

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**[CIVIL JURISDICTION]**

**Civil Action No. HBC 156 of 2022**

**BETWEEN:**        **MATAQALI NABOUCAWA** of the Tokatoka Naviraiyawa of the Yavusa Narairaiyaga the members of which are enumerated in the Register of Native Landowners of the Province of Ba and Yasawa, Tokatoka No. 341.

**PLAINTIFF**

**AND:**            **APOROSA NAMAQA NO. 2** of Nagado Village, Farmer.

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

**AND:**            **APOROSA NAMAWA NO. 3** of Nagado Village, Farmer.

**2<sup>ND</sup> DEFENDANT**

**AND:**            **ELONI TOUTOU aka ELONI TUKUTUKI** of Nagado Village, Farmer.

**3<sup>RD</sup> DEFENDANT**

**AND:**            **VERENIKI GONEVA** of Nagado Village.

**4<sup>TH</sup> DEFENDANT**

**AND:**            **ILIASERI RASARO** of Nagado Village, Farmer.

**5<sup>TH</sup> DEFENDANT**

**AND:**            **TAGI MOALA** of Nagado Village, Farmer.

**6<sup>TH</sup> DEFENDANT**



*“Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being tenants or tenants holding after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provision of this Order”*

5. Footnote 113/1-8/1 of the 1997 Supreme Court Practice at page 1653 reads:

*“The application of this Order is narrowly confined to the particular circumstances described in r.1, i.e. to the claim for possession of land which is occupied solely by a person or persons who entered into or remain in occupation without the licence or consent of the person in possession or of any predecessor of his. The exceptional machinery of this Order is plainly intended to remedy an exceptional mischief of a totally different dimension from that which can be remedied by a claim for the recovery of land by the ordinary procedure by writ followed by judgment in default or under O.14. The Order applies where the occupier has entered into occupation without licence or consent; and this Order also applies to a person who has entered into possession of land with a licence but has remained in occupation without a licence, except perhaps where there has been the grant of a licence for a substantial period and the licensee holds over after the determination of the licence (*Bristol Corp. v. Persons Unknown*) [1974] 1 W.L.R. 365; [1974] 1 All E.R. 593). The Court, however, has no discretion to prevent the use of this summary procedure where the circumstances are such as to bring them within its terms, e.g. against a person who has held over after his licence to occupy has terminated (*Greater London Council v. Jenkins*) [1975] 1 W.L.R. 155; [1975] 1 All E.R. 354) but of course the Order will not apply before the licence has expired (*ibid.*). The Order applies to unlawful sub-tenants (*Moore Properties (Ilford) Ltd v. McKeon*) [1976] 1 W.L.R. 1278.”*

6. It is only in situations where there arises in the Court’s view, triable issues, would an Order 113 application be refused: ***Nair v Khan*** [2024] FJCA 40; ***Baiju v Kumar*** [1999] 45 FLR 79.
7. A plaintiff seeking relief from this Court under this Order must demonstrate that: (i) they have the right to possess the land in question; (ii) they are claiming possession of the land currently occupied by the defendant; and (iii) the defendant, whom the plaintiff aims to evict, is someone who has entered and

remained on the land without the plaintiff's (or any predecessor in title) permission or consent.

8. It is a requirement that a plaintiff establish that the occupiers have entered into occupation without license or consent of the plaintiff. Order 113 is also applicable in the event a person who has entered into possession of land with a license but has remained in occupation without a license (see also *Dutton v Manchester Airport* [1999] All ER 675).
9. In the Plaintiff's Affidavit in Support, annexed and marked "A" is a copy of the Register of Native Land for the Property which describes the land as Lot 42 on Folio 769 with land-owning unit as "*the tokatoka Naraviyawa of the Mataqali Naboucawa of the yavusa Narairiyaga the members of which are enumerated in the Register of Native Landowners of the Province of Ba & Yasawa, Tokatoka No. 341*" (NLC Register).
10. The Defendants' Affidavits state as follows:
  - a) Emosi Raura did not have the authority of the *Tokatoka Naraviyawa* of the *Mataqali Naboucawa* of the *Yavusa Narairiyaga* to depose the Affidavit in Support on their behalf.
  - b) Plaintiff has not shown any authority to institute this proceeding.
  - c) There is no documentary proof that Emosi Raura is a registered member of the *Tokatoka Naraviyawa* of the *Yavusa Narairiyaga*.
  - d) No proof of ownership of the Property has been provided.
  - e) The Plaintiff is registered twice in the land register and owns *iTaukei* land described as Lot 31 on Folio 553 as opposed to Lot 42 on Folio 769.
11. Annexed in the Plaintiff's Affidavit in Reply, which is also deposed by Emosi Raura marked "A", is a document he refers to as the "*consent letter from Tokatoka Naraviyawa of the Matawali Naboucawa of the Yavusa Narairiyaga*" (Consent letter).
12. In the same Affidavit, annexed and marked "B" is a copy of a document, which the Plaintiff's counsel submitted, is an extract from the Native Land Register – *Vola ni Kawa Bula* (VKB list) of the Property. It must be noted that this VKB list is incomplete and bears no seal that it is indeed from the VKB. In any event it only has a list of 43 names. The deponent Emosi Raura is listed at number 20.
13. During the hearing of the Summons, the Plaintiff's counsel submitted that:
  - a) the Plaintiff had established its right to ownership of the Property through evidence of the NCL Register.
  - b) The Consent letter gave Emosi Raura authority to depose affidavits on behalf of the Plaintiff.

- c) The Defendants were unable to prove a licence to enter and remain on the Property thereby making them trespassers.

14. In opposition, the Defendant's counsel raised the following issues:

- a) There is no evidence of the number of actual members that make up the Plaintiff *Mataqali*, and how they were authorised to institute this proceeding.
- b) The Consent letter does not state whether those members of the Plaintiff *Mataqali* had authority to sign the same.
- c) There is no evidence of where the deponent of the Plaintiff's Affidavits, Emosi Raura, derived his authority to act on behalf of the Plaintiff.
- d) The VKB list is incomplete.
- e) There is no evidence that the Defendants are in fact residing on the Plaintiff's land.
- f) The Plaintiff is registered twice in terms of *iTaukei* land ownership, and the Plaintiff owns Lot 31 on Folio 553 as opposed to Lot 42 on Folio 769.
- g) The proceeding is irregular.

15. In response, counsel for the Plaintiff relied on *Qoro v Galala* [2021] FJHC 390; HBC273.2019 (17 December 2021) to advance his submissions that Emosi Raura was a member of the Plaintiff *Mataqali* and any member of a *Mataqali* could bring a representative action on a *Mataqali's* behalf. The Plaintiff's counsel asserted that the Consent letter was an authority from the Plaintiff for Emosi Raura to depose both the Affidavit in Support and the Reply on behalf of the Plaintiff.

16. The facts in *Qoro* [supra] are distinguishable from this matter. In *Qoro*, Master Azhar (as His Lordship then was) stated the following:

*09. The plaintiff annexed a true copy of authority given to him by the majority members of Tokatoka Vunatawa, marking as "JGQ 2" to prove his status to bring this representative action against the defendant. According to that document, 77.5% of the members consented for this action. Furthermore, the supporting affidavit clearly shows that, all the members of Tokatoka Vunatawa have common interest and common grievance as the defendant is illegally occupying the land belongs to their Tokatoka. Therefore, they seek ejectment of defendant, which is beneficial to all of them. Accordingly, this action meets all three requirements of a representative action which are (i) common interest; (ii) common grievance; and (iii) the relief in its nature would be beneficial to all."*

17. In the present matter before this Court, the Consent letter which the Plaintiff relies on is endorsed only by 14 members of the Plaintiff. It is not clear whether any of those members is the Head of the *Mataqali* – the *Turaga ni Mataqali*. Further, the VKB list is not endorsed by the *iTaukei* Land Commission, and the said list seems to be incomplete showing only the names of 43 members.

18. **Qoro** above was a representative action and the plaintiff therein had the consent of 77.5% of the relevant *Mataqali* members to initiate the proceeding. In this current action, the *Mataqali* itself is the Plaintiff yet only 14 members seem to have signed the Consent letter. There is no evidence of where these 14 members derive such authority from. Moreover, even if the Court were to presuppose that the total number of members for the Plaintiff is 43 as per the annexed VKB list, 14 does not even come close to the 50% threshold of the total members.
19. Therefore, I find that the Plaintiff has failed to satisfy this Court that the majority of its members have given their authority for the institution of this action, and for Emosi Raura to depose affidavits on its behalf.
20. Furthermore, the Defendants in the Defendants' Affidavits raised that the Plaintiff's interest in *iTaukei* land is registered twice and asserted that the Plaintiff owns Lot 31 on Folio 553 as opposed to Lot 42 on Folio 769. This particular issue was not addressed by the Plaintiff's counsel in his submissions.
21. The said issue needs to be determined at a trial where witnesses and relevant authorities such as the *iTaukei* Lands Commission will need to give oral and produce documentary evidence to ascertain if there is any merit in the Defendants' claim. Issues such as this cannot be resolved in a summary manner under Order 113 of the HCR.
22. In light of the above, the Plaintiff's application is hereby dismissed. This dismissal is not a bar for the Plaintiff to institute proceeding in any other manner seeking eviction.
23. Accordingly, I make the following orders:

(a) The Plaintiff's Summons is hereby dismissed; and

(b) The Plaintiff is to pay costs summarily assessed at \$1,000.00 to the Defendants within one month from today.



**P. Prasad**  
**Master of the High Court**

**At Lautoka**  
**18 November 2025**