

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

CASE NUMBER: HBC 293 OF 2024

BETWEEN: **ISIKELI NAKOIVALU**

PLAINTIFF

AND: **ALL UNLAWFUL OCCUPIERS/ TENANTS AND OR FAMILY MEMBERS**

DEFENDANTS

Appearances: *Mr. A. Chand for the Plaintiff.*

Mr. S. Komaisavai for all Defendants.

Date/Place of Judgment: *Friday 26 September 2025 at Suva.*

Coram: *Hon. Madam Justice Anjala Wati.*

JUDGMENT

(Application for vacant possession – Order 113 High Court Rules 1988)

1. This is an application under order 113 of the High Court Rules 1988 for vacant possession of the property comprised in an Agreement to Lease No. 4/3/42757, Tacirua (Part of), Naitasiri containing an area of 6.1081 hectares (subject to survey).
2. The plaintiff says that he is one of the elders of the Mataqali Nawavatu Land Owning Unit of Kalabu Village, Naitasiri. He agrees that this Mataqali is the traditional customary owner of the subject land in issue.
3. The plaintiff was given a 10 year development lease over the property commencing 1 July 2023. He admits that the defendants have been living on the property from before he was given a lease but asserts

that no one has a proper lease or title with them. He says that they are therefore unlawful occupiers of the property.

4. On behalf of the defendants, two affidavits were filed, one by Mr. Eparama Turaganivalu and the other by Mr. Aklesh Nalin Prasad.
5. Mr. Eparama Turaganivalu states that he is the Turaga Ni Mataqali of Mataqali Nawavatu Land Owning Unit. He has served in this role for over 20 years. According to Mr. Eparama Turaganivalu, there are 32 informal settlements on this property. The area occupied covers 700 acres.
6. Mr. Eparama Turaganivalu says that these people on the land are informal settlers to whom his Land Owning Unit gave permission to reside on the land. They have been there from ages. It is said that the Land Owning Unit has not given the required consent to issue a development lease to the plaintiff. The lease issued to the plaintiff is therefore fraudulent. He says that his Land Owning Unit does not want these families to be displaced as they have been living on the land harmoniously and with permission.
7. After having heard the parties, it is clear that the people who are occupying the property in question have been there for ages. They have been occupying this property before the plaintiff was issued with a development lease. They appear to have been there with the permission of the Land Owning Unit Nawavatu. The Land Owning Unit had been owning this piece of land. They are the predecessors in title and it is more likely than not that they allowed all the informal settlers on the property.
8. Order 113 Rule 1 of the High Court Rules 1988 reads:

“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.”

9. If the previous owners of the land gave the occupiers permission to occupy the property and it is alleged that the necessary consent of the owners was not taken to issue a development lease on the property, the issue becomes triable and the originating summons is not a proper mode to bring the proceedings.

10. It also needs investigation as to how many people from the Land Owing Unit had actually given consent for a development lease to be issued to the plaintiff and what are the arrangements to house over hundreds of people who are now living on the land. The plaintiff does not think that this is an issue for the court to consider. I do not endorse that view. There are hundreds of people on this property. It is not easy to displace families with children who need shelter and protection.
11. The issue of consent needs to be inquired into. It also needs to be determined whether there was proper consultation and consideration about housing these people before a development lease was issued. They had been invited on the land to stay and the Land Owing Unit which invited them wants them to continue to stay. Their views were necessary to be taken into consideration before a development lease was issued. The Land Owing Unit alleges collusion and fraud between the plaintiff and the lessor. This issue needs further investigation.
12. I am fortified in my view, given the letter of iTaukei Lands and Fisheries Commission of 2 April 2025. It reads:

“Proposed Kalabu Village Boundary Extension

With your indulgence,

Kindly be informed that we are currently in the process of extending the Kalabu Village present boundary to the Tacirua Heights and Tacirua Plains locality.

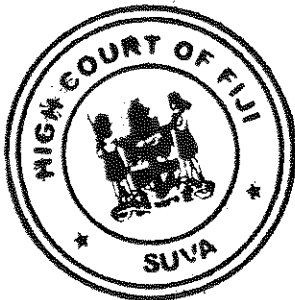
The traditional oath taking for consent by various LOU heads whose lots of land will be directly affected namely Matanikorovatu, Nawavatu and Naulukarua had been carried out successfully through the auspices of the iTaukei Lands Fisheries Commission and Ministry of iTaukei Affairs.

In essence this will infer that Kalabu Village will have the largest single boundary of any kind in Fiji. This exercise will involve about 19 informal settlements.

The official gazzeting of this exercise is yet to be finalized by the iTaukei Affairs but it is envisaged that after work has been completed in the Rewa Province gazette exercises will resume in Naitasiri proper.”

13. If the boundary of Kalabu village is to be extended and the process of obtaining consent of Land Owing Units Matanikorovatu, Nawavatu and Naulukarua has been carried out then the issuance of the development lease without consent of the required members of the 3 Land Owing Units is highly questionable.

14. I do not find that Order 113 Rule 1 is the proper proceedings to evict the occupiers of the land in question and as such I dismiss the application. The proceedings should not have been brought under Order 113.
15. Mr. A Chand had asked that this matter be converted into a writ action. I do not find that the action for summary proceedings should be converted into a writ action. Summary proceedings are meant to be finalized quickly one way or the other and not kept in the system to age.
16. The plaintiff has chosen the wrong procedure to bring this case. It was already known to him that the occupiers of the land had the permission of the Land Owning Unit to occupy the land. That gave a clear indication that Order 113 procedure was not suitable from the beginning.
17. I therefore dismiss the plaintiff's application for vacant possession and order the plaintiff to pay costs of the proceedings in the sum of \$5,000 to the defendants.



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Hon. Madam Justice Anjala Wati

Judge

26.09.2025

To:

1. *Amrit Chand Lawyers for the Plaintiff.*
2. *Messrs Komai Law for the Defendants.*
3. *File: HBC 293 of 2024.*