

**IN THE HIGH COURT**  
**AT LABASA**  
**CIVIL APPELLATE JURISDICTION**

Civil Appeal No: **HBE 08 of 2019**

**BETWEEN** : **MANASA RADOLO & KELERA ADIMAITOGA**  
**APPELLANTS**

**AND** : **LALITA WATI**  
**RESPONDENT**

**BEFORE** : M. Javed Mansoor, J

**COUNSEL** : Appellants, absent and unrepresented  
: Ms. A. Shankar for the respondent

**Date of Hearing** : 01 June 2020

**Date of Judgment** : 23 October 2020

# JUDGMENT

*MAGISTRATES' COURT ACT: APPEAL                      Jurisdiction of the Magistrate – Eviction from land – Challenge of the registered owner's title – Eviction notice – Section 16 (1) Magistrates' Court Act.*

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1. The respondent filed action in the Magistrate Court of Savusavu by writ of summons dated 1 June 2015 to evict the appellants from the disputed land. The respondent is the registered proprietor of that land which is described in certificate of title No: 14368, Navutu (part of) Lot 21 of DP No: 3037. The appellants by their statement of defence pleaded that they resided on the property for more than 20 years without the payment of rent and that the property was bequeathed to them by the previous owner, Chandra Prabha. The appellants counter-claimed for compensation in a sum of \$25,000 for losses to their property and belongings, and sought general and exemplary damages in a further sum of \$30,000.00, due to psychological effects resulting from eviction out of their premises through action said to be initiated by the respondent in 2015.
2. After trial, judgment of the hon. magistrate ("magistrate") was delivered on 26 June 2019 (though dated 26 April 2019), allowing the respondent's claim. The appellants were directed to give up possession of the subject property within 31 days and to pay the rental arrears of \$7,200 within two months. The appellants' counterclaim was dismissed. On 23 August 2019, the resident magistrate stayed the execution of the judgment until the determination of the appeal.
3. At the hearing of the appeal, the appellants were absent and unrepresented, but the respondent made oral submissions. Both parties filed their written submissions prior to the hearing.
4. The appellants' grounds of appeal, which are set out by its notice of intention to appeal dated 12 July 2019, are reproduced below:

- a. *That the learned Magistrate erred in law and in fact when he allowed the Plaintiff to claim for rent when there was neither any rent agreement, nor notice to pay rent issued to the Defendants.*
  - b. *That the learned Magistrate erred in law and in fact to consider that the Defendants had been residing on the said property for over 20 years looking after the late Chandra Prabha and they did not pay any rent accordingly.*
  - c. *That the learned Magistrate erred in fact when he failed to consider the Defendants' testimony that they have only met the Plaintiff once at the Savusavu Hospital and not any other time after that. Therefore, no notice to pay rent was served on the Defendants as claimed by the Plaintiff. Even if she had served it then, the Plaintiff was not the owner of the property during that time and she had no authority to serve any rent demand notice.*
  - d. *That the learned Magistrate erred in law and in fact by failing to recognize the trauma that the Defendants went through when they were forced to move out of the said property and even held in police custody at the cell without any reasons which caused psychological fear.*
  - e. *That the learned Magistrate erred in law and in fact when it also failed to consider that the Defendants had their property and chattels damaged and destroyed when they were forcefully evicted from the said property as those that had evicted them initially destroyed the wrong property instead of the one in the order.*
  - f. *That the learned Magistrate erred in law by continuing to preside over the proceedings in the Magistrate court when the proceedings should have been instituted in the High Court under a section 169 of the Land Transfer Act application or Order 113 of the High Court Rules.*
5. Both appellants gave evidence in the Magistrate Court. Their evidence corroborated each other in the main. The first appellant testified that his wife, the second appellant, commenced renting at Chandra Prabha's house, but he could not remember for how long she was renting the place. Chandra Prabha, he stated, had asked the second appellant to stop renting and look after her mother, and that before Chandra passed away, she gave the land to the second appellant.

6. The second appellant stated in her evidence that she was renting the property at \$60 initially. Thereafter, Chandra Prabha had said to look after her mother, and the appellant had agreed to do so, and, therefore, did not pay rent thereafter. She was living on the property on Chandra's authority. The second appellant denied that she was ever asked by the respondent to pay rent. This appellant stated that she occupied the property for about 22 years since October 1995, and during that time she paid rent only for one week. She did not pay rent for the property even after Chandra's death on 18 December 2002. She lived there until she was evicted. The second appellant said she met the respondent only once previously, when Chandra Prabha was in hospital in 2002. On that occasion, the respondent had attempted to get Chandra to sign her last will, but had failed to do so.
7. The second appellant explained that she was at lot 22 when Chandra died. Thereafter, she had remained at lot 22 until one Mittu Swamy who was in Lot 21 was evicted after the respondent filed action against him. After that eviction, the appellant said she had moved into Lot 21. Her testimony was that Chandra Prabha, by last will, gave her lots 20, 21 and 22, and that she is the current owner of those properties.
8. By document dated 8 December 2002, which she described as Chandra Prabha's will, the second appellant said she was given the subject property along with two other properties. This document or last will was not produced during the trial. Nor is there evidence that such document or instrument was at any time proved according to law. It must be said that the magistrate gave the second appellant an opportunity to produce her documents when the court was informed that she did not have important documents in her possession at the time of giving evidence on 12 April 2017. This occurred when the second appellant told court that all her documents were with her lawyer, and that as a result she was unable to produce any proof of her rights. Thereupon, the court adjourned the trial to 24 May 2017. However, notwithstanding this indulgence, the second appellant failed to produce any documentary evidence in support of her claims when the hearing resumed on the next date.

9. On the day of eviction, according to the evidence, she was frightened and traumatized when she went to the police station, and being locked up in police custody had a very adverse impact on her. The second appellant's evidence was that their house was dismantled and personal belongings damaged in the process of eviction. The evidence suggests that the eviction complained of does not relate to the judgment of the magistrate being assailed in this appeal, but in respect of another order made by the Magistrate Court in 2015 and involving the parties.
10. The respondent in her evidence said she has title to the property described as lot 21. She received the property from her cousin, Chandra Prabha, through a will. She was the sole executor and trustee of the estate of her cousin, Chandra Prabha, whose entire property, including the subject property, was written to her. The respondent was granted probate bearing number 40960 on 21 February 2003, after Chandra Prabha's last will was proved and registered in the probate registry of the High Court of Suva. The respondent also said that she gave her bank account details to the appellants, but rent was never deposited, and that there are substantial arrears of rent due from the appellants. According to the respondent, she has been paying rates for the property from 2003 onwards, even though she is not in receipt of rent for the property.
11. In his judgment, the magistrate noted that the parties were in agreement that the respondent is the registered proprietor of the subject property. The title, he says in his judgment, confirmed that the property was transferred and registered under the name of the respondent on 12 July 2012. The judgment states that probate was granted to the respondent as the sole executrix and trustee of the estate of Chandra Prabha, and that the last will of Chandra Prabha did not give any property interest to the appellants.
12. The magistrate makes the point that there is no pending proceeding challenging the transfer of the property to the respondent or challenging the grant of the probate to the respondent. The magistrate has considered the evidence of the respondent to be more credible than that of the appellants.

He has, therefore, accepted the respondent's evidence and rejected the evidence of the appellants.

13. The respondent is claiming rent arrears from August 2008 at the rate of \$100 per month. However, in computing the arrears of rent, the magistrate has taken the date on which the respondent's name was registered for the purpose of title i.e: 12 July 2012. On this basis, the magistrate ordered the payment of a sum of \$7,200.00 as arrears of rent to be paid by the appellants to the respondent.
14. By their submissions, the appellants contended that the respondent did not give a valid eviction notice. The magistrate did hold that though there was no documentary evidence to show that the respondent had served an eviction notice on the appellants, the court was entitled to grant the respondent the relief that was sought as the appellants had adequate notice when the action was filed. The better view, I think, is that the appellants, who deny tenancy and seek to set up an adverse title to that of the respondent, the registered owner, to whom the law provides the protection of title indefeasibility, cannot insist on notice in view of that particular stance. The rights they seek to establish to the property are entirely independent of and adverse to the respondent. The appellants must stand or fall on the basis of the defence taken by them i.e: that they, the appellants, and not the respondent has true title to the property. The appellants have failed to establish rights to the property independent of the respondent's title. In these circumstances, this contention will not aid the appellants' cause.
15. The magistrate also dismissed the appellants' counter-claim, whereby they sought compensation of \$25,000 for loss of property and a further sum of \$30,000 as damages for psychological fear, depression and stress caused by eviction from the wrong property in 2015. Though this has been pleaded in the statement of defence, the appellants failed to establish these claims. It appears that a separate action was filed against the appellants in respect of another property that was also part of the estate of Chandra Prabha, and a writ of possession, which was produced on behalf of the appellants, was

issued in that action on 9 April 2015 in relation to an order of the Magistrate Court dated 15 August 2008.

16. The appellants, who did not participate at the appeal hearing, conceded before the magistrate that the respondent is the registered owner of the property. However, they cast doubt on the instrument that gave title i.e: Chandra Prabha's last will and testament dated 17 December 2002, executed a day before the death of the testatrix by a thumb print, and suggested that it was a fabricated instrument. The instrument seems to have been executed at the Savusavu hospital. But, the will was not challenged and probate was duly granted by court. The appellants have not produced a competing title or evidence of cogent value to challenge the respondent's title.
17. In their written submissions, the appellants contended that the respondent's action was misconceived and that the proper action lay in terms of section 169 of the Land Transfer Act or Order 113 of the High Court Rules, if the respondent wanted to evict the appellants from the property. Section 16 (1) (c) of the Magistrates' Court Act states that without prejudice to the jurisdiction of a magistrate under the Act or other written law, a resident magistrate shall have and exercise jurisdiction in all suits between landlords and tenants for possession of any land (including any building or part thereof) claimed under any agreement or refused to be delivered up, if the annual value or annual rent does not or did not exceed \$50,000. There is no suggestion by the appellants that the jurisdiction of the magistrate has been exceeded vis-a-vis the limits placed by section 16 (1) of the Magistrates Court Act.
18. The findings of the magistrate are consistent with the evidence before court. The appellants have not satisfied court that the inferences drawn by the magistrate are unsupported by the primary facts and evidence. In such circumstances, an appellate court would be slow in interfering with the findings of an original court which has the advantage of seeing and hearing the testimony of witnesses. In this appeal, the appellants have not established any of their grounds of appeal, and, as such, there is no reason to disturb the findings of the magistrate.

19. The matter of costs needs some consideration. The appellants pursued this appeal, after resisting proceedings before the magistrate, which were instituted by the registered owner of the property to evict the appellants and recover arrears of rent. Though the notice of intention to appeal dated 12 July 2019 was out of time, enlargement of time was allowed and the execution of the judgment of the Magistrate Court dated 26 June 2019 was stayed until the determination of this appeal. No serious challenge was posed by the appellants to impeach the respondent's title during proceedings before the magistrate. Although the second appellant referred to a will from which she claimed to derive title, this was not produced, despite time being granted by the court. At the appeal hearing, the appellants did not make an appearance notwithstanding that notices were issued to their solicitors to appear before the master on 14 May 2020, on which day the appeal was fixed for hearing on 1 June 2020, and, though there was appearance on their behalf during the preliminary stages of the appeal. In view of the seriousness of the claims levelled by the appellants, and the gravity of the task at hand, much greater diligence on their part should have been forthcoming. These factors have been considered in the assessment of costs.

### ORDER

- A. The appeal is dismissed.
- B. The appellants are directed to pay the respondent costs summarily assessed in a sum of \$3,000.00 within 2 weeks of this judgment.

Delivered at Labasa this 23<sup>rd</sup> day of October, 2020



M. Javed Mansoor  
Judge