

IN THE HIGH COURT OF FIJI AT LAUTOKA
CIVIL JURISDICTION

Civil Action No: 289 of 2021

BETWEEN : **JAHARUL NISHA** of Megunyah, Nadi, Domestic Duties.

DEFENDANT-APPLICANT

AND : **SAVENACA SIGA** of Megunyah, Nadi, Manager.

PLAINTIFF-RESPONDENT

BEFORE : A.M. Mohamed Mackie-J.

APPEARANCE : Ms. Gounder M. for the Plaintiff- Respondent.
 : Mr. Chand for the Defendant-Applicant.

HEARING : Disposed by way of written submissions.
W. SUBMISSIONS : Filed by the Defendant- Applicant on 26th July 2025.
 : Filed by the Plaintiff Respondent on 17th March 2025.

RULING : Delivered on 10th June 2025.

RULING

A. INTRODUCTION:

1. Before me is a Summons by the Defendant-Applicant (“the Applicant”) “filed on 18th March 2024 and supported before me inter-parte on 5th April 2024, seeking the following reliefs against the Plaintiff-Respondent (“the Respondent “)
 - A. *An injunction restraining the Respondent from further occupying the subject property, identified as Crown Lease Number 15599, Lot 2 on S04017, known as part of Nasou, Nadi, until such time as the rental arrears is settled in full or appropriate arrangements are made*
 - B. *That all monthly rental payments, along with the arrears amounting to \$21,100.00 (twenty-one Thousand and One Hundred Dollars), owed by the Respondent under the Tenancy Agreement dated 4th July 2020 over the property comprised in Crown Lease Number 15599, Lot 2 on S04017, known as part of Nasou, Nadi, be directed to be paid into Court pending the determination of the Writ Action.*
 - C. *The Costs of this application to be borne by the Respondent.*
 - D. *Any other Orders that this Honourable Court deems just and fitting under the circumstances.*
2. The Summons is supported by the Affidavit sworn by the Applicant (**Ms. Jaharul Nisha**) and filed together with annexures marked as “**JN-1**” to “**JN-4**”. The Summons states that the Applicant will

rely on this Summons, the Supporting Affidavit, Legal Submissions, and any other evidence presented at the hearing of this Summons.

3. The Summons also states that it is made pursuant to Order 14 and Order 22 Rule 8 of the High Court Rules 1988 and under the Inherent Jurisdiction of this Court.

B. BACKGROUND HISTORY:

4. The Respondent on or about 09th December 2021 filed his Writ of Summons and the Statement of Claim (SOC) against the Applicant seeking, inter alia, the following reliefs;

i. That the Court shall pronounce against the validity of the Tenancy Agreement signed on 4th July 2020.

*ii. **A declaration** that the defendant has misrepresented to the plaintiff the ownership of the property rented and or in sublets as described in the Tenancy Agreement signed on 4th July 2020.*

*iii. **A declaration** that the defendant has fraudulently obtained rent by deception.*

*iv. **An Order** that the defendant refund the rent payment paid by the plaintiff from July 2020 to April 2021 in the sum of \$7,100.00 [Seven Thousand One Hundred Dollars] and interest.*

*v. **A declaration** that the person who purportedly witnessed the Tenancy Agreement signed 4th July 2020 has acted fraudulently and be subjected to criminal charges.*

*vi. **Damages [Exemplary/ Punitive/ General /Special]** for shame and sufferings.*

5. The Applicant on 26th May 2022 filed her Statement of Defence (SOD) and the Counter Claim moving for the following reliefs;

a. The plaintiff's claim be dismissed with costs on a strict Solicitor/client indemnity basis;

b. Judgment in a sum of \$7,900.00 (Seven Thousand and Nine Hundred Dollars) being mesne profit as stated in paragraph 16 of the SOD under counter-Claim.

c. Claim for Water bill in the sum of \$962.80/- (Nine Hundred Sixty-Two Dollars and Eighty Cents) as Mesne profit as stated in paragraph 17 of the SOD under Counter- Claim.

6. The Respondent on 16th June 2022 filed his Reply to defence and defence to counter- Claim and moved for the dismissal of the Counter- Claim and for Orders as prayed for in the Statement of Claim.

7. All PTC formalities being complied with, the matter stood fixed for Trial on 2nd and 3rd July 2024. However, as this court did not sit on the said dates, the trial was vacated leaving the matter to be re-fixed for trial.

C. CURRENT SUMMONS & HEARING:

8. However, when the substantive matter was pending for trial on 2nd & 3rd July 2024 as stated above, the Solicitors for the Applicant had filed the current Summons on 18th March 2024, as stated in paragraph 1 above, seeking Orders for an injunctive relief restraining the Respondent from further occupying the premises in suit until the rental arrears is fully settled, and for depositing in Court, the monthly rental, along with the arrears thereto in a sum of \$21,100.00, pending the determination of the writ action.
9. In response to the above Summons, the Respondent filed his Affidavit in opposition on 28th May 2024 and the Applicant filed her reply Affidavit on 19th December 2024. Instead of an oral hearing on this Summons, both parties, having agreed to have it disposed by way of written submissions, have filed their respective written submissions as stated above.

SUMMONS FOR WITHDRAWAL:

10. In the meantime, the Respondent's Solicitors on 30th April 2025 filed their Summons for withdrawal as Solicitors for the Respondent on the ground that he had not settled the bill of Costs. This Summons being supported before me on 08th May 2025, this Court made direction to have it served on the Respondent and file the Affidavit of service on the next date. The court also re-fixed the Ruling for 10th June 2025.
11. When the matter came up today 10th June 2025 for the Ruling, the Respondent, who appeared in person, agreed for the withdrawal of his former Solicitors, namely, **Messrs. Ravneet Charan Lawyers**, and accordingly they were allowed to withdraw. **However**, without leaving room for any further delay, which may prejudice the Applicant in terms of her rental income, this Court, having directed the Respondent to retain a new Solicitor, if he wishes, to proceed with his claim, decided to pronounce the Ruling on the current Application by relying on the contents of the Affidavits and those of the written submissions already filed by both parties.

D. AFFIDAVIT IN SUPPORT:

12. In her Affidavit in Support of the current Summons, the Applicant, inter alia, has averred **THAT:**
 - a. The property in question, where the Respondent currently resides unlawfully, was initially jointly purchased by four individuals, including herself, with the intention of subdividing into four lots to accommodate each buyer.
 - b. However, due to procedural constraints at the Land Department, it was decided to transfer the main land in Crown Lease Number 15599, lot 2 on SO4017 known as part of Nasou, Nadi, with an area of 4066m², to one **Ravneel Rohitesh Kumar's** name, who is one of the four persons agreed to buy, as the Land Department would not process the lease transfer to all four names.
 - c. Pursuant to a mutual agreement, the lease has now been successfully completed following the subdivision process with the Land Department. In accordance with the agreement, she (the Defendant-

Applicant) has acquired her designated portion of land and constructed a 3- Bedroom dwelling house. It is in this property; the Respondent currently resides without any lawful authority after the expiry of the Tenancy Agreement on 4th July 2021. A copy of the sale & purchase agreement with **Ravneel Rohitesh Kumar** is marked and tendered as “JN-1”.

- d. An Affidavit from said **Ravneel R. Kumar**, one of the original purchasers, has been submitted marked as “JN-2” confirming her averments hereof.
- e. A tenancy Agreement was entered into between her and the Respondent on 4th July 2020 for him to occupy the property on payment of monthly rental of \$600.00 from 4th July 2020 till 4th July 2021. (**Vide “JN-3” Tenancy Agreement**).
- f. In the said Tenancy Agreement, she inadvertently mentioned the Crown Lease Number incorrectly as 20019, while the correct Crown Lease Number was 15599, where the Respondent is in occupation now after expiry of the Agreement.
- g. The previously mentioned Crown Lease Number 20019 was also being inaccurately stated, the correct Crown Lease Number is 20019 A. Vide Crown Lease marked as “JN-4”.
- h. Subsequent to the expiration of the Tenancy Agreement, the Respondent continues to occupy the property without making any rental payment. The Respondent has consistently neglected his responsibility to remit rental payments by relying on an error in the Tenancy Agreement.
- i. The Applicant Moves for the Respondent to settle the entire outstanding rental sum and continue to deposit the monthly rental into the Court pending the determination of this action.
- j. The balance rental due from April 2021 is in a sum of \$21,100.00, which is not contested by the Respondent. His continued occupation of the property, without payment of rent, constitutes a clear violation of her rights as the landlord of the property.
- k. Considering the substantial amount of the arrears of rent owed by the Respondent, it is only just and equitable that this Court order the immediate restitution of the outstanding rental payments. Accordingly, she moves for the reliefs sought in her Summons.

E. AFFIDAVIT IN OPPOSITION & TREPLY:

13. I have carefully considered the contents of the above averments in the Affidavit in support by the Applicant, Affidavit in opposition by the Respondent and those of the Affidavit in reply by the Applicant. I shall not reproduce the entire averments therein in order to avoid verbosity. However, pertinent parts thereof will be referred to in this ruling, if and when needed.
14. I have also considered the contents in the Statement of Claim, those in the Statement of Defence, and in the other Pleadings to the extent needed for the determination of the current summons in hand.

F. ANALYSIS:

15. The Respondent disputes the Applicant's right, as the Landlord and rightful owner of the property in dispute, to seek eviction and recovery of the arrears of rental, by alleging fraud regarding her ownership of the said property. It is observed that the Applicant has duly obtained the consent of the Director of Lands for the Transfer of the Crown Lease by confirming her rightful ownership.
16. The Respondent, who has not advanced any justifiable claim for the subject property, appears to be in an attempt to dispute the Applicant's right, title and interest to the property and her attempt to recover the rental and the vacant possession on account of such arrears of rental. The Respondent's opposition to the Applicant's Summons hereof is with no merits and totally ill-conceived, intended to frustrate the recovery of rental arrears and the eviction process.
17. The main issues that beg determination for the time being are;
- a. *Whether the Respondent should be ordered to pay the outstanding and the continuing monthly rentals into Court pending the determination of the substantive writ action, in view of his continued unlawful occupation of the subject property after the expiration of the Tenancy Agreement?*
 - b. *Whether the failure on the part of the Respondent to pay the rental arrears into Court, if ordered to pay, should result in eviction from the property pending the final determination of the substantive matter?*
 - c. *Whether the Applicant is entitled for costs on a Solicitor- client indemnity basis in the circumstances hereof.*
18. It is not in dispute that the Respondent became the Applicant's Tenant initially from 4th July 2020 to till 4th July 2021, by agreeing to pay \$ 600.00 per month and signing the Tenancy Agreement marked "JN-3" on 4th July 2020, however with liberty to extend it for 3 years period upon obtaining the consent of the Land Department. There is no dispute that the Respondent has duly paid the monthly rental of \$600.00 for the first year of Tenancy from 4th July 2020, which amount is now demanded by the Respondent as his counter claim from the Applicant.
19. However, the Respondent, who came into the Applicant's property as a Tenant, as per his own admission above, will remain as a Tenant, as long as he duly pays the monthly rental in terms of the Tenancy Agreement, on failure of which he will become a trespasser. In my view, by refusing and failing to pay the agreed rental, he has become a trespasser of the Property in dispute.
20. The Respondent, who came in as a Tenant as per the Tenancy Agreement, by accepting the Applicant as his Landlord, cannot subsequently change his position to dispute and deny the ownership, right, title and interest of his landlord (the Applicant) with whom he entered into

the Tenancy Agreement. However, the landlord (the Applicant) need not necessarily be the owner of the property to enter into a Tenancy Agreement, unless it is for an Agreement for sale and purchase etc.

21. Although, the formal Transfer process in favour of the Applicant is still in progress, she has established her legal rights and pending ownership over the property and she is the rightful purchaser of the Land and premises even by obtaining the consent of the DOL for the Transfer of the lease in her favour. This status of the Applicant was more than enough for her to have entered into the Tenancy Agreement with the Respondent.
22. Another dispute raised by the Respondent is in relation to the witnessing of the Tenancy Agreement. Since the Respondent in paragraph 8 of his Affidavit in response and in paragraph 4 of his statement of claim has admitted the signing of the Tenancy Agreement, the argument advanced by him in paragraph 10 of his Affidavit in opposition to the effect that the Tenancy Agreement was witnessed by an unknown witness, the said witness was not present when it was signed and the Tenancy Agreement is therefore invalid, will not hold water. The question of witnessing will not arise for consideration, as he has admitted the signing of the Tenancy agreement.
23. The Respondent seems to be in an attempt to capitalize on the insertion of a wrong Lease Number in the "JN-3" Tenancy Agreement, which in fact appears to have occurred inadvertently as the Applicant explains. This is not a valid reason for the Respondent to continue in occupation without paying the monthly rental as agreed by the Tenancy Agreement.
24. The Respondent has to either continue to pay for occupying the property in dispute or leave the property as the Applicant cannot tolerate the presence of the Respondent any further in the absence of payment of the rentals, **particularly, when the Respondent has not prayed for a relief for his continued occupation of the property in question.**
25. As far as the other reliefs prayed for in the SOC are concerned, the Respondent need not necessarily remain in the property concerned. By continuing to occupy the property without payment of the monthly rental, he is causing immense loss and hardship to the Applicant. If the Respondent still opts to remain in the property and litigate for his purported reliefs, then he has to pay the agreed monthly rentals, which had accrued to a sum of \$21,100.00 from April 2021 till March 2024 (till filing of the Application), which now has increased to a colossal sum of \$ 30,100.00 from April 2021 till May 2025.
26. It is unfair on the part of the Respondent to occupy the premises without paying the monthly rental that he had agreed to pay. He does not show any valid ground for him to continue to occupy the property without paying the rental as agreed. He neither advances a claim for any right, title or interest in the subject property in dispute, nor makes a claim for the continued occupation of the subject property.

27. The Respondent cannot rely on his mere allegation of fraud against the Applicant in the absence of particulars thereof in his Statement of Claim. No such an allegation with details is found in the Respondent's Statement of Claim against the Applicant, except for making such an allegation in paragraph 12 (b) of his Statement of claim only against the witness for the Tenancy Agreement. I have already discussed about the role of the witness, propriety of which need not be considered any further as the respondent has admitted the signing of the Tenancy Agreement as alluded to above.
28. Careful Perusal of the Respondent's pleadings and the contents of his written submissions clearly show that he is in a "**Nit picking and petty fogging**" exercise, with the view of continuing to occupy the property in suit without paying the due rental unto the Applicant.
29. It also appears that the Respondent in his Statement of claim has not disclosed any valid cause of action against the Applicant Land Lord and a valid defence to the Counter claim advanced by the Applicant in this matter.
30. On top of his failure to pay the rental, the Respondent has now alleged to have failed to pay the bill of costs to his former Solicitors and even failed to respond to their correspondences in that regard. In view of this background, it is my considered decision that the Respondent should not be allowed to have a free ride at the expenses of the Applicant Land-Lody.
31. In the case of **B.L. Naidu Properties Ltd V Ravindra Nadro Food Mart Ltd [2017] FJHC 592; HBC 109 of 2015 (Itk) (1st August 2017)**, an application was made by the tenant for the payment of rent into court until the matter was resolved. This Application was allowed by the Court recognizing the importance of securing rental payments into court to protect the interest of both parties during the pendency of the litigation.
32. For the reasons discussed above, I find that it is justifiable to allow the Order (B) prayed for in the Applicant's Summons filed on 18th March 2024, with the variation of the amount \$21,100.00 claimed therein to include the monthly rental arrears till the month of May 2025, total of which will be a sum of \$30,100.00.
33. In the interest of justice and in fairness to both parties, in my view, it is also justifiable to order the Respondent to deposit the monthly rental from June 2025 till the final determination of the matter, if he opts to occupy until such time. The monies, if deposited, to the credit of this case at the registry, will remain intact until further orders are made by this Court.
34. On consideration of the circumstances, this Court stands fully convinced that an unless order is warranted in the event the Respondent fails and neglects to abide by the Orders made hereof, and to impose a reasonable summarily assessed costs against the Respondent in favour of the Applicant on account of this Summons.
35. However, the Respondent will be at liberty to proceed with his action seeking the purported claim made by him, provided he abides by the Orders made hereof. The precious time and

resources of this Court should not be allowed to be abused on account of this calibre of action commenced by the Respondent.

G. FINAL ORDERS:

- A. The Defendant- Applicant's Summons filed on 18th March 2024 succeeds.
- B. The Order (B) prayed for in the Summons is granted, requiring the Plaintiff- Respondent to deposit a total sum of \$30, 100.00, being the arrears of rental from the date of the expiry of the Tenancy Agreement on 4th July 2021 till the month of May 2025.
- C. The said payment should be made to the credit of this Case, at the Registry of this Court, within 21 days from the date of service of these Orders, and the money, if so deposited, will remain intact pending the final determination of the substantive matter.
- D. The Plaintiff-Respondent shall also continue to deposit the monthly rental of \$600.00 from the month of June 2025 till the termination of this action.
- E. The Plaintiff- Respondent is at liberty to proceed with his purported claim, provided he complies with the Orders (B) and (C) above.
- F. In the event the Plaintiff- Respondent fails and neglects to abide by the Order (B) above, his purported Statement of Claim and the Defence to Counter Claim **will stand struck out**, and the Defendant- Applicant will be at liberty to move for further orders.
- G. The Plaintiff-Respondent shall pay the Defendant- Applicant a sum of \$1500.00, being the summarily assessed costs of this Application to be paid within 21 days.

On this 10th Day of June 2025 at the High Court of Lautoka.



A.M. Mohamed Mackie
A.M. Mohamed Mackie
JUDGE- High Court
Lautoka

SOLICITORS:

For the Defendant- Applicant- Messrs Pillai Naidu & Associates- Barristers & Solicitors.

For the Plaintiff- Respondent- Messrs Ravneet Charan Lawyers –Barristers & Solicitors.