

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 266 of 2012

BETWEEN : **NASINU LAND AND PURCHASE AND HOUSING CO-OPERATIVE SOCIETY LIMITED** a co-operative society duly incorporated pursuant to the Co-operative Societies Ordinance Cap 219 and having its principal place of business at 68 Suva Street, Suva.

PLAINTIFF

AND : **THE OCCUPIERS** of Certificate of Title No. 3213 being Lot 1 on Deposit Plan No. 3130 Stage 9, Phase 1.

DEFENDANT

BEFORE : **Master Thushara Rajasinghe**

COUNSEL : **Mr. Daven.** for the Plaintiff

8 occupiers are present. for the Defendants

(Vijay Wati, Dollfy Wati, Gyan Bali, Zahid Hussein, Muni Ratnam, Timaima Lewakuna, Zahid Hussain, Jiujiuwa Waqa)

Date of Hearing : 22nd July, 2014

Date of Ruling : 21st November, 2014

JUDGMENT

A. INTRODUCTION

1. The Plaintiff instituted this action by way of this Originating Summons, seeking an order pursuant to order 113 of the High Court Rules to recover possession of the land comprised in certificate of title No 3213, being Lot 1 on Deposit Plan No 3130, stage 9, phase 1, having an area of 326 acres 2 roods on that ground. The Summons is supported by an affidavit of Muni Deo, the Assistance Secretary of the Plaintiff.
2. Upon being served with this Summons, the following eight occupiers filed their respective affidavits in oppositions, they are : Vijay Wati, Zahid Hussein, Gyan Bali,

Dollfy Wati, Zahid Hussain, Jijujiuwa Waqa, Muni Ratnam, and Timaima Lewakuna. Apart from Vijay Wati and Dollfy Wati, all other Defendants admitted in their respective affidavits that they live on this land without the permissions of the Plaintiff. Vijay Wati and Dollfy Wati did not deposited any defense pursuant to Order 113 but stated that they have been living on this land for a long time and has link to this property.

3. Subsequent to filing of affidavits in opposition, the Plaintiff filed their replies to those affidavits. This Summons was then set down for hearing on the 22nd July 2014. Vijay Wati, Zahid Hussein, Gayan Bali, Dollfy Wati, Sahid Hussein, Jijujiuwa Waqa, Muni Ratnam, Timaima Lewakuna for the occupiers and the learned counsel for the Plaintiff made their respective submissions during the cause of the hearing. Subsequent to the hearing, all the defendants and the Plaintiff filed their respective written submissions. Having carefully considered the respective affidavits and submissions of the parties, I now proceed to pronounce my judgment as follows.

B. THE LAW

4. Order 113 of the High Court Rules provides a summary procedure for possession of land, where it states that;

“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 licence 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”.

5. In view of Order 113, a person who has a legal right to claim the possession of a land could institute an action, claiming the possession of said land against a person who has entered into or remains in occupation without his license or consent or that of any predecessor in title.

6. The main purpose of Order 113 is to provide a speedy and effective procedure for the owners of the lands to evict persons who have entered into and taken the occupation of the land without the owner's license or consent. They can be defined as trespassers or illegal occupants. These trespassers or illegal occupants have sometimes been referred to as squatters. In McPhail v Persons unknown, (1973) 3 All E.R.394) Lord Denning has observed "the squatter" as a person who without any colour of right, enters into an unoccupied house or land and occupies it. His Lordship found that in such instances, the owner is not obliged to go to court to regain his possession and could take the remedy into his own hands, which indeed, recommended as an unsubstantial option. Therefore, Order 113 has provided a speedy and effective procedure to provide a remedy to the owners instead of encouraging them to take a remedy of self-help.
7. The proceedings under Order 113 encompass two main limbs. The first is the onus of the plaintiff. The Plaintiff is first required to satisfy that he has a legal right to claim the possession of the land. Once the plaintiff satisfies the first limb, the onus will shift towards the defendant, where the Defendant has burdened with to satisfy the court that he has a licence or consent of the owner to occupy the land.
8. I now turn to this instance case, where the Plaintiff claims that they are the registered owner of this property, which in fact not disputed by the Defendants. Hence, the onus is now on the Defendants to satisfy the court that they have a licence or consent of the owner of the property to occupy.
9. Having carefully considered the affidavits filed by the Defendants and their respective submissions, it appears that all of their objections are founded on their sympathetic pleas of poverty and homelessness. I am mindful and considerate of their misery of poverty and homelessness, however, the court is required to consider the factual and legal positions of the parties, but not the social statues of them. Lord Denning MR in McPhail v Persons unknown (supra) held that "

"What is a squatter? He is one who, without any colour of right, enters on an unoccupied house or land, intending to stay there as long as he can. He may seek to

justify or excuse his conduct. He may say that he was homeless and that this house or land was standing empty, doing nothing. But this plea is of no avail in law. As we said in London Borough of Southwark v Williams ([1971] 2 All ER 175 at 179, [1971] Ch 734 at 744):

'If homelessness were once admitted as a defence to trespass, no one's house could be safe ... So the courts must, for the sake of law and order, take a firm stand. They must refuse to admit the plea of necessity to the hungry and the homeless; and trust that their distress will be relieved by the charitable and the good.'

10. In view of the observation of Lord Denning MR in McPhail (supra) the poverty or the homelessness could not be considered as a defense in an application in this nature. I accordingly make following orders that;
- i. The Defendants and all other occupiers are hereby ordered to give immediate vacant possession of this land to the Plaintiff,
 - ii. Having considered the submissions of the Defendants, I make no order for cost,

Dated at **Suva** this **21st** day of November, **2014**.



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R.D.R Thushara Rajasinghe
Master of High Court, Suva