

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

CIVIL ACTION NO.: HBC 182 of 2018

BETWEEN : **SULEMAN ALI** aka **SULEMAN ALI AZIMULLAH** **PLAINTIFF**
AND : **THE OCCUPIERS** **DEFENDANTS**

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms J Lal [Neel Shivam Lawyers]
DEFENDANT : No Appearance [Not Represented]
RULING OF : Acting Master Ms Vandhana Lal
DELIVERED ON : **01 November 2018**

JUDGMENT

[Order 113 Summary Proceedings For Possession Of Land]

1. This is the Plaintiff's summary proceedings under Order 113 of the High Court Rules for possession of land on Housing Authority Sub-Lease No. 128100 being Lot 2 on Deposited Plan No. 3390 in the province of Rewa in the city of Suva situated at 134 Milverton Road, Raiwaqa, Suva [the land].
2. Despite service the Occupiers have failed to enter appearance and oppose the application.
3. The Plaintiff submits he is the registered lessee of the said property.

Sometimes in 1989 he moved to Australia authorising his late brother Imman Ali to reside on the property.

Upon the brother's demise on 6th April 2013, his widow and children occupied the property for 2 to 3 months after which the property was vacant.

He came to Fiji in July 2017 to carry out maintenance of the property and discovered the Defendants were residing on the property without his consent/license or authority.

He cannot verify or confirm their names.

The unnamed occupiers are illegally occupying the property.

Despite service of Eviction Notice dated 17th August, 2017 they continue to occupy the property.

4. **Order 113** of the **High Court Rules** reads:

Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

5. This Court needs to decide whether the Plaintiff is entitled to possession under the said Order.

6. This Order provides for recovery of possession of land which is in wrongful occupation by trespassers – **The Supreme Court Practice, 1993 Volume 1, notes to Order 113, 1 – 8/1 at p1602.**

The note further goes on to read:

“The exceptional machinery of this Order is plainly intended to remedy an exceptional mischief of a totally different dimension from that which can be remedied by a claim for the recovery of land by the ordinary procedure by Writ followed by Judgment in Default or under Order 14.....”

This Order would normally apply only in virtually uncontested cases, or in clear cases where there is no issue or question to try i.e. Where there is no reasonable doubt as to the claim of the Plaintiff to recover possession of the land or as to wrongful occupation on the land without licence or consent and without any right, title or interest thereto.”

7. Pathik J. in **Baiju v Kumar [1999] 45 FLR 72** had discussed who a trespasser or a squatter is. I shall reproduce the relevant paragraph from the Judgment.

In Department of Environment v James and others [1972] 3 All E.R. 629 squatters and trespassers are defined as:

*“he is one who, without any colour of right, enters on an unoccupied house or land, intending to stay there as long as he can
.....”*

There Goulding J. said that:

“.....where the plaintiff has proved his right to possession, and that the defendant is the trespasser, the Court is bound to grant an immediate order for possession.....”

Another definition of “trespasser” is as set out in Clerk & Lindsell on Torts (15th Ed. 1982) page 631:

"A trespasser is a person who has neither right nor permission to enter on premises".

Also as was said by Lord Morris of-Borth-Y-Gest in British Railways Board v. Herrington [1972] A.C. 877 at 904:

"The term 'trespasser' is a comprehensive word; it covers the wicked and the innocent; the burglar, the arrogant invader of another's land, the walker blindly unaware that he is stepping where he has no right to walk, or the wandering child - all may be dubbed as trespassers".

.....
I refer to Sir Frederick Pollock's statement in the case of Browne v. Dawson (1840) 12 Ad. & El 624 where he said:

"..... A trespasser may in any case be turned off land before he has gained possession, and he does not gain possession until there has been something like acquiescence in the physical fact of his occupation on the part of the rightful owner...."

- 8. There is no dispute that the Plaintiff is the last registered lessee and has sanction of the Housing Authority to bring this proceeding.

The Occupiers on the land are there without any colour of right and continue to occupy the land despite being served with an Eviction Notice.

- 9. Despite being served with the Originating Summons, the Occupiers have not entered their appearance or filed any opposition. They further failed to appear in Court for the Hearing.
- 10. Hence, there shall be order in terms of the Originating Summons with costs summarily assessed and to be jointly and severally paid in the sum of \$850.00 to the Plaintiff within 14 days of service of the order.

The Plaintiff is granted immediate possession of Housing Authority Sub-Lease No. 128100 being Lot 2 on Deposited Plan No. 3390 in the province of Rewa in the city of Suva situated at 134 Milverton Road, Raiwaqa, Suva.



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Vandhana Lal [Ms]
Acting Master
At Suva.