

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

CIVIL ACTION NO.: HBC 203 of 2017

BETWEEN : MATAQALI NAOCOVONU **PLAINTIFF**

AND : ERONI WAQAVUNI AND MAKELESI BUTULOVO **FIRST DEFENDANTS**

AND : ITAUKEI LAND TRUST BOARD **SECOND DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr A Rayawa [Rayawa Law]

FIRST DEFENDANTS : Ms S Colavanua on instructions [Tuifagalele Legal]

SECOND DEFENDANT : Ms Vakanavanua [ILTB]

RULING OF : Acting Master Ms Vandhana Lal

DELIVERED ON : 22 November 2018

JUDGMENT
[Section 169 7 Order 113 application for vacant possession]

Application

1. The Plaintiff on 12 July 2017 filed an application originating summons seeking orders from the First Defendants to give vacant possession to the Plaintiff of the land and premises comprised and described as Vucivuci No. 2 subdivision, Lot 5, District of Nuku (Tailevu), Land Area, 0.1405 HA in the Province of Tailevu.
2. In its summons the Plaintiff says it is making this application under Section 169 of the Land Transfer Act and Order 113 of the High Court Rules 1988.

Law

3. Under Section 169 of the Land Transfer Act following person may summon any person in possession of land to appear before a Judge in Chambers to show cause why the person summoned should not give up possession to the applicant:
 - i. *the last registered proprietor of the land;*

- ii. *a lessor with the power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provision therein, when the lessee or tenant is in arrear for one month, whether there be or be no sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;*
- iii. *a lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired."*

4. Order 113 of the High Court Rules reads:

"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 license or consent or that of any predecessor in title of his....."

I-Taukei Land Trust Board As A Party

- 5. At the outset I would like to deal with the issue of naming the I-Taukei Land Trust Board as a party to this proceeding.
- 6. It is evident that I-Taukei Land Trust Board has been wrongly named as a party to proceedings as no order for vacant possession is sought against them.

They are not in possession of the property in question but are only the custodian of all I-Taukei Land.

- 7. As such the proceeding shall be dismissed against them with cost.

The Plaintiff's Claim

- 8. According to the Turaga ni Mataqali or Head of the Mataqali Naocovonu, Eroni Waqavuni and Makelesi Butulovo are residing on the Mataqali land – Lot 5, Vucivuci No.2 Sub division, District of Nuku.

There had been dispute between the Turaga ni Mataqali's father late Joseva Vueti and Eroni regarding unlawful occupation of the land by the Defendants.

Late Joseva had issued an eviction notice in 2009 prior to his passing away.

According to Manoa, Eroni has been squatting in the Mataqali land for over 20 years and has not paid any lease.

Despite the dispute this I-Taukei Land Trust Board had issued an offer letter on 03 September 2013. However on 03 March 2014, ILTB wrote to the Defendant stating that the offer had lapsed and the lease application does not exist.

Despite being notified on several occasions that the Defendants are to vacate the Mataqali land they have failed to do so.

The Defence

9. In their defence, the First Defendants states they have been residing on the land for over 20 years on an agreement by the former Head of the Mataqali and its member to reside on the subject land.

Formal customary protocols were conducted to allow them to stay and remain on the subject land. The Deponent of the Affidavit for the Plaintiff was not around at that time.

This matter was only instituted when the First named Defendant reported to the Police for alleged raping of his daughter by the deponent's son.

Determination

10. From the Affidavit evidence it is clear that there is dispute as to how the Defendants came to occupy the land.

However it is not in dispute that they have been in occupancy for over 20 years.

11. The Plaintiff has annexed two letters ML5 which unfortunately are in I-Taukei language and not translated in English by the Plaintiff's Counsel.
12. There are disputes which need to be determined on oral evidence as to how the Defendants came to occupy the property in question.
13. On the evidence before me I cannot make findings that the Defendants are squatters or trespassers under Order 113 of the High Court Rules.
14. These are issues which cannot be resolved in a summary manner under Order 113 of High Court Rules and Section 169 of the Land Transfer Act on the Affidavit alone. Oral evidence of parties is required.
15. In the circumstances, I am dismissing the application. This dismissal is not a bar for the Plaintiff to institute proceeding in any other manner to seek eviction orders.
16. The Plaintiff is to pay cost to the Defendants summarily assessed at \$1,000 each [total cost to be paid is \$2,000]. Said cost is to be paid in 14 days.

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Vandhana Lal [Ms]
 Acting Master
 At Suva.

