

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBC 49 of 2023

BETWEEN : NARENDRA PRASAD

PLAINTIFF

AND : JONE SOGUNU LOLOMA

DEFENDANT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. J. Vulakouvaki for the Plaintiff
: No representation for the Defendant

Date of Hearing : 21 September 2023

Date of Judgment : 22 September 2023

JUDGMENT

POSSESSION OF LAND

Summary proceedings – Vacant possession of land –

Order 113, High Court Rules 1988

1. The plaintiff filed an originating summons seeking orders directing the defendant to immediately give up vacant possession of the property described in CT 31523 having an extent of 2.0588 ha in Lot 2 set out in DP 8038 in Raiwaqa, Navua (“the property”). The summons was filed under Order 113 of the High Court Rules 1988.
2. The plaintiff stated in his affidavit in support that the property belonged to his brother, Alexander Sophis Sahani. He is the sole executor and trustee of his brother’s estate. The plaintiff is registered as the proprietor of the property with the registrar of titles.
3. When this matter came before the master on 16 March 2023, both parties were present. The defendant told court that he had applied for assistance to the Legal Aid Commission. He was directed to file an affidavit in opposition by 12 March 2023. On 22 May 2023, the defendant was represented by the Legal Aid Commission. As the defendant did not file an affidavit by that date, he was given time to do so by 26 May 2023, and the matter was allocated to a judge.
4. On 26 July 2023, the parties were present in court, and the defendant sought a further 14 days to file an affidavit in opposition. The parties were given timelines for the filing of affidavits. On 31 August 2023, a lawyer from the Legal Aid Commission, Ms. Tavaiqila, appeared and stated that legal aid assistance would not be granted to the defendant. Nevertheless, she submitted, the commission had helped the defendant to prepare an affidavit in opposition. She was unaware whether the affidavit was filed. Hearing was fixed for 21 September 2023, and a notice was issued on the defendant as he was not present on the day.

5. When this matter was taken up for hearing yesterday, the defendant was not present. The record shows he was served notice of the hearing on 20 September 2023.
6. The plaintiff said that the defendant went into occupation of the property when it was vacant during the pandemic and, therefore, he was unaware of the illegal entry to the property. At that time the plaintiff resided in Labasa, and he was unable to travel during the lock down and inspect the property. He said the defendant did not seek permission to occupy the property. When he visited the property in April 2022, the property was in illegal occupation by the defendant.
7. The plaintiff stated that when he verbally asked the defendant to vacate the property, the defendant refused to do so. His lawyers sent the defendant a letter dated 6 May 2022 demanding that he vacate the property immediately. The plaintiff described the defendant as a trespasser, and said that he incurs unnecessary expenses as a result of the illegal occupation.
8. The plaintiff said that the property is a three bed room house built by his brother and that it became vacant upon his death. He said that he is unable to properly discharge the function of executor of his brother's estate due to the defendant's occupation of the property. Apart from his duties connected to the estate, the plaintiff is also a beneficiary to the property.
9. The defendant has not opposed the plaintiff's application notwithstanding that he was given several opportunities to file an affidavit in opposition. The court notes that the property is a protected lease. The plaintiff is entitled to recover possession of the property, which is unlawfully occupied by the defendant.

ORDER

- A. The defendant is directed to hand over vacant possession of the property described in CT 31523 containing in extent 2.0588 ha in lot 2 on DP 8038 within seven days of this judgment.
- B. The defendant is to pay the plaintiff costs summarily assessed in a sum of \$1,000.00.

Delivered at **Suva** on this **22nd** day of **September, 2023**.



A handwritten signature in blue ink, appearing to read "M. Javed Mansoor". The signature is fluid and cursive, written in a professional style.

M. Javed Mansoor
Judge