

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

**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 76 of 2014**

**BETWEEN** : **BEKANA GARDEN ISLAND RESORT LIMITED** a duly  
incorporated company under the Laws of Fiji.

**PLAINTIFF**

**AND** : **ASHWEN GIBSON BLAKE** of Bekana Island, of Lautoka

**DEFENDANT**

**Mr Sivanesh Wasu Pillay for the Plaintiff**  
**Mr Eroni Maopa for the Defendant**

**Date of Hearing :- 5<sup>th</sup> June 2015**  
**Date of Ruling :- 26<sup>th</sup> August 2015**

**RULING**

1. Before me is the inter-parties Notice of Motion filed by the Plaintiff seeking leave to issue Writ of Possession against the Defendant in respect of the land (Bekana Island) comprised in iTaukei Lease No. 20434, having an area of 38 acres.

The application is made Pursuant to Order 45, Rule 2 of the High Court Rules, 1988.

2. Upon being served with Notice of Motion, the Defendant appeared in Court and strongly resisted the application.
3. The Defendant filed an Affidavit in Opposition opposing the application.

4. The Defendant resisted the application on the following grounds, which I have reproduced as deposed in the affidavit in opposition.

- i) *non-disclosure as to the status of the Plaintiff's Company being wound up.*
- ii) *non-disclosure as to whom is the registered lessee.*
- iii) *Stay and appeal application is pending*

5. The real issue and the only issue which this court has to consider at the outset is whether the Defendant has a right to show cause as to why leave should not be granted by this Court to issue Writ of Possession.

6. It is necessary to examine Order 45, Rule 2 of the High Court Rules closely.

I should quote Order 45, Rule 2 which provides;

*2.-(1) Subject to the provisions of these Rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say-*

- (a) writ of possession;*
- (b) in a case in which rule 4 applies, an order of committal;*
- (c) in such a case, writ of sequestration.*

*(2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the Court except where the judgment or order was given or made in a mortgage action to which Order 88 applies.*

*(3) Such leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled*

*(4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.*

*(Emphasis Added)*

7. The obtaining of an order from a Court certainly conveys certain rights, but that does not necessarily imply that they may be enforced without further steps. A court has a duty to facilitate the execution and enforcement of its orders according to law. Order 45, Rule 2 provides for the obtaining of a Writ of Possession to enforce an Order for Possession.



8. Pursuant to Order 45, Rule 2 of the High Court Rules;

- *A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the Court except where the judgment or order was given or made in a mortgage action to which Order 88 applies.*
- *Such leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled.*

9. **On a strict reading of Order 45, Rule 2, it is clear beyond question that the Defendant has no right to show cause as to why leave should not be granted by the Court to issue Writ of Possession.** To be more precise, the Defendant does not have a right to be heard on the Plaintiff's application seeking leave to issue Writ of Possession. There is clearly an implied intention by the legislature that the Defendant should not have the right to be heard before granting leave to issue writ of possession.

(10) Although the Defendant has opposed the application for leave to issue writ of possession, I intend to give it absolutely no weight whatsoever. I cannot see any other just way to finish the matter than to follow the law.

(11) The Defendant's appeal and the application for stay is yet to be heard. **Thus, at this stage there is a final determination by the High Court for vacant possession against the Defendant to vacate all that piece and parcel of land of which the Plaintiff is the registered lessee comprised and described in iTaukei Lease No. 20434 in the Tikina of Vitogo Province of Ba being land known as Bekana Island.** Until that decision is overturned by the Court of Appeal, the issue has been finally determined and is therefore "*Res judicata*".

(12) There only remain one question of substance which needs to be considered before granting leave to issue Writ of Possession to enforce a judgment or Order for the giving of possession of the land. The leave shall not be granted unless it is shown that the person in active possession of the land has received Notice. [(Order 45, rule 2 (3))]

I ask myself is this requirement sufficiently complied with by the Plaintiff?

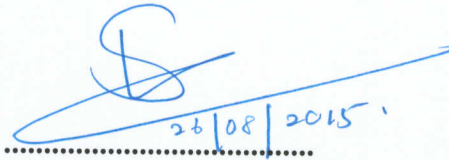
The Plaintiff has informed the Defendant by Notice that the matter will be called on 30<sup>th</sup> April 2015 for Orders to be made for Writ of Possession. Upon being served with Notice, the Defendant appeared in Court.

In the circumstances, I have no hesitation in holding that the Plaintiff has satisfied the threshold criteria in Order 45, rule 2 (3) of the High Court Rules.

**FINAL ORDERS**

- (1) Objections overruled.
- (2) Leave is granted to the Plaintiff to issue a writ of possession against the Defendant in respect of the land comprised in iTaukei Lease No. 20434.
- (3) I make no Order for costs.



  
26/08/2015

**Jude Nanayakkara**  
**Acting Master of the High Court**

At Lautoka

26<sup>th</sup> August 2015