

**IN THE HIGH COURT OF FIJI**  
**IN THE WESTERN DIVISION**  
**AT LAUTOKA**

**CIVIL JURISDICTION**

**CIVIL CASE NO. HBC 115 OF 2019**

**BETWEEN** : **NEW HOPE CHRISTIAN FELLOWSHIP ASSEMBLIES OF GOD CHURCH** a religious body in affiliation with the Assemblies of God of Fiji located at Sabeto Road, Sabeto, Nadi.

**PLAINTIFF**

**AND** : **AISAKE LOBAU** of Tuaikavukavu, Natalau, Sabeto, Nadi.

**DEFENDANT**

**Appearances** : **Mr Kevueli Tunidau with Mr Tomasi Duanasali for the plaintiff**  
**The defendant is absent and unrepresented**

**Hearing** : **Monday, 12<sup>th</sup> August, 2019**

**Ruling** : **Friday, 04<sup>th</sup> October, 2019**

**RULING**

(01) The matter before me stems from the Originating Summons filed by the Plaintiff seeking the grant of the following orders;

(I) **A DECLARATION** that the Defendant is unlawfully occupying the Plaintiff's Agreement for Lease comprised in the land known as Tuaikavukavu (Part of) with TLTB Reference No. 6/10/8240 having an area of 0.4070, in the Tikina of Sabeto, in the Province of Ba.

(II) **AN ORDER** for the Defendant to give vacant possession to the Plaintiff's Agreement for Lease comprised in the land known as Tuaikavukavu (Part of) with TLTB Reference No. 6/10/8240 having an area of 0.4070, in the Tikina of Sabeto, in the Province of Ba.

(02) The plaintiff's application is made pursuant to Order 7 of the High Court Rules, 1988, Section 169 of the Land Transfer Act and under the inherent jurisdiction of the Court.

(03) The plaintiff's application is supported by an affidavit sworn by Jope Baledrokadroka, one of the Trustees of New Hope Christian Fellowship Assemblies of God Church.

(04) The plaintiff is a religious body. A religious body cannot take out an originating summons or issue a writ of summons and a statement of claim. It violates the provisions of section 2 of the **Religious Bodies Act, 1881** which provides;

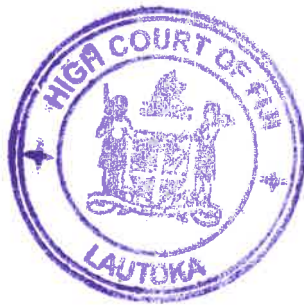
*2. All suits and proceedings at law instituted or brought by or against any religious body **shall be** instituted or brought by or against the persons registered as hereinafter provided as trustees for the time being of such religious body and any such suit or proceeding shall be carried to its final termination notwithstanding any alteration in the registered trustees of such religious body while such suit or proceeding is pending.*

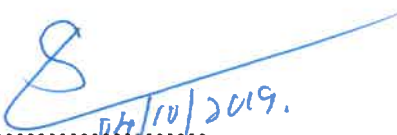
(Emphasis added)

(05) The above provision is a mandatory provision of statute which a court is bound to take notice of. In other words, the court cannot use its discretion when the statutory provision is mandatory. The proceedings in the present case should have been instituted by the registered trustees of New Hope Christian Fellowship Assemblies of God.

**ORDER**

Originating Summons is dismissed.



  
.....04/10/2019.  
**Jude Nanayakkara**  
Judge

**At Lautoka**  
**Friday, 04<sup>th</sup> October, 2019**