

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

**Civil Action No: HBC 04 of 2017**

**BETWEEN** : **MOSESE MASIBULI** of Korovou, Tavua, Cultivator as executor  
and Trustee of the **Estate of Jovesa Natinavou**.

**Plaintiff**

**AND** : **KELERA NAIVUGA & JOSIA NAQARAVATU** of Korovou,  
Tavua, Domestic Duties & Miner respectively.

**1<sup>st</sup> Defendant**

**AND** : **MEREWALESI ADI & ELONI DIKE** of Korovou, Tavua,  
Domestic Duties & Miner respectively.

**2<sup>nd</sup> Defendant**

**AND** : **KOLORA SAWEA & SILIVE DAU** of Korovou, Tavua, Domestic  
Duties & Miner respectively.

**3<sup>rd</sup> Defendant**

**AND** : **KELERA BUINAIMASEI & VILIAME BOKINI** of Korovou,  
Tavua, Domestic Duties & Miner respectively.

**4<sup>th</sup> Defendant**

**AND** : **SALANIETA DREU** of Korovou, Tavua, Domestic Duties

**5<sup>th</sup> Defendant**

**R U L I N G**

1. On 16 January 2017, the Plaintiff filed a Summons for ejectment pursuant to Order 113 of the High Court Rules 1988 and the inherent jurisdiction of the Court.
2. The application was supported by an Affidavit sworn by the Plaintiff on 16 January 2017.

3. By that Affidavit the Plaintiff deposes as follows:

1. ....
2. ....
3. ....
4. THAT I am the Executor and Trustee of the estate of the late Jovesa Natinavou. I annex here marked 'MM1' a true probate.
5. THAT the late Jovesa Natinavou owns the property known as the Instrument of Tenancy No 639 (part of), TLTB No 4/4/794. I annex here marked 'MM2, a true copy title.
6. THAT the Defendants are in occupation of the subject land without my consent or license and have no authority to be on the land.
7. THAT accordingly on 28<sup>th</sup> day of October 2016 I gave notices to the 1<sup>st</sup>, 3<sup>rd</sup> & 4<sup>th</sup> defendants and advised that any license that may have been granted previously is thereby revoked and they were to vacate. I annex here marked 'MM3' true copy Notices 1,3 & 4.
8. THAT further on 30<sup>th</sup> day of November, 2016 I gave notices to the 2<sup>nd</sup> & 5<sup>th</sup> defendants and advised that any license that may have been granted previously is thereby revoked and they were to vacate. I annex here marked 'MM4' true copy Notices 2 & 5.
9. THAT further on 24<sup>th</sup> October 2016 a meeting was conducted between the Plaintiff and the defendants with the presence of the Solicitors representatives, Mr. Aisake Ravutubananitu, Mr. Vetaia Bari Ralulu and Onisivoro Ratu Naqata where the defendants were asked to vacate the property.
10. THAT during the month of November numerous meetings with individual defendants were conducted to advise them that they had to vacate the land because they did not have any rights in occupation.
11. THAT the defendants refused to leave and they threatened the Plaintiff by way of reporting him to the police because he was telling them to vacate the property.
12. THAT I have made every effort that I know of to evict the Defendants as I know they have no rights to be on the land but to no avail.
13. THAT I pray the Court grant the Orders requested.

4. The Summons was returnable on 16 February 2017 before the Master. On 16 February 2017, the case was called before the Master. Upon there being no appearance by the Defendants or their counsel, the Master granted Order in Terms of the Plaintiff's summons.

5. Before me is the Defendants application to set aside the Master's Order. The application is made under Order 32 Rule 6, and Order 1 Rule 8 of the High

Court Rules. It is supported by an Affidavit sworn by Isoa Tikoca a Solicitor in the firm of Vuetaki. Mr Tikoca deposes as follows.

6. The Affidavit sworn on 20<sup>th</sup> February 2017.

1. THAT I am the Solicitor employed by MESSERS VUATAKI LAW Barristers and Solicitors for all the Defendants in this action and I am duly authorized by the Defendant to swear this Affidavit on their behalf.
2. THAT on the 15<sup>th</sup> February 2017 VUATAKI LAW was instructed by the Defendants to appear on their behalf on Thursday 16<sup>th</sup> February 2017.
3. THAT on the 16<sup>th</sup> February 2017 the case was number one on the cause list and I had missed the case by close to two minutes and therefore the learned Master gave the Orders for the Defendants to vacate the property that they are currently on because there was no appearance by the Solicitor for the defendants.
4. THAT afterwards on the same morning I appeared for the Plaintiff on instructions from Babu Singh & Associates before the Master for the case Ami Chand v Suhbug Wati & Others Civil action number 160 of 2015 which was number two on the cause list.
5. THAT the reason why I didn't appear on time for the Defendants was that I had migraines and have flu for two days and tried to appear on time for the case before the Master but was unfortunately late and now the Defendants home is at stake.
6. THAT I also note that a very Senior Solicitor Mr Nawaikula appeared on time but for the above reasons I couldn't.
7. THAT the Defendants have a very strong case against the Plaintiff mainly because when Joseva Natinavou the owner of the property and father of the Plaintiff allegedly signed the Will over to the plaintiff on 8<sup>th</sup> July 2016, he was already bed ridden for about a month.
8. THAT Makelsei Savui the wife of Joseva Natinavou and Mother of the Plaintiff had full care of the husband till he passed on 17<sup>th</sup> July 2016 can also testify that there were no such Will made and signed because the husband had swollen lips, was not eating, very weak and hence was bed ridden.
9. THAT also the Defendants are in the process of engaging a Solicitor in Suva to contest the Will IN THE ESTATE OF JOSEVA NATINAVOU in the Probate Jurisdiction to be filled during this week.
10. THAT the application before the Probate Jurisdiction in Suva will include an Order for a stay in the current proceedings before the Learned Master until the matter of the Will whether it is legitimate or not is presided on.
11. THAT the defendants on the property are the siblings and cousins of Joseva Natinavou who is the father of the Plaintiff and the place they call home where the Plaintiffs father and allowed them to stay, is at stake.
12. THAT we have no intention if disrespecting the Court, Court procedures and the Solicitor for the Plaintiff.
13. THAT in the circumstances above, I humbly pray to this Honorable Court for the Order that was made in Court on 16<sup>th</sup> February 2017 to be Set Aside and for the

Defendants to be given a chance to file their affidavit in opposition and thereafter for the Plaintiff to reply.

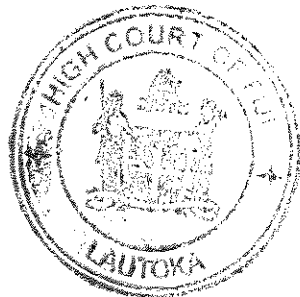
7. Order 32 Rule 6 of the High court Rules 1988 states as follows:

**Order made ex parte may be set aside** 6. The Court may set aside an order made *ex parte*.

8. Order 1 Rule 8 states:

**Proceedings to which these Rules do not apply** (O.1, r.8)  
8.-(1) Where, for the time being, by or under any law in force in Fiji, specific provision is made for regulating the practice and procedure in, or in relation to, any particular form of proceedings in the High Court, these Rules shall not apply thereto except in so far as any such provision applies, incorporates, or imports the application of these Rules, whether by express reference thereto or by reference to the rules of Court of, or the practice or procedure in, the High Court.  
(2) These Rules shall not apply to any criminal proceedings in the High Court.

9. I have read all submissions filed by counsel. I agree with Mr. Nawaikula's submissions that in order to succeed in their application, the defendants must be able to show through an affidavit of merits that they have a good and arguable defence. The only basis upon which they are resisting the Order for eviction is that they plan to contest the Will which they have not yet done. This is not sufficient to meet the threshold. Accordingly, I dismiss their application. Costs to the plaintiff which I summarily assess at \$800 -00 (eight hundred dollars only).



.....  
Anare Tuilevuka

**JUDGE**

18 July 2017.