

6, 1957

No. 30 of 1955.

# In the Privy Council.

---

---

## ON APPEAL FROM THE FIJI COURT OF APPEAL.

---

---

BETWEEN

RATU TAITO NALUKUYA (Plaintiff) . . . *Appellant*

AND

THE DIRECTOR OF LANDS (Defendant)

and

10 THE NATIVE AFFAIRS BOARD (amicus curiae) *Respondents*

and

THE NATIVE LAND TRUST BOARD OF FIJI *Intervener.*

---

---

## Case for the First Respondent.

---

---

RECORD.

1. This is an appeal by leave of the Fiji Court of Appeal granted on the 21st day of January 1955 from the Judgment of the said Court of Appeal (Carew, J., President, Macaskie and Higginson, JJ.), whereby the said Court of Appeal varied an order made in the Supreme Court (Ragnar Hyne, C.J.) on the 19th day of March 1954 and ordered that a sum of £7,985 paid into Court by the First Respondent should be paid to the Intervener to be applied in accordance with the provisions of the Native Land Trust Ordinance of Fiji (Laws of Fiji, Cap. 86).

p. 36.

p. 29.

2. The question raised by this Appeal is whether the Court of Appeal was right in holding that the proper body to receive the said sum of money which the First Respondent had agreed to pay as compensation for the compulsory acquisition of land and had brought into Court, was the Intervener in this Appeal or whether, as the Appellant had urged, the Court of Appeal was bound to order that the said sum should be paid to the Appellant and other members of his family as the native owners of the said land.

30 3. The Appellant is the head of the Tokatoka Nadrau. A Tokatoka is the Fijian name for a native land holding unit. The Tokatoka Nadrau

- consisted of the Appellant and 8 other members of his family, 5 of whom were his infant children. In 1944 the Tokatoka Nadrau held some 434 acres of land in the Colony of Fiji and in November 1944 the Governor of the Colony acting through the First Respondent, a Government Official, compulsorily acquired the said land under the provisions of section 3 of the Crown Acquisition of Land Ordinance (Cap. 122 of the Laws of Fiji, 1945). The amount of compensation payable in respect of the said acquisition was not agreed between the First Respondent and the Tokatoka at the time of the acquisition and in 1953 the Appellant instructed a firm of solicitors who wrote to the First Respondent claiming compensation. 10
- Annexe hereto, p. 5.
- Ex. B, p. 47. By letter dated the 9th April 1953 the First Respondent informed the Appellant's Solicitors that subject to the consent of the Finance Committee the Government had agreed to accept the Appellant's claim for compensation in full. The compensation claimed was the said sum of £7,985 and the Appellant further claimed interest at 5 per centum per annum from the date of acquisition which amounted to the sum of £3,393.1.6. The total sum including interest claimed and agreed was therefore £11,378.1.6.
- Ex. A, 10, p. 48. By letter dated the 5th May 1953 addressed to the First Respondent, a copy of which was sent to the Appellant's solicitors, the Intervener, a Statutory body set up to control and administer Native Lands, claimed 20 that by virtue of section 15 (2) of the Native Land Trust Ordinance (Cap. 86 of the Laws of Fiji 1945) the said money should be paid to the Intervener. The Appellant through his solicitors disputed this claim. The Appellant's Solicitors had on the 12th March, 1953, caused to be issued in the Supreme Court of Fiji an Originating Summons under the Crown Acquisition of Lands Ordinance citing the First Respondent as Defendant and asking for the determination of the amount of compensation. On the 7th July 1953 the Appellant's Solicitors issued a Summons for Directions in the above action asking (inter alia) for an order for service of the Originating Summons on the adult members of the Tokatoka and for the approval 30 by the Court of the compromise fixing the said compensation at the said figure of £11,378.1.6, and further for an order that the said sum, less costs, should be shared equally among the members of the Tokatoka; the adults' share to be paid to them to be applied as they think fit and the infants' shares to be paid to the Appellant to be applied or dealt with by him in such manner for the benefit of the infants as the Court should direct.
- p. 4. 4. On the 26th day of August 1953 the said Summons for Directions came before the Chief Justice. At this hearing the Second Respondent, a body created by the Fijian Affairs Ordinance (Cap. 83 of the Laws of 40 Fiji) to look after the interests of the natives, appeared by counsel and asked leave to be heard as *amicus curiae*. The Appellant raised no objection and leave was granted. The Solicitor-General representing the First Respondent asked leave to make an amendment to the said Summons for Directions to the effect that the said action should be settled by the Court in terms of section 9 of the Crown Acquisition of Lands Ordinance, and that the said sum of £11,378 1. 6. should be paid into Court in terms of section 18 of the said Ordinance. The Appellant's Counsel again raised no objection and the said amendment to the summons was made. The purpose of the amendment was to bring into operation section 18 of the said Ordinance 50
- Ex. A, 12 and 13, pp. 50-52.
- p. 1.
- Annexe hereto, p. 5.
- p. 6, l. 2.
- Annexe hereto, p. 5.
- Annexe hereto, p. 5.

which provided (inter alia) that payment into Court of any compensation upon the decision of the Court should effectively discharge the Government from seeing to the application of the said compensation. Annexe hereto,  
p. 5.

5. On the 17th day of February 1954 the matter again came before the Chief Justice, the Appellant, the First and Second Respondents being separately represented by Counsel. Counsel for the Appellant stated that the Court had power to prepare issues and that all the Counsel had agreed on the following issues :—

- 10 (1) Should the capital or any part thereof of the fund in Court be paid to the present members of the Tokatoka Nadrau, and p. 6.
- (2) If not, to whom should the same be paid.

6. Counsel for the Second Respondent called a witness Ratu Sir Lala Sukuna who gave evidence of the native customs relating to land. He said (inter alia) that there was "no individual ownership" of land. The ownership "was based on the unit" (the Tokatoka). Individual members of the Tokatoka had "some interest, similar to a life interest in entailed land." p. 7, ll. 16-17  
p. 7, l. 17.  
p. 7, l. 18.

7. On the 19th day of March 1954, the Chief Justice delivered Judgment. He held that the sum of £3,393 1. 6. being the interest referred to above should be paid in equal shares to the members of the Tokatoka, the shares of the infant members to be held by the Appellant on trust for each infant until he or she should reach the age of twenty-one. As to the sum of £7,985 which was the capital sum payable as compensation, the learned Chief Justice held that the money did not belong absolutely to the present members of the Tokatoka, and that succeeding generations of the Tokatoka must have an interest in this money as they would have had in the land if it had not been acquired by the Crown. The learned Chief Justice therefore held that the generations to come of the Tokatoka should not be deprived of their interests in the sum but that these interests would be preserved by the creation of a trust to invest the capital and pay the interest to the members of the Tokatoka. The Chief Justice held that the money could not be paid to the Intervener in this Appeal because "the provisions of the Native Land Trust Ordinance were not invoked," and there had been no sale under the Ordinance and that therefore "the Native Land Trust Board had no right claim or interest in the money." The learned Chief Justice made an order directing (inter alia) that the money should be paid to the Public Trustee to be held in trust for the Tokatoka, and invested and the income paid in equal shares to the members of the Tokatoka living at the time when the payments fell due. pp. 12-18.  
p. 16, l. 18.  
p. 16, l. 21.  
p. 18, l. 36.
- 30

- 40 8. The Appellant appealed against that part of the order of the Chief Justice which directed that the capital sum should be paid to the Public Trustee to be held on trust for the members of the Tokatoka.

9. At the hearing of the Appeal on the 12th day of November 1954 before Mr. Justice Carew, President, Mr. Justice Macaskie and Mr. Justice Higginson, the Second Respondent was not represented. The First Respondent appeared through the Attorney-General of the Colony who

p. 30, l. 37.

addressed arguments for the assistance of the Court on the proper interpretation of the relevant Ordinances. It was argued on behalf of the Appellant, and conceded by the Attorney-General, that the Chief Justice's Order that the money should be paid to the Public Trustee was wrong. On behalf of the Appellant it was contended that the present members of the Tokatoka were entitled to be paid the money. The Attorney-General submitted that the proper order was to direct the payment of the money to the Intervener in this Appeal. The argument turned on whether the provisions of section 15 of the Native Land Trust Ordinance applied to this money. This section provided that "purchase money received in respect of a sale or other disposition of land" should be either distributed by the Intervener in the manner prescribed by the Regulations or invested and the proceeds distributed as the Intervener might decide. It was submitted by the Attorney-General that the money paid into Court as compensation for the compulsory acquisition of the native land in this case was purchase money received in respect of the sale or other disposition of such native land and by reason of section 15 the Intervener in this Appeal had the power and the duty to see to its distribution or investment and that therefore the Court should order that the money should be paid to the Intervener. 10

p. 33, l. 18.

10. The Court of Appeal accepted the Attorney-General's submissions and held that the words "purchase money" in section 15 of the Native Land Trust Ordinance should be read as to include compensation under the Crown Acquisition of Lands Ordinance and that therefore the proper body to receive the capital sum in Court was the Intervener, who should deal with the said sum in accordance with the Native Land Trust Ordinance. 20

11. The First Respondent therefore submits that this Appeal should be dismissed for the following (among other)

## REASONS

- (1) BECAUSE the Court of Appeal were entitled to Order that the said sum of £7,985 should be paid to the Intervener. 30
- (2) BECAUSE the said sum was purchase money received in respect of a sale or other disposition of native land.
- (3) BECAUSE by virtue of the provisions of section 15 of the Native Land Trust Ordinance the Intervener was the proper body to distribute the said sum, or invest the same and distribute the income, among the members of the Tokatoka Nadrau.
- (4) FOR the reasons given by the Court of Appeal.

D. A. GRANT. 40

## ANNEXE.

## CROWN ACQUISITION OF LANDS ORDINANCE

(Cap. 122.)

3. The Governor may acquire any lands required for any public purpose for an estate in fee simple for a term of years as he may think proper paying such consideration or compensation as may be agreed upon or determined under the provisions of this Ordinance.

\* \* \* \* \*

9. If at the expiration of three months from the service and publication as aforesaid of such notice no claim shall have been lodged with the Director of Lands in respect of such lands or if the person who may have lodged any claim and the Governor shall not agree as to the amount of compensation to be paid for the estate or interest in such lands belonging to such person or if such person has not given satisfactory evidence in support of his claim, or if separate and conflicting claims are made in respect of the same lands, the amount of compensation due, if any, and every such case of disputed interest or title shall be settled by the Court which shall have jurisdiction to hear and determine in all cases mentioned in this section upon an originating summons taken out by the Director of Lands or any person holding or claiming any estate or interest in any land named in any notice as aforesaid.

\* \* \* \* \*

18. The payment to any person to whom any consideration or compensation shall be paid or the payment into Court of any compensation upon a decision of the Court shall effectually discharge the Government from seeing to the application or being answerable for the misapplication thereof :

Provided that where any person is in possession by virtue of any estate less than an estate of inheritance or where any person is in possession in any fiduciary or representative character the Government may pay such consideration or compensation to such person and in such proportions and instalments and after such notice as the Court may direct.

---

 NATIVE LAND TRUST ORDINANCE

(Cap. 86 of the Laws of Fiji, 1945)

3.—(1) There is hereby established for the purposes of this Ordinance a Board of Trustee called “ the Native Land Trust Board ” which shall consist of :—

The Governor as President.

The Secretary for Fijian Affairs.

The Director of Lands.

One Native Member nominated by the Governor.

The Director of Agriculture.

\* \* \* \* \*

5.—(1) The control of all native land shall be vested in the Board and all such lands shall be administered by the Board for the benefit of the native owners.

6.—(1) Native land shall not be alienated by native owners whether by sale grant transfer or exchange except to the Crown and shall not be charged or encumbered by native owners and any native Fijian to whom any land has been transferred heretofore by virtue of a native grant shall not transfer such land or any estate or interest therein or charge or encumber the same without the consent of the Board. 10

(2) All instruments purporting to transfer charge or encumber any native land or any estate or interest therein to which the consent of the Board has not been first given shall be null and void.

7. When any native land has been transferred to [or acquired by]\* the Crown a certificate shall be executed in such a form as may be prescribed. Such certificate shall contain a diagram of the land to be comprised therein on such a scale as may be prescribed and shall be executed by the Board under seal on behalf of the native owners and by the Director of Lands on behalf of the Crown. A record of such transfer shall be made in the "Register of Native Lands" kept under the provisions of section 7 of the Native Lands Ordinance. 20

8. Subject to the provisions of the Crown Acquisition of Lands Ordinance, the Forest Ordinance, the Oil Mines Ordinance and the Mining Ordinance, no native land shall be sold leased or otherwise disposed of and no licence in respect of native land shall be granted save under and in accordance with the provisions of this Ordinance.

\* \* \* \* \*

15. Rents and premiums received in respect of leases or licences in respect of native land shall be subject to a deduction of ten per centum which shall be payable to general revenue as and for the expenses of collection and administration and the balance thereof shall be distributed in the manner prescribed and the purchase money received in respect of 30

---

*\*The words in brackets were inserted by Part 2 of the Schedule to the Crown Lands Ordinance No. 15 of 1945 (1946 Laws, p. 23).*

a sale or other disposition of native land shall either be distributed in the manner prescribed or invested and the proceeds so distributed as the Board may decide :

Provided that in the case of a premium obtained from the sale of a lease only the actual disbursements on account of the sale shall be deducted in full :

And provided further that no deduction on and for the expenses of collection and administration shall be made in respect of leases relating to native land where such land is leased to the Crown at its full market  
10 value.

*The above section 15 was repealed by section 9 of the Native Land Trust (Amendment) Ordinance (No. 30 of 1945) and replaced by the following section :—*

15.—(1) Rents and premiums received in respect of the lease and licences in respect of native land shall be subject to a deduction of such amount as the Board may from time to time prescribe not exceeding nineteen per centum of such rent or premium, which shall be payable to the Board as and for the expenses of collection and administration, and the balance thereof shall be distributed in the manner prescribed.

20 (2) The purchase money received in respect of any sale or other disposition of native land shall, after deduction therefrom of any expenses incurred by the Board in respect of such sale or other disposition, be either distributed in the manner prescribed or invested and the proceeds so distributed as the Board may decide.

**In the Privy Council.**

---

---

**ON APPEAL**  
*from the Fiji Court of Appeal.*

---

---

BETWEEN  
**RATU TAITO NALUKUYA**  
(Plaintiff) . . . . *Appellant*  
AND  
**THE DIRECTOR OF LANDS**  
(Defendant)  
and  
**THE NATIVE AFFAIRS**  
**BOARD** (*amicus curiæ*) . *Respondents*  
and  
**THE NATIVE LAND TRUST**  
**BOARD OF FIJI** . . . . *Intervener.*

---

---

**Case for the First Respondent**

---

---

**CHARLES RUSSELL & CO.,**  
37 Norfolk Street,  
Strand, W.C.2,  
*Solicitors for the First Respondent.*