

In the High Court of Fiji

At Suva

Appellate Jurisdiction

Civil Action No. HBC 374 of 2019

Vapiola Asinate

Appellant

v.

1. Rafaele Natovi

2. Eneriko Nabulivou

Respondents

Counsel: Mr P. Niubalavu for the appellant

Ms Mishra for the respondents

Date of hearing: 6<sup>th</sup> April, 2022

Date of Judgment: 28<sup>th</sup> April, 2022

### **Judgment**

1. The appellant appeals a decision of the Master declining her summons for vacant possession of the premises on Native Lease No. 11694, Lot 7, section 8 Lami Subdivision in Suva. The appellant is the Administrator of the estate of Manueli Aisea Bera Wakilau, the registered proprietor of the land. He died intestate leaving three children: Rafaele Natovi, Apenai Batiniu and the appellant.

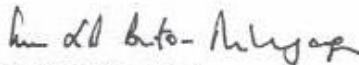
2. The appellant, (in her affidavit in support of her section 169 summons filed before the Master) stated that Rafaele Natovi and Apenai Baitniu are dead and she is the only surviving beneficiary. She obtained Letters of Administration on 14<sup>th</sup> June,2017, but was unable to carry out her duties. The respondents were issued with Notice to Vacate.
3. The first respondent in his opposition said that he is son of Apenai Baitni. He has lived on the property since birth with his father, who resided on the property since 1970. He has a right of possession, as he and his father are successors of the deceased.
4. The Master held that all three children of the deceased are entitled to shares in the estate of the deceased per stirpes. The children of Rafaele Natovi and Apenai Baitniu take their share per stirpes. The Master concluded that Eneriko Nabulivou and Rafaele Natovi are children of Apenai Batiniu, in terms of the Death Certificates produced and have shown an entitlement to remain on the property.
5. The appellant appeals on the following grounds of appeal :
  - I. *The learned Acting Master erred in law and in fact in holding that the Defendants/Respondents have shown an entitlement to remain on the property when:*
    - a. *There was no material evidence in the Affidavit Evidence filed to show a right to possession;*
    - b. *The 2<sup>nd</sup> named Defendant/Respondent throughout the proceeding had failed to show cause or file Affidavit Evidence to support his right or title to remain in possession;*
    - c. *The mere entitlement in an estate that holds shares in the property does not entitle the beneficiary to remain in occupation;*
    - d. *The mere occupation of the property since birth is not sufficient to establish a right to remain in occupation.*
  - II. *The learned Acting Master erred in law and in fact in not taking into account the duty and legal interest of the Appellant being the Administrator of the Estate, her duty to all other beneficiaries of the Estate and the interests of the body of beneficiaries as a whole;*
  - III. *Such further ground of appeal as may be added upon receipt of record/Masters notes of the court.*

6. The first ground contends that the respondents have not shown an entitlement to remain on the property. There was no material evidence filed to show a right to possession.
7. The death certificates of Manuela Aisea Bera Wakilau and Apenai Batiniu attached to the appellant's supporting affidavit establish that the first and second respondents are children of Apenai Batiniu.
8. As stated in *Prasad v Pratap*, [2012] FJHC 11; Civil Action 39.2010 (20 January 2012) and referred to in the written submissions filed on behalf of the appellant:

*..The Defendant ... does not have to prove a conclusive right to remain in possession only some tangible evidence establishing a right or at least supporting an arguable case for such a right...For the evidence to be tangible it must be real and capable to be established; not a vague or an elusive perception of a right of possession.*

9. The next ground argues that the Master did not take into account the appellant's duty as Administrator to other beneficiaries.
10. The appellant states that the property is valued at \$200,000.00 and has good resale prospects.
11. There is no evidence before Court that the other beneficiaries have consented to a sale nor that the property requires renovations, as contended by the appellant.
12. In *Khan v Rasheed* [2022] FJHC 29; HBC 49.2019 (1 February 2022), I held that a beneficiary was is entitled to be in possession of estate property.
13. The facts in the authorities cited by the appellant which have held otherwise, are distinguishable from the present case.
14. In *Mati v Devi*, [2002] FJHC 78; HBC0242R.2002S (1 November 2002) defendant was dismantling the premises and interfering with the performance of the administrator's duties.

15. In *Dass v Subamma*, [2003] FJHC 304; HBC0246J.2001s (22 July 2003) the defendant was hampering the administrator's attempts to subdivide the estate land.
16. In the present case, there is no evidence that the respondents are interfering with the appellant's rights as administrator.
17. The appeal fails and is declined.
18. **Orders**
  - a. The appeal of the appellant is declined.
  - b. The appellant shall pay the first and second respondent costs summarily assessed in a sum of \$1000.00

  
A.L.B. Brito-Mutunayagam  
Judge  
28<sup>th</sup> April, 2023

