

## NATIVE LAND TRUST BOARD

A

v

## NADI TOWN COUNCIL

[SUPREME COURT, Lautoka (Williams, J.) 3 August 1979]

B

## Appellate Jurisdiction

*The Native Land Trust Board is an "owner" within s.2 of the Local Government Act 1972*

*A. Qetaki* for Appellant

*A. Balram* for the Respondent

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The Native Land Trust Board appealed against a judgment against it for unpaid rates for 1974 and 1975 on several parcels of Native Land.

The sole issue was whether such rates were payable by the appellant. This depended on an examination of the *Local Government Act* s.2 and s.75, the *Interpretation Ordinance 1967* or the *Native Land Trust Ordinance*. After examination of legislation the Court noted that it was apparent that the only way in which Native Land can be alienated or commercialised was by the power in the Native Land Trust Board.

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The Court examined the legislation to ascertain who was the owner. S.2 of the *Local Government Act* defines owner as being:

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"... a person who is for the time being entitled to dispose of the fee simple . . . whether in possession or reversion and includes a person holding or entitled to hold to the rents and profits of the land under a registered lease or registered agreement."

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In the interpretation Ordinance 1967 as amended "the proprietary unit" was referred to thus:

"... in the case of native land means the proprietary unit registered under the provisions of the Native Land Ordinance as being the owner of such land."

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Under s.4(1) of the Native Land Trust Ordinance the control of all native land was vested in the Board which administers it for the benefit of the Fijian owners.

Section 8, of the Native Land Trust Ordinance made other provisions for the granting of leases of native lands, the fees for their preparation and prohibits dealing without the Board's consent, and as the Court emphasised, described the Board

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A as a "lessor". S.14(1) permitted the Board to deduct no more than 25% of the rent to cover costs of collecting and administration. S.5(1) protects dealing with a Fijian owner without the consent of the Board. After referring to other legislation the Court said:

"It is apparent from the foregoing that the only way in which Native Land can be alienated or commercialised is by the powers vested in the Native Land Trust Board for the benefit of the native beneficial owner."

B The Court concurred in the view which had been expressed by the Magistrate; the power referred to in s.14(1) (above) was sufficient to "construe" them as owners.

Referring to other legislation and the case of *Vinodakandra Shankarbhai Patel & Ors. V. Rajendra Prasad* (Action 24/76) and the judgment of Stuart, J. he said:

C "... for the purposes of s.2 of the Act the Mataqali and the Native Land Trust Board both being entitled to rents are owners."

See also *Nausori Town Council v. Native Land Trust Board* per Kermode, J. Action<sup>2</sup> 27/73.

Held: Appeal dismissed.

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Cases referred to:

*Vinodakandra Shankarbhai Patel & Ors. v. Rajendra* (Action No. 279/74).  
*Nausori Town Council v. Native Land Trust Board* (Action No. 27/73).

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WILLIAMS J.:

### Judgment

F This is an appeal by the N.L.T.B. who were sued in the Nadi Magistrate's Court by the Nadi Town Council for \$1,655.47 being rates unpaid for the years 1974 and 1975 on several pieces of native land.

The N.L.T.B. did not deny that the native land was liable to rates or the amount claimed. They objected solely on the ground that liability for town rates on native land does not rest upon the N.L.T.B. because they are not "the owner" under Sections 2 & 75 of the Local Government Act No. 4/72 (hereinafter called "the Act").

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Before the learned magistrate argument was limited to one namely who is liable as an owner of native land to pay rates under the Act. In a cogent and well balanced judgment the learned magistrate Mr Kepa came to the conclusion that the N.L.T.B. and not the local Fijian landowners were liable.

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The arguments presented to the magistrate are relied upon in this appeal by the N.L.T.B. and the Town Council. Mr Qetaki for the N.L.T.B. had clearly taken pains to prepare his submissions and he presented a list of authorities which he relied upon.

The law appertaining to the imposition and collection of town rates is contained in the Act. S.75 deals with liability for rates and enacts that—

“S.75 (1) (a) \_\_\_\_\_ rates shall be a first charge on the land noted and shall be recoverable by the council from—

(a) the owner at the time of making the rate;”

The remainder of the section is not applicable of these proceedings.

It becomes necessary to ascertain who is the owner and the Act defines “owner” in S.2 as being—

“a person other than a mortgagee not in possession; who is for the time being entitled to dispose of the fee simple of the land whether in possession or reversion and includes also a person holding or entitled to the rents and profits of the land under a registered lease or registered agreement.

Provided that in the case of unalienated native land the term “owner” shall mean the proprietary unit.”

It is not suggested that the land is unalienated and therefore we are not concerned with the proviso except in so far as it may assist in determining who is the owner of alienated native land. According to the Interpretation Ordinance 1967 as amended by Ordinance 33 of 1968 “the proprietary unit”—

“in the case of native land means the proprietary unit registered under the provisions of the Native Lands Ordinance as being the owner of such land.”

There is nothing very surprising in the proviso to S.2 because if native lands are alienated this must have been done by the N.L.T.B. under the powers vested in them by the N.L.T. Ordinance Cap. 115. Under S.4(1) of the N.L.T. Ordinance the control of all native land is vested in the N.L.T.B. and the Board administers it for the benefit of the Fijian owners.

S.8(1) of the Ordinance authorises the Board to grant leases of native land; S.10(1) permits them to charge fees for preparation of leases; S.12(1) prohibits dealings with the leaseholds of native land without the Board’s consent and *describes the Board as a lessor* and S.14(1) permits the Board to deduct not more than 25% of the rent to cover their costs of collection and administration. By S.5(1) of the Ordinance a Fijian owner cannot deal with land in any way without the consent of the N.L.T.B. Timber concessions are under the control of the N.L.T.B. and under S.33 of The Forest Ord. Cap. 128 the Conservator of Forests may not issue a licence to remove timber without the consent of the N.L.T.B. and By S.25 the royalties must be paid to the N.L.T.B. It is apparent from the foregoing that the only way in which native land can be alienated or commercialised is by the powers vested in the N.L.T.B. and control and management of the income therefrom is vested in the N.L.T.B. for the benefit of the native beneficial owners.

In considering the definition of “owner” in S.2 of the Act as a ‘person holding or entitled to the rents and profits’, the learned magistrate noted that the N.L.T.B. were entitled to retain 25% of the rents under S.14(1) of the N.L.T. Ord. to cover the cost of managing alienated native land. He regarded that power as sufficient to construe them as owners within that definition and with respect I concur in the magistrate’s view. In addition I also consider that the N.L.T.B. can be regarded as an owner because it is a person “holding the rents and profits” of alienated native land. They

are responsible for collecting the rents and profits and once collected they hold them for the benefit of the native proprietary unit i.e. to pay the mataqali who are the beneficial owners of the land. The Board's powers of managing monies received are very wide. Thus S.14(2) enacts that purchase money from a sale or other disposition of native land can be distributed among the beneficiaries or invested and the proceeds from the investments may be distributed. If they retain investments purchased from profits that surely is tantamount to holding the profits.

**B** Why should the proviso deliberately state that the owners of unalienated native land are the proprietary unit? Surely the legislature must have contemplated that once the land is alienated then another owner is substituted for the proprietary unit or an additional owner comes into existence at the time of alienation.

I was referred to Lautoka Action 249/76 *Vinodakandra Shandarbhay Patel & Ors. v. Rajendra Prasad* in which my then learned brother Stuart J. held that the mataqali of alienated land were owners thereof under S.2 of the Act. The learned judge was not considering liability for rates but entitlement to be registered as voters in Ba town. Nevertheless his interpretation of the meaning of "owners" if correct would be of great weight. He based his opinion on the members of the mataqali being entitled to the rents from the alienated land. I would not seek to differ from his viewpoint. However, as I have been at pains to explain the N.L.T.B. are also entitled to a portion of rents up to 25% and in addition they are also persons holding the profits from alienated land. In other words, for the purposes of S.2 of the Act the mataqali and the N.L.T.B. both being entitled to the rents are owners and in that connection it should be noted that the proviso to S.2 does not suggest that the proprietary unit ceases to own the native land once it has been alienated. The town council are at liberty to place the mataqali and the N.L.T.B. on the roll of ratepayers but it is obviously easier for the Town Council to seek payment from the N.L.T.B. than to try and collect from the various members of the mataqali.

I was also referred to the judgment of my learned brother Kermode J. in A.27/73 *Nausori Town Council v. N.L.T.B.* which was also a claim for arrears of rates on native land. In that case the land was unalienated land and it clearly fell within the proviso to S.2 of the Act thereby placing responsibility for the rates upon the proprietary unit. In has no application to alienated land.

**F** The appeal is dismissed and the decision of the learned magistrate upheld.

The appellants will pay the costs hereof to be taxed.

*Appeal dismissed.*