

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

Civil Action No. HBC 52 of 2023

**BETWEEN:**

**SHAKUNTALA KUMARI SINGH**  
**PLAINTIFF**

**AND:**

**PATRICIA KOI**  
**1<sup>ST</sup> DEFENDANT**

**AND:**

**THE UNKNOWN OCCUPIERS / ALL PERSONS CONCERNED**  
**2<sup>ND</sup> DEFENDANT**

**BEFORE:**

Acting Master L. K. Wickramasekara

**COUNSEL:**

Messrs. Jamnadas & Associates for the plaintiffs  
Verebalavu Lawyers for the 2<sup>nd</sup> Defendants

**Date of Hearing:**

11 July 2024

**Date of Judgment:**

05 September 2024

**JUDGMENT**

01. The Plaintiff, as the last registered proprietor of the land comprised in Certificate of Title No. 17196, being Lot 1 on Deposit Plan No. 4287, summoned the Defendants pursuant to Order 113 of the High Court Rules seeking the following,

*“**An Order** under Order 113 Rules 1 to 7 of the High Court Rules that the Defendants and their families, agents and servants give immediate vacant possession to (of) the Plaintiffs property being Lot 1 on Deposit Plan No. 4287 and comprised and described in Certificate of Title No. 17196 of which the Plaintiffs is (are) the Registered Proprietor, presently partially occupied by the Defendants and **For An Order** that the costs of this application be paid by the Defendants to the Plaintiff.”*

02. The summons is supported by an affidavit sworn by Dilip Kumar Jamnadas, a partner of Jamnadas & Associates, the solicitors for the Plaintiffs. A copy of the authority letters signed by each of the Plaintiffs, a copy of the Certificate of Title No. 17196, and a copy of a Notice to Evict issued on 08/02/2023 have been annexed with the Affidavit in Support.
03. It is averred in the Affidavit in Support that the first named Defendant and the unknown occupiers mentioned as the 2<sup>nd</sup> Defendants have recently moved on to the land described in the Summons and have built an illegal dwelling which the Plaintiffs believe is occupied by the said Defendants. It is further averred that there were previous instances where illegal occupants had occupied the said land, and the Plaintiffs had taken legal action thereof. It is averred that the current Defendants were not in occupation previously but had recently moved on to the land and are now illegally occupying part of the subject land owned by the Plaintiff's.
04. It is further averred that the Plaintiffs do not know any of the Defendants personally and that they have at no point in time, had consented or licensed the Defendants to occupy the subject land.
05. It is averred that when the Bailiff, Marika Ralova, attempted to serve the Notice to Evict, the first named Defendants name was discovered and that there is also a second dwelling being built by one Remavini Vunivai. However, it is further averred that the said Remavini Vunivai is currently not occupying the said land in question but is residing in Namena Village and as such 'there is no need for an eviction on that person yet'.
06. It is averred on behalf of the Plaintiffs that the Notice to Evict was served on the first named Defendant and the occupiers of the other dwelling being built on the land and that these occupiers are still on the land. Thus, it is averred that the Plaintiffs are left with no choice but to initiate these proceedings for the vacant possession of the subject land pursuant to Order 113 of the High Court Rules 1988.
07. As per the Affidavit of Service filed on 09/03/2023, it is averred that on 01/03/2023 the duly issued Originating Summons and the Supporting Affidavit have been duly

served (by way of personal service) on the first named Defendant and have served on the 2<sup>nd</sup> Defendants by way of affixing copies of the said documents on the door of the dwellings being built on the said land. It is also averred that a copy of the above documents was also personally served on one Remavini Vuniwai.

08. Court, at this juncture, would refer to the history of these proceedings. When the matter was first called before the Court on 17/03/2023, there was no appearance by any of the Defendants. However, Mr. Verebalavu, solicitor, appeared on behalf of 'Mataqali Tuinaqilu' and moved from Court further time to file opposition to the Summons on behalf of the 2<sup>nd</sup> Defendant. The previous Master of the Court, then granted the 'Mataqali Tuinaqilu' 14 days to file and serve an opposition and 14 days thereafter for the Plaintiffs to file a Reply and adjourned the matter to 23/05/2023.
09. On 23/05/2023, the matter was called before this Court, and it was revealed that no opposition have been filed and served. On this day too, none of the Defendants appeared in Court, but Mr. Verebalau, solicitor, appeared in Court and claimed that he was not able to duly file an opposition as per the directives of the Court on the last date and then sought further time.
10. Counsel for the Plaintiffs objected to this application and pointed out to the Court that there has been no proper application being made pursuant to Order 113 Rule 5 of the High Court Rules for any unnamed Defendant to be duly joined as a party in these proceedings and further that there is no opposition being filed as per the last date's directions, there is no party duly being represented by Mr. Verebalau, and thus the Court should dismiss the application for further time and grant the Plaintiffs application on an undefended basis.
11. This Court, on 23/05/2023, accordingly upheld the position taken by the counsel for the Plaintiff and thus granted the orders as sought by the Plaintiffs in their originating Summons filed on 22/02/2023.
12. That order of the Court was then appealed by Mr. Verebalau on 13/06/2023. Pursuant to the Notice of Appeal filed on 13/06/2023, the appeal was brought by the '***Appellant being one of the persons concerned as the 2<sup>nd</sup> Defendant***'.
13. Upon the appeal hearing before the High Court, the order of this Court made on 23/05/2023 as against the 2<sup>nd</sup> Defendants was quashed and the following final orders were made as per the Judgment dated 31/10/2023,

*"a. Appeal allowed.*

*b. Master's order for eviction against unknown parties set aside.*

- c. *Matter is to be listed before Master to deal with unnamed parties in accordance with law.*
- d. *No costs.*”

14. The High Court in appeal, however, had upheld the eviction order as against the 1<sup>st</sup> Defendant as per the orders made by this Court on 23/05/2023. The conclusion in the appeal Judgment dated 31/10/2023 reads,

*“Appeal is allowed. For avoidance of doubt, Master’s order for eviction against the first Defendant which was not appealed remains without a change, but the eviction order against unnamed occupants set aside for them to be heard by Master in terms of HCR. No costs awarded considering circumstances of the case.”*

15. Upon the matter being remitted back to this Court, the Court gave directions on 13/02/2024, in the presence of counsels for the Plaintiff and for the alleged 2<sup>nd</sup> Defendant, for filing of opposition and the reply and as well as written submissions, and then listed the matter on 09/04/2024.

16. On 29/01/2024, Verebalavu Lawyers filed a Notice of Appointment of Solicitors. This Notice reads as follows,

*“**Take Notice** that **Verebalavu Lawyers** have been appointed to act as Solicitors for the Mataqali Tuinaqilu as of one of the Unknown Occupiers/All Persons Concerned named as the 2<sup>nd</sup> Defendant and that the address for service of the said solicitors is at their Chambers at Level 1 Jawahir Lal & Sons Building, Korovou, Tailevu.”*

17. On 26/02/2024, an Affidavit of one Vaulina Draiwaca was filed on behalf of the Mataqali Tuinaqilu. In this Affidavit it is averred that the deponent is the representative of *“one of the unknown occupiers and persons concerned named as the 2<sup>nd</sup> Defendant and represent the land-owning unit known as the Mataqali Tuinaqilu from Naburenivalu village in Namena, Tailevu and that I am the head of the Mataqali Tuinaqilu”*.

18. Since this Affidavit is being filed in opposition to the Plaintiffs summons, the averments therein shall play a major role in these proceedings. As such, I find it important to reproduce the same in its entirety *in verbatim* in this ruling.

*“2. **THAT** I cannot confirm the contents of Paragraphs 1 and 2 of the Plaintiffs affidavit in support of the application for possession of land as I am not aware of their arrangement.*

3. **THAT** I cannot confirm the content of paragraph 3 of the plaintiff's affidavit in support of the application for possession of land as I am not aware of the 2 and 3rd named Plaintiffs residence.
4. **THAT** based on the Plaintiffs annex (sic) marked with the letter "B" I confirm Paragraph 4 in that they are the registered owners of Certificate of Title No. 17196, however, I wish to further add that our Mataqali are the traditional land owners of the land known as of Waivola located in the Namena District in Tailevu.
5. **THAT** I cannot confirm the contents of paragraphs 5 of the Plaintiffs affidavit as I am not aware of any legal actions they previously took against those that are currently residing at the said land.
6. **THAT** I cannot confirm nor deny paragraphs 6, 7 and 8 of the Plaintiffs Affidavit in support of their application for possession of land.
7. **THAT** I neither confirm nor deny the content of paragraph 9 of the Plaintiffs Affidavit as I am not aware of the same.
8. **THAT** I deny paragraph 10 of the Plaintiffs affidavit in that Remavini is an occupant of any of the houses at the land known as Waivola and wish to further add that she permanently resides at Naburenivalu village in Tailevu.
9. **THAT** I cannot confirm the contents of paragraphs 11 & 12 of the Plaintiffs affidavit as I am not aware of the communications made between them.
10. **THAT** I cannot confirm the contents of paragraphs 13 and 14 of the Plaintiffs affidavit.
11. **THAT** I wish to further add that the land-owning unit which I head and represent are the traditional owners of the land known as Waivola and currently have filed an application in Court seeking orders to establish their interest in the land under Civil Action No. HBC 79 of 2023.
12. **THAT** I pray that this honorable court does not grant any orders requested by the Plaintiff until a determination on Civil Action No. HBC 79 of 2023."

19. Counsel for the purported 2<sup>nd</sup> Defendant has also filed a written submission on the 11/03/2024. It is submitted in this written submission that this submission is being filed on behalf of the *Mataqali Tuinaqilu* who are allegedly '*the traditional and customary owners of the land known as Waivola which is being claimed by the Land-Owning Unit in a separate action currently before the High Court.*'
20. It is further submitted that they are the traditional and customary owners of the land known as Waivola and that they were on the land even before the Plaintiffs claimed ownership of land and have been there till today.
21. Moreover, it is submitted that their traditional burial sites are visible on the land and that this has been confirmed through an archeological impact survey done by the Fiji Museum. This **evidence**, however, is not averred in the Affidavit filed on the

26/02/2024 and is therefore, literally evidence given from the 'Bar Table'. This Court shall therefore not take into consideration such baseless facts.

22. In the above written submissions, it is further claimed that the ownership of the land known as Waivola is currently being litigated in Civil Action no. HBC 79 Of 2023 and the Plaintiffs in this case have been named as the 1<sup>st</sup> Defendant in that matter. It is submitted that the traditional owners of the land cannot be regarded as squatters or trespassers as they have a colour of right over the land.
23. Furthermore, it is submitted that the Plaintiffs have failed to serve the Originating Summons on all the unknown occupiers/persons concerned pursuant to Order 113 Rule 4 (2) (a) and b) of the High Court Rules and has failed to file an Affidavit of Service thereof and as such this application by the Plaintiffs is an abuse of the process of the Court.
24. It is also submitted that the Affidavit in Support of the Plaintiffs Summons contains a lot of material facts which they dispute, as well as the boundary of the land, and hence this application cannot be dealt by way of an Originating Summons.
25. It is further submitted at paragraph 8 of the above submissions that “...*Our client and all other unnamed 2<sup>nd</sup> Defendants have been residing at the subject land for more than 100 years whilst the Plaintiffs have never resided in Waivola*”. This again is **evidence** from the 'Bar Table'. No facts of the sort have been averred in the Affidavit filed on the 26/02/2024. As such the Court shall disregard these baseless facts as submitted in the written submissions filed on 11/03/2024.
26. In reply to the Affidavit filed on 26/02/2024, the Plaintiffs have filed an Affidavit in Reply as sworn by Dilip Kumar Jamnadas on 12/03/2024. At paragraph 5 of the said Affidavit it is averred,

*“I deny paragraph 1 and state that there is no supporting evidence to make such a claim, nor is there any such authorizations from the purported Mataqali. I further state that Naburenivalu village is on Native Land and that neither the deponent nor the Mataqali is on the Plaintiffs land, which is Freehold land.”*

27. Furthermore, at paragraph 9 of the said Affidavit, it is averred that,

*“As to paragraph 11 I state:*

- a) *Civil Action No. HBC 79 of 2023 is an action in which the purported Mataqali in question is attempting to;*

- i. *Challenge the Deed of Cessation.*
- ii. *Challenge the findings of the Land Commission made in about 1883;*
- b) *Civil Action No. HBC 79 of 2023 is an abuse of process and has no chance of success as there is already established case law which shows that such a case cannot be maintained.*
- c) *I annex hereto and mark with the letters “B” a copy of the current pleadings in Civil Action No. HBC 79 of 2023.*
- d) *HBC 79 of 2023 was filed after these proceedings were initiated and is simply an attempt to interfere with these proceedings by falsely claiming right which does not exist.*
- e) *At the date of deposing this affidavit striking out application by the Plaintiffs in these proceedings (1<sup>st</sup> Defendants in HBC 79 of 2023) has been filed or will be filed for Civil Action No. HBC 79 of 2023.*
- f) *The same Mataqali is attempting to file an amendment, but this is still an abuse of process and has no chance of success. I annex hereto and mark with the letters “c” a copy of the proposed amended pleadings.”*

28. Further, at paragraph 10 of the said Affidavit, it is averred that,

*“That the opposition of the Plaintiffs claim has simply wasted time and neither the Deponent nor the purported Mataqali have established any occupation of the Plaintiffs land whatsoever, meaning they have dragged this application on and even appealed the initial decision when they have nothing to do with the Plaintiffs land. In this regards the Plaintiffs ought to be awarded cost on an indemnity basis or at the very least on a higher scale to adequately compensate the Plaintiffs for significant legal fees that would not have existed but for the intervener’s application.”*

29. The counsel for the Plaintiffs also has filed comprehensive written submissions on 19/03/2024.

30. When the matter was called before this Court on 09/04/2024 as scheduled, only the counsel for the Plaintiff appeared in Court. The purported 2<sup>nd</sup> Defendant nor the counsel on record, Verebalavu Lawyers, appeared in Court this day. There were no reasons duly notified to the Court for this absence. The Court on this day, fixed the matter for Hearing on 11/07/2024 at 11.30 am.

31. When the matter was taken up for Hearing on 11/07/2024, yet again, only the counsel for the Plaintiffs appeared in Court and the purported 2<sup>nd</sup> Defendant nor the counsel on record appeared for the Hearing. There were no reasons duly informed to the Court on the absence of the purported 2<sup>nd</sup> Defendant or its counsel. As such the Court construed that the purported 2<sup>nd</sup> Defendants have chosen not to appear for the Hearing

and thus proceeded with the Hearing on 11/07/2024. Counsel for the Plaintiffs accordingly made oral submissions in support of the Plaintiffs application and filed further written submissions as well.

32. In its further submissions for the Plaintiff, it is highlighted that the purported 2<sup>nd</sup> Defendant, the *Mataqali Tuinaqilu*, in the Affidavit filed in Opposition, have failed to make any averment that they are in fact residing on the subject land in question but had only laid claims of a historical ownership of the whole area of land as *mataqali land*.

33. Counsel for the Plaintiff has relied on the case of *NBF Asset Management Bank v The Occupiers* [2205] FJHC 120; HBC0119.2005 (26 May 2005) where it was held,

*“The order and rule do not specify what the phrase “who is in occupation of the land” means.*

*The Oxford Dictionary of Law 2001 Edition page 339 defines occupation to be the physical possession and control of land.*

*Counsel for Mr. Low conceded that his client was not living in the house. Rather he claimed an interest solely because he collected rent and sought to administer his mother’s estate.*

*I reject that argument. I find that he is not “in occupation of the land” in terms of Order 113 Rule 5”.*

34. Moreover, the further submission of the Plaintiff highlights the fact that the High Court Case HBC 79 of 2023, where the purported 2<sup>nd</sup> Defendant had claimed that they have filed to establish their ownership over the subject land in this matter and to recover the same, has now been struck out as an abuse of the process of the court by a ruling made by the Court on 16/05/2024.

35. Further, it is submitted that, the ruling to strike out the matter was appealed but the appeal may be dismissed as no compliance under Order 59 Rule 17. This Court has taken judicial notice of the fact that the said appeal in HBC 79 of 2023 had in fact been dismissed by the Court on 02/08/2024.

36. Having duly considered the affidavit evidence before this Court and the written and oral submissions on behalf of the parties, the Court shall make its Judgment as follows.

37. The Plaintiff has brought these proceedings as against one named Defendant (1<sup>st</sup> Defendant, Patricia Koi) and as against the ‘Unknown Occupiers/All Persons Concerned (2<sup>nd</sup> Defendant)’ for vacant possession of the land as described in the Summons pursuant to Order 113 of the High Court Rules 1988.



38. Order 113 Rule 1, of the High court Rules 1988 reads as follows,

*"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 license 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".*

39. Procedure under Order 113 of the High Court Rules is intended for a summary procedure for recovery of possession of a land occupied by a trespasser or a squatter. Where none of the wrongful occupiers can reasonably be identified the proceedings take on the character of an action *in rem*, since the action would relate to the recovery of the *res* without there being any other party but the plaintiff. **Kennedy LJ.**, in **Dutton v Manchester Airport** (*supra*) said at page 689 that:

*"The wording of Order 113 and the relevant facts can be found in the judgment of Chadwick LJ. In Wiltshire C.C. v Frazer (1983) PCR 69 Stephenson LJ said at page 76 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 went on at page 77 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 be persons who have entered into or have remained in occupation of it without his license or consent (or that any predecessor in title of his)".*

40. The onus is on the Plaintiff to satisfy Court that there is no doubt as to his or her claim to recover the possession of the land. In that process, he/she must be able to show the Court the right to claim the possession of the land and then to satisfy that the Defendant/s (not being a tenant or tenants holding over after the termination of the tenancy) entered the land or remained in occupation without his or her license or consent or that of any predecessor in title. Once a Plaintiff satisfies these two factors, he or she shall be entitled for an order against the Defendant or the occupier.

41. Then, it is incumbent on a Defendant, which the Plaintiff alleges to be in occupation of the land, if he or she wishes to remain in possession, **to satisfy the Court that he or she had consent either from the Plaintiff or his or her predecessor in title** or he

or she has title either equal or superior to that of the Plaintiff. If the Defendant can show such consent or such title, then the application of the Plaintiff ought to be dismissed.

42. Plaintiffs in this case hold Certificate of Title No. 17196, being Lot 1 on Deposit Plan No. 4287, which is the legally registered title for the subject property in this matter and this fact is not in dispute. A copy of the said Certificate of Title has been annexed to the Supporting Affidavit filed on 22/02/2023 as annexure 'B'.
43. The opposition to the Plaintiffs Summons came not from the named 1<sup>st</sup> Defendant but purportedly from an 'Unknown Occupant' as an 'occupier' intended to be recognized as one of the 2<sup>nd</sup> Defendants.
44. The procedure in which such an unknown occupier could duly intervene in the proceedings has been set out in Order 113 Rule 5 of the High Court Rules. This Rule reads as follows,

*“Without prejudice to order 15, Rules 6 and 11, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant”*
45. Interestingly in this case, at no stage of the case, the purported Defendant never made a formal application from Court to be joined as a Defendant under Order 113 Rule 5 of the High Court Rules.
46. Be that as it may, since the purported 2<sup>nd</sup> Defendant has now filed its opposition and has even succeeded at an appeal on this point, this Court shall proceed to consider the merits of the opposition to the Summons by the purported 2<sup>nd</sup> Defendant and shall make its ruling on the merits rather than limiting the Court's consideration on the technical issue under Order 113 Rule 5 of the High Court Rules.
47. It is however pivotal to the success of the opposition of the purported 2<sup>nd</sup> Defendant as against the Summons by the Plaintiff that the purported 2<sup>nd</sup> Defendant to in fact be 'a person who is in occupation of the (subject) land' as against a person merely with an interest in the subject land.
48. Not every person with an interest in the subject land shall be identified as an 'Unnamed Occupier' for the purpose of proceedings under Order 113 of the High Court Rules. The case of *NBF Asset Management Bank v The Occupiers* (*Supra*) is quite clear on this point.

49. For Order 113 of the High Court Rules to be applicable, it is not enough to simply identify an occupier, but it is required to establish that the occupier have entered into occupation without license or consent of the person claiming the subject land. It shall also be applicable in the event a person who has entered into possession of land with a license but has remained in occupation without a license, Pennycuick VC in **Bristol Corporation v. Persons Unknown** [1974] 1 W.L.R. 365; [1974] 1 All E.R. 593 held at page 595 that:

*“Looking at the words of that rule, it seems to me to be clear that the order covers two distinct states of fact. The first is that of some person who has entered into occupation of the land without the license or consent of the person entitled to possession or any predecessor in title of his, and secondly that of the person who has entered into occupation of the land with a license from the person entitled to possession of the land or any predecessor in title of his but who remains in such occupation without the license or consent of the person entitled to possession or any predecessor in title. That that is the true construction appears to be perfectly clear from the use of the word ‘or’ and if the rule did not cover the second state of affairs which I have mentioned, that is to say of entry with license and remaining in occupation without license, then the words ‘or remained’ would, so far as I could see, have no significant meaning at all. Obviously there never could be proceedings against someone who had entered but did not remain in occupation of the land”.*

50. It must be noted that, Pennycuick VC in **Bristol Corporation v. Persons Unknown** (*supra*) expressed in obiter that, the court has discretion whether to permit this summary procedure to be used in cases where there had been a license to occupy.
51. However, the Court of Appeal in **Great London Council v Jenkins** [1975] 1 W.L.R. 155; [1975] 1 All E.R. 354, unanimously disapproved that obiter and held that, the court has no discretion to refuse to allow the summary procedure to be used, even where the respondent had been in occupation under the license for a substantial period and the court is bound to grant an order for possession in such circumstances. Cairns LJ., held at page 359 that:

*“With respect to Pennycuick V-C, that opinion, expressed obiter, appears to me one which it would be difficult to sustain. It may well be that a local authority or other responsible landlord would be reluctant to use this summary procedure against a former licensee with whom good relations have been maintained over a long period. But if the procedure is adopted, I do not consider that there is any discretion for the court to say: ‘I shall not make an order for possession, because I do not think this is the sort of defendant against whom the procedure should be used.’”*

52. With the above principles in mind, the Court shall evaluate the *locus standi* and/or the position of the purported 2<sup>nd</sup> Defendant in this case. It is noted from the ‘Notice of Appointment of Solicitors’ filed on behalf of the 2<sup>nd</sup> Defendant on 29/01/2024, that ‘Verebalavu Lawyers’ have been appointed to act as solicitors for the ***‘Mataqali Tuinaqilu as of one of the Unknown Occupiers/All Persons Concerned named as the 2<sup>nd</sup> Defendant’***.
53. The Affidavit in Opposition filed on 26/02/2024 has been deposed by one ‘Vaulina Draiwaca on behalf of the Mataqali Tuinaqilu’. At averment number 1 of the said Affidavit, it is averred that the deponent is *‘the representative of one of the unknown occupiers and persons concerned named as the 2<sup>nd</sup> Defendant’*. However, in the same averment, the deponent claims that he/she *‘represent the land-owning unit known as the Mataqali Tuinaqilu from Naburenivalu Village in Namena, Tailevu and that he/she is the head of the Mataqali Tuinaqilu’*.
54. No where in this Affidavit, it is averred that the purported 2<sup>nd</sup> Defendant is, in fact, in actual occupation of the subject land in this case. Instead, at averment number 4 of the Affidavit, it is averred,
- “4. ***THAT*** based on the Plaintiffs annex (sic) marked with the letter “B” I confirm Paragraph 4 in that they are the registered owners of Certificate of Title No. 17196, however, I wish to further add that our Mataqali are the traditional landowners of the land known as of Waivola located in the Namena District in Tailevu.”
55. Further at averment numbers 8 and 11 it is averred as follows,
- “8. ***THAT*** I deny paragraph 10 of the Plaintiffs affidavit in that Remavini is an occupant of any of the houses at the land known as Waivola and wish to further add that she permanently resides at Naburenivalu village in Tailevu.
11. ***THAT*** I wish to further add that the land-owning unit which I head and represent are the traditional owners of the land known as Waivola and currently have filed an application in Court seeking orders to establish their interest in the land under Civil Action No. HBC 79 of 2023.”
56. As highlighted above, it is abundantly clear from the Affidavit in Opposition filed on 26/02/2024, that the purported 2<sup>nd</sup> Defendant is in fact not a person in occupation of the subject land in question. It is only a ‘traditional land-owning unit’ which has an interest in the land in question.

57. This Court therefore has no reservation in holding that the purported 2<sup>nd</sup> Defendant in this case, *The Mataqali Tuinaqilu* has no *locus standi* in this matter to be recognized as a Defendant to these proceedings.
58. Moreover, *The Mataqali Tuinaqilu*, currently do not even share a legally recognizable interest in the subject land in this case, as the case in which they have laid a claim over the said land (HBC 79 of 2023) has been struck out as an abuse of the process of the Court.
59. In the above-mentioned circumstances, I find that the opposition raised by the purported 2<sup>nd</sup> Defendant in this case, as against the Summons of the Plaintiff, is in itself an abuse of the process of the Court and that the Plaintiffs have therefore been put to undue delay and being made to bear unnecessary costs in these proceedings.
60. The purported 2<sup>nd</sup> Defendant not only had *no locus standi* to have brought any opposition to the Summons of the Plaintiff but currently also have no recognizable interest in the subject land in question.
61. This action has been brought pursuant to the summary procedure under Order 113 of the High Court Rules and none of the matters as depended upon by the purported 2<sup>nd</sup> Defendant in its opposition to the said Summons are relevant considerations in these proceedings as per settled law on Order 113 of the High Court Rules.
62. This Court thus conclude that the Plaintiff has successfully established its right to claim vacant possession of the subject land under Order 113 of the High Court Rules and the purported 2<sup>nd</sup> Defendant has obviously failed to establish a *locus standi* to be recognized as a Defendant to the matter or else has shown any legal right to claim for occupation of the subject land.
63. In conclusion, this Court finds that the whole exercise by the purported 2<sup>nd</sup> Defendant, *Mataqali Tuinaqilu* as represented by **Vaulina Draiwaca**, the head of the *Mataqali Tuinaqilu*, is a futile effort without any colour of right over the Plaintiffs subject land or having any *locus standi* as an actual ‘occupier’ to have any footing in these proceedings.
64. It is therefore the considered view of this Court that this was a deliberate attempt by the purported 2<sup>nd</sup> Defendant to abuse the process of the Court and to unnecessarily delay the proceedings and to put the Plaintiff to unnecessary costs.
65. As such, the Plaintiff’s Summons shall be granted subject to costs at the higher scale and/or indemnity basis.

66. In consequence of the above findings and the conclusions of this Court, I make the following final orders:

- 1) That all the Defendants in this action, including the unnamed 2<sup>nd</sup> Defendants, are hereby ordered to deliver to the Plaintiff, the vacant possession of the subject land as described in the Originating Summons filed in this case, in not less than 14 days from the date of this Judgment, and
- 2) The purported 2<sup>nd</sup> Defendant, *Mataqali Tuinaqilu* as represented by **Vaulina Draiwaca** shall personally pay a summarily assessed cost of \$ 10000.00 to the Plaintiff within 14 days from today, as cost of this action.



**L. K. Wickramasekara,**  
**Acting Master of the High Court.**

**At Suva,**  
**05/09/2024**