

**IN THE MAGISTRATE'S COURT AT LABASA**  
**CIVIL JURISDICTION**

*Civil Action No. 19 of 2013*

**BETWEEN** : **GANGA WATI**

**PLAINTIFF**

**AND** : **SANJAY KUMAR**

**FIRST DEFENDANT**

**ISHWA NANDAN**

**SECOND DEFENDANT**

Appearance : **Mr Sharma. S** for the plaintiff  
**First Defendant** no appearance  
**Second Defendant** in person

Judgment : **13 February 2019**

**JUDGMENT**

1. The Plaintiff filed a writ of summon with a statement of claim on 1 February 2013. The Plaintiff is claiming for the losses and damages she suffered from the soil being dug and loaded from her land at Nukutatava by the Defendant's without her consent. She claimed for the damage to the physical structure of the land. She asked for a stop order against the Defendant's and claimed for general and special damages.

2. The First Defendant filed his statement of defence on 27 March 2013. He stated that the extraction was done on the verbal consent of the Plaintiff. He asked for the claim to be dismissed.
3. The Plaintiff filed her reply to the First Defendant statement of defence on 4 June 2013.
4. There was no statement of defence filed by the Second Defendant.

#### ***Plaintiff's Evidence***

5. The Plaintiff stated that the First Defendant is her son in law and he resides in her freehold land at Movo, Tabia. The title of the land is under her name when her husband Ram Udit passed away. The original title is at her home. Her name is shown on the title No. 23390.
6. She stated that on 21 February 2013, the First Defendant brought the bulldozer, they dug the land, load the soil in the truck and take it to Tuatua. The First Defendant authorised his brother the driver of the bulldozer to dig the land. She identified the Second Defendant as the driver of the bulldozer. They dug the land from Monday, Tuesday, and Wednesday when the police came and stop them. Her land is on slippery area and more soil was dug out from the land resulted on the land been washed down to the road and damaged her sugarcane farm. They have stop taking the soil at the moment.
7. She did not give her consent for the digging of the soil. She had a kidney problem and during that time her pressure was high. She travelled to Labasa to report at the Police Station and to see her lawyer. She travelled to Labasa from Monday to Thursday by taxi and her returned fare is \$30.00. She has no idea on the damages and do not have any estimated value as she had no idea.
8. In cross-examination, she stated that she did not give any authority for the digger to dig the soil. They put 2 to 3 loads of soils in her compound. When

she asked them for more soil, they told her to pay or hire one truck. During that time there was no landslide but last year there was a landslide

### ***Defendant's Case***

#### First Defendant

9. The First Defendant did not appear on the hearing date and no evidence was offered from him.

#### Second Defendant

10. The Plaintiff has consented for the Second Defendant to give evidence without filing any statement of defence.
11. The Second Defendant stated in his evidence that the First Defendant and his wife took her to the land to dug out the land from the landside. They told him to remove the land and he dug out 3 loads. When they tried to level the land, the Plaintiff stopped them.
12. In cross-examination, he stated that the First Defendants house is on his land. He did not see any title of the land. He only saw the will on the land. When the police came on the second day, he showed them the will and they left. The Plaintiff stops them on Wednesday and later he knew that the Plaintiff has the title and the daughter have the will. His job is to remove the soil from the landslide and took about 9 to 10 loads of soil.

### ***Analysis and determination***

13. The Plaintiff claimed that she is the owner of the land contained in Title No. 23390 known as Nukutatava (subject land). I rejected to consider *plaintiff exhibit 1* which is a copy of the Title No. 23390 as it was a copy and the original copy was not tendered as it was at the home of the Plaintiff. There was no explanation provided to confirm that it was a true copy of the

original. The First Defendant in his pleading stated that he does not know on the Plaintiff's claim that she is owner of the subject land. The Second Defendant stated that he later realise that the Plaintiff has the title of the land. With these evidence and on the balance of probabilities, I am satisfied that the Plaintiff is the owner of the subject land. I therefore, find that she has *locus standi* to file her claim.

14. The Plaintiff is asking for an order to stop the Defendants from extracting and loading the soil from his land. The Plaintiff in her evidence has stated that the Defendants had stopped the work in her land. Accordingly, I find that there is no need to issue and stop order to the Defendants as the work had already been stopped.
15. On general damages, the Plaintiff stated that she has no ideas and no estimated value on the damages. She was not able to inform the court on what injuries or pain she suffered as a result of the soil extraction. Accordingly, no damages can be awarded on general damages.
16. On the Plaintiff's claim for special damages, there was no specific amount claimed. The Plaintiff stated in her evidence that she travels to Labasa from Monday to Wednesday by taxi with returnable fare of \$30.00 each day. She went to see the Police and her counsel. However, there was documentary evidence to prove such damages. Accordingly, no damages can be granted for special damages.
17. The Plaintiff is asking for other relief that the court deem just. There was no agreement or contractual terms to show there was a breached by the defendants so the Plaintiff for damages caused by the breach. According to the Plaintiff the extraction was unlawful as it was without her consent. The First Defendant in his defence stated that the Plaintiff consented for the extraction. The evidence shows that the Plaintiff has benefitted from the extraction.

18. The Second Defendant stated that there were. 9 to 10 loads of soil. There was specific claim made to claim for the monetary value of the loads of soil taken from her land.
19. In this judgment, I have considered the pleading filed by the parties and their respective evidence. I also take note of the applicable laws and relevant case authorities.
20. In this judgment, I find that no order and award can be granted to the Plaintiff's prayer in her statement of claim as discussed above. Accordingly, I make no order on costs.

**28 days to appeal.**



C. M. Tuberi  
RESIDENT MAGISTRATE