

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

**Civil Action No. HBC 228 of 2017**

**BETWEEN** : **HOUSING AUTHORITY** a body corporate duly constituted under the provisions of the Housing Act and having its Head Office at Valelevu, Suva.

**PLAINTIFF**

**AND** : **JOSEVA SADRATA** also known as **JOSEVATA SADRATA** also known as **JOVESA SADRATA** Self Employed, **VENIANA SADRATA**, unemployed, **VILIAME SADRATA**, Labourer and **MAKELESI SADRATA**, Student and all of Lot 055, DP 6502, Certificate of Title Number 11003, Malawai, Votualevu Road, Nadi.

**DEFENDANTS**

**Counsel** : Mr. R. R Gordon with Mr. P. Chauhan for the Plaintiff  
No Appearance for the Defendants – Defendants absent

**Date of Hearing** : 23<sup>rd</sup> January, 2018

**Date of Ruling** : 24<sup>th</sup> April, 2018

**Ruling by** : Hon. Mr. Justice Mohamed Mackie

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**J U D G M E N T**

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**Introduction:-**

1. On 30<sup>th</sup> October 2017, the Plaintiff filed **Originating Summons** against the within-named Defendants and /or others, whose names and details are said to be unknown to the Plaintiff, seeking following reliefs.
  - (1) **Declarations** that the Defendants and/or others, whose names and details are unknown to the Plaintiff;

- a. Entered into and remained in possession without the consent , authority or licence of the Plaintiff,
  - b. Are occupying, without the consent , authority or licence of the Plaintiff,
  - c. Are trespassers &
  - d. Are illegally and unlawfully occupying , the Plaintiff's piece and parcel of land known and described as Lot 055, in DP 6502, "Malawai or Votualevu" and more fully described and contained in Certificate of Title Number 11003; **and for**
- (2) **Orders** that the Defendants and/or others, whose names and details are unknown to the Plaintiff,
- a. do immediately and forthwith vacate,
  - b. do immediately and forthwith give to the Plaintiff vacant possession of, the piece and parcel of land known and described as Lot 055 depicted in DP 6502, "Malawai or Votualevu" and more fully described and contained in Certificate of Title Number 11003.
  - c. do pay the Plaintiff's costs of instituting, bringing and maintaining this cause of action and proceedings, on an indemnity basis , and
  - d. Such further Orders that the Court deems just and necessary in the circumstances of action.

**A. CAUSE OF ACTION:**

- 2. The plaintiff's cause of action against the within-named Defendants and/ or others, whose names and details are said to be unknown to the Plaintiff, is that they illegally entered into and remained in occupation and/or possession of the piece of Land in dispute without the consent, permission, licence or authority from the Plaintiff and continuing to do so, as trespassers, illegally and unlawfully not being the Tenants or Lessees of the Plaintiff and/or tenants or Lessees of the Plaintiff holding over after termination of tenancy or lease.
- 3. This (Application) is made pursuant and under Order 113 of the High Court Rules, 1988. In the alternative and without prejudice to this application under Order 113 of HCR, the Plaintiff brings this application and/ or proceedings under Section 169 of the Land Transfer Act as well.

B. **PLAINTIFF'S CASE (Evidence by way of Affidavit):-**

4. In support of the Originating Summons, Mr. AMIT ASHISH RAJ, the Manager, Credit Management, being the Authorized Officer of the Plaintiff Housing Authority, filed an Affidavit sworn on 27<sup>th</sup> October, 2017, together with documents marked "A" to "H".
5. Plaintiff's supporting affidavit, among other things, states as follows.

*"4. That the Plaintiff was and is at all material times the proprietor of that piece of land known as 'Malawai or Votualevu' and containing an area of twenty (20) acres and three (3) roods and situated in the District of Nadi in the Island of Viti Levu and being Lot 44 on deposited plan No. 2333 and more fully described and contained in Certificate of Title No. 11003 (hereinafter referred to as the "principal land") Annexed hereto and marked as "B" is a certified true copy of Certificate of Title No. 11003.*

*5. That on or about 14th November 1990, the Plaintiff leased a portion and/or parcel of the principal land to Gabriel Raoma (hereinafter referred to as the "lease")*

*6. That the particulars of the lease included:*

- (i) Lease No. 293269*
- (ii) Term of the Lease: 99 years from 15th July 1985*
- (iii) Area Leased: 464 square meters*
- (iv) Description: Lot 55 on DP 5602, part of Certificate of Title No. 11003*
- (v) Island: Viti Levu*
- (vi) City/Town: Nadi*

*Annexed hereto and marked as "C" is a copy of Lease No. 293269.*

*7. That Gabriel Raoma remained the lessee of the Plaintiff pursuant to Lease No. 293269 until about 22nd May 2014.*

*8. That on or about 22nd May 2014, the Plaintiff, pursuant to Clause 7 of Lease No. 293269, applied to cancel Lease No. 293269 upon re-entry.*

*9. That the application was lodged and registered at the Office of the Registrar of Titles on 22nd May 2014, thereby cancelling Lease No. 293269 and revoking all interest conferred on Gabriel Raoma by the said Lease No. 293269.*

*Annexed hereto and marked as:*

- (i) "D" is a copy of the application to cancel lease upon re-entry by the Lessor; and
- (ii) "E" is a copy of the certified true copy of the cancelled Lease No. 293269 with the words "Cancelled by Re-Entry No. 797997 on 24/5/14 at 1.42pm" and is executed by the Register of Titles.

10. *That at some point in time prior to 22nd May 2014 and unknown to the Plaintiff the Defendants and/ or others, whose names and details are unknown to the Plaintiff, entered into possession and/or occupation of that portion and/or parcel of Land marked Lot 55 on DP 5602, encompassed in Lease No. 293269, which is a part of the main land in Certificate of Title No. 11003.*
11. *That the Defendants and/or others, whose names and details are unknown to the Plaintiff, moved into possession and/or occupation of that portion and/or parcel of the principal land that was encompassed in Lease No. 293269 on Certificate of Title No. 11003 without the knowledge, consent, licence or authority of the Plaintiff.*
12. *That the Defendants and/or others, whose names and details are unknown to the Plaintiff, continue to illegally occupy that portion and/or parcel of the principal land that was encompassed in Lease No. 293269 on Certificate of Title No. 11003.*
13. *That to the best of my knowledge and from information in the Plaintiff's custody and business records, the named Defendants and/or others, whose names and details are unknown to the Plaintiff, are in possession and/or occupation of that portion and/parcel of the principal land that was encompassed in Lease No. 293269 on Certificate of Title No. 11003.*
14. *That the Plaintiff as registered proprietor of Certificate of Title No. 11003 did not, at any time, grant consent, authority or licence to the Defendants and/or others, whose names and details are unknown to the Plaintiff, to occupy and/or to take possession of that portion and/or parcel of the principal land that was encompassed in Lease No. 293269 on Certificate of Title No. 11003.*
15. *That the Defendants and/or others, whose names and details are unknown to the Plaintiff, who are currently occupying and/or in possession of that portion and/or parcel of the principal land that was encompassed in Lease No. 293269 on Certificate of Title No. 11003, were never tenants and/or lessees of the Plaintiff with the consent and authority and licence of the Plaintiff.*
16. *That the Defendants and/or others, whose names and details are unknown to the Plaintiff, who are currently occupying and/or in possession of that portion*

*and/or parcel of the principal land that was encompassed in Lease No. 293269 on Certificate of Title No. 11003 are not tenants and/or lessees of the Plaintiff holding over under and/or from any termination of tenancy or lease with the Plaintiff with the consent and authority and licence of the Plaintiff.*

*17. That the Plaintiff at no time whatsoever received or is receiving any payment(s) from the Defendants and/or others, whose names and details are unknown to the Plaintiff, who are currently occupying and/or in possession of that portion and/or parcel of the principal land that was encompassed in Lease No. 293269 on Certificate of Title No. 11003 in the form of any rental(s).*

*18. That the Defendants and/or others, whose names and details are unknown to the Plaintiff have no legal or lawful right to remain on or be in possession and/or occupation of that portion and/or parcel of the principal land that was encompassed in Lease No. 293269 on Certificate of Title No. 11003”.*

6. Paragraphs 19 to 21 of the affidavit of AMIT ASHISH RAJ are averments with regard to the service of the written notice on the Defendants personally and by affixing of same in the land and premises in question for the Defendants and all other unknown persons to take notice to immediately and forthwith deliver up and give vacant possession of that portion of land that was encompassed in Lease No. 293269 on Certificate of Title No. 11003 and about the consequences on their failure to adhere to the notice. Relevant Notice and the affidavits of respective services are annexed.
7. The Plaintiff, through the deponent, states that it has inspected the premises through one of its Employees namely, MANOJ KUMAR by physically attending the premises and found that the premises in suit is presently occupied by the Defendants and other persons, whose names are unknown to the Plaintiff.
8. By the contents of the above averments of the affidavit in support and that of the documents annexed thereto, the plaintiff moves to establish and has clearly established;
  - 8.1 That the Plaintiff was and is the rightful owner of the main land known as “ Malawai or Votualevu” containing an area of 20 acres and 03 roods situated in the District of Nadi in the Island of Viti Levu depicted as Lot 44 on deposit plan No: 2333 more fully described and contained in Certificate of title No: 11003. (As per the annexure “B”).
  - 8.2 That on or about 14<sup>th</sup> November 1990, the Plaintiff leased a portion and/or parcel of the main land described above to one Gabriel Raoma on lease No:

293269 for 99 years to be effective from 15<sup>th</sup> July 1985, which is in an extent of 464 square meters depicted as Lot-55 on DP 5602 being a part of Certificate of Title No: 11003.(By lease marked as “C”)

8.3 That the said lease No:- 293269, which remained in the name of said Gabriel, on an application of the Plaintiff was cancelled on or about 22<sup>nd</sup> May 2014 revoking all the interest conferred on said Gabriel Raoma and same was duly registered. ( As per annexures “D” & “E”)

8.4 That the Defendants and others, whose names and details are not known to the Plaintiff, at some point in time, also unknown to the Plaintiff, entered into possession and/or occupation of the said portion of land Lot No: 55 in DP No: 5602 in Lease No: 293269 in Certificate of Title No: 11003, and continue to illegally occupy that portion.

8.5 That the Plaintiff did not, at any time, grant consent, authority or licence to the Defendants or others to take possession or occupy the land in suit and they were neither tenants / lessees of the Plaintiff with the consent, authority and licence of the Plaintiff nor an over holding Tenants or lessees after the termination of a Tenancy or lease .

Accordingly, the Plaintiff moves for Declarations, Orders and other connected reliefs as prayed for in the Originating Summons.

**9. The issues that beg adjudication, according to the pleadings, are**

- 9.1 Who has the rightful title to the land in question, and whether such title is a valid one?
- 9.2 Whether there has been unlawful entry and occupation of the part of the Defendants and/or others as alleged by the plaintiff?
- 9.3 And if the answer to issue No: 9.1 is in favor of the Plaintiff, whether the Defendants have any right to deal with the land in terms of building or constructing, or accommodating and/or inviting further persons to reside in the subject matter as Tenants ?
- 9.4 Whether the plaintiff Housing Authority is the only party to legally possess the right to conduct any dealings with the land in question?

**C. DEFENDANT'S POSITION:**

10. Apart from not responding to the initial notice personally served and affixed in the premises in suit, despite the subsequent Originating Summons and the Notice of Appointment to hear the Originating Summons being personally served on the

within-named Defendants and same being affixed in the premises in question the within-named Defendants and/ or any others have not responded by appearing and/or filing the acknowledgment of service and/or any affidavit in opposition to the plaintiff's claim in the Originating summons.

**D. APPLICABLE LAW & RULES:**

11. The Plaintiff brings this Motion primarily under Order 113 summary proceedings for the recovery of land ,whereby it is stated under Rule 1 that;

*'Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being tenants or tenants holding 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 provision of this Order'*

12. Plaintiff also initiates this action concurrently under Section 169 of the Land Transfer Act, which reads as follows.

Sections from 169 to 172 of the Land Transfer Act (LTA) are applicable to summary application for eviction.

**Section 169 states;**

*"The following persons 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:-*

*(a) the last registered proprietor of the land;*

*(b) a lessor with 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 not sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;  
.....;*

*(c) ...*

**Section 170 states;**

*“The summons shall contain a description of the land and shall require the person summoned to appear at the court on a day not earlier than sixteen days after the service of the summons.”*

**Section 171 states;**

*“On the day appointed for the hearing of the summons, if the person summoned does not appear, then upon proof to the satisfaction of the judge of the due service of such summons and upon proof of the title by the proprietor or lessor and, if any consent is necessary, by the production and proof of such consent, the judge may order immediate possession to be given to the plaintiff, which order shall have the effect of and may be enforced as a judgment in Ejectment.*

**Section 172 states;**

*“If the person summoned appears he may show cause why he refuses to give possession of such land and, if he proves to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons with costs against the proprietor, mortgage or lessor or he may make any order and impose any terms he may think fit;*

*Provided that the dismissal of the summons shall not prejudice the right of the plaintiff to take any other proceedings against the person summoned to which he may be otherwise entitled:*

*Provided also that in the case of a lessor against a lessee, if the lessee, before the hearing, pay or tender all rent due and all costs incurred by the lessor, the judge shall dismiss the summons.*

**E. DISCUSSION:**

13. The Plaintiff brings this action under two different provisions of the law namely, Order 113 of the HCR, 1988 and Section 169 of the Land Transfer Act) which facilitate the recovery of possession of a land and premises alleged to be occupied or held illegally and unlawfully by person or persons, without any right, authority or licence to do so. The Plaintiff claims the relief alternatively and under the inherent jurisdiction of this Court.



14. The Plaintiff avers that the Defendants and/ or others are trespassers having entered illegally and continue to remain there unlawfully without any right, title, interest or consent or knowledge of the Plaintiff.

I decide to consider the Application under Order 113 of the High Court Rules 1988.

15. Under the above circumstances, it is necessary to consider the matter under the applicable law and in the light of reported decisions in relation to the principles governing the summary application for eviction under Order 113 of the High Court Rules, 1988.
16. Out of the line of authorities that govern the subject in hand, I propose to set out hereunder few important citations, which I consider to be the guidance.
17. Order 113 of the High Court Rules, 1988 provides a summary procedure for possession of Land as observed in paragraph 11 above.
18. Justice Pathik in ***"Baiju v Kumar (1999) FJHC 20; HBC 298 J.98***, succinctly stated the scope of the order as follows;

*"The question for (the) Courts determination is whether the plaintiff is entitled to possession under this Order. To decide this Court has to consider the scope of the Order. This aspect is covered in detail in the Supreme Court Practice, 1993 Vol 1, O.113/1-8/1 at page 1602 and I state hereunder the relevant portions in this regard .....*"

*"This Order does not provide a new remedy, but rather a new procedure for the recovery of possession of land which is in wrongful occupation by trespassers".*

19. This Order is narrowly confined to the particular remedy stated in r.1. It is also to be noted, as the White Book says at p.1603:

*"this Order would normally apply only in virtually uncontested cases or in clear cases where there is no issue or question to try i.e. where there is no reasonable doubt as to the claim of the plaintiff to recover possession of the land or as to wrongful occupation on the land without licence or consent and without any right, title or interest thereto".*

20. Order 113 is effectively applied with regard to eviction of squatters or trespassers. In *Department of Environment v James and others* [1972] 3 All E.R. 629 squatters and trespassers are defined as:

*“He is one who, without any colour of right, enters on an unoccupied house or land, intending to stay there as long as he can.....”*

**Goulding J. said that:**

*“.....where the plaintiff has proved his right to possession, and that the defendant is the trespasser, the Court is bound to grant an immediate order for possession .....”*

21. Another definition of “trespasser” is as set out in Clerk & Lindsell on Torts (15th Ed. 1982) page 631:

*“A trespasser is a person who has neither right nor permission to enter on premises”.*

22. Also as was said by Lord Morris of-Borth-Y-Gest in **British Railways Board v. Herrington** [1972] A.C. 877 at 904:

*“The term ‘trespasser’ is a comprehensive word; it covers the wicked and the innocent; the burglar, the arrogant invader of another’s land, the walker blindly unaware that he is stepping where he has no right to walk, or the wandering child – all may be dubbed as trespassers.”*

23. I refer to Sir Frederick Pollock’s statement in the case of **Browne v. Dawson (1840)** 12 Ad. & El 624 where his Lordship said;

*“..... A trespasser may in any case be turned off land before he has gained possession, and he does not gain possession until there has been something like acquiescence in the physical fact of his occupation on the part of the rightful owner.....”*

24. The supporting affidavit dated 27th October, 2017 sworn on behalf of the Plaintiff Housing Authority by its Manager, Credit Management, has convinced this Court by the uncontested and un-contradicted evidence adduced therein that the Plaintiff was and is the rightful owner of the larger extent of land known as ‘Malawai or Votualevu’ containing an area of 20 acres and # roods situated in the District of

Nadi in the Island of Viti Levu and being Lot No. 44 on deposit plan No.2333 more fully described and contained in Certificate of Title No:- 11003.

25. It has also been proved through the above evidence and supporting documents that a portion of the said main land was leased by the Plaintiff to one Gabriel Raoma on or about 14<sup>th</sup> November 1990 by Lease No:- 293269 for a period of 99 years with effective from 15<sup>th</sup> July 1985 , which contained an area of 464 Square Meters being Lot No: 55 on DP 5602 and part of Certificate of Title No:11003 and thereafter same lease was duly cancelled by the plaintiff on or about 22<sup>nd</sup> May 2014 by following the process and revoked all interest conferred of the said Gabriel Raoma.
26. Apart from the above, the Plaintiff also has satisfied this Court by the uncontested evidence, that at some point in time prior to 22<sup>nd</sup> May 2014, without the knowledge of the Plaintiff the within named Defendants and/ or others , whose names and particulars are not known to the Plaintiff , entered into the land in Lease No: 293269 without the consent, licence or authority of the Plaintiff and continue to occupy it illegally and the Plaintiff had or has not given its consent , authority or licence at any point of time to take possession, occupy or continue to do so and they were or are not Tenants and / or lessees of the Plaintiff .
27. The question for Court's determination is whether the Plaintiff is entitled to possession of the land under Order 113 of the High Court Rules. To decide this, the Court has to consider the 'scope' of the Order 113.

#### **What is the scope of Order 113 of the High Court Rules, 1988?**

Scope of Order 113 of the High Court Rules is discussed in The Supreme Court Practice, 1993 Volume 1, O,113/1 – 8/1 at page 1602. The relevant paragraph is as follows:

*“The application of this Order is narrowly confined to the particular circumstances described in r.1. i.e. to the claim for possession of land which is occupied solely by a person or persons who entered into or remain in occupation without the licence or consent of the person in possession or of any predecessor of his. The exceptional machinery of this Order is plainly intended to remedy an exceptional mischief of a totally different dimension from that which can be remedied by a claim for the recovery of land by the ordinary procedure by writ followed by judgment in default or under O.14. The Order applies where the occupier has entered into occupation without licence or consent; and this Order also applies to a person who has entered into possession of land*

*with a licence but has remained in occupation without a licence, except perhaps where there has been the grant of a licence for a substantial period and the licensee holds over after the determination of the licence (Bristol Corp. v. Persons Unknown) [1974] 1 W.L.R. 365; [1974] 1 All E.R. 593.”*

28. **The Court in “Ralinalala v Kaicola” (2015) FJHC 66 said;**

**“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”.*

*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 licence or consent or that of any predecessor in title.*

*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 licence 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.*

*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.”*

29 (i) In *Moto v Nakauta* [2013] FJHC 30; HBC 262.2012 (11 February 2013)” the

Plaintiff was granted immediate possession in terms of their originating summons as per Order 113 and the Defendants ordered costs of the application, whereby it was stated that;

*‘to evict an occupant what is important is not whether the Plaintiff was actually in possession or had any exclusive possession but Plaintiff should have a better title than Defendants.’*

The case made further reference to “*Danford v McAnulty* (1883) 8 App Case 456” at 462 where Lord Blackburn had proclaimed as follows:

*‘... in ejectment, where a person was in possession those who sought to turn him out were to recover upon the strength of their own title; and consequently possession was at law a good defence against any one, and those who sought to turn the man in possession out must show a superior legal title to his.’*

ii) In “*Housing Authority v Muniappa* [1988] FJSC 177; Civil Action 25 of 1977 (7 April 1977)”, it was held that the plaintiff, Housing Authority, who held a registered lease so that it may be characterised as the ‘last registered proprietor’. The Housing Authority in this case has also established a prima facie right to possession.

iii) In the Supreme Court of Fiji case of “*Morris Hedstrom v Liaquat Ali* Action No. 153 of 1987, at paragraph 2 it was clearly stated that:

*“Under Section 172 the person summonsed may show cause why he refused to give possession of the land and if he proves to the satisfaction of the Judge a right to possession or can establish an arguable defence the application will be dismissed with costs in his favour. The Defendants must show an affidavit evidence some right to possession, which would preclude the granting of an order*

*for possession under Section 169 procedure. That is not to say that final or incontrovertible proof of a right to remain in possession must be adduced. What is required is that some tangible evidence establishing a right or supporting an arguable case for such right, must be adduced.”*

30. When reduced to its essentials, the law in relation to Order 113, as I understand from the aforesaid is this;

- ❖ A person who has a legal right to claim the possession of a land could institute an action under Order 113 against a person who has entered into or remains in occupation without his licence or consent or that of any predecessor in title.
- ❖ This Order also applies to a person who has entered into possession of land with a licence but has remained in occupation without a licence.
- ❖ To evict an occupant, the applicant must show better title than the respondent.

31. **Applying these principles to the case before me, what do we find?**

- a. The Plaintiff is the proprietor (lessee) of the said land. Therefore, I am satisfied that the Plaintiff has a legal right to claim the possession of the land, pursuant to Order 113 of the High Court Rules, 1988.
- b. Now the onus will shift towards the Defendants and /or others not known to the Plaintiff, to satisfy that they have licence or consent of the Plaintiff, being the owner of the Land in question, to occupy and continue to occupy the land in suit.
- c. The Defendants and/or others, who are said to be not known to the plaintiff, apart from not responding to the initial notice of the Plaintiff's Solicitors, have not appeared in this Court in person or through their Solicitors, despite the **Originating Summons** and the **Notice of the date of fixing the Originating Summons for hearing** being served personally and by substituted service. None of them took trouble to file affidavits in opposition disputing the Plaintiff's claim or showed cause against the Summons.

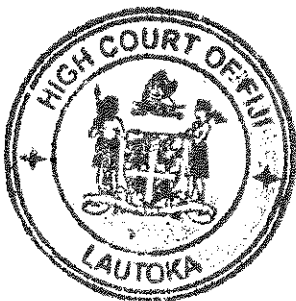
## **F. CONCLUSION**

- a. The Plaintiff Housing Authority is the lawful owner of the Land and premises in suit.

- b. I conclude that the Defendants and /or all the others, whose names are not known to the Plaintiff, have entered into the possession of the land in question as alleged by the plaintiff and remains in occupation thereof without the knowledge, consent, licence or authority, acquiescence of the Plaintiff Housing Authority.
- c. Therefore, the Defendants and /or all those in occupation, possession of Lot No: 55 on DP 5602, containing 464 square Meters in extent, which was encompassed in Lease No:- 293269, being part of Lot 44 depicted on Deposit Plan No: 2333 described in Certificate of Title No: 11003, known and referred to as “Malawai or Votualevu “situated in the District of Nadi in the Island of Viti Levu, are trespassers, and illegal occupants and have no right to possession or occupation thereof.

**G. ORDERS:**

- A. The reliefs claimed in the Plaintiff’s Originating Summons dated 30<sup>th</sup> October 2017 are hereby granted except for cost on indemnity basis.
- B. Judgment entered in favor of the Plaintiff as per the other prayers.
- C. The within named Defendants and / or all the others, whose names are not known to the Plaintiff, shall deliver unto the Plaintiff the immediate vacant possession of the land depicted as Lot No: 55 on DP 5602, containing in the extent of 464 square Meters.
- D. This Judgment shall be duly served on the within -named Defendants personally and/or by way of substituted service (by affixing on a conspicuous part of the Land and premises in suit) forthwith and reported back to Court accordingly.
- E. The Defendants and/ or all others therein shall pay unto the Plaintiff jointly or severally a summarily assessed costs of \$2,500.00 within 14 days from the date of the service hereof.



**At Lautoka  
24<sup>th</sup> April, 2018**

.....  
A.M.Mohammed Mackie

**Judge**