

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 02 of 2016**

**IN THE MATTER** of an application  
under Section 169 of part XXIV of the  
Land Transfer Act [Cap 131].

**BETWEEN :** **RAFCO ENTERPRISES LIMITED** a limited liability company duly  
incorporated under the laws of Fiji and having its registered office at  
2<sup>nd</sup> Floor, Narseys Building, 98 – 200 Ellery Street, Suva.

**PLAINTIFF**

**AND :** **VERONICA JANG** also known as **VERONICA TUIGASIALE** in illegal  
and unlawful occupation of **State Lease No. 19559 (Residential Lease)**  
*being Lot 1 Section 16 on Plan S 603 A. Name of Land: Samabula Indian  
Settlement, District: Suva, Province: Rewa, comprising of a total area of  
2 road 26 perches having the street address of 20 Matuku Street,  
Samabula, Suva.*

**DEFENDANT**

**BEFORE:** Master Vishwa Datt Sharma

**COUNSELS:** Mr. Varunendra Prasad - for the Plaintiff.  
Mr. Bukarau - for the Defendant.

**Date of Hearing:** 10<sup>h</sup> May, 2016

**Date of Ruling:** 10<sup>th</sup> May, 2016

**RULING**

*(Extension of time to file and serve Affidavit  
in Opposition & Vacation of Hearing Date)*

**INTRODUCTION**

1. The Plaintiff filed an Originating Summons together with an Affidavit in Support on 7<sup>th</sup> January 2016.

2. Returnable date assigned on the Summons was 25<sup>th</sup> February, 2016.
3. Mr. Bale representing the Defendant appeared in Court and sought for 14 days to file/serve his Affidavit/Response.
4. Accordingly the request was granted allowing Defendant to file/serve his Affidavit/Response within 14 days and 14 days thereafter for Plaintiff to file/serve his Reply (if any).
5. Matter therefore adjourned to 24<sup>th</sup> March 2016 for Mention to meet the compliance.
6. On 23<sup>rd</sup> March, 2016 Muskits & Company Lawyers representing the Defendant filed in a Notice of Change of Solicitors.
7. On 25<sup>th</sup> April, 2016, Mr. Varun Prasad representing the Plaintiff was present. Whereas no counsel representing Defendant from Muskits Law was present for the reason known to Muskits Law. Even the Defendant was not personally present either in absence of any lawyers from Muskits Law.
8. The Court Record shows:
  - (i) The Defendant's name was called three (3) times as is the usual procedure of this Court and also the Defendant's counsel's name but no one was present from Defendant's side.

Court also noted that no affidavit or response was filed/served onto the Plaintiff as per the Court Directives.

That being the case upon the Plaintiff's application, the matter was adjourned for Formal Proof/Hearing on 10<sup>th</sup> May 2016 at 11.30 pm.
9. Today, Mr Bukarau appears for the Defendant and explains his failure to file/serve the Affidavit/Response. He added further that his Practicing Certificate (PC) was suspended for reasons best known to him and sought for an extension of time be granted allowing him an opportunity to file/serve his affidavit/response and Court to vacate today's hearing in the given circumstances.
10. Defence counsel's application was objected to by Plaintiff's counsel, Mr Prasad on the following basis:
  - (i) That on two separate occasions Defendant was granted 14 days time to file/serve Affidavit/Response but failed to do so.

- (ii) When S169 application is served onto a Defendant with a returnable date assigned on the summons, that is treated as the hearing date of the Court and if the Defendant wishes to defend the proceedings, then he/she should file/serve on Affidavit/Response or file show cause why he/she should not be evicted from the said property.
11. The Court notes that from the time of service of this application until to date no Affidavit/Response has been filed and no efforts exhaustive or otherwise made to ensure Defendant succeeds in filing one.
12. I can understand that the Defendant's counsel got into some practical difficulty which resulted in his Practicing Certificate being suspended which was beyond his control but did nothing to the advantage of the Defendant to ensure Defendant is able to attend court and be heard.
13. Courts are here to see that justice is done in matters before them. No one party should be deprived of his hearing of the matter, in a Court of Law.
14. The question I pause to myself is, whether the Defendant should suffer the consequences at the expense of his counsel and should be allowed on opportunity to be heard the proceedings before me may be of the summary nature but must be heard and dealt with some caution and allow the Defendant to be heard; but the circumstances rather herein call upon me to impose a heavy costs, since the Defendant has all along delayed this matter and without any good cause. Since the counsel for the Defendant had appeared in this case very last minute of the scheduled hearing, I will allow the matter to be heard and determined in a just and fair manner rather than proceeding in the absence of the Defendant and his written submission.

### **COURT ORDERS**

- (i) Today's hearing is vacated.
- (ii) Impose costs of \$1,000.00 (One Thousand Dollars) against the Defendant/Counsel to be paid within 7 days.
- (iii) The Defendant is hereby granted an extension of 7 days time to file/serve his Affidavit/Response.
- (iv) Upon Defendant's failure to file and serve the Affidavit/Response and further failure to pay \$1,000.00 costs, I therefore impose an unless order against the Defendant's non compliance which would be activated upon non

compliance and the Plaintiff's matter would then be heard and determined accordingly.

- (v) Plaintiff is at liberty to file/serve any reply within 3 days thereafter.
- (vi) Defendant to file/serve written submission before the hearing date.
- (vii) For hearing on 24<sup>th</sup> May, 2016 at 10.00 am.

Dated at **Suva** this 10<sup>th</sup> day of **MAY, 2016**.



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**MR VISHWA DATT SHARMA**  
Master of High Court, Suva

cc. **Mr. Varunendra Prasad** of VP Lawyers, Suva.  
**Mr. Bukarau** of Muskits Law, Suva.