

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 184 of 2021

BETWEEN: **SABRINA EVELYN ALPORT WISHART and FRANK ALPORT RYAN** as Executors and Trustees of the Estate of Lady Evelyn May Barker of Nasese, Suva.

PLAINTIFFS

AND: **ALL THOSE PERSONS, NAMES UNKNOWN**, in occupation of all that land comprised in Certificate of Title CT 19586 and/or the **PERSONAL REPRESENTATIVES IN THE ESTATE OF OLIPANI BABA**, of Lot 25 Ratu Sukuna Road, Nasese, Suva.

DEFENDANTS

Counsel: **Plaintiffs: Ms. Lodhia S**
 Defendants: Ms. Vaurasi L
Date of Hearing: 14.4.2023
Date of Judgment: 9.6.2023

JUDGMENT

INTRODUCTION

1. Plaintiff filed this summons seeking leave to issue writ of possession against Defendants from CT 18586. Plaintiff had obtained an order for vacant possession on 31.8.2022. Defendants had not vacated the premises and filed summons seeking leave to issue writ of possession in terms of Order 45 rule 2 of High Court Rules 1988. There is no pending appeal and or stay of judgment sought by the Defendants.

ANALYSIS

2. Order 45 rule 2 of High Court Rules 1988 states

“Enforcement of judgment for possession of land (O.45, r.2)

2.-(1) Subject to the provisions of these Rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say–

- (a) writ of possession;
- (b) in a case in which rule 4 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the Court except where the judgment or order was given or made in a mortgage action to which Order 88 applies.

(3) **Such leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled.**

(4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ”(emphasis added)

- 3. So the scope of an application seeking leave is limited. There should be evidence of evidence of notice of the proceedings to the persons in occupation. In this proceedings the legal practitioner who appeared to them at the eviction proceedings appeared again and no issue was raised regarding the service to persons in possession.
- 4. Defendants are aware of this proceedings for enforcement of judgment. So the leave is granted to issue writ of possession. The provision only allows an aggrieved party to seek “appropriate legal relief which they may be entitled.”
- 5. Not in every case for eviction a party in possession will be entitled to such a relief, especially under Torrens System, where ‘registration is everything’. In such an instance objection to grant of leave is without merit.

FINAL ORDERS

- a. Leave is granted for issuance of writ of possession.
- b. Cost of this proceeding is summarily assessed at \$500 to be paid by Defendants jointly and or severally. Within 21 days.

DATED this 9th day of June 2023.



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Justice Deepthi Amaratunga
Judge High Court, Suva