

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 341 of 2013

IN THE MATTER of an application under Order 113 of the High Court Rules 1988 for an Order for Summary Proceedings for immediate Possession of Land.

BETWEEN : **TEVITA DAKUNITURAGA, LORIMA TURAGANISOLEVU and VILIAME NAQELE** for and on behalf of Mataqali Rara, Naduru Village, Tailevu.

PLAINTIFFS

: **AMEO LIACI** of Vunivaudamu No. 2, Vuci Road, Nausori.

DEFENDANT

BEFORE : **Master Thushara Rajasinghe**

COUNSEL : **Ms. Rigsby T.** for the Plaintiff
Ms. Preetika P. for the Defendant

Date of Hearing : **11th June, 2014**

Date of Ruling : **16th September, 2014**

RULING

A. INTRODUCTION

1. The Plaintiffs instituted this action pursuant to Order 113 of the High Court Rules seeking an order for an immediate vacant possession of the land known as Vunivaudamu

No 3, situated in the District of Bau in the province of Tailevu in which the Plaintiffs are the native owners.

2. The Plaintiffs stated in their affidavit in support that they are authorised by the members of their Mataqali Rara to institute this action and deposed the relevant affidavits. They deposed that they are the registered land owners of all that piece and parcel of land known as Vunivaudamu No 3 (part) and situate in the province of Tailevu in the island of Vitilevu. They further deposed that the Defendant had occupied this land on the belief that he was part of the landowning unit to which such land belong. The names of the Defendant and his family have been transferred from this landowning unit to another due to the fact that he was not from the Plaintiffs' Mataqali. They stated that the Defendant is fully aware of it. Having deposed such, the Plaintiffs seeks an order for immediate vacant possession pursuant to Order 113 as the Defendant is illegally occupying their land.
3. Upon being served with this Summons, the Defendant appeared before the court and filed his affidavit in opposition. He denied that he is an illegal occupier or a trespasser. He claimed that he and his forefathers have been living on this Mataqali lands as they have always been members of the landowning unit. However, their names have been removed and transferred to another landowning unit fraudulently which they vehemently contested.
4. Subsequent to the filing of the respective affidavits of the parties, the matter was set down for the hearing on 11th of June 2014, where both counsel agreed to conduct the hearing by way of written submissions. I accordingly invited them to file their written submissions which they filed accordingly. Having carefully considered the Summons, respective affidavits and the written submissions of the parties, I now proceed to pronounce my judgment as follows.

The Plaintiffs Submissions,

5. The learned counsel for the Plaintiffs tendered few documents as annexures to her written submissions, which I disregard as it amounts to providing evidence from the bar table.

Had they really wanted to tendered them as evidence, they should have sought the permission of the court and file them with a supplementary affidavit. The learned counsel submitted that the Defendant is an illegal occupier or a trespasser as he is not a member of the landowning Mataqali unit.

6. The learned counsel for the Defendant raised few preliminary issues, one of them are the documents tendered as annexure to the written submissions of the Plaintiffs, which I have already considered. The main contentions of the Defendant are that the Plaintiffs cannot maintain this action under Order 113, as the Defendant was a member of the landowning unit and his name have been removed fraudulently. Wherefore, he is not an illegal occupier as defined under Oder 113. Moreover, the Defendant contended that this dispute falls within the meaning of section 3 of the Native Land Act wherefore, it should be dismissed. The learned counsel submitted that the Plaintiffs had earlier instituted an action pursuant to section 169 of the Land Transfer Act in Civil Action No. HBC 80/2011 which was founded on the same grounds as of this summons. The Hon. Master Amaratunga (as his lordship then was) in that action ruled that the dispute between the parties falls within the meaning of section 3 of the Native Land Act, wherefore the court has no jurisdiction to hear the Summons.

B. THE LAW,

7. Order 113 of the High Court Rules provides a summary procedure for possession of land, where it states that;

“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”.

8. In view of Order 113, a person who has a legal right to claim the possession of a land could institute an action, claiming the possession of said land against a person who has entered into or remains in occupation without his license or consent or that of any predecessor of his title.

C. ANALYSIS,

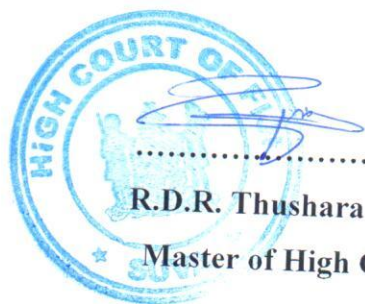
9. I first turn to the issue of whether this court has jurisdiction to hear this Summons pursuant to section 3 of the Native Land Act. Section 3 of the Native Land Act states that:

“Native lands shall be held by native Fijians according to native custom as evidenced by usage and tradition. Subject to the provisions hereinafter contained such lands may be cultivated, allotted and dealt with by native Fijians as amongst themselves according to their native customs and subject to any regulations made by the Fijian Affairs Board, and in the event of any dispute arising for legal decision in which the question of the tenure of land amongst native Fijians is relevant all courts of law shall decide such disputes according to such regulations or native custom and usage which shall be ascertained as a matter of fact by the examination of witnesses capable of throwing light thereupon.” (Substituted by 9 of 1907, s. 2, and amended by 12 of 1940, s. 35.)
10. It has been stated under section 3 of the Native Land Act, that all native land shall be held by native Fijian according to native customs as evidence by usage and tradition. It has further been stated that in the event of any disputes arises in relation of the tenure of land amongst native Fijian, it shall be decided according to such regulations or native customs and usage which shall be ascertained as a matter of fact by the examination of witnesses capable of throwing light thereupon.
11. In view of the affidavits and the submissions of the parties, the main dispute is that to determine whether the Defendant is a member of the landowning mataqali unit or if he has been removed from it, whether it was done according to the native customs and regulations pertaining to such issues. Accordingly, it is my opinion that this dispute

relates to the tenure of the Defendant's occupation on this land, which needs to be determined according to the regulations or native customs and usage as stated under section 3 of the Native Land Act. In view of this findings, I am satisfied that the court has no jurisdiction to hear this dispute as stated in the Summons pursuant to section 3 of the Native Land Act. I accordingly make following orders that ;

- i. The Summons for possession of land filed on 2nd of December 2013 by the Plaintiffs is hereby refused and dismissed,
- ii. The Defendant is granted \$750 cost assessed summarily,

Dated at **Suva** this **16th** day of **September, 2014**.


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R.D.R. Thushara Rajasinghe
★ **Master of High Court, Suva**