiff suing in a representative capacity does not have to obtain the consent of those he purports to represent.
13. I conclude that the plaintiff has locus standi to bring these proceedings on behalf of Mataqali Matanikutu. However, he does not nor claims to have the authority of the other five mataqalis.

14. The plaintiff's complaint is that the signatures of members of Mataqali Matanikutu were forged in the iTLTB form. Four were residing overseas. But there is no evidence before Court in support of this serious allegation, as quite correctly pointed out by Ms Vokanavanua. Ms Vokanavanua also pointed out that the plaintiff had given his consent for the lease.

15. In my judgment, there is no serious issue to be tried.

16. I would also note that the plaintiff has not disclosed his assets. He has given a bare undertaking as to damages.

17. In *Honeymoon Islands (Fiji) Ltd v Follies International Ltd*, (Civil appeal no.63 of 2007) it was held that an applicant must proffer sufficient evidence of his financial position.

18. In the exercise of my discretion, I decline the application for interim relief.

19. **Orders**

- (a) The application for interim relief is declined.
- (b) Costs in the cause.



A.L.B. Brito-Mutunayagam
A.L.B. Brito-Mutunayagam
Judge

A.L.B. Brito-Mutunayagam
Judge
13th December, 2017