

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No: HBC 114 of 2014

BETWEEN: TIMOCI RAMO RALIWALALA

PLAINTIFF

A N D: SOLOMONI KAICOLA

1ST DEFENDANT

A N D: LEONE KOROI, MARICA TINAI, MAKARITA DAVEKA,
LOSALINI QALIA, TOKASA MARAMA, TORIKA MARAMA,
MESAKE BEBE, RAIJELI LIKU and MARIA TINAI

2ND DEFENDANTS

Before: Master Thushara Rajasinghe

Counsel: Ms. Nayacalevu for the Plaintiff
Ms. Veretawatini for all defendants

Date of Hearing: 16th September 2014
Date of Ruling: 30th of January 2015

JUDGMENT

A. INTRODUCTION

1. This Summons was filed by the Plaintiff pursuant to Order 113 of the High Court Rules seeking following orders inter alia;
 - i. *That the 1st and 2nd Defendants be vacated from the land known as "Wainikai" in Naituvatuva village in Wainibuka, Tailevu, which the Defendants remain in occupation of being part of the land comprised and*

described in I.T. 1006 as well Folio 767 of the Register of Native Lands of which the Plaintiff is the registered proprietor on the ground that the Defendants have remained in occupation of the same without a license or consent from the Mataqali Nawakasa,

ii. That the Defendants pay the costs of this application on an indemnity basis.

2. This Summons was called before me on the 4th of June 2014, where the parties were given directions to file their respective affidavits, which they filed accordingly. Upon filing of the respective affidavits, this Summons was set down for hearing on 16th of September 2014. The learned counsel for the Plaintiff and the Defendants made their respective oral arguments and submissions during the course of the hearing and also tendered their respective written submissions. Having carefully considered the respective affidavits and submissions of the parties, I now proceed to pronounce my judgment as follows.

B. BACKGROUND

3. The Plaintiff claims that he is the Turaga ni Mataqali of Mataqali Nawakasa and they are the registered and traditional owners of this native land which is the subject matter of this application. The Plaintiff further deposed in his affidavit in support that the Defendants entered into this land without proper consent or approval of the land owners or the Native Land Trust Board and presently occupying it illegally. He tendered an affidavit of the previous tenant of the land, who deposed that he was forcefully evicted from the land by the 1st Defendant. He then surrendered his lease to the Native Land Trust Board. Accordingly the Defendants are occupying this land without the consent or license of the land owners or the previous tenant of the land.
4. Meanwhile, the first Defendant filed his affidavit in opposition not only for him but also on behalf of other Defendants. He deposed in his affidavit that he helped the previous tenant to settle his bank loan arrears and entered into an agreement with him to purchase this land. However, the previous tenant changed his position subsequent to the payment and surrendered the lease to the Native Land Trust Board. The Defendant claims that he has a right to stay in the land due to the arrangement made with the previous tenant.

C. THE LAW

5. 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”.

6. 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 in title.
7. The main purpose of Order 113 is to provide a speedy and effective procedure for the owners of the lands to evict persons who have entered into and taken the occupation of the land without the owner’s license or consent. They can be defined as trespassers or illegal occupants. These trespassers or illegal occupants have sometimes been referred to as squatters. In **Mcphail v Persons unknown, (1973) 3 All E.R.394**) Lord Denning has observed “the squatter” as a person who without any colour of right, enters into an unoccupied house or land and occupies it. His Lordship found that in such instances, the owner is not obliged to go to court to regain his possession and could take the remedy into his own hands, which indeed, recommended as an unsubstantial option. Therefore, Order 113 has provided the owners a speedy and effective procedure to recover the possession instead of encouraging them to take a remedy of self-help.
8. The proceedings under Order 113 encompass two main limbs. The first is the onus of the plaintiff. The Plaintiff is first required to satisfy that he has a legal right to claim the possession of the land. Once the plaintiff satisfies the first limb, the onus will shift

towards the defendant, where the Defendant has burdened with to satisfy the court that he has a licence or consent of the owner to occupy the land.

D. ANALYSIS

9. The Defendants have not disputed the ownership of the Plaintiff. Their objection for this application is founded on their claim that they have paid the bank loan arrears of the previous tenant and he then agreed to sale this land to them. In the meantime the previous tenant tendered an affidavit in the form of an annexure to the Plaintiff's affidavit in support and deposed that he never made such an arrangement with the Defendants, but he was forcefully evicted by the Defendant from the land, which eventually led him to surrender his lease to the Native Land Trust Board.
10. Accordingly, the main issue to be determined in this application is that whether such an arrangement entered between the previous tenant and the Defendant constitutes a consent or license to occupy the land. Indeed it is an arrangement entered between the tenant and a third party to settle loan arrears with the bank. In order to legitimize such a transfer of property by the tenant, he is required to obtain the consent of the Native Land Trust Board which has not been obtained. In the meantime, the previous tenant deposed in his annexed affidavit that he was forcefully evicted from the land and the Defendant was demanding the money back, which he paid to the bank. Under such circumstances, it appears that the dispute between the previous tenant and the Defendant does not relate to the occupation of the land. The Defendant may have a claim "*in personam*", but not for the possession of the land. Accordingly, it is my opinion that the Defendants have not obtained consent or a license to occupy or remain in occupation of this land.
11. I accordingly make following orders that;
 - i. The Plaintiff is hereby given immediate vacant possession of the land more fully described in the Summons dated 28th of April 2014,

ii. The Plaintiff is awarded cost of \$ 1000 assessed summarily,

Dated at Suva this 30th day of January 2015



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