

IN THE HIGH COURT AT SUVA
CENTRAL JURISDICTION
CIVIL JURISDICTION

HBC 55 of 2021

BETWEEN:

PUBLIC RENTAL BOARD

APPLICANT

AND:

SHALINI DEVI SINGH

RESPONDENT

Date of Hearing : 29 September 2023
For the Applicant: Ms Lal. P
Date of Ruling: 6 October 2023
Before: Levaci SLTTW, Acting Pusine Judge

R U L I N G

(EX- PARTE APPLICATION FOR WRIT OF POSESSION)

APPLICATION

- 1.0 By way of an Ex-Parte Notice of Motion and supporting Affidavit, the Applicant seeks leave of the High court to issue a Writ of Possession. This Application is made pursuant to Order 45 Rule 2 of the High Court Rules.
- 2.0 Consent Orders were granted on the 1 of March 2023 and later sealed in the High Court on the 11th of April 2023 as follows –

1. 'That Leave be granted to Plaintiff to issue Writ of Possession against the Defendant, **SHALINI SINGH** of Block 2 Flat 5, Kalabu Rental Board Estate, Uci Place, Kalabu, Suva situated on State Lease No. 297889 being Lot 2 on DP 5465 in the Tikina and Province of Naitasiri containing an area of 2.1595 ha.
2. An order for costs against the Defendant.'

Affidavit

- 3.0 The Applicant relies upon an Affidavit deposed by a James Chen in support of the Application as follows –

'3. That the Plaintiff had on the 11th day of May 2023 obtained an Order in the within action that the Defendant do give vacant possession of Public Rental Board Block 2, Flat 5 at Kalabu Rental Estate, Uci Place, Kalabu, Suva to the Plaintiff on or before 31st of July 2023.

4. That the Order was sealed on 14th June 2023.

5. That the sealed Order was served to the Defendant on 12th June 2023 and an Affidavit of Service was filed thereafter on 16th June, 2023. Annexed hereto and marked 'B' is the Affidavit of Service with the Sealed Order attached.

6. That despite service of the said Order, the Defendant continues to reside on the property.

7. That often the tenant (s) act smart and vacate the flat but leave behind their family members/other occupants. Hence I seek leave to issue writ of possession against the defendant and other occupants as well.

8. That I am advised and verily believe that there is no Order staying the execution of the Order made on the 11th day of May, 2023 against the Defendant.'

4.0 Law and Analysis

- 4.1 Order 45 (2) of the High Court Rules provides as follows –

'Enforcement of judgment for possession of land

'2 (1) Subject to the possession of these Rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say –

- (a) Writ of possession;

(b)

(2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the court except where the judgment or order was given or made in a mortgage action to which Order 88 applies.'

(3) Such leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the court.

(underlining my emphasis)

4.2 In an application for Writ of Possession, the Court will not grant leave unless it is shown that every person in actual possession of the property has received notification of this proceedings and appears in to the Court.

4.3 In The Supreme Court Practice Book 1998 (Vol 1 part 1, Sweet and Maxwell Ltd, London)page 699 paras 45/3/4 and 45/3/5'in regards to Leave application and notification to Defendants'-

'Leave as to issue of Writ of Possession – Leave to issue a writ of possession is necessary except in a mortgage action under Order 88, for in that case the position of every person in occupation is known before an order for possession is made (see *Leicester Permanent Building Society –v- Shearley [1951] Vh 90; [1950] 2 All ER. 738*)

Notice of Proceedings – Where the defendant is the only person in possession of the premises the plaintiff must give the defendant notice of the judgment or order, and call upon him to give up possession under the judgment or order. Where there are other persons (not parties to the proceedings) in actual possession it is also necessary to serve them with such written notice as well give them a reasonable opportunity of applying to court. It should be observed that the Rule does not confer any new rights on a tenant or other occupier. Its only effect is to give those who may apply for relief an opportunity of doing so."


4.5 In this case, the Applicant has shown to this court through its Affidavit its position as the registered owner of the property. The Court is satisfied that the Applicant is entitled to seek leave for an Order for Writ of Possession.

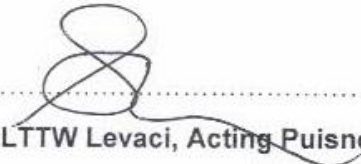
4.6 The Applicant has also deposed in its Affidavit which the Court accepts that the Defendant is still in occupancy of the property although he has not been seen to be in residence as there are other persons residing on the property on his behalf.

- 4.7 The Affidavit deposes which the Court accepts as evidence that the Sealed Order of Vacant Possession was served on the Defendant on 12 June 2023 and the Defendant knew of the requirement to vacate the property. Thus the Court is satisfied that the Defendant was aware of and notified of the Orders of Vacant Possession by the Court.
- 4.8 The Court finds that the Applicant has met the requirements for Leave to be granted for Writ of Possession.

Orders:

- 5.1 Court grants Leave for Writ of Possession to be issued against the Defendant;
- 5.2 Costs against the Defendant for \$200.




Mrs SLTTW Levaci, Acting Puisne Judge