

**ALIKA KAILIANU COOPER JNR AND KE'AHU COOPER JNR v  
OLIVER DANFORD, LUSIANA DANFORD AND OTHER MEMBERS  
OF DANFORD FAMILY (HBC0369 of 2009S)**

5 HIGH COURT — CIVIL JURISDICTION

WATI J

2 February 2012

10 **Vacant possession — summary proceedings — registered proprietors — adverse  
possession — physical possession of land — Land Transfer Act Cap 131 ss 39, 169.**

The plaintiffs sought an order for vacant possession of property against the defendants. The plaintiffs are the registered proprietors of the property. The property has one  
15 substantial dwelling house which is occupied by the defendants.

**Held –**

(1) The defendants have not been in physical possession of the land for the past 20 years as claimed. Even if they did occupy the property for more than 20 years, they cannot  
20 bank on this to justify their staying on the land. If the defendants thought they were entitled to the property by adverse possession, they should have applied for vesting orders in their favour. Their sleeping on their rights cannot be a ground for them to stay on the property.

(2) The plaintiffs are the registered proprietors of the property and no allegations of fraud have been made against them or any previous owner. The plaintiffs' title is therefore  
25 indefeasible and as such is good against the whole world.

25 Orders made that the defendants must forthwith vacate the subject property.

*A Tikaram* for the Plaintiffs.

*S Valenitabua* for the Defendants.

30 **Wati J.**

**The Cause**

[1] The plaintiffs are seeking an order for vacant possession of the property comprised in the Certificate of Title No 8541 being land known as Raiwaqa, containing an area of 116 acres 2 rood 25 perches, situated at Navua, Fiji Islands,  
35 against the defendants and other members of the Danford family.

[2] The application is strongly opposed.

**The Grounds in Support/Opposition**

[3] Succinctly, the plaintiffs say that:-

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- The plaintiffs are the registered proprietors of the subject property. The property has one substantial dwelling house which is occupied by the defendants.
  - Prior to the coup in 2000, and whilst the plaintiffs father was alive, a group of people forcibly entered the property with the intention of occupying it.  
45 With the assistance of the police, this group of people were removed from the property.
  - After the 2000 coup, the defendants forcefully entered and started occupying the house on the property and also illegally started cultivating part of the property. The police and the army were advised of this forceful occupation.
  - At the time the plaintiffs were still minors. Now the plaintiffs are of age and  
50 have got the property in their names, they are moving the Court for an order for vacant possession.

- A notice to vacate the property dated 11th August, 2009 was served on the defendants on the 12th day of August, 2009. The defendants continue to occupy the property without the permission from the proprietors.

5 [4] The grounds in opposition appear from the affidavit of Henry Danford, one of the members of Danford family. Vacant possession is opposed on the grounds that:

- The Danford family lived on this land and other lands within the original Crown Grant continuously from the early 1900 to today.
- It may be that the lands had been leased, transferred or dealt with in other ways. The family has been occupying the lands, built their homes on the lands, lived on the lands and cultivated the lands. During all that time, no one asked them or demanded that they leave the lands including CT 8541.
- The period of their occupation is more than 20 years. They had and still have a right to these lands through adverse possession and the law allows the Danford family to apply for a vesting order to facilitate their registration as registered proprietors. To prove adverse possession, they need to call witnesses to testify in Court.
- The members of the Danford family have been occupying and cultivating the property together with other lands surrounding it for much, much, more than 50 years.

20 [5] The allegations by the defendants are opposed through 2 affidavits, one by Virginia Kwong, the mother of the plaintiffs and the 1st named plaintiff. They state:-

- Certificate of Title No 8541, the subject property was purchased by Virginia Kwong and Alika Kailianu Cooper on the 3rd day of April 1997 for a valuable consideration of \$105,000.00 from Channan Singh and Raghubir Singh. Prior to the purchase, the whole property was inspected. Apart from the Indian family living in the house and some squatters living on the land, there were no other persons occupying the property.
- Soon after acquiring the property, the company of Virginia Kwong and Alika Kailianu Cooper, named Golden Cowrie Complex Ltd, planted a substantial area of the land with golden palms, red ginger flowering plants, heliconia plants and Echinacea. With exception of Echinacea, the rest of the varieties were long term crops. The Indian family who were living in the house moved out along with the squatters except for one during the time the property was acquired. The company had one of the working crew and his family and a Chinese man to move into the house on the property.
- During the divorce between Virginia Kwong and Alika Cooper, Virginia's share of the property was transferred to Mr Alika Cooper and he became the sole proprietor. Mr Alika Cooper then formed Noni Agricultural Products Ltd which expanded on the existing crops and planted a substantial area in eating ginger.
- At no time during any of the defendants or Danford family members either occupied or farmed any part of the property.
- It was after Mr Alika Cooper became the sole owner, when the defendants illegally moved onto the property and that was either sometimes in late 1999 or straight after the 2000 coup when there was visible breakdown of law and order.

#### **The Plaintiffs Submission**

50 [6] The plaintiffs' counsel averred that the defendants must show cause why they refuse to give possession of the property. Nowhere in the affidavit of the defendants have they raised grounds to show cause or a right to possession of the

land. The defendants' basic ground for opposing this application is that they have a right to the property through adverse possession and that the law allows them to apply for a vesting order to facilitate registration as registered proprietors. The defendants have not instituted any proceedings against the plaintiffs. Section 39  
5 of the Land Transfer Act guarantees that a registered proprietor's title is paramount except in the case of fraud.

[7] Some 11 years later, while remaining illegally on the plaintiffs' property, the defendants' argue that they should be allowed to remain in occupation while sometime in future they will pursue an action for vesting order. This argument to  
10 say the least, submitted the counsel, is preposterous. The defendants should not use this honourable Court as a vehicle for remaining illegally on the plaintiffs' land while contemplating issuing of proceedings sometimes in the future.

[8] This Court is being asked to go behind the issue of Certificate of Title 8541. and to do so, will be a mockery of the provisions of the Land Transfer Act and the indefeasibility of title of registered proprietors for value. The system of land  
15 registration adopted in Fiji through the Land Transfer Act does not allow any person to go behind what is on the face of the register save in a case of fraud. The defendants have not raised the issue of fraud.

[9] It is evident that the plaintiffs and before that, their parents when made aware of the illegal occupation of the property, have attempted to remove the  
20 defendants and/or the Danford family. Nowhere have the defendants shown that the plaintiffs acquiesced in their continued occupation of the property but on the contrary, at every opportunity, the plaintiffs have attempted to have them removed; the present action is another evidence of the plaintiffs' intention to  
25 obtain vacant possession of the property from the defendants.

[10] There is no complicated questions of fact in this case which needs to be investigated and thus an order for vacant possession must be granted.

### 30 **The Defendants Submissions**

[11] The defendants cause to remain in possession of the land is that their family has been in possession of the subject land for more than 20 years and that they are entitled to the title by adverse possession.

[12] It was submitted that this Court needs to enquire, among other things how  
35 a vesting order was granted to the Danford family and a CT No 24502 was issued to them on 14th March, 1974. These would require oral evidence in Court from the Registrar of Titles and others. The evidence of the Danfords's occupation of the subject land also requires oral evidence. This, again, makes a s 169 application inappropriate in the circumstance of this case.

### 40 **The Analysis**

[13] The subject property that the Court is interested in, is the CT 8541. The Danford family may have occupied other land by virtue of being legal owners or  
45 by virtue of adverse possession but CT 8541 has not been in physical possession of the defendants' family since the past 20 years. The various annexure in the plaintiffs' affidavit indicates clearly that they have moved on the property in the year 1999 and have been illegally occupying the property since then.

[14] Even if the defendants did occupy the property for more than 20 years, they cannot bank on this to justify their staying on the land. The defendants very  
50 well know of their rights of adverse possession and if they thought or think that they are entitled to the property by adverse possession, they should have applied

for vesting orders in their favour. Their sleeping on their rights cannot be a ground for them to stay on the property.

5 [15] The plaintiffs are the registered proprietors of the property in question and no allegations of fraud against them or any previous owner of the property for that matter is made. The plaintiffs' title is therefore indefeasible and as such is good against the whole world.

10 [16] There are definitely no complicated questions of fact that I need to investigate at this stage. The defendants have also not shown any cause why they should remain in occupation. As a result the orders sought through the proceeding must be granted.

**Final Orders**

[17] The defendants must forthwith vacate the subject property.

15 [18] The plaintiffs shall have costs of this action to be determined after I hear from the parties.

[19] Orders accordingly.

*Order for vacant possession made.*

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