IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 13 of 2017

BETWEEN	:	**AISAKE RAVUTUBANANITU** of Tagitaginatua, Tavua, Businessman.
		Plaintiff
AND	:	**BASKARAN NAIR** f/n Archudan Nair of Koronisalusalu, Tavua, Driver.
		Defendant
Before	:	Master U.L. Mohamed Azhar
Counsels	:	Mr. N. Nawaikula for the plaintiff Mr. S. K. Ram for the Defendant
Date of Judgment	:	27th June 2019

JUDGMENT

01. The plaintiff filed the summons for ejectment against the defendant, pursuant to Order 113 of the High Court Rules and inherent jurisdiction of this court. The plaintiff sought an order that, the defendant to deliver vacant possession of all that piece of property Agreement to Lease No. 64646 (part of) TLTB No.4/4/1953 more particularly described as Koronisalusalu Lot 2, in the Tikina of Tavua in the Province of Ba having an area of approximately 1664m^2 more or less and owned by Mataqali Navusabalevu. The summons is supported by an affidavit sworn by the plaintiff and contains three annexures marked as **"AR 1"** to **"ARP 3"**. The **"AR 1"** is the copy of the Agreement to Lease signed by and between Native Land Trust Board and the plaintiff on 04.11.1999. The **"AR 2"** is the copy of the notice sent by the solicitor for the plaintiff to the defendant requesting the vacant possession of the subject property. The **"AR 3"** is the copy of the letter sent by the Native Land Trust Board on 08.05.2009 to the defendant to vacate the subject land within 7 days.

02. The defendant failed to appear on the summons returnable day, though the summons was duly served and the affidavit of service was filed. Therefore, on the application of the counsel for the plaintiff, the then Master granted orders in terms of the summons in the absence of the defendant. Thereafter, the defendant filed a summons before a judge seeking several orders including an order to stay of the order made in his absence. The

judge granted a stay against the execution of the ex parte order pending the determination of setting aside application. Thereafter, the said ex parte order was set aside by consent and subject to an agreed cost with the leave to the defendant to file his affidavit in opposition. The affidavit in opposition sworn by the defendant contains seven annexures marked as **"BN 1"** to **"BN 7"**. The plaintiff then filed his affidavit in reply and further annexed two documents marked as **"AR1"** and **"AR2"**. The **"AR 1"** is the locality diagram and **"AR 2"** is the same letter of NLTB which he already annexed with his supporting affidavit marking as **"AR 3"**.

03. At the hearing of the summons, both counsels tendered their written submissions and relied on their respective affidavits. They further moved to file reply submissions and the court granted leave for the same. Thereafter both counsels filed their respective submissions in reply. The counsel for the defendant took up three preliminary issues. The first is that, the summons is defective as the plaintiff used the Format of Summons generally taken out under the section 169 of the Land Transfer Act, whereas the instant summons is taken out under the Order 113 of the High Court Rules. The second is that the supporting affidavit of the plaintiff does not show before whom it was sworn. The third is that, the land area purportedly given to the plaintiff in that Agreement to Lease is not defined through a survey. Now I turn to discuss the first two preliminary issues and the third will be discussed when considering right of the defendant to possess subject land.

04. The Order 113 of the High Court Rules allows the person claims possession of land which he alleges is occupied by a person or persons who entered into or remained in occupation without license. The Order 113 rule 2 further provides that, the summons for the purpose this Order shall be in the Form No. 3 in Appendix [1]. The said Form 3 is the General Form of originating summons. The counsel for the defendant submitted that, the plaintiff used the summons generally used in applications under section 169 of the Land Transfer Act. The reason for his argument is the wording used in this summons which states that, 'the defendant to show cause why an order for ejectment should not be made against him'. This is the general wording of the summons filed for the purpose of the applications under the said section 169 of the Land Transfer Act. Order 113 is akin to summary procedure under section 169 of the Land Transfer Act Cap. 131 as Justice Pathik said in **Baiju v Kumar** [1999] FJHC 20; Hbc0298j.98s (31 March 1999). Since the order, that is made under this Order 113 too, is the same order as the one that is made under section 169 of the Land Transfer Act, I do not see any harm in using those wording. In any event, this irregularity claimed by the counsel for the defendant, is not something that can cause substantial injustice to the defendant to be a nullifying factor. The **Privy Council** in **Austin v. Hart** (1983) 2 AC. 640 held at page 647 that:

> *"...The modern approach is to treat an irregularity as a nullifying factor only if it causes substantial injustice: see Marsh v. Marsh (1945) A.C. 271, 284..."* (Emphasis added).

05. The second issue raised by the counsel for the defendant is in relation to the supporting affidavit of the plaintiff. Though the counsel suggests that the said affidavit does not show before whom it was executed, the solicitor and the commissioner for oaths who administered the oaths confirmed it was before him and signed. Thus, I consider this wording is sufficient to treat that affidavit to be compliant to Order 41 rule 1. In any

event, Order 41 rule 4 gives discretion to the court to allow any such affidavit notwithstanding any irregularity in the Form. In **Chandrika Prasad v. Republic of Fiji & Attorney General** (No. 6) [2001] HBC 0217/00L 17 January 2001 His Lordship the former Chief Justice Gates (as His Lordship then was) allowed 3 defective affidavits to be used in evidence notwithstanding the non-compliance with the mandatory rule of O.41, r.9 of the High Court's Rules. In that case, the affidavits were devoid of the indorsement required under the said O.41, r.9. In **Singh v Liku** [2009] FJHC 365; HBC312.2009 (9 November 2009), the President Court of Appeal Justice Calanchini (as he then was) admitted an affidavit appeared to be unsworn although signed and without jurat details. It was in an application under section 169 of the Land Transfer Act. For the above reasons I overrule first two preliminary objections raised by the counsel for the defendant.

06. The purpose of the Order 113 of the High Court Rules, in its plain meaning is to provide a summary and speedy procedure for the recovery of possession of any land when it is in wrongful occupation by a person who has no consent or licence either from the applicant/plaintiff or his predecessor in title. The introduction of this rule in United Kingdom was prompted by the decision of **Manchester Corp v Connolly** [1970] 1 All ER 961, [1970] Ch. D 420 where it was held in appeal that the court had no power to make an interlocutory order for possession. This was well explained in **Dutton v Manchester Airport** [1999] All ER 675 at 679 as follows:

> *"**Order 113** was introduced in 1970 (by the Rules of the Supreme Court (Amendment No 2) 1970, SI 1970/944), shortly after the decision of this court in Manchester Corp v Connolly [1970] 1 All ER 961, [1970] Ch 420. It had been held in that appeal that the court had no power to make an interlocutory order for possession. **Order 113** provides a summary procedure by which a person entitled to possession of land can obtain a final order for possession against those who have entered into or remained in occupation without any claim of right--that is to say, against trespassers. The order does not extend or restrict the jurisdiction of the court. In University of Essex v Djemal [1980] 2 All ER 742 at 744, [1980] 1 WLR 1301 at 1304 Buckley LJ explained the position in these terms:*
>
> *'I think the order is in fact an order which deals with procedural matters; in my judgment it does not affect in any way the extent or nature of the jurisdiction of the court where the remedy that is sought is a remedy by way of an order for possession. The jurisdiction in question is a jurisdiction directed to protecting the right of the owner of property to the possession of the whole of his property, uninterfered with by unauthorised adverse possession.'*

07. The Order 113 rule 1 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 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".

08. The scope of this rule 1 was explained by Justice Pathik in **Baiju v Kumar** (supra). His Lordship cited the passage from the **White Book** when explaining the scope and stated that:

> *"The question for Court's determination is whether the plaintiff is entitled to possession under this Order. To decide this, the 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."*** (Emphasis mine)
>
> *As to the application of this Order it is further stated thus:*
>
> > ***"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."***
>
> *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."*** (Emphasis is original)

09. It is apparent from the decision in **Dutton v Manchester Airport** (supra) and the commentary in the **White Book** cited above that, this is the procedure to recover the possession of a land occupied by a trespasser or a squatter.

10. KENNEDY LJ., in **Dutton v Manchester Airport** (supra) said at page 689 that:

> *The working of RSC Ord 113 and the relevant facts can be found in the judgment of Chadwick LJ. In Wiltshire CC v Frazer (1983) 47 P & CR 69 at 76 Stephenson LJ said that for a party to avail himself of the order he must bring himself within its words. If he does so the court has no discretion to refuse him possession. Stephenson LJ (at 77) went on to consider what the words of the rule require. They require:*
>
> > *'(1) Of the Plaintiff, that he should have a right to possession of the land in question and claim possession of land which he alleges to be occupied solely by the defendant. (2) that the defendant, whom he seeks to evict from his land [the land], should he persons who have entered into or have remained in occupation of it without his license or consent [or that of any predecessor in title of his].'*

11. The above decisions and the commentary on this Order 113 makes it manifestly clear that, the courts must be satisfied that there is no reasonable doubt on, (a) the claim of the plaintiff and (b) on the wrongful occupation of the defendant. It follows that, it is the duty of the plaintiff, who invokes the jurisdiction of this court under this Order, to firstly satisfy the court that, it is virtually a clear case where there is no doubt as to his claim to recover the possession of the land. In that process, he must be able to show to the court of his right to claim the possession of the land and then to satisfy that the person or persons (not being a tenant or tenants holding over after the termination of the tenancy) entered into the land or remained in occupation without his licence or consent or that of any predecessor in title. Once the plaintiff satisfies these two factors, he or she shall be entitled for an order against the defendant. Then, it is incumbent on the defendant, if he wishes to remain in possession, to satisfy the court that he had consent either from the plaintiff or his predecessor in title. If the defendant can show such consent, then the application of the plaintiff ought to be dismissed.

12. The plaintiff in paragraph 4 of his affidavit avers that, he is the registered proprietor of the land described in the summons and annexed the document marked as **"AR 1"** in support of his averment. On the other hand, the defendant in paragraph 6 of his affidavit denies the above averment. The counsel for the defendant also submitted that, the document **"AR 1"** is the agreement to lease and it is neither registered with the Registrar of Title, nor with the Registrar of Deeds and therefore he further submitted that, the plaintiff cannot be considered as the registered proprietor.

13. The term 'registered proprietor' is associated with the registration of land after introduction of the Land Transfer Act. Reading of section 2 together with section 5 of the Land Transfer Act reveals that, the term 'registered proprietor' means the registered proprietor of land subject to the provisions of that Act or of any estate or interest therein and it includes any mortgage thereon. The agreement of lease marked as **"AR1"** is, as submitted by the counsel for the defendant, neither registered under the provisions of the

Land Transfer Act, nor under the Registration Act for the plaintiff to be qualified as the 'registered proprietor', even though the plaintiff has an interest conferred by virtue of the said Agreement to Lease on the subject land. At this point, I agree with the submission of the defendant's counsel that, the plaintiff is not a registered proprietor of the subject land. However, a plaintiff under Order 113 of the High Court should not necessarily be a registered proprietor. Being a 'registered proprietor' is the requirement under section 169 (a) to summon any person who is in occupation of such land or property, but under the Order 113, a plaintiff should satisfy his or her right to claim the possession of the subject property. Thus, a plaintiff could be a licensee too, who is entitled for possession. Likewise, an estate owner also may seek an order whether he is in possession or not. In **Dutton v Manchester Airport** (supra) Laws LJ, held at page 689 that:

> *'In my judgment the true principle is that a licensee not in occupation may claim possession against a trespasser if that is a necessary remedy to vindicate and give effect to such rights of occupation as by contract with his licensor he enjoys. This is the same principle as allows a licensee who is in de facto possession to evict a trespasser. There is no respectable distinction, in law or logic, between the two situations. An estate owner may seek an order whether he is in possession or not. So, in my judgment, may a licensee, if other things are equal. In both cases, the plaintiff's remedy is strictly limited to what is required to make good his legal right. The principle applies although the licensee has no right to exclude the licensor himself. Elementarily he cannot exclude any occupier who, by contract or estate, has a claim to possession equal or superior to his own. Obviously, however, that will not avail a bare trespasser'*

14. According to the above dictum, a licensee who has right to possession can bring an action under this Order, even though he is in de facto possession of the subject property. However, he cannot exclude a person who has a claim to possession equal or superior to his own, because such person cannot be considered as 'trespasser'. In the case before me, the plaintiff is the licensee of the iTLTB as per the Agreement to Lease **"AR 1"** which is not denied by the defendant. However, the defendant raised a preliminary issue as mentioned above that, the land area of the plaintiff is not confirmed by a survey. The special condition B, 1 (i) states as follows:

> *1. If within three months of being required so to do by notice in writing served on him by the lessor he fails to –*
>
> *(i) engage the services of a surveyor registered under the Surveyors Act to carry out a survey of the land agreed to be leased and to prepare a survey plan in accordance with the regulations made under that Act;*
> *(ii) ....*
> *(iii) ....*
>
> *then this agreement shall cease to have effect, whereupon the provisions of Regulation 12 (4) shall apply.*

15. Though this Agreement to Lease was signed on 04.11.1999 almost twenty years ago, there is nothing before the court that the land was surveyed and the area agreed to be leased was demarcated. In fact the plaintiff too admitted that, the land was not surveyed. Though the above condition provides that the agreement shall cease if not surveyed, the plaintiff cannot be blamed for this, as there was no requisition for survey by the NLTB. However, the fact that the land was not surveyed remains undisputed. Furthermore, the plaintiff's annexure **"AR3"** a letter sent by the NLTB to the defendant also confirms that the plaintiff is the lessee of NLTB and it indicates that, the Agreement to Lease is still effective. It shows that, the plaintiff has the right to possess the un-surveyed portion of land. Therefore, I now turn to discuss whether the defendant has any right to possess the same land which is equal or superior to that of the plaintiff as expounded in **Dutton v Manchester Airport** (supra).

16. The defendant traces his right to possess the same land back to his grandfather and states that, he has been in occupation of the subject property for 59 years. He further states in his affidavit that, he built the current dwelling in year 1987 and prior to this, had been living with his father. His father then sold the said land to one Ram Padarath with an agreement that one acre of land would belong to his five children. The defendant attached a copy of the said agreement marked as **"BN1"**. The **"BN 1"** is the transfer document by the father of the defendant to Ram Padarath of the same land which was a Native Lease. According to **"BN1"** the father of the defendant agreed to transfer land called 'Koronisalusalu' containing 12 acres and 2 roods to Ram Padarath, except 1 acre where he had been residing in his dwelling. The defendant claims that, he has been in occupation of that 1 acre excluded by his father when he transferred the main land. It must be noted here that, an un-surveyed land that was agreed to be leased to the plaintiff as per his agreement to lease annexed as **"AR1"** also forms part of that main land owned by the father of the defendant. Both the plaintiff and the defendant claim an un-surveyed part of the main land owned by the father of the defendant sometime back, though their source of claim is different. The plaintiff claims based on the agreement to lease and the defendant claim based on the agreement of his father.

17. The defendant admits receiving the letter from NLTB, marked as **"AR 3"** by the plaintiff and annexed with his affidavit. By the said letter, NLTB requested the defendant to vacate the land he has been occupying. However, he states that, the Mataqali which owns the said main land called 'Koronisalusalu' replied to NLTB immediately on 12.05.2009 which was four days after the said letter that was dated 08.05.2009. The defendant attached the said letter sent by the Mataqali marked as **"BN 4"** and further stated that, there was no issue from iTLTB and nor from the plaintiff after the said reply of the Mataqali. The annexure **"BN 4"** is signed by the Turaga Ni Mataqali – Manasa Naiceru. It directly speaks about the issues in relation to the subject property of this matter. Whilst it states that, the leasehold of the defendant expired longtime ago, it further raises serious concerns regarding the Agreement to Lease issued the plaintiff. The plaintiff did not deny the said letter sent Turaga Ni Mataqali. The body of the said letter is as follows:

> ***Ref: Notice to Vacate – 4/4/1953 Mr. Baskaran Nair f/n Achudan Nair: Native Land Known Koronisalusalu Lot 2 (attached)***

I with the senior members of the mataqali have been approached to intervene for assistance by Mr. Baskaran Nair as referenced above.
Mr. Baskaran and family are well known and have been friends with us for a very very long time.
We have had discussion with them and agreed that on compassionate ground we allowed them to stay since their leasehold expired a few years ago until such time that they have secured a place for relocation or when the Housing Authority development earmarked for Tavua is completed.
Also the said land is not on leasehold purported to belong to Ravutubananitu and it's located on land known by the same name but on 4/4/701 which belongs to the Trustees of Mataqali Navusabalavu and not Ravutubananitu.
The whole parcel of land including the ones claimed by Ravutubananitu to be under his name is currently under dispute as we believed Ravutubananitu obtained the lease under dubious means. This will be reported to FICAC and will be under investigation.
On this note we are also requesting your good office to consult us on any land dealings Ravutubananitu has with you as he is the main source of problems in our mataqali. This has been a topic of our very recent meeting with senior FICAC officials from Suva and Lautoka and a major investigation will be underway soon on all Ravutubananitu's dealing using the mataqali's name.
We ask for your consideration in allowing Mr. Nair to stay for a while until such time we find it appropriate for them to move on.

18. The plaintiff heavily relies on **"AR3"**, the letter sent by NLTB to the defendant. It must be noted here that, though the NLTB issued the said letter in 2009 requesting the defendant to vacate the land he has been occupying, the same NLTB has received the payment for new lease in year 2012 from the defendant and his other brother as established by the annexure **"BN 6"** in the affidavit of the defendant. Therefore, the defendant cannot be considered as a trespasser or a squatter.

19. The defendant further averred in his affidavit that, the plaintiff had been trying to evict him and his other brothers from the land in past and he filed an action against them in the Magistrate's Court in Ba. Annexing the sealed order (**BN 5**) in that case, the defendant declared in his affidavit that, the court struck out the said action for non-appearance of the plaintiff. The annexure **"BN 5"** is self-explanatory to the contention of the defendant.

20. It is the contention of the defendant that, he and his brothers were to get separate lease after the subdivision by Ram Padarath as per the agreement between his (defendant's) father and Ram Padarath. As a result, defendant's brother already obtained his lease and the defendant and his other brothers are waiting for their lease having made the respective payments. The defendant tendered the copies of the receipts and copy of the agreement to lease of his brother marking as **"BN6"** and **"BN7"**. The defendant further declared in his affidavit that, the officers of iTLTB came to his premises and measured the areas

occupied by him and his brothers for the purpose of separate lease and they were never told by those officers that they (defendant and his brothers) are occupying plaintiff's land. It is also evident from **"BN"** that the defendant's application for lease is being processed. The main point the defendant wishes to make by the said averment is that the plaintiff has mistaken the occupation of the defendant.

21. What transpires from the claims of both the plaintiffs and the defendant is that, the plaintiff claims his right to possess an area of 1664 m^2 or little more or less of the land called Koronisalusalu as per the annexure **"AR1"** issued on 04.11.1999 and admittedly it has not been surveyed so far. On the other hand, the claim of the defendant derives from his father who owned the main land Koronisalusalu which contained an area of 12 acres and 2 roods. This main land was a Native Lease belonged to Archudan Nair – the father of the defendant and then it was transferred to one Ram Padarath with the condition that, the latter to subdivide the main land and arrange a separate lease for the defendant and his brother for the areas they have been occupying. One brother of the defendant obtained an agreement to lease which is marked as **"BN7"** and annexed with the affidavit of the defendant. That **"BN 7"** is the agreement for lease same as the agreement to lease of the plaintiff marked as **"AR1".** The defendant too waiting for the same agreement having made the payment in year on 26.04.2012 (see: annexure **"BN6"**) long before the plaintiff started this proceeding in 2017 against the defendant. Thus the right of the defendant to possess the un-surveyed part of main land which has been occupied by him derives from the right of his father who had the Native Lease for main land and then transferred it to Ram Padarath excluding one acre. Accordingly, the defendant too has the right to that portion of main land, of course un-surveyed, and that right is equal to that of the plaintiff.

22. It is the settled law that, the person who seeks an ejectment must have a superior legal title. In **Danford v McAnulty** (1883) 8 A.C 456 at 462 Lord Blackburn said:

> *'...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.'*

23. Further, what is important to be noted here is the special condition B, 2 of the agreement to lease (**"AR1"**) of the plaintiff. It said condition reads as follows:

> 2. *In the event of it being shown by survey that the land agreed to be leased forms part of any land the subject of any existing freehold or leasehold title, this agreement to lease shall be deemed to exclude such area.* (Emphasis added).

24. According to the above condition, the agreement to lease of the plaintiff shall exclude other lease when surveyed. The defendant and his brothers too have been living there for longtime, and one brother of the defendant obtained same agreement for lease for part of same land whilst the defendant is waiting for the same for the area he has been occupying. However, none of their land is duly surveyed. At this point, the plaintiff faces a risk of losing some portion if his land is duly surveyed as per the above condition 2. Therefore, it appears that, the plaintiff started this proceeding invoking the jurisdiction of

this court under Order 113 against the defendant, to eject him in order to avoid such risk, before he goes for survey. This attempt of the plaintiff should not be allowed, i.e. the plaintiff should not be allowed to eject all neighboring occupants when the area of land agreed to be leased to him is un-surveyed. The plaintiff must ascertain the area of land agreed to be leased to him by an authorized survey, before seeking an order for ejectment. In the absence of any such survey there is a reasonable doubt as the extent of the land for which the plaintiff has right to possess according to his annexure **"AR1"** since the defendant derives his right to possess part of the main land from his father who owned the main land sometime back.

25. In addition, there are several complicated issues in this matter. Firstly the extent of the land agreed to be leased to the plaintiff yet to be surveyed and determined. Secondly, the right of the defendant to occupy the part of the same land, which he claims from his father who owned the Native Lease for the main land to be determined. Thirdly, the defendant and his other brother too paid the fee for separate leases for the areas they have been occupying. Fourthly, there is another agreement for lease issued to one of the brother of the defendant which is marked as **"BN7"** for part of the same main land. That agreement for lease also has same condition in relation to survey like the agreement of the plaintiff. Therefore, his (brother of the defendant) land too should be surveyed as it also forms part of the main land called 'Koronisalusalu'. Thus, all the rights of the plaintiff, defendant and his brothers to certain portion of the land which they claim to form part of main land called 'Koronisalusalu' to be determined through a proper survey with the active involvement of iTLTB.

26. According to the above discussion, the plaintiff obtained the right of possession of un-surveyed part of the main land called 'Koronisalusalu' through his agreement to lease. On the other hand, the defendant's right to possess his portion of land, of course un-surveyed, derives from his father who owned the main land sometime back. Whilst the defendant and his other brother too made the payment for new lease of the land they occupy, another brother of the defendant has already obtained an agreement for lease for another un-surveyed portion of main land 'Koronisalusalu'. In these circumstances, the plaintiff cannot succeed in this application when all those issues remain unsettled; as both the plaintiff and defendant have the equal right to possess an un-surveyed portion of main land called 'Koronisalusalu'. It follows that the summons filed by the plaintiff ought to be dismissed without cost.

27. Accordingly, I make following final orders:

a. The summons filed by the plaintiff is dismissed, and

b. Both parties to bear their own cost.

U. L. Mohamed Azhar
Master of the High Court

At Lautoka
27.06.2019