

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

Civil Action No. HBC 305 of 2015

**BETWEEN:**            **ITAUKEI LAND TRUST BOARD** a body corporate under the  
iTaukei Land Trust Act [Cap 134].

**PLAINTIFF**

**AND:**                 **ROHIT LAL** of Vuci Road, Nausori.

**DEFENDANT**

**COUNSEL:**            **Ms. Vokanavanua** for the Plaintiff  
                              **Mr. Kunal Singh** for the Defendant  
**BEFORE:**             **Master Vishwa Datt Sharma**

**Date of Hearing:**        **06<sup>th</sup> June, 2016**  
**Date of Ruling:**       **08<sup>th</sup> September, 2016**

**R U L I N G**

*[Originating Summons seeking possession of the Land pursuant  
to Order 113 of the High Court Rules, 1988]*

**APPLICATION**

1. The **Originating Summons** filed by ITAUKEI LAND TRUST BOARD (TLTB) is seeking an order for **Summary Possession of Land** on the grounds that TLTB is entitled to possession and that the person(s) in occupation is in occupation without licence or consent.

2. This application is supported by an affidavit sworn by Ela Manukuin in her capacity as the Regional Manager Central Eastern.
3. The Defendant filed his Affidavit in Response to the Plaintiff's application.
4. The Plaintiff as well as the Defendant filed and furnish this court with written

### PRACTICE AND PROCEDURE

5. **Order 113 of the High Court Rules, 1988** provides a summary procedure for possession of Land, whereby it states as follows-
  1. *'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. *Pursuant to Order 113, a person who has a legal right to claim the possession of a land could institute an action, claiming the possession of land against a person who has entered into or remains in occupation without his licence or consent or that of any predecessor in title.*
7. *The main purpose of Order 113 is to provide a speedy and effect 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 licence or consent.*
8. *The proceedings under Order 113 encompass two (2) main limbs. The First limb places the burden on 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 the burden to satisfy the Court that he has a licence or consent of the owner to occupy the land.*

**PLAINTIFF'S CASE**

9. The Plaintiff is seeking an order for **Summary Possession of Land** and relies on the Affidavit in Support.
10. The Plaintiff adopts its written submissions.

**DEFENDANT'S CASE**

11. The Defendant opposes the application and relies on its **Affidavit in Response**.
12. A written submission has been furnished to the Court.
13. The Defendant apprised Court that the Plaintiff's application is **defective** since it doesn't **describe** and **state** the following **essential details**-
  - (i) What orders are being sought by the Plaintiff?
  - (ii) The description of the land.
  - (iii) Who should vacate or from whom shall the Plaintiff recover possession?

**DETERMINATION OF THE ISSUES**

14. The **questions or issues** for this court to determine are the following-
  - (a) **Whether the Plaintiff is entitled to recover the possession of the land pursuant to Order 113 of the High Court Rules, 1988?**
  - (b) **Whether the Plaintiff's Originating Summons is defective in Law?**
15. It would be rather appropriate and fitting in the circumstances that I first of all deal with the issue of **'Whether the Plaintiff's Originating Summons is defective in Law?'**



16. The form of the **Originating Summons and the Affidavit in Support** must be made pursuant to **Order 113 Rule 2 and 3** respectively which states as follows-  
**Forms of originating summons (O.113, r.2)**

2. The originating summons shall be in **Form No. 3 in Appendix A.**

**Affidavit in support (O.113, r.3)**

3. The plaintiff shall file in support of the originating summons an affidavit stating-

(a) his interest in the land;

(b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and

(c) that he does not know the name of any person occupying the land who is not named in the summons.

17. The **contents** of the Originating Summons are not in **conformity with Form No. 3** as is in **Appendix A** within the High Court Rules, 1988. Details such as the description of the land in occupation and who is occupying the land of which the Plaintiff seeks possession of. No doubt, the Order sought is mentioned which is **'to recover possession' but from whom is recovery possession sought from?**

18. The format of the application should have been in conformity with the governing rules **Order 113 Rule 2** of the High Court Rules 1988.

19. The Affidavit in Support does not have defects and is in order.

20. The Court gave the Plaintiff Counsel an opportunity to cure and or regularise the defect if she wanted to do so in terms of **Order 2 of the High Court Rules, 1988**, which provides as follows-

**'Non-Compliance with rules (O.2, r.1)**

*1.-(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.*

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*(2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.'*

But the Plaintiff's Counsel failed to take the advantage of the opportunity for the reasons best known to her.

20. I find that the Originating Summons before me is rather incomplete and does not specifically describe the Land and the Lease as well as from whom should the recovery possession of the land be sought from. The application is therefore fatal in the circumstances.

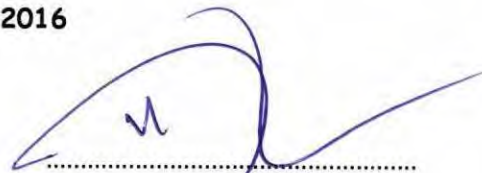
### ORDERS

21. The **Orders** are therefore as follows:

1. That the Plaintiff's Originating Summons is defective and fatal in the circumstances.
2. That the Plaintiff to pay the Defendant costs summarily assessed at \$500.

DATED at Suva on 08<sup>th</sup> September, 2016



  
.....  
**VISHWA DATT SHARMA**  
Master of the High Court  
Suva

cc: TLTB, Suva.  
K.S Law, Nausori.