

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

**CIVIL ACTION NO.: HBC 234 of 2020**

**BETWEEN : RATU MELI V K K VAKACABEQOLI**  
**PLAINTIFF**

**AND : NOA RASAKU**  
**FIRST DEFENDANT**

**: ATELAITE RASAKU**  
**SECOND DEFENDANT**

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**APPEARANCES/REPRESENTATION**

**PLAINTIFF : Appearing In Person**

**DEFENDANTS : Mr. N Naiwaikula [Nawaikula Esquires]**

**RULING BY : Acting Master Ms Vandhana Lal**

**EXTEMPORE RULING  
DELIVERED ON : 16 February 2022**

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**EXTEMPORE RULING**

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1. This is Plaintiff's application under Order 113 of the High Court Rules.
2. According to the Plaintiff, he is the registered lessee of the property and the defendants are occupying the same without any color of rights and are trespassers.

A notice was served on the Defendants on 26<sup>th</sup> November, 2019.

3. The plaintiff has annexed to the affidavit a copy of transfer of lease which has been certified by a commissioner of oaths.
4. The plaintiff has failed to have the said document certified by the Registrar of Titles.
5. Section 18 of the Land Transfer Act requires documents to be authenticated under the hand and seal of the Registrar of Titles in order to be received in as evidence in court.

**Has the Plaintiff complied with the requirements of Order 113?**

6. Order 113 rule 2 of the rules requires the Originating Summons to be in Form 3 which I find is not the case here.
7. He has filed an affidavit in support pursuant to Order 113 Rule 3.
8. Order 113 Rule 4(1) requires service personally on named defendant, whilst subrule (2) requires summon and affidavit to be affixed to the main door or other conspicuous part of the premises.
9. As per the affidavit of service filed on 11<sup>th</sup> September 2020 and 01<sup>st</sup> October 2020, the above requirement was complied with.
10. The Plaintiff is claiming possession as Administrator of the Estate of Isei Rakula
11. The Defendant claims the property/house was built by his grandfather whilst lease was held by his uncle the deceased.

The pine trees on the land were planted by the Defendant's family with the Defendant farming on the land for 30years.

The defendant claims to be the next of kin of the deceased.

12. In this affidavit in support, the Plaintiff states that the defendants are relative of the deceased.

13. He has not adduced evidence contrary to what the Defendant has stated how they came into occupying the property.

The Defendants are known to the plaintiff.

14. Hence, I do not find them to be trespassers as they have been on the property prior to the death of the owner who was the First Defendant's uncle.

15. I do not find they entered the property without the consent of the deceased and are occupying the same illegally.

16. For reasons aforementioned the application shall fail and is dismissed. Parties to bear own costs.



A handwritten signature in black ink, appearing to read 'Vandhana Lal'.

Vandhana Lal [Ms]  
Acting Master  
At Suva.

**TO:**

1. Suva High Court Civil Action No. HBC 234 of 2020;
2. Ratu Meli V K K Vakacabeqoli, the named Plaintiff appearing in person;
3. Naiwaikula Esquires, Solicitors for the Defendants.