

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. **HBM 154** of 2020

BETWEEN: **THE PROCEEDINGS COMMISSIONER** on behalf **RAHUL STEVEN SINGH**
of Naivorovoro Road, Nakasi, Office Worker.

FIRST APPLICANT

AND: **THE PROCEEDINGS COMMISSIONER** on behalf **HUMAN RIGHTS AND**
ANTI DISCRIMINATION COMMISSION of Level 2, Naibati House, 9
Goodenough Street, Suva.

SECOND APPLICANT

AND: **SONAL CHAND & ASHNITA CHAND** of Naivorovoro Road, Nakasi,
Landlord & Land lady respectively.

RESPONDENTS

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Sharma P.** for the 1st and 2nd Plaintiff

Mr. Buakula J. for the Respondent [No appearance/presence of the Respondents]

DATE OF JUDGMENT: 10th July, 2025

JUDGMENT

[Declarations and Orders in Terms of 2013 Constitution]

Introduction

1. This proceedings is instituted by on behalf of the 1st and 2nd Applicants Human Rights and Anti Discrimination Commission and sought for the following declarations and Orders:
 - (1) A declaration that the First Applicant's Constitutional **Freedom from Arbitrary Evictions** under **Article 39** of the Constitution of the Republic of Fiji 2013 were violated and breached by the Respondents and/or their servants or agents;
 - (2) A declaration that the First Applicant's children's rights under **Article 41** of the Constitution of the Republic of Fiji 2013 were violated and breached by the Respondents and/or their servants or agents;
 - (3) A declaration that the First Applicant and his family's Constitutional **Freedom from Cruel and Degrading Treatment** under **Article 11** of the Constitution of the Republic of Fiji 2013 were violated and breached by the Respondents and/or their servants or agents;
 - (4) An Order that the time for the service of the Originating Summons to be abridged to one day;
 - (5) An order that this Originating Summons be heard by oral evidence or partly oral evidence and partly affidavit evidence if there is or maybe a dispute of fact and/or alternatively to be converted into a writ action should there be a need to hear the oral evidence of the parties;
 - (6) An order that costs for this matter be paid by the Respondents;
 - (7) An order for the Respondents to pay damages for:
 - a) Humiliation, loss of dignity and injury to feelings under section 41 (1) (d) of the Human Rights and Anti-Discrimination Commission Act 2009;
 - b) Such further or other reliefs as this Honourable Court deems just and fit.
2. Both parties furnished Court with their respective written submissions.

Background to Case

3. On 20th October 2020, the Applicant together with his two (2) daughters aged 5 and 6 years old respectively with the housegirl Shainaz Khan and her two (2) years old son moved to the Respondent's flat at Naivorovoro Road, behind Rups Mega Complex at Nakasi after responding to an advertisement they put on Facebook.
4. It was agreed that the rent will be \$600 per month and there would be no Tenancy Agreement and receipts provided.

5. The Respondents informed the Applicants that they intend to sell the property and of within 6 months the property is not sold, the Respondents would provide the Applicant with a Tenancy Agreement.
6. It was also agreed that there will be a bond of \$600 within the First month.
7. The Respondent's property is a double storey, the Respondents lived on the top flat and the Applicant lived downstairs in the front flat with 2 bedrooms whilst a iTaukei family lived at the back flat downstairs.

First Threat

8. On 29th October 2020 after returning from work in the evening, the First Respondent who was standing at his top flat and drunk at the time, verbally told the Applicant that the Respondent was giving him three (03) days' Notice to vacate the flat.
9. The Applicant told the Respondent that he had paid rent for the month from 20th October 2020 to 20th November 2020.
10. Thereafter, according to the Applicant, the Respondent would come and hassle the Applicant asking for the key back, when will he go out and return and even telling his house girl during working hours to vacate the flat.

Second Threat.

11. On or about 10th November 2020, the applicant received a purported notice to vacate the flat which he took to Consumer Council and sought for assistance who then called the Respondents and advised them to stop the harassment.
12. The harassment from the Respondents and the First Respondent's Father continued even when the Applicant reported the Matter twice to the Nakasi Police Station.
13. On 20th December 2020, the house girl together with the three (03) children were evicted by the Respondents and put outside the compound by the roadside in the rain.
14. The Applicant, house girl and three children after receiving no help from Police and others and it was getting dark that they slept at Auntie's Residence in Nausori with the same clothes on them.
15. The applicant deposed in his affidavit in support that his constitutional rights were violated.
16. Hence sought for orders as it appears in the Applicant's applications.

Analysis and Determination

17. The Applicant seeks three (03) substantive declarations in their originating summons.
18. **1st Declaration: whether the Respondent's Arbitrarily Evicted Rahul Steven Singh, Shainaz Khan and the three (03) children?**
19. Since there is an eviction of all the occupants [Shainaz Khan and three children] whilst the Applicant was at work, and put outside the compound by the roadside by the Respondents, then the next issue that arises is **'whether it was done in a arbitrary manner?'**
20. The legal definition of 'arbitrary' is stated in 2017 Fiji Court of Appeal matter of **Devo v Fiji Independent Commission Against Corruption** [2017] FJCA 11, AAU12.2012:

'In law, an arbitrary act an unreasonable act, a despotic act, an act which is not guided by rules and regulations but by the wishes of the accused. Let me give an example, in a government, he accounts officers are supposed to follow financial rules and regulations when it comes to raising payment on behalf of the government. If one accounts officer decided to ignore the financial rules and regulations when raising payments that would be an arbitrary act. That is because the act is guided by the wishes of the accounts officer and not by proper financial regulations.'" (Page 137 of RHC).
21. The Respondent's Contention to paragraph 14 of First Applicant's affidavit is denied that the Respondents evicted the Applicant's house girl and the three (03) children on 20th December 2020. However, the Respondent's aver that they enquired with Rahul Steven Singh's (1st Applicant's) house girl whether they intend to vacate the flat and upon enquiry the house girl then took the first Applicant's two (2) children and her child out of the flat and went to stand outside on road when it began to rain, we called out to the house girl to come back to the flat and/or come up to our flat and wait here but the house girl refused.
22. At paragraph 13 of the Respondent's affidavit filed they depose to the following relevant facts:
 - (i) They gave first Applicant 10 days to vacate the flat;
 - (ii) They first Applicant took the notice to the Consumer Council.
23. The Consumer Council's terms of settlement of 05 December 2020 between the First Applicant and the Respondents as per annexure - 'SA2' within the Respondent's affidavit filed on 03rd December 2021 confirms:
 - (1) It allowed the Applicant to occupy the flat until 20th December 2020,
24. Thus, in terms of the mediation and the Agreement reached before the Consumer Council, the Applicant was allowed to stay in the flat until 20th December 2020 and required to vacate on 21st December 2020.

25. The contents of paragraph 23 of the Respondents affidavit proves that the Respondents had evicted Mr. Steven Singh, Ms. Khan and the three (03) children where they state:

".....so we only allowed the house girl to go into the flat with the children to get some clothes....."

26. What comes to mind is that if the Respondents had not evicted Mr. Singh, Ms. Khan and the three (03) children, they would not have stopped them from going into the flat and reside in it? They only allowed Ms. Khan and three (03) children to go into the flat to get some clothes.

27. I also make reference to paragraph 19 of the First Applicant's Affidavit who deposed to the relevant facts, sworn and filed on 22nd December 2020.

'19. The Respondents said that the only thing they need from him was the key to the flat and the sum of \$1,900. They won't let us back in the flat.'

28. However, the Respondents at paragraph 24 of their Affidavit admit the contents of paragraph 19 of the First Applicant's Affidavit.

'We admit to the contents of paragraph 19 of Affidavit of Rahul Singh and further aver that he was in possession of the only key to the flat and that it would be impossible for us to took Rahul Steven Singh out of the flat.'

29. It is important to note and bear in mind that there is no provision contained in the Distress for Rent Act that empowers a landlord or a bailiff to lock the house, so as to evict them from entering home or depriving them of the occupation.

30. At paragraph 32 of the Respondent's Affidavit, the Respondent deposes that he utilised the services of a bailiff to issue a Notice of Distress for Rent to Rahul Steven Singh, which was served on to him on 19th December 2020, but refused to sign and acknowledge a copy and they did not lock him out of the flat nor took possession of any of his chattels.

31. Further, the Respondents depose at paragraph 33 that they all times ensured that Rahul Steven Singh's tenancy rights were adhered to and at no time the Respondents conduct an arbitrary eviction nor breached First Applicant's or his children's constitutional rights.

32. Paragraph 29 of the Affidavit of the First Applicant is denied by the Respondents wherein paragraph 29 deposes that 'alternatively, we request for a court order to be allowed back into the flat to recover all our belongings in the presence of the police.'

33. The Respondent's contention is that they allowed the First Applicant to return to the flat and recover his belongings.

34. However, upon the perusal of the court file, it is evident that this court granted an interim order 'that the First Applicant and his family is allowed to return, enter, use, and/or given possession of his flat at the Respondent's property located at Naivorovoro Road, Nakasi on the condition that the respective flat is still not occupied and is vacant with the assistance of the police at the Nakasi Police Station until the determination of this matter.'
35. When this interim order was granted by this Honorable Court on 23rd December 2020, it was evident then that the Applicant was evicted beforehand on 20th December 2020 rather than on 21st December 2020 in terms of the Consumer Council's terms of settlement.
36. I find from the affidavit evidence filed into court coupled with the oral argument of the parties to this proceedings, that the manner in which the eviction was exercised and carried out by the Respondents was arbitrary since it was exercised in a degrading and inhumane manner with total disregard to First Applicant Rahul Steven Singh, Ms. Khan and the vulnerable three (03) children.
37. The eviction therefore was arbitrary and this was a validation of First Applicant, Rahul Steven Singh, Ms. Khan and the three (03) children's constitutional rights under Section 39(i) and Section 11 of the 2013 Constitution.
38. It is pertinent to note that Section 39(i) of Constitution restricted to evictions from a home and re-entry under property law is a general provision. Hence, is more important in the context of human dignity as well as to human rights.
39. The Hon. Justice Kevin Bell, Justice of the Supreme Court of Victoria and former President of the Victorian Civil and Administrative Tribunal in an article to Monarch University Law Review (2013, March) stated as follows:

"The idea of home has profound social and cultural importance. In recent years, it has attracted substantial scholarly attention in the social and legal sciences. A number of books and journal articles have been published which have carefully analyzed the role of the home in promoting individual, family and community well-being. Influential scholars have emphasized the importance of the home to our sense of 'personhood' and 'identity' that is having identity and standing in society as someone of individual work. Existing legal categories and principles have been criticized for failing fully to recognize and protect home-based interest. Residential tenancy laws is one of those categories.
40. It will be noted that *Section 39(i) of the 2013 Constitution* deals with eviction from home and not all properties.
41. *Chapter 2, Sections 6[5] and 7[2] - [5] of the 2013 Constitution* provides the manner in which the Bill of Rights is to be read and applied. I will not reproduce Chapter 2- Bill of Rights herein but this can be referred to in the 2013 Constitution for ease of reference and details.
42. However, according to *Section 7[5] in the interpretation of Sections 39[1] and [2] and 41*, the Court needs to consider the impact of it on individuals or groups of individuals, especially vulnerable groups such as women, children and also elderly people.

43. In the current case before this Court, the rented flat comprised of a woman and three (03) children when they were evicted from the flat and had to stand on the roadside in the rain and got wet.
44. Bearing the fact in mind at the time of eviction, the circumstances in which they were evicted favours that these vulnerable group of four, including the house girl and the three (03) children, be protected and their human dignity be protected by law. It is noted that these children are of very tender ages of 2 years, 5 and 6 years old.
45. Therefore, I find as a fact that the eviction of the first applicant, Rahul Steven Singh, Shainaz Khan and the three (03) children by the Respondents from the premises of the respondents was arbitrary and a violation of their constitutional right guaranteed under **section 39[1] of the 2013 constitution**.

Second declaration:

What are the rights of the children?

46. **Section 41 of the 2013 constitution** states:

Rights of children

41.—(1) *Every child has the right—*

- (a) *to be registered at or soon after birth, and to have a name and nationality;*
- (b) *to basic nutrition, clothing, shelter, sanitation and health care;*
- (c) *to family care, protection and guidance, which includes the equal responsibility of the child's parents to provide for the child—*
 - (i) *whether or not the parents are, or have ever been, married to each other; and*
 - (ii) *whether or not the parents are living together, have lived together, or are separated;*
- (d) *to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour; and*
- (e) *not to be detained, except as a measure of last resort, and when detained, to be held—*
 - (i) *only for such period of time as is necessary; and*
 - (ii) *separate from adults, and in conditions that take account of the child's sex and age.*

(2) *The best interests of a child are the primary consideration in every matter concerning the child.*

47. A child locked outside of his home faces many difficulties such as no access to bathroom facilities, food and water, exposure to someone who could harm them [since it was late in the afternoon when they were evicted] and exposure to other elements. On 20th December 2020 when the Respondents arbitrarily evicted the three tender aged children, they had to stand

on the roadside getting wet in the rain, hence could have got sick and traumatized as a result in such circumstances.

48. It cannot be objected or disputed that it is paramount importance that child rights are guaranteed and they are not subjected to inhuman and degrading treatment.
49. In this case, in absence of the applicant, Rahul Steven Singh has two daughters namely Shana Singh (aged 6 years) and Shihansi Singh (aged 5 years), his house girl Shainaz Khan and her son (aged 2 years) were evicted and moved to the roadside in the rain. The three children are of very tender ages, two are females.
50. **Section 41 of the 2013 constitution** deals in detail with the rights of the children. **Section 41(2)** states 'the best interests of the child are the primary consideration in every matter concerning the child are the primary consideration in every matter concerning the child.
51. The Respondents in this case failed to consider the best interest of the three (03) very tender aged children when they were evicted and locked out of the Respondent's flat which they were occupying.
52. Their actions amounted to cruelty and inhuman treatment.
53. Physiological impact experienced from such an incident in particular by all the three (03) children of very tender ages cannot be measured and may be irreversible. The children would have been mentally tormented by the actions of the Respondents.
54. Therefore, I find that there is a violation of the **section 41(1) (d) and (2) of the 2013 constitution**.

Third declaration.

55. Whether damages should be awarded?
56. **Section 41 of the Human Rights and Anti-Discrimination Commission Act 2009** allows the High Court to award damages under different leads when there is a contravention of human rights.
57. Upon a careful perusal of the Applicant's Originating Summons, I see that the Applicant seeks remedy sought in order (7) of the Originating Summons filed on 7th April 2022, which relates to humiliation, loss of dignity and injury to feelings pursuant to **section 41(1) (d) of the Human Rights and Anti-Discrimination Commission Act 2009**.
58. The Applicant's counsel has finished court with case authorities in this regard.
59. He sought damages for \$7,500 each for Mr. Singh, Ms. Khan, Shana Singh, Shihansi Singh and Ms. Khan's son. This court will take this into consideration and will determine what is fair in the circumstance.

Costs

60. The matter proceeded to full hearing on written submission and oral arguments on the originating summons. However, it involves cost, and I order a summarily assessed cost of \$2,000 against the Respondent to be paid to the Applicant.
61. I note that application was filed by way of Originating Summons which is a summary proceedings. However, the Respondent's had a Legal Aid Commission counsel representing the Respondents. I see from the Respondent's affidavit filed herein together with a written submission that the Respondents deny evicting Rahul Stephen Singh, Ms. Khan, and the three (03) children from the premises, rather it was the house girl upon being enquired from about eviction that she took the three (03) children to the roadside and waited in the rain.
62. The Respondents deny evicting Rahul Steven Singh, Ms. Khan, and the three (03) children from the premises.
63. However, there was no application and/or the Respondent counsel appearing in court during the hearing and appraising Court that the application filed herein has disputed facts and/or the originating summons to be converted to a writ action in terms of **Order 28 Rule 9 of the High Court Rules, 1988** and heard on *viva voce* evidence of the parties and witnesses and be then determined accordingly.
64. The Respondent have denied eviction and not challenged the same to make it a dispute but relied on affidavit evidence. Further, the applicant and the house girl became aware that when the Landlord (Respondents) made enquiries as to eviction, had in fact evicted them from the premises prematurely.
65. Further, both the respondents did not show any interest in this case since they did not appear and take part in the hearing.
66. In light of above, I invoke **section 15 (3) of the 2013 Constitution** and decided to hear this matter in all fairness on the Counsels submissions in order to determine this matter within a reasonable timeframe. It is a 2020 matter, anyway, impending in the system for approximately 5 years.
67. For the aforesaid rational, I proceed to grant the following Declarations and Orders:
 - (i) Declaration that the First Applicants Constitutional Freedom and Arbitrary Evictions under **Article 39 of the Constitution of the Republic of Fiji 2013** were violated and breached by the Respondent and/or their servants and agents.
 - (ii) Declaration that the First Applicants Children's rights under **Article 41 of the Constitution of the Republic of Fiji 2013** were violated and breached by the Respondent and/or their servants or agents.
 - (iii) Declaration that the First Applicant and his family's Constitutional Freedom from cruel and degrading treatment under Article 11 of the Constitution of the Republic of Fiji 2013 were violated and breached by the Respondents and/or their servants or agents.

- (iv) The Respondents to pay the Applicant Rahul Steven Singh a sum of \$2,000 as summarily assessed costs within 21 days timeframe.
- (v) I make a further order that the Respondents pay the following damages for humiliation, loss of dignity and injury to feelings under Section 41(1)(d) of the Human Rights and Anti-Discrimination Commission Act 2009 to the following:
- a) First applicant, Rahul Steven Singh a sum of \$2,000.
 - b) House girl Ms. Shainaz Khan a sum of \$3,000.
 - c) Two children (daughters) of the first applicant
 - Shana Singh aged six years - a sum of \$3,000.
 - Shihansi Singh aged five years - a sum of \$3,000 and
 - d) Shainaz Khan's son aged two years - a sum of \$3,000.

A total sum of \$14,000 as damages to be paid as hereinabove order within 28 days timeframe.

Dated at Suva this 10th day of July , 2025.




VISHWA DATT SHARMA
PUISNE JUDGE

CC: Victoria Chambers, Suva
Legal aid commission, Suva