

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

**CIVIL JURISDICTION**

**Civil Action No. HBC 150 of 2013**

**BETWEEN** : **INDRA WATI** as administrator of the estate of the late  
Babu Ram of Vuniboga, Yasiyasi, Tavua, Self Employed

**Plaintiff**

**AND** : **RICHARD BLASE aka RICHU** of Vuniboboga, Tavua

**Defendant**

**Before:** Actg Master M H Mohamed Ajmeer

**Appearances:**

Mr Nawaikula for the plaintiff

Mr M Antony for the defendant

**Date of Hearing** : 27 March 2014

**Date of Judgment** : 23 April 2014

**J U D G M E N T**

[1] By an originating summons dated 28 August 2013 (the application) accompanied by supporting affidavit plaintiff seeks the following orders:

1. *Possession of Native Lease No. 4/4/279 and known as Vuniboboga, Tavua containing an area of 15 acres no rods and 2 perches.*
2. *Payment of the sum of \$280.00 to the plaintiff being rent owing by the defendant as at 1<sup>st</sup> January 2011 to 31<sup>st</sup> December 2012 plus mesne profits.*
3. *Costs*
4. *Any other order as of the Court may deem just and equitable.*

[2] The application has been filed pursuant to Ord. 113 of the High Court Rules of 1988, as amended (the HCR), which provides:

*“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 (Emphasis added)”.*

[3] Defendant did not appear at the court, nor filed any affidavit in opposition although the application together with the supporting affidavit duly served on the defendant pursuant to Ord. 10, rr. 1 & 5 of the HCR. The affidavit of service sworn by Vetaia Ralulu filed on 6 September 2013 indicates that he personally served a true copy of the originating summons and the supporting affidavit and at the time of the service the defendant accepted but refused to sign the acknowledgement.

[4] At hearing, however, Mr M Antony appeared for the defendant and sought a short adjournment of the hearing stating that he had some difficulty in filing affidavit in opposition as he could not contact his client. Mr Nawaikula vehemently objected to any application for adjournment. The application for adjournment was made at the last movement and without sufficient ground. I therefore refused to adjourn the matter. Then Mr Nawaikula argued the matter without the defendant’s participation.

[5] In the course of the hearing I asked Mr Nawaikula whether a tenant or tenants holding over after the termination of the tenancy could initiate proceedings under Ord. 113 of the HCR. He then sought time to file written submissions on that issue. I accordingly granted 14 days to file his written submissions on that point. Nonetheless, he did not file his written submissions within the time permitted for that purpose.

[6] The plaintiff is the administratrix of the estate of her late husband, Babu Ram. Babu Ram was the last proprietor of an Agricultural Lease, being Instrument of Tenancy NLTB No. 4/4/279 Vuniboboga, Tavua containing area of 15 acres no rods 2 perches. The defendant was the tenant of the estate of a monthly tenancy of which he was paying \$160.00 a month. The plaintiff needs possession for the premises because she intends to repair and do maintenance before re-leasing. So, on 15 August 2013 she issued a seven day notice to the defendant to vacate and to pay the sum of \$280.00 being arrears of rent outstanding at that time.

The notice, she says, has expired but the defendant still occupying without payment and the defendant's authority of licence to continue occupation has been terminated, yet the defendant refuses to vacate.

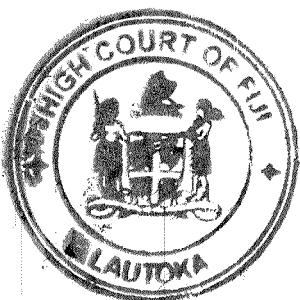
[7] The procedure for summary judgment under Ord. 113 of the HCR applies to a claim for possession of land which is occupied solely by a person or persons, **not being a tenant or tenants holding over after the termination of a tenancy**, who entered into or remained in occupation without his (person claiming possession) licence or consent or that of any predecessor in title of his. The procedure applies to the wrongful occupier who has entered into, or who has remained in, occupation without licence or consent of the owner.

[8] The plaintiff in her supporting affidavit admits that the defendant is a tenant and holding over after the termination of the tenancy. It is not clear when the tenancy was created and the nature of the tenancy is also not clear.

[9] The procedure envisaged under Ord. 113 of the HCR does not apply to a claim for possession of land against a tenant holding over after the termination of the tenancy.

[10] Undoubtedly, in these proceedings the plaintiff seeks to recover possession of the land from the defendant who is admittedly a tenant and holding over after the termination of the tenancy. In my view the plaintiff is not entitled to bring proceedings under Ord. 113 of the HCR.

[11] For these reasons, I should dismiss and strike out the summary application for recovery of possession of land, but without costs.



At Lautoka

23 April 2014

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**M H Mohamed Ajmeer**  
**Actg Master of the High Court**