

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 237 of 2021

BETWEEN: R.C MANUBHAI HOLDINGS PTE LIMITED a limited liability company duly incorporated in Fiji and having its registered office at shop 6, Market Sub Division, Ba, Fiji.

PLAINTIFF

AND: RARAWA TALE of Lot 5 Wainibuku Subdivision Suva.

FIRST DEFENDANT

AND: ATUNISA BULEWA of Lot 5 Wainibuku Subdivision Suva.

SECOND DEFENDANT

AND: THE OTHER OCCUPIERS of State Lease No 23086, Being Lot 5 on Deposited Plan No R 1169.

DEFENDANTS

BEFORE: Hon. Justice Vishwa Datt Sharma

COUNSEL: Mr. Reddy A -for the Plaintiff  
First Defendant -In Person.  
Second Defendant - In Person

DATE OF JUDGMENT: 01<sup>st</sup> Day of February 2023 @ 9.30am

JUDGMENT

*[Amended Originating Summons seeking Vacant Possession pursuant to Order 113 of the High Court Rules 1988 and the Inherent jurisdiction of this Honourable Court]*

**Introduction**

1. The Plaintiff filed an Amended Originating Summons against the first and second defendants and other 'occupiers' and sought for the following orders:-
  - i) **AN ORDER** that the Defendant give vacant possession of the Land comprise in the State Lease No: 23089, being Lot 5 on Deposited Plan No R1169, in the Republic of Fiji and having an area of 3035m<sup>2</sup> (**'the Land'**) to the Plaintiff pursuant to Order 113 of the High Court Rules 1988 (as amended) on the grounds that the Defendants have entered into and have remained in occupation of the Land without the Plaintiff's license or consent or that of any predecessor.
  - ii) **THAT** the costs of and incidental to this application to be paid by the Defendants.
  - iii) **SUCH** further or other orders and/or reliefs as this Honourable Court may deem fit.

**Cause of Actions**

2. The Plaintiff's Cause of action against the First and Second Defendants and the Other Occupiers is that the Defendants and other Occupiers have entered into and remained in occupation of the Land Comprised in the State Lease No: 23089, being Lot 5 on Deposit Plan No. R1169, in the Republic of Fiji without the Plaintiffs License or Consents or that of any predecessor.
3. The application is made *pursuant to Order 113 of the High Court Rules 1988* and the inherent jurisdiction of the Honourable Court.

**Plaintiffs Case**

4. The Plaintiff filed an Affidavit in Support deposed by Jitendra Kumar Patel on 14<sup>th</sup> October 2021 coupled with the documents marked thereon as 'A-1 to A-4' inclusive.
5. The Plaintiff's supporting affidavit amongst other facts stated the following:-
  - That the Plaintiff purchased the land State Lease No. 23089, being Lot 5 on deposit Plan No. R1169 which contains an area of 3035m<sup>2</sup> on or about 8<sup>th</sup> January 2021, for a consideration sum of \$1,350,000.00.
  - The Plaintiff is and remains the registered owner of the land comprised in State Lease No. 23089, being Lot 5 on deposit plan No. R1169 which contains an area of 3035m<sup>2</sup> [**'the land'**], situated at Lot 5, Wainubuku Sub Division, in the province of Rewa, in the district of Suva. A true copy of the State Lease is annexed hereto marked "A-3".
  - That on or about 12<sup>th</sup> September the Plaintiff's employees discovered that a group of illegal occupants were residing on the said land.
  - The plaintiff is in the process of developing the land which the Defendants or 'occupiers' are presently illegally occupying.

- The Defendants named herein and other unnamed occupiers are currently illegally occupying the Plaintiff's land without license, consent or authority from the Plaintiff by 'squatting' on the land.
  - The Defendants or occupiers have built temporary shelter or lean to type of houses and continue to reside in the said land.
  - The Plaintiff engaged its solicitors to serve the Defendants with an eviction Notice.
  - The Plaintiff's solicitors then served an eviction notice to the occupants/occupiers on 23<sup>rd</sup> September 2021. Annexed hereto marked "A-4" is the copy of eviction notices served.
  - Despite this, the Defendants failed to and/or neglected to give vacant possession of the land till date.
  - That the Plaintiff is unable to verify or confirm the names of all the persons who are illegally occupying the land and believes that the specifically named Defendants herein together with the rest of the unnamed occupiers are residing on the land.
6. The Plaintiff prays for the orders in terms of the Originating Summons accordingly.

**First and Second Defendants Case**

7. The State Lease No. 23089 was issued fraudulently.
8. From his knowledge, the land comprised in the Lease is Native Land belonging to the 'Mataqali Solia' and the land was to revert to the Landowning Unit when the initial lease expired.
9. That the second Defendant resides on the property because his wife [First Defendant] is a member of the Landowning Unit. That the First and Second Defendants are not squatters and not occupying the entire 3035m<sup>2</sup> of Land for which the Lease is issued fraudulently.
10. That they are residing in a four bedroom concrete house and there is no temporary shelter or lean to type of houses on the said land.
11. That the property is situated on the Land that belongs to the First Defendant's Mataqali and that they did not need the Plaintiff's Consent to enter into or reside on the land.
12. The Defendants sought for Plaintiffs Originating Summons for Summary of possession of land to be dismissed.
13. The Plaintiff subsequently filed a Response Affidavit and deposed that they had no knowledge of any dealing with the Land-owning Unit or any fraud.
14. The Plaintiff agreed that the occupants are not occupying the entire property but a portion of it. However, due to the illegal occupation, the Plaintiff Company is unable to develop the land in which it invested \$1,350,000, to purchase.

Analysis and Determination

15. The issues that need determination in terms of the pleadings filed before this court are:
- a. Who has the right to the land comprised in the State Lease No. 23089 being Lot 5 on Deposit Plan No. R1169?
  - b. Where there has been an unlawful entry and occupation on the part of the First and Second Defendants and other 'occupiers' as alleged by the Plaintiff?
  - c. Was the State Lease No. 23089 obtained by fraud as alleged by the First and Second Defendants?
16. Before I proceed to determine the issues enumerated hereinabove, I must first find out and be satisfied that the Plaintiff has complied with the mandatory requirements of the personal service or otherwise onto the First and Second Defendants as well as the other 'occupiers' since the Plaintiff in his Originating Summons seeks a relief for an order for vacant possession against all the Defendants.
17. The Plaintiff commenced this summary proceedings primarily under *Order 113 of the High Court Rules 1988* for recovery of Land, wherein *Rule 1* provides as follows:-
- "where a person claims possession of land which he alleges is occupied by a person or persons (not being tenant or tenants holding after the termination of Tenancy) who entered into or remained into occupation without his license or Consent or that of any predecessor on the title of his, the proceedings may be brought by Originating Summons in accordance with the provisions of this order."*
18. The Plaintiff avers that the First and Second Defendants and the unnamed 'Occupiers' are currently illegally occupying the Plaintiff's land without license, consent or authority from the Plaintiff by squatting on the land and have built temporary shelter or lean to type houses and continues to reside on the said land.
19. The First and Second Defendants were personally served with the Acknowledgement of Service, Originating Summons and Plaintiffs Affidavit in Support on 17<sup>th</sup> November 2021 at Lot 5, Wainibuku Sub-division, Nasinu. However, the Defendants refused to acknowledge the served documents.
20. Further, after service of the Documents on the First and Second Defendants only, a copy of the same documents were posted onto the said premises. Since, the First and Second Defendants refused to acknowledge the service of the same.
21. The Affidavit of Service confirming personal service of documents onto the First and Second Defendants have been filed into Court and confirms the posting of the same documents onto the said premises because First and Second Defendants refused to acknowledge the same. It will be noted that there is no evidence of personal service or otherwise of Originating Summons and the Affidavit in Support onto the unnamed 'occupiers' against whom the relief for vacant position order is sought.
22. *Order 113 Rule 3 of the High Court Rules 1988* provides as follows:-
- a. His interest in the land.

- b. The circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises.
- c. That he does not know the name of any person occupying the land who is not named in the summons." (Emphasis added)

In *Supreme Court Practice 1993 (White Book)* page 1796 states as follows:-

**"113/8/11 Affidavit in Support**

At the time of the issue of the originating summons, the plaintiff must file an affidavit in support, in which he must state his interest in the land and the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises (see r.3 (a) and (b)).

In addition, the plaintiff must in his supporting affidavit state that he does not know the name of any person occupying the land who is not named in the summons (r.3(c)). There is no longer any requirement that the plaintiff should take or that he should state in his supporting affidavit that he has taken reasonable steps to identify such person or persons. The essential point is that the use of the machinery of the Court against persons not named as defendants in proceedings is obviously and exceptional measure and can only be justified where the plaintiff claiming possession does not in fact know their named and state this fact positively in his supporting affidavit." (Emphasis added)

23. Upon the perusal of the Affidavit in Support of the Plaintiff, Jitendra Kumar Patel at paragraph 13, he deposed that:

*"That the Plaintiff is unable to verify or confirm the names of all the persons who are illegally occupying the land and believes that the specifically named Defendants herein together with the rest of the unnamed occupiers are residing on the land."*

24. Abovementioned averment deposed at paragraph 13 of the Plaintiff's affidavit no doubt is in full compliance with the mandatory requirements of *order 113 rule 3 (c) of the High Court Rules 1988* and the *Supreme Court Practice 1993 (white book) page 1796* as paraphrased at paragraph 22 of my Judgment hereinabove.
25. However, the question that arises herein is "whether the 'occupiers' as Defendants have been personally or otherwise served with the Plaintiff Originating Summons and the Affidavit in Support?"
26. It is evident that only the First and Second Defendants were personally served with the Plaintiff's Originating Summons and the Affidavit in Support seeking for an order for vacant possession of the said land and not the other 'occupiers' whose names are unknown to the Plaintiff but occupying the said land as 'occupiers'.
27. In terms of *Order 113 rule 3 (c) of the High Court Rules 1988*, this court has a mandatory requirement and an order is sought by the Plaintiff for Vacant Possession against the unnamed parties as the other 'occupiers' to the action as the Defendants.
28. There is no evidence of any Affidavit of Service filed into Court to substantiate that the other 'occupiers' as Defendants were personally served with the plaintiff's Originating Summons and the Affidavit in

Support accordingly.

29. In absence of any evidence of Service of the Originating Summons and the supporting affidavit onto the other 'occupiers'. I find that the Plaintiff has failed to comply with the mandatory requirements contained in **Order 113 rule (4) (2)** which deals with the service of the Summons onto the other 'occupiers' which would invariably allow me to accede to the relief sought in the Plaintiffs Originating Summons.

30. It is appropriate that I paraphrase the mandatory requirements of **Order 113 rule 4 of the High Court Rules 1988**:

"4(1) *where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit in support shall be served on him or her-*

(a) *Personally or in accordance with Order 10, Rule 5;*

(b) *By leaving a copy of the summons and of the affidavit or sending them to him or her, at the premises; or*

(c) *In such other manner as the court may direct.*

(2) *The summons shall, in addition to being served on the named defendants, if any, in accordance with paragraph (1) be served, unless the Court otherwise directs, by:-*

(a) *Affixing a copy of the summons and a copy of the affidavit to the main door other conspicuous part of the premises; and*

(b) *If practicable, inserting through the letter box at the premises a copy of the summons and a copy of the affidavit enclosed in a sealed envelope addressed to "the occupiers".*

(3) *Every copy of an originating summons for service under paragraph (1) or (2) shall be sealed with the seal of the High Court out of which the summons was issued.*

(4) *Order 28, Rule 4 shall not apply to proceedings under the Order."*

31. **Order 113 rule 4(2)** has a mandatory requirement for the Plaintiff to personally serve and bring to the attention of the other 'occupiers' as **Defendants therein in occupation of the said land comprised in State Lease No. 23089 being Lot 5 on Deposit Plan No. R1169**, within the Plaintiffs Originating Summons and the affidavit in support accordingly.

#### In Conclusion

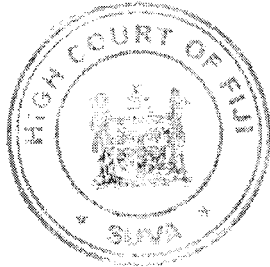
32. For the Rational outlined hereinabove, I find that in absence of any service of the Plaintiffs Originating Summons and the Affidavit in Support **personally effected onto the other 'occupiers' as defendants** and the failure to comply with the mandatory requirements of Order 113 rule (4) (2) of the High Court Rules 1988, I have no alternative but proceed to dismiss the Plaintiffs Amended Originating Summons together with the Affidavit in Support seeking for an order or vacant possession against the First and Second Defendants and other 'occupiers' of the land comprised in State Lease No. 23089 being Lot 5 on Deposit Plan No. R1169 accordingly.


33. Bearing in mind that this matter proceeded to full hearing, it is only appropriate that the First and Second Defendants be entitled to be paid a summarily assessed costs of \$500 in total by the Plaintiff accordingly.

**ORDERS**

- i. The Plaintiffs Amended Originating Summons and the Affidavit in Support is hereby dismissed.
- ii. The Plaintiff to pay to the First and Second Defendants a total summarily assessed cost of \$500 accordingly.

Dated at Suva this 01<sup>st</sup> day of February, 2023.



  
.....  
Vishwa Daft Sharma  
JUDGE

CC: REDDY & NANDAN LAWYERS, SUVA  
RARAWA TALE OF LOT 5 WAINIBUKU SUVA  
ATUNISA BULEWA OF LOT 5 WAINIBUKU, SUVA