

IN THE HIGH COURT OF FIJI

[WESTERN DIVISION] AT LAUTOKA

Civil Action No. HBC 54 of 2013

IN THE MATTER of an application
under Section 169 of Part XXIV of the
Land Transfer Act, Cap 131 for an Order
for immediate vacant possession

BETWEEN: **MANJIT KAUR** of Votua, Ba, Domestic Duties

PLAINTIFF

AND : **SARJEET SINGH** of Lot 18, Votua, Ba

DEFENDANT

Appearances: Mr Singh R for Plaintiff
 Mr Dayal A for Defendant

Date of Hearing: **5th December, 2014**

Date of Judgment: **10th December, 2014**

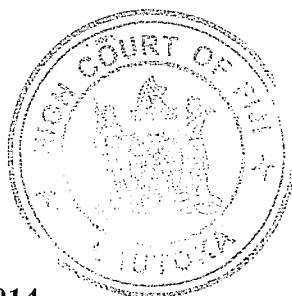
RULING

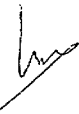
Introduction

1. These are my reasons for the ruling I delivered verbally in Court on 05/12/2014.
2. By Amended Ex-parte Summons dated 19th November, 2013 the Defendant sought the following orders from Court:
 1. That the Orders entered on 14th June, 2013 be set aside on the grounds that it is irregular in that: -

- (a) The Summons and Affidavit was not served on the Defendant.
 - (b) The Defendant was not informed by notice or otherwise that the matter will be called on 14th June, 2013 for orders to be made for vacant possession.
 - (c) The Defendant was not given an opportunity to be heard.
 - (d) The people in actual possession of the land and/or having right to possession were not summoned to appear.
 2. In the alternative the Orders entered on 14th June, 2013 be set aside on the grounds that the Defendant has a defence on the merits.
 3. That the execution of the Writ of Possession be stayed pending the determination of this application.
 4. That the Writ of Possession be set aside on the grounds that it was executed improperly.
 5. The costs awarded to the Plaintiff in the sum of \$850.00 on the 14th June, 2013 be also set aside.
 6. The Defendant be granted leave to join the Director of Lands as an interested party to this action.
 7. Costs for this Application.
3. The Ex-parte Summons was supported by an Affidavit sworn by the Defendant, Sarjeet Singh.
 4. This application is made to set aside the Orders made by the learned Master on 14th June, 2013 granting vacant possession to the Plaintiff all the land comprised in crown lease No. 18854 Part of Nanunu and Nareba in the province of Ba. The application for vacant possession was made by the Plaintiff pursuant to Section 169 of Part XXXIV of the Land Transfer Act.

5. The Plaintiff filed Affidavit in Reply sworn by him on 31st January, 2014 opposing the application of the Defendant and the Defendant filed his Affidavit in Response sworn by him on 6th May, 2014. The Plaintiff filed another Affidavit in Reply sworn on 1st June, 2014.
6. When the matter was taken up for hearing on 5/12/2014, the Learned Counsel for the Plaintiff raised a preliminary objection stating that only the learned Master had the jurisdiction to set aside the Order pronounced by him and therefore this Court lacks jurisdiction to hear this matter. He further stated Order 59 Rule 3 of the High Court Rules is not applicable to this application and if an appeal is lodged from the Masters' Ruling, it has to be done according to the provisions of Order 59 Rule 9 of the High Court Rules.
7. In reply to the argument of the Plaintiffs' Counsel the learned Counsel for the Defendant stated that the Ex-parte Summons was taken under Order 2 Rule 2 of the High Court Rules on the ground that the documents were not served on the Defendant. He also submitted that the Court has the power to dispose of the matter under Order 32 Rule 11.
8. In considering the submissions made by both Counsels, I am of the view that this Court has no jurisdiction to set aside the Orders made by the learned Master on an application of this nature. The Defendant cannot invoke the jurisdiction of this Court to set aside the Orders of the learned Master unless he appeals from the said Orders to this Court.
9. Therefore I dismiss and strike out the Amended Ex-parte Summons dated 19th November, 2014 for want of jurisdiction with costs summarily assessed in a sum of \$750.00 to be paid to the Plaintiff by the Defendant.




Lal S. Abeygunaratne
Judge

At Lautoka
10th December 2014