

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

CIVIL ACTION NO.: HBC 269 of 2017

BETWEEN : **FA BALEINUKUALOFA KOROVAKATURAGA**
PLAINTIFF

AND : **ROMANU TUSURUMI**
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr A Chand [Legal Aid Commission]
DEFENDANT : Mr Tuifagalele [Tuifagalele Legal]
RULING OF : Acting Master Ms Vandhana Lal
DELIVERED ON : **07 March 2019**

JUDGEMENT

[Order 113: Summary Proceedings For Possession Of Land]

1. The Plaintiff caused an originating summons to be filed via his solicitors pursuant to Order 113 rule 1 of the High Court Rules.

He seeks orders:

"That the Respondent, his relatives and occupants give up immediate vacant possession to the Applicant of the premises and the land located on and described in Certificate Title Number 12489 described as Lot No. 5 Naganivatu (part of) comprising of 6 acres, 1 rod and 35 perches otherwise more commonly known referred to as Lot 5 Naganivatu Place, Wailoku".

There is an Affidavit sworn by the Plaintiff and filed in support of the application.

2. Said application is opposed by the Defendant who has filed his Affidavit on 6 March 2018.

A reply was filed by the Plaintiff on 12 March 2018.

3. According to the Plaintiff she is the registered proprietor of the land described in Certificate of Title number 12489 at Lot 5 Naganivatu (part of) comprising of 6 acres, 1

rod and 35 perches otherwise more commonly known referred to as Lot 5 Naganivatu Place, Wailoku.

The subject land has matured Mahogany forests and a small lean-to-house which was the residence of the caretaker of the property under the previous owner.

The land was previously registered under her late husband's name and was transferred to her after his death.

She has on numerous occasions spoken to the Respondent of her desire to move onto the property and develop the same for her children.

On 17 November 2014 an eviction notice dated 13 November 2014 was served on the Respondent who refused to sign the same and/or acknowledge the same.

On 19 January 2015 she engaged a logging company to log down some Mahogany trees however the Respondent obstructed, stopped and threatened them from the property claiming the property belonged to him.

She had the matter reported.

The Respondent demanded \$900, 000 to vacate the property.

4. According to the Defendant his late father began living on the property on or about 1955. He was then 17 years of age.

Him and his siblings were living on the property and have lived on the property for 60 years.

He was advised by his father, that his father and one Mikaele Naqila had seen the late Ratu Penaia Ganilau to buy the same property from one Aliso Baxter. This request was accepted however Cakaudrove Bua Macuata Holdings Limited purchased the property.

His family was not aware of this transaction.

They continued to reside on the property and plant mahogany.

The Certificate of Title was originally issued on 11 January 1968 to Gurmel and Gurnam Singh. However the Defendant and his family were already on the property.

Cakaudrove Bua Macuata Holding Limited transferred property to Ratu Tomasi Korovakaturaga on 1 March 1995. Ratu Tomasi never lived or resided on the property at any time whatsoever.

He (Defendant) on 23 December 2010 made an application for vesting order which was registered on 19 January 2011 bearing registration number 740521.

According to the Defendant the transfer of property to Ratu Tomasi is fraud as Ratu Tomasi at the time of the transfer was a General Manager at Cakaudrove Bua Macuata Holding Limited. Stan Ritova was not a Managing Director and should not have signed the transfer document.

He wants there to be an agreement that the sale of proceeds of the Mahogany be distributed as they had planted the Mahogany not by virtue as a caretaker but after requesting later Ratu Penaia Ganilau to assist his father in purchasing the property.

He has claim for adverse possession and compensation for the development on the land and 50% share from the proceed of sale of Mahogany.

5. Order 113 rule 1 allows a person claiming possession of land which he/she alleges is occupied solely by a person's (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his or her licence or consent or that of any predecessor in title of his or her, the proceeding maybe brought by originating summons in accordance with the provision of this order.
6. The Plaintiff became the last registered owner of the subject land on 15 April 2008.
7. The Defendant claims to be on the property for 60 years even before the title was issued.

On 23 December 2010 he had made an application for vesting order which was registered on 19 January 2011 (registration number 740521).

8. The copy title annexed to the Affidavit in Support is not legible. Counsels when annexing document should ensure the documents are legible.
9. The Defendant was on the property when the Plaintiff's husband was a registered owner from 1 March 1995. They have been cultivating mahogany on the land.

I do not find the Defendants to be mere trespasser.

10. I do not find that the proceeding via originating summons is appropriate as issues between the parties cannot be resolved on affidavit evidence.

Hence I convert the summons into a Writ action. The Plaintiff is to file and serve its Statement of Claim in 14 days from today.

The Defendant is to file/serve his Statement of Defence and Counterclaim [if any] in 14 days thereafter. Plaintiff to reply in 07 days.



[Handwritten Signature]
 Vandhana Lal [Ms]
 Acting Master
 At Suva.