

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. **HBC 345** of 2022

IN THE MATTER of an application under
Order 113 of the High Court Rules of Fiji
1988

BETWEEN : **NIRANJAN SINGH** of Nakasi in the Republic of Fiji, Bank Officer.
PLAINTIFF

AND : **ASISH KAMAL PRASAD** and/or other Occupants, whose names and details
are said to be unknown to the Plaintiff of the Land known as Vunivikau (Part
of) Nausori of Tailevu Province.
DEFENDANT

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Singh S.** for the Plaintiff
No Appearance for the Defendant and/or Counsel Representing

DATE OF DECISION: 7th March, 2024

DECISION

*[Amended Summons seeking immediate Vacant Possession pursuant to
Order 113 of the High Court Rules 1988 and the inherent Jurisdiction]*

1. This is the Plaintiff's Amended Summons filed pursuant to Order 113 of the High Court Rules, 1988 seeking an order for immediate Vacant Possession of the Plaintiff's property comprised in the Agreement for Lease TLTB No. 4/14/40903 known as Vunivikau (PART OF) Nausori, Tailevu of which the Plaintiff is the registered lessee of which the Defendant occupies without the Plaintiff's consent and permission.
2. The Defendant was served with the Plaintiff's Summons on 21st February 2023 and an affidavit of service duly deposited by Vinesh Pratap was filed into Court.
3. The Defendant on the returnable date of the summons on 4/4/23 was granted time to check on Legal Aid Commissions presentation and to file and serve his Response/opposition within 14 days.
4. On 04th May 2023, the Plaintiff's Counsel made an application to file an Amended Summons in respect of the First Order sought within the Summons.
5. The Amended Summons was subsequently filed in Court on 18th May, 2023 and on 25th October 2023, the Hearing date of 29th February 2024 was accordingly assigned with Written Submissions to be furnished to this Court.
6. A Notice of Appointment of Solicitors was filed by Jiten Reddy Lawyers on 08th November 2023 after the Plaintiff's Amended Summons was filed into Court, however, no appearances were made to represent the Defendant at any time at the assigned dates nor did the Defendant make any effort to appear in his proceedings which he was fairly aware of.
7. This Court bearing in mind that this was a Summary Proceedings, and that there being no appearance by the appointed Defence Counsel and/or the Defendant, proceeded to hear the Plaintiff on his oral and written submissions on 29th February 2024.
8. There was no affidavit Response and/or any opposition filed by the Defendant/Counsel.

Plaintiff's Submission

9. That the Plaintiff is the registered Lessee of the land described and contained in the approved Agreement to Lease TLTB No. 4/14/40903 known as Vunivikau (PART OF) Nausori, Tailevu.
10. The Agreement for Lease was executed and came into the Plaintiff's possession sometimes on or about the 20th July 2018 for a term of 99 years.
11. That on or about 2020, the Plaintiff intending to have the said property surveyed, where he then found out that the property was occupied by the Defendant.
12. The Plaintiff thereafter file the current action for the removal of the Defendant from the said property.
13. While directions have been given on two occasions for the Defendants to file his Affidavit in Opposition, the Defendant has failed to do so and to comply with the same accordingly.
14. The Defendant occupied the Plaintiff's property without the Plaintiff's consent and/or permission.

Determination

15. This action is brought under Order 113 of the High Court Rules, 1988 which inter alia in Rule 1 reads as follows:

"Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order."

16. The Question for Court's determination is **'whether the Plaintiff is entitled to possession under this Order**. To decide this, the Court has to consider the **'Scope of the Order'**

(Supreme Court Practice, 1993 Vol. 1, O.113/1-8/1 at page 1602 and I state the relevant portions hereunder:

"This Order does not provide a new remedy, but rather a new procedure for the recovery of possession of land which is in wrongful occupation by **Trespassers.**"

17. I have carefully considered the Plaintiff's Summons and the affidavit filed in Support of his amended summons together with the oral and written submissions.
18. The facts as I find that the Agreement for Lease TLTB No. 4/14/40903 known as Vunivikau (PART OF) Nausori, Tailevu came into the Plaintiff's possession sometime on or about 20th July 2018 for a term of 99 years. The Plaintiff whilst intending to have the said land surveyed, found out that the property was occupied by the Defendant. The Defendant has failed to file and serve any affidavit in opposition and to show cause as to why he should continue to occupy, the said property of the Plaintiff. He has failed to show any cause for his continued occupation.
19. It is clear that the Defendant was in occupation of the Plaintiff's property without consent and/or any permission. The Defendant was served with a **Notice of unlawful occupation by iTaukei Land Trust Board on 21st October 2022 and he was further put on Notice to remove the structure and cease any further development or any work whatsoever on this land effectively immediately from the receipt of this notice** and that legal action will be taken for non-compliance of the notice served onto him by iTaukei Land Trust Board.
20. Order 113 is effectively applied with regards to eviction of squatters or trespassers.
21. The **Department of Environment v James and Others (1972) 3 All ER 629** squatter and trespassers are defined as :

"He is one who, without colour of right, enters on an unoccupied house or land, *intending to stay there as long as he can.....*"

Goulding J. said that:

".....where the plaintiff has proved his right to possession, and that the defendant is the trespasser, the Court is bound to grant an immediate order for possession"

22. The evidence before this Court reveals and satisfies Court that the Plaintiff was issued with the Agreement for Lease TLTB No. 4/14/40903 dated 20th July 2018.
23. The Defendant has failed to file and serve any affidavit in opposition and/or satisfy this Court that he has a cause to continue occupation of the said property with a licence and/or with permission.
24. I find that the Defendant is a trespasser to the Plaintiff's said land which he currently continues to occupy without a licence and/or permission.
25. Accordingly, I have no alternative but proceed to accede to the Plaintiff's application/summons seeking for an eviction order against the Defendant.
26. I grant the order sought against the Defendant for Vacant Possession of property Agreement for Lease TLTB No. 4/14/40903 known as Vunivikau (PART OF) Nausori, Tailevu of which the Plaintiff is the registered lessee.

Costs

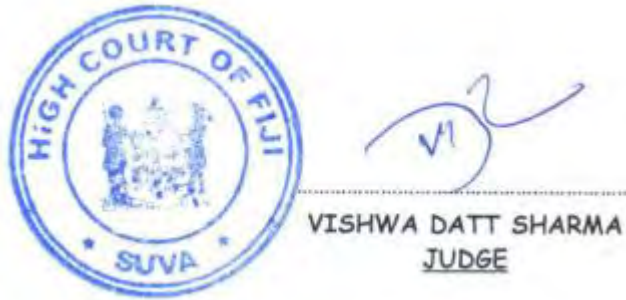
27. The Defendant has failed to file/serve any Affidavit in Opposition. This application was commenced in this Court on 08th December 2022, adjourned on a number of occasions to accommodate the Defendant to fetch for a Legal Aid Commission representative and to file/serve his Affidavit in Opposition, which to date he failed to do so accordingly.
28. On the other hand, the Plaintiff was ready to proceed with his case and its disposition with written submission filed into court.
29. This Court therefore seems fit, proper and justified to impose a summarily assessed costs of \$1,000 against the Defendant to be paid to the Plaintiff within 14 days timeframe.

Order

- (i) The Plaintiff's application for Vacant Possession Order against the Defendant succeeds.

- (ii) The Defendant to give Vacant Possession to the Plaintiff of the Agreement for Lease TLTB No. 4/14/40903 known as Vunivikau (PART OF) Nausori, Tailevu of the which the Plaintiff is the Registered lessee of accordingly.
- (iii) That the Defendant to pay the Plaintiff a summarily assessed cost of \$1,000 within 14 days timeframe.
- (iv) Orders accordingly.
- (v) File closed with the above orders intact.

Dated at Suva this 7th day of March, 2024.



CC: Shelvin Singh Lawyers, Suva
Legal Aid Commission, Suva
Jiten Reddy Lawyers, Nakasi.