

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

**[CIVIL JURISDICTION]**

**Civil Action No. HBC 143 of 2024**

**IN THE MATTER** of an Application under  
Order 113 of the High Court Rules 1988.

**BETWEEN:**        **KAMLA WATI** of 745 Stockton, Boulevard, Apt 74, Sacramento, CA  
95823, Domestic Duties.

**PLAINTIFF**

**AND:**        **SALESH ROHIT SHARAN and DEO SHARAN** of Nabare  
Settlement, Saweni, Lautoka, occupation unknown to the Plaintiff.

**DEFENDANTS**

**BEFORE**        :        **Master P. Prasad**

Counsels        :        Mr. A. Achal and Ms. S. Singh for Plaintiff  
First named Defendant in person  
No appearance for Second named Defendant

Date of Hearing        :        27 February 2025

Date of Decision        :        16 May 2025

**JUDGMENT**

1. The Plaintiff has instituted this action by filing a Summons pursuant to Order 113 of the High Court Rules 1988 (**HCR**) thereby seeking an order for the Defendants to give immediate vacant possession of all the piece of land comprised in a Tenancy at Will (**TAW**) over iTaukei land known as 'Nabare (Part of) Subdivision Lot 2', in the Tikina of Vuda, in the Province of Ba with an area of 452m<sup>2</sup> (**Subject land**). This TAW was issued to one Ram Sumer, who died on 13 October 2020, and the Plaintiff has filed this

Summons as the 'Sole Executrix and Trustee' of the said Ram Sumer's Estate. The Plaintiff filed an Affidavit in Support and an Affidavit in Reply.

2. The Defendants opposed the Summons and filed an Affidavit in Opposition of the first named Defendant.
3. The first named and second named Defendants are son and father respectively.
4. At the hearing of the Summons, the first named Defendant informed Court that his father - the second named Defendant - was bedridden and therefore unable to attend Court.
5. Both parties made oral submissions at the hearing with the Plaintiff filing written submissions as well. At the completion of the hearing, Plaintiff's counsel had sought time to file supplementary written submissions on certain issues raised by the Court. The Court had granted 7 days for the same. At the time of this Ruling, no submissions had been filed by the Plaintiff.
6. Order 113 outlines a summary procedure for possession of land and is in essence applied for eviction of squatters or trespassers (see **Department of Environment v James and others** [1972] 3 All E.R. 629).
7. The onus is on the plaintiff to satisfy the Court that there is no doubt as to its claim to recover possession of the land. Hence the plaintiff must be able to satisfy the Court of the following: (i) the plaintiffs right to claim possession of the land; and (ii) that the defendant/s (not being tenants holding over after the termination of the tenancy) entered the land or remained in occupation without the plaintiff's license or consent or that of any predecessor in title. A plaintiff is entitled for an order against the defendant once the plaintiff has satisfied the aforementioned two factors. Order 113 is also applicable in the event where a person who has entered into possession of the land with a license but has remained in occupation without a license. (See **Singh v Koi** [2024] FJHC 57).
8. The Subject land was issued under a TAW by the iTaukei Land Trust Board (TLTB) to a Ram Sumer who was the Plaintiff's late husband.
9. The Hon. Mr Justice Tuilevuka in **Ram v Kumari** [2023] FJHC 110; HBC298.2021 (3 March 2023) held;

*"Generally, a Tenancy at Will gives a very limited right of occupation only to the "tenant". There is no proprietary interest given such as would exist in a formal lease. As such, a "tenant" in a Tenancy at Will may not be entitled to sell, transfer,*

*assign, rent out or even offer as security the limited interest there is in the Tenancy at Will."*

10. Halsbury's Laws of England, Fourth Edition, Volume 27 states the following regarding the nature of tenancy at will on pages 125 and 130 respectively:

*"167. Nature of tenancy at will. A tenancy of will is a tenancy under which the tenant is in possession, and which is determinable at the will of either landlord or tenant.*

*...*

*174. Tenancy at will personal relationship. A tenancy at will is a personal relationship between the original landlord and tenant and is determined by the death of either of them."*

11. The TAW, a copy of which is annexed to the Plaintiff's Affidavit in Support that was which was issued to the Plaintiff's late husband namely Ram Sumer, states at clauses 4 and 7 respectively:

*"4. The right to occupy and use the land is **not transferable.***

*...*

*7. Be advised that this land is earmarked for future development purposes and at such time the Board confirm its plan, all rights thereon will be terminated by the Board."*

12. The said TAW was essentially determined at the time of Ram Sumer's death. The Plaintiff was also unable to produce before this Court any approval from the TLTB wherein TLTB has accepted the Plaintiff as its tenant at will over the Subject land now.

13. Furthermore, the first named Defendant in his Affidavit in Opposition has annexed a copy of Ministry of Housing letter dated 12 June 2023 marked as "SRS2" that is addressed to a Meenu Manika Devi, who is the Plaintiff's daughter and the first named Defendant's ex-wife. The said letter states as follows:

*"Re: **Confirmation of Occupants of House Number 26, Nabare I, Lautoka***

*We refer to your request received on 09th June 2023 to clarify occupants of House Number 26, Nabare I, Lautoka.*

*This is to confirm that the socio-economic survey conducted by the Ministry of Housing on the 30th October 2021, Meenu Manika Devi, Satesh Sharan, Seran Devi, Shivnit Sharan and*

Deo Sharan was recorded as the occupants of House Number 26.

We note from the probate and last will submitted to the Ministry that Mr. Ram Sumer f/n Shiu Ram deceased on 13th October 2020. It is noted that Mr. Ram Sumer was a Tenancy-at-will (iTltb ref:4/7/40633) lease holder from 27th May 2015.

We also note from your request that Mr. Ram Sumer was residing in Sacramento, USA and you was given the authority to live and take care of the house.

You are kindly informed that the Ministry cannot transfer house ownership from late Mr. Ram Sumer f/n Shiu Ram to any of the family members to the following reasons:

1. During the socio-economic survey conducted for Nabare, Ms. Meenu Devi (f/n Ram Sumer) and Mr. Salesh Rohit Sharan (f/n Deo Sharan) was living in House Number 26.
2. A second socio-economic survey on 30th October 2021 recorded, Ms. Meenu Manika Devi, Mr. Salesh Sharna, Ms. Seran Sharan, Mr. Shivnit Sharan and Mr. Deo Sharan as the resident of House Number 26.
3. Mr. Ram Sumer's details was not captured as a resident.
4. The Ministry cannot transfer ownership of houses as socio-economic survey only captures the members int eh house during the survey. Any amendments made to the household names will only be recorded at the time of a socio-economic survey for the entire settlement and names updated accordingly.
5. We do not allow any sales and purchases of house on the Ministry's development land.
6. We would like to clarify with you that renting of houses within the development lease, as the land is legally owned by the Ministry.

This letter does not provide any confirmation of allocation of lot to Ms. Meenu Manika Devi (or her family members) at this point in time as Nabare I and II settlement is still under development stage and lot allocation process will determine the eligible applicant or the lots in Nabare I and II settlement in Lautoka.

The allotment process will be carried out once the development has completed. The Ministry also does not allow any addition and extension fo the existing house.

Please feel free to contact the Ministry...

*Yours faithfully*

*Ronit Sen (Mr)*

*Director for Housing"*

14. It is apparent from the above letter that the Subject land has now been leased out to the Ministry of Housing for development purposes.

15. In light of the above, I find that the TAW issued to Ram Sumer was determined upon his death. Moreover, the Subject land is now part of a development lease issued by TLTB to the Ministry of Housing. The Plaintiff has not shown any evidence of any approval by the TLTB, accepting the Plaintiff as its tenant at will over the Subject land nor has she adduced any evidence to challenge the Subject land being leased out to Ministry of Housing.

16. Therefore, I am satisfied that in this matter the Plaintiff has not proven her legal right to claim possession of the Subject land pursuant to Order 113 and as such she should not be allowed to use this summary procedure.

17. Accordingly, I make the following orders:

(a) The Plaintiff's Summons is hereby dismissed; and

(b) Costs summarily assessed in the sum of \$1000.00 to be paid by the Plaintiff to the Defendants within 21 days.

**At Lautoka  
16 May 2025**



**P. Prasad  
Master of the High Court**