

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

CIVIL JURISDICTION

Civil Action No. HBC 24 of 2020

BETWEEN : **ASESELA SADOLE** formerly of Rakuibalenasiga, Lot 1, Nailaga, Ba but now residing at Vunakece Road, Namadi Heights, Tamavua, Suva, Fiji Islands.

PLAINTIFF

AND : **MAKITALENA VADRASALA** of Nailaga, Ba, Fiji Islands.

DEFENDANT

Appearances : **Mr Aman Dayal for the plaintiff**
The defendant is absent and unrepresented

Trial : **Thursday, 09th July, 2020.**

Judgment : **Friday, 24th July, 2020.**

J U D G M E N T

[A] INTRODUCTION

- (01) By Writ issued on 03rd February, 2020 the plaintiff, Asesela Sadole claims from the defendant vacant possession of land comprised in Native Lease No. 26793, land known as Rukuibalenasiga, Lot 1, in the Tikina of Nailaga in the province of Ba and containing an area of thirteen acres and two roods.
- (02) According to the affidavit of service filed on 20-02-2020, the defendant was duly served with the Writ of Summons and the Statement of Claim on 12th February, 2020.
- (03) The defendant filed an acknowledgment of service and notice of intention to defend on 27-02-2020.
- (04) The plaintiff's claim against the defendant is for possession of land only. The defendant failed to serve a defence on the plaintiff. The plaintiff, after the expiration of the period

fixed by order 18, rule 2 for the service of defence, filed Summons under Order 19, rule 5 to enter Judgment for possession of the land against the defendant.

(05) I heard formal proof of the plaintiff's claim.

[B] THE CONSIDERATION AND THE DETERMINATION

(01) The plaintiff is the registered proprietor of the agricultural land comprised in Native Lease No. 26793 (PEX-1).

(02) The plaintiff said in evidence that;

(1) *That the defendant's husband Mr Malelili Nakulanikoro Nadau is the plaintiff's nephew.*

(2) *The defendant came into occupation of property through her husband who was hired to work on the Sugarcane Farm on daily labour basis.*

(3) *The defendant moved with her husband and started residing on the farm house situated on said land from 2004.*

(4) *The defendant and plaintiff's nephew Malelili Nakulanikoro Nasau separated in 2015 and he moved out of the plaintiff's property.*

(5) *The defendant remained in occupation of the property after her husband moved out of the property.*

(6) *That on the 30th August, 2017 the plaintiff Solicitors gave a Notice to vacate to the defendant.*

(7) *Despite the notice to vacate, the defendant remains in possession of the land.*

(03) It is the plaintiff's evidence that the defendant's husband worked on the land as a **labourer** for the plaintiff. The defendant's husband has moved out of the property. The plaintiff says that the defendant refuses to quit in spite of notices (**PEX-2**) requiring her to do so.

(04) The land in question is Native Land and any alienation, sale or transfer is necessarily subject to the written consent of the iTLTB (See; clause 12 of the plaintiff's Instrument of Tenancy and Section 12 of the iTaukei Land Trust Act.).

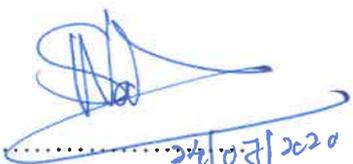
- (05) The defendants' occupation of the land is a dealing in the land within the meaning of Section 12(1) of the iTaukei Land Trust Act and is prohibited by the same Section without the written consent of the iTLTB.
- (06) No such written consent has been deposed to or produced by the defendant and accordingly, any occupation of any part of the plaintiff's leasehold by the defendant of whatever duration, must be considered null and void and incapable of being enforced as a matter of equity.

ORDERS

- (1) Judgment for the plaintiff.
- (2) I order that the defendant to give vacant possession of the land described in Native Lease No. 26793 within seven (07) days from the date of this judgment.
- (3) There will be no order as to costs.



**At Lautoka
Friday, 24th July, 2020**


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Jude Nanayakkara
[Judge]