

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

**Civil Action No. HBC 138 of 2025**

**IN THE MATTER** of an  
application under Order 113, r.(1)  
of the High Court Rules 1988 for  
an order to recover  
possession of land

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**BETWEEN** : **Vaseva Maramanitabua Natadra aka Vaseva  
Maramanitabua of Matawailevu , Nalawa, Ra, Domestic  
Duties, Administratrix of Ratu Sakiusa Natadra  
Niudamu aka Sakiusa Natadra, Intestate.**

**PLAINTIFF**

**AND** : **Litia Adi Tubuna and Other unknown**

**DEFENDANTS**

**Coram** : **Banuve, J**

**Counsels** : **Lazel Lawyers for the Plaintiff  
Seniroqa Law for the Defendants**

**Date of Hearing** : **19 September 2025**

**Date of Ruling** : **22 September 2025**

# RULING

## A. Introduction.

1. The Plaintiff as Administratrix of the Estate of Ratu Sakiusa Natadra Niudamu aka Ratu Sakiusa Natadra late of Matawailevu Village, Nalawa, Ra appointed by way of grant of Letters of Administration dated 5 September 2023, filed an Originating Summons pursuant to Order 113, r(1) of the *High Court* Rules 1988 on 11 April 2025 seeking the following order, that she;
  - (i) do recover possession of Lot 42, DP H13, 4, H18, 2, H/19, 1, H14, 3 situate in the District of Vatutu , Province of Ba and Yasawa on the ground that she is entitled to possession and that the persons are in occupation without license or consent.<sup>1</sup>

## B. Narration.

2. The Prayer in the Originating Summons mistakenly refers to a different plot of land, however the Court notes from the affidavit evidence that there is no dispute between the parties about the correct description and location of the subject land. As extracted from the Affidavit in Support<sup>2</sup> of Summons ;
  - (i) The subject title is for Native Lease No. 28405, dated 14 December 2007 over that piece and parcel of land described as follows;  
Natuanivonu (as shown Lot on TL 1615), Tikina of Nausori, Province of Tailevu, Area of 5 acres, 0rood 11 perches. (Annexure 'B' }
  - (ii) The subject lease was transferred to Sakiusa Niudamu on 7 June 2012
  - (iii) The Plaintiff was granted Letters of Administration of all the Estate of Ratu Sakiusa Natadra Niudamu aka Sakiusa Natadra, Deceased, Intestate, on 11 February 2025,inclusive of NLTB Lease Ref: 4/14/500380438, known at

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<sup>1</sup> This is an incorrect reference, the correct one covered by Annexure 'B' in the Affidavit of Vaseva Maramanitabua Natadra sworn and filed on 11 April 2025 described as **Natuanivonu, Tikina of Nausori, Province of Tailevu consisting of 5acres 0roods 11 perches.**

<sup>2</sup> Deposed by the Plaintiff and filed on 11 April 2025

Natuanivonu as shown on Lot 1 on Plan No. TL 1612, Nausori, Tailevu which are unlawfully occupied by the Defendants.

(iv) There is no dispute or issue raised by the Defendants about the proper description of the land subject of the Originating Summons filed on 11 April 2025, pursuant to Order 113. The Defendants, rather, in paragraph 1 of the 'Response to Order for Recovery of Possession of Land' state that they concur with paragraphs 1 and 2 of the 'Affidavit in Support of Summons'; which state;

2. *That the Plaintiff was granted Letters of Administration of all the estate of Ratu Sakiusa Natadra, deceased, intestate, inclusive of lease NLTB Ref: 4/14/500380438, situate at Natuanivonu as shown Lot 1 on TL 1612, Nausori, Tailevu which are unlawfully occupied by the abovenamed Defendants ("hereinafter called the "Defendants") A certified true copy of the Letters of Administration is annexed hereto marked 'A.'*

(v) The named Defendant, and others unknown, ('the Defendants'), occupy the property described as Natuanivonu, as shown on Lot 1 on TL 1612, Nausori, Tailevu, without the consent of the Plaintiff, whose right as a lessee still subsists.

(vi) The Plaintiff is made aware that the Defendants, with their families, are illegally occupying the said land, cultivating and grazing livestock at the said land.

(vii) That the Defendants and their families, and other persons not mentioned in the originating summons, are illegally occupying, cultivating, and grazing their livestock, without the consent of the Plaintiff, are trespassers and therefore the Plaintiff seeks an immediate order that she recover possession in terms of the summons and the Defendants vacate the land immediately.

3. In the Affidavit in Response<sup>3</sup> the following matters are deposed;
- (i) That the First named Defendant and her daughter have been residing on the land for more than 10 years.
  - (ii) The daughter's father-in-law is the landowner of the land
  - (iii) That the daughter and her husband are assigned to take care of the land whilst it has been left in an idle state for more than 10 years .
  - (iv) That the landowners have found bad husbandry on the land which is a breach of the condition of the Agricultural lease.
4. In an Affidavit in Reply the Plaintiff filed on 12 September 2025 the Plaintiff deposes that her inability to attend to the land was due to spousal responsibility in caring for her late husband, who had been gravely ill and required full time attention.

### **C. The Law.**

5. Order 113 is entitled 'Summary Proceedings for Possession of Land. Rule 1 states;

#### *Proceedings to be brought by originating summons*

1. *Where a person claims possession of land which he alleges is occupied safely by a person (not being a tenant or tenants holding over after the termination of the tenancy), who entered into or remained in occupation without his or her license or consent or that any predecessor in title or his or hers, the proceedings may be brought by originating summons in accordance with the provisions of this order.*
6. In *Baiju v Kumar* [1999] FJHC 20, certain directions on the ambit of Order 113 were considered;

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<sup>3</sup> Deposed by the First named Defendant and filed on 26 August 2025

- (i) Order 113 does not provide a new remedy, but rather a new procedure for the recovery of possession of land which is in wrongful occupation by trespassers.
- (ii) The application of the Order is narrowly confined to the claim for possession of land which is occupied solely by a person who entered into or remain in occupation without the license or consent of the person in possession or of any predecessor of his.
- (iii) The exceptional machinery of the Order is plainly intended to remedy a situation where the occupier has entered into occupation, without license or consent, and the Order also applies to a person whom has entered into possession, with a license, but has remained in occupation without a license.
- (iv) The order normally applies in virtually uncontested cases or in clear cases where there is no issue or question to try, i.e where there is no reasonable doubt as to claim of the Plaintiff to recover possession of land or as to wrongful occupation of the land without license or consent and without any right, title or interest

7. The issues of contention raised by the Defendant as the basis for her occupying the subject land which is presently covered by Native Lease No 2845 ,dated 14 December 2007, described as Natuanivonu (as shown Lot 1 on TL 16120) situate in the Tikina of Nausori in the Province of Tailevu are as follows;

- (i) That she resides on the land with her daughter whose father-in-law owns the land and who has assigned the land to them as the land has been idle for 10 years<sup>4</sup> or so now;
- (ii) That the landowners have found bad husbandry which is a breach of the condition of the Agricultural lease.
- (iii) That the Plaintiffs have never attempted to carry out farming activity and therefore the Defendant has no option but to reside and utilize the land.

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<sup>4</sup> Paragraph 4 of the Defendant's ' Response to Order for Recovery of Possession of Land filed on 26 August 20256

**D. Analysis**

8. The issue for determination is whether the Plaintiff is entitled to an order for vacant possession under Order 113
- (i) The subject land is covered by Native Lease No 26405, issued on 14 December 2007, subsisting from the 1<sup>st</sup> day of July 2007, for a term of thirty (30) years.
  - (ii) Whilst the lease is for agricultural purposes, its terms and conditions are governed by *the Native Lands (Leases and Licenses) Regulations 1984*<sup>5</sup>.
  - (iii) The Defendant’s justification for their occupation of the subject leased land is that the lessee has not complied with the requirement of good husbandry of the subject land, for over 10 years now, and it is on that basis that they have entered the land.
  - (iv) The Defendants have come onto the land during the subsistence of the lease held by the Plaintiff, whose term commenced on 1 July 2007, some 18 years ago, with some 12 years left to run.
  - (v) The Defendant ascribe their action as akin to enforcing and remedying the breach of the covenants governing the subject lease. These action, however, are not sanctioned under clause 4 (b)(ii) of the Lease which states;

*(b) That if and whenever during the term of the lease-*

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(ii) *there shall be any breach, non-performance or non-observance of any of the covenants on the part of the lessees herein contained or implied by virtue of the Native Land Trust (Leases and Licenses) Regulations 1984;*

.....  
*then and in any such case it shall be lawful for the lessor at any time thereafter, and notwithstanding the waiver by the lessor of any previous right of re-entry, to enter into and upon the land or any part thereof or in the name of the whole and thereupon this demise shall absolutely cease and determine....*

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<sup>5</sup> Exempted under section 58 (f) of ALTA

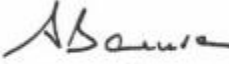
(vi) Pursuant to the covenants which govern the subject lease it is the “lessor”, the I-Taukei Land Trust Board, which is vested with the power to re-enter Lease No 28405, for the breach of a covenant. The Defendant (and other unnamed occupants) are not vested with the right of e-entry over the subject lease so, in summary the Defendants do not have a legal basis for entering and remaining on the subject leased land.

**ORDER:**

**Order in Terms of the Originating Summons filed pursuant to Order 113 of the High Court Rules 1988 granted;**

- 1. That the Plaintiff do recover possession of Native Lease No. 28405 over land described as Natuavonu as shown on Lot 1, on TL 1613 in the Tikina of Nausori, Province of Tailevu, Area of 5 acres, 0 rood, 11 perches on the ground that she is entitled to possession and that the persons are in occupation without license or consent.**
- 2. Parties to bear their own costs.**



  
Savenaca Banuve  
Judge

**At Suva  
22<sup>nd</sup> September 2025**