

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

**HBC 117 of 2011.**

**BETWEEN** : **KISSUN LAL** of Lot 14 M.N. Naidu Road, Rifle Range, Lautoka,  
Landlord.

**PLAINTIFF**

**AND** : **LATIKA KUMAR, SUNITA PRASAD** and **BABU RAM** all of Lot  
14 M.N. Naidu, Rifle Range, Lautoka.

**DEFENDANTS**

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## **R U L I N G**

1. In this case, because of some technicalities, I did dismiss the section 169 application that was filed by the plaintiff. The matter has been pending before me though for assessment of costs. Mr. Samuel K. Ram, for the defendants, had asked for indemnity costs.
2. The technicalities in question which led to my dismissing the case are set out below. When taken together, I formed the view (as submitted by Mr. Ram) that the factors did raise some serious doubts about whether or not the registered proprietor in question is at all aware of the proceedings which were, purportedly, instituted on his behalf by his daughter. The technicalities in question were as follows:
  - (i) the main affidavit filed in support of the application was sworn by one Amrita Lal on 25 July 2011.
  - (ii) Amrita Lal swears at paragraph 1 of her affidavit as follows:

I am the daughter of the Plaintiff in this action herein and I am duly authority (sic) by the Plaintiff to make and swear this affidavit of (sic) of his behalf. A copy of Authority is annexed hereto and marked as annexure "AL1".
  - (iii) however, the Authority which is annexure "AL1" signed by a Kissun Lal is authority to:

"... act on my behalf and sign any affidavit and related documents and file such documents in matter No. 73/2010 in Magistrate Court in Lautoka."
  - (iv) obviously, this case before me is not "Matter No. 73/2010 in Magistrates Court in Lautoka."
  - (v) furthermore, the intituling on the Summons and affidavit describes the plaintiff as:

“Kissun Lal fathers name Babu Ram....”

The authority however is given by one Kissun Lal f/n Din Dayal.

(vi) apart from the above, the intituling states the address of Kissun Lal as “*Lot 14 M.N. Naidu Road, Rifle Range, Lautoka*”. However, the authority states the address as “*3/7 Noel’s Street, Potts Point, Sydney, Australia*”.

3. To add yet another twist, after these discrepancies were highlighted in Court, the plaintiff’s solicitor filed an affidavit of one Shah Newaz Khan, Chief Clerk employed by Messrs Iqbal Khan & Associates who purported to explain the discrepancies as follows:

*“The reason for the Plaintiff to put his father’s name as DIN DAYAL in the Authority is that in early 1980s, the said Babu Ram changed his name from BABU RAM to DIN DAYAL BABU RAM.”*

4. Kissun Lal would have been the best person to swear the affidavit. Why Kissun Lal himself has not deposed an affidavit, I keep asking myself. In fact, many affidavits have been filed in this case but none of them was sworn by Kissun Lal himself.

5. Shah Newaz Khan deposes that he has known Babu Ram for 40 years but he does not say whether or not the change of name in question was done by Deed Poll, let alone that he, Shah Newaz Khan did in fact assist Babu Ram in that Deed Poll process.

6. The proceedings are already dismissed. I summarily assess costs at \$850-00 only (eight hundred and fifty dollars only).

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Anare TUILEVUKA

**JUDGE**

01 October 2013.