

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 134 of 2023

BETWEEN: **SANGEETA DEVI** the Administratrix of the Estate of Nirmal Kumar presently of Sydney, Australia and formally of Legalega, Nadi, Fiji, Nurse.

PLAINTIFF

AND: **RISHI RAM AND OCCUPANTS** of Legalega, Nadi, occupation not known to the Plaintiff.

DEFENDANT

Appearances: Mr. Chand K. for the Plaintiff
Mr. Rishi Ram – In Person for the Defendant
Date of Hearing: 28 November 2023
Date of Ruling: 30 November 2023

R U L I N G

1. Nirmal Kumar died intestate on 26 August 2019. He was one of the victims of the “**Nausori Highlands Murder Case**”. Kumar had two daughters. The first daughter was Ms. Ranjeeta Devi. The second daughter was Ms. Sangeeta Devi.
2. Upon the death of Nirmal Kumar, Ranjeeta Devi was granted Letters of Administration No. 67755.
3. Ranjeeta Devi however passed away on 29 November 2022.
4. On 27 February 2023, Sangeeta Devi was granted Letters of Administration De-Bonis Non No. 71066 over the estate of Nirmal Kumar.
5. On 16 June 2023, Devi filed a Writ of Summons and Statement of Claim against Mr. Rishi Ram and Occupants. She seeks the following relief:
 - (i) an Order for vacant possession.

- (ii) Judgment in the sum of \$5,200-00 (Five Thousand and Two Hundred Dollars Only) as mesne profit.
 - (iii) damages in the sum of \$100,000 – 00 (One Hundred Thousand Dollars Only) for Rishi Ram’s continued illegal occupation.
6. The Statement of Claim alleges as follows:
- (i) on 30 September 2019, Rangeeta Devi and Rishi Ram executed a Tenancy Agreement.
 - (ii) the term of the tenancy was for one year. The commencement date was 30 September 2019. The termination date was 30 September 2020. The agreed monthly rental was \$130 per month.
 - (iii) on 30 May 2022, Rangeeta Devi served a Notice to Vacate on Rishi Ram. On 28 March 2023, Sangeeta Devi served Rishi Ram with another Notice to Vacate.
 - (iv) in spite of these Notices, Rishi Ram has remained on the property. He has never paid a single cent towards rental.
7. The Writ of Summons and Statement of Claim were served on Rishi Ram on 20 June 2023. However, Rishi Ram did not file a Statement of Defence.
8. On 01 September 2023, Sangeeta Devi filed a Notice of Motion under Order 19 Rule 2,3,4,5 and 6 of the High Court Rules 1988 seeking directions to allow her to formally prove the case on account of Rishi Ram’s failure to file and serve a Statement of Defence.
9. On 20 September 2023, I adjourned the matter to **28 November 2023** for Formal Proof.
10. Notably, the Legal Aid Commission had appeared on 20 September as “friend of the court” to advise that Rishi Ram had applied for Legal Aid Commission assistance and that his application was being processed.
11. On 04 October 2023, Rishi Ram filed a Notice of Motion seeking and Order that the Formal Proof be vacated and set aside. Notably, he does not state in his Motion that he intends to file a Statement of Defence. That Motion was made returnable on **28 November 2023**.
12. On 28 November 2023, Mr. Gade from the Legal Aid Commission appeared in Court to advise that the Commission has processed and declined Rishi Ram’s application. Rishi Ram also appeared in Court.
13. I did ask Rishi Ram some questions to try and ascertain what his interest in the property might be. From his responses, it is clear to me that he does not have an iota of right to remain on the property. At the outset, he denied ever signing a Tenancy Agreement with Rangeeta Devi.

This assertion was refuted by Sangeeta Devi who pointed to the Tenancy Agreement annexed to her Affidavit Evidence in Chief sworn on 21 November 2023. Rishi Ram then asserted that he was brought onto the property by Ranjeeta Devi and one Raj Kumar to look after the property as caretaker.

14. I do note that the Tenancy Agreement identifies "**Nirmal Kumar**" as the Landlord and that it was purportedly executed by Rangeeta Devi "for" Nirmal Kumar.
15. I do note also that the said Tenancy Agreement was not consented to by the *i*-TLTB.
16. The said Tenancy Agreement does not comply with section 12 of the *i*-Taukei Lands Act.

12. -(1) Except as may be otherwise provided by regulations made hereunder, it shall not be lawful for any lessee under this Act to alienate or deal with the land comprised in his lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever without the consent of the Board as lessor or head lessor first had and obtained. The granting or withholding of consent shall be in the absolute discretion of the Board, and any sale, transfer, sublease or other unlawful alienation or dealing effected without such consent shall be null and void:

Provided that nothing in this section shall make it unlawful for the lessee of a residential or commercial lease granted before 29 September 1948 to mortgage such lease.

(Substituted by Ordinance 30 of 1945, s. 8; amended by 29 of 1948, s. 3.)

(2) For the purposes of this section "lease" includes a sublease and "lessee" includes a sublessee.

17. Because the Tenancy Agreement does not comply with section 12, and is therefore null and void, the Agreement is therefore unenforceable. It follows that the parties cannot derive any obligation or benefit out of it.
18. This must mean that Sangeeta Devi cannot obtain Judgment in the sum of \$5,200-00 (Five Thousand and Two Hundred Dollars Only) as *meisne* profit or damages in the sum of \$100,000 – 00 (One Hundred Thousand Dollars Only) for Rishi Ram's continued illegal occupation.
19. The only question then left for me is whether or not I should grant an Order for vacant possession. Even if Rishi Ram's account was to be accepted that he was brought onto the land as caretaker and that he did not actually want to come onto the land, it is hard to see how that justifies his continued existence on the land in defiance of the two Notices to Vacate which were served on him by the administrators of the estate of Nirmal Kumar.

20. Notably, the approval Notice which Ms Sangeeta relies on and which is annexed to her Affidavit of Evidence in Chief was issued by the i-TLTB to one Ganga Ram on 18 May 1981 for a period of 50 years from 01 April 1981.
21. Ganga Ram apparently was the father of Nirmal Kumar and the paternal grandfather of Ms. Sangeeta. None of the pleadings or affidavit filed has cared to set out how Sangeeta or Ranjeeta have a beneficial interest in the estate of Ganga Ram.
22. From the evidence, I gather that Sangeeta Devi and Rangeeta Devi were raised by their parents in their grandfather's house. Their parents were both victims in the Nausori Highlands Murder case.
23. In his evidence, Rishi Ram lied about Ganga Ram being his "brother". It was only when Sangeeta clarified that Ganga Ram was his paternal grandfather that Rishi Ram clearly withdrew from pursuing that false narrative.
24. In the final, I can only order that Rishi Ram do vacate the property in question forthwith and costs against him which I summarily assess at \$1,500 only.



Anare Tuilevuka
JUDGE
Lautoka

30 November 2023