



3. At the hearing of the application both parties made oral submissions and filed written submissions thereafter.

4. Order 113 states that:

*“Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being tenants or tenants holding after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provision of this Order”*

5. Footnote 113/1-8/1 of the 1997 Supreme Court Practice at page 1653 reads:

*“The application of this Order is narrowly confined to the particular circumstances described in r.1, i.e. to the claim for possession of land which is occupied solely by a person or persons who entered into or remain in occupation without the licence or consent of the person in possession or of any predecessor of his. The exceptional machinery of this Order is plainly intended to remedy an exceptional mischief of a totally different dimension from that which can be remedied by a claim for the recovery of land by the ordinary procedure by writ followed by judgment in default or under O.14. The Order applies where the occupier has entered into occupation without licence or consent; and this Order also applies to a person who has entered into possession of land with a licence but has remained in occupation without a licence, except perhaps where there has been the grant of a licence for a substantial period and the licensee holds over after the determination of the licence (*Bristol Corp. v. Persons Unknown*) [1974] 1 W.L.R. 365; [1974] 1 All E.R. 593). The Court, however, has no discretion to prevent the use of this summary procedure where the circumstances are such as to bring them within its terms, e.g. against a person who has held over after his licence to occupy has terminated (*Greater London Council v. Jenkins* [1975] 1 W.L.R. 155; [1975] 1 All E.R. 354) but of course the Order will not apply before the licence has expired (*ibid.*). The Order applies to unlawful sub-*

*tenants (Moore Properties (Ilford) Ltd v. McKeon [1976] 1 W.L.R. 1278)."*

6. Order 113 outlines a summary procedure for possession of land and Master Azhar (as he then was) in **Prasad v Mani** [2021] FJHC provided a detailed explanation of its history. Master Azhar further stated that "*this Order does not provide a new remedy, rather a new procedure for the recovery of possession of land which is in wrongful occupation by trespassers who have neither license nor consent from the current owner or his predecessor in title.*"
7. Thus Order 113 is in essence applied for eviction of squatters or trespassers.
8. Goulding J in **Department of Environment v James and others** [1972] 3 All E.R. 629 said that:

*"where the plaintiff has proved his right to possession, and that the defendant is a trespasser, the court is bound to grant an immediate order for possession".*

9. Master Wickramasekara in **Singh v Koi** [2024] FJHC 57 on the application of Order 113 stated as follows:

*"40. The onus is on the Plaintiff to satisfy Court that there is no doubt as to his or her claim to recover the possession of the land. In that process, he/she must be able to show the Court the right to claim the possession of the land and then to satisfy that the Defendant/s (not being a tenant or tenants holding over after the termination of the tenancy) entered the land or remained in occupation without his or her license or consent or that of any predecessor in title. Once a Plaintiff satisfies these two factors, he or she shall be entitled for an order against the Defendant or the occupier.*

*41. Then, it is incumbent on a Defendant, which the Plaintiff alleges to be in occupation of the land, if he or she wishes to remain in possession, to satisfy the Court that he or she had consent either from the Plaintiff or his or her predecessor in title or he or she has title either equal or superior to that of the Plaintiff. If the Defendant can show such consent or such title, then the application of the Plaintiff ought to be dismissed."*

10. Master Wickramasekara further explained that for Order 113 to be applicable, it is a requirement that a plaintiff establish that the occupiers have entered into occupation without license or consent of the plaintiff. It is also applicable in the event a person who has entered into possession of land with a license but has remained in occupation without a license (see also ***Dutton v Manchester Airport*** [1999] All ER 675).
11. The Plaintiff has annexed to her Affidavit in Support a copy of the Crown Lease No. 256614 (**Crown Lease**) issued to one Muthu Swamy Padayachi (**Muthu**) for a term of 99 years commencing on 01 November 1987. In her Affidavit in Support the Plaintiff stated she is the current Administratrix of Muthu's Estate.
12. Section 9 of the Succession, Probate and Administration Act 1970 (**SPA**) provides that, "*upon the grant of probate or administration, all property of which a deceased person dies possessed, or entitled to, ...as from the death of such person, pass to and become vested in the executor to whom probate has been granted, or administrator for all the estate and interest of the deceased therein*". Accordingly, the Crown Lease was transferred to the Plaintiff as the Administratrix of Muthu's Estate.
13. Therefore, I am satisfied that the Plaintiff has a legal right to claim possession of the Property pursuant to Order 113. The onus then shifts to the Defendant to satisfy the Court that she has a licence or consent of the Plaintiff or of any predecessor of the title to occupy the Property.
14. According to the Plaintiff's Affidavit in Support, there is a double storey building on the Property and the Defendant is occupying one of the flats in the said building without the consent and authority of the Estate. On 08 March 2024, the Plaintiff served on the Defendant a 'Demand Notice to vacate' and pay overdue rent.
15. The Defendant in her Affidavit in Opposition stated that:
- (i) Muthu passed away on 16 December 2002;
  - (ii) Muthu's son-in-law Sada Siwan was appointed the sole Executor and Trustee of his Estate as per Muthu's Will of 7 November 2001;
  - (iii) As per Muthu's Will, he bequeathed all his property to his 4 daughters namely Pushpa Renu, Vijayanti Mala Saroj (**Vijayanti**), Nerula Rita and Kasi Jan Mala;
  - (iv) One of the beneficiaries of Muthu's Estate namely Vijayanti was the wife of Sada Siwan and passed away on 8 September 2008;
  - (v) Sada Siwan and Vijayanti had two sons namely Dhinish Varan Naicker (deceased) and Lalit Ross Naiker (**Lalit**);

- (vi) The Defendant was in a de-facto relationship with Sada Siwan since 2009 until Sada Siwan's death in 2016;
- (vii) The Defendant initiated proceedings against Lalit (**HPP 71 of 2019**) pertaining to Sada Siwan's Estate;
- (viii) Thereafter, Defendant and Lalit together obtained Letters of Administration in the Estate of Sada Siwan;
- (ix) In HPP 71 of 2019 there were certain court orders made in relation to Muthu's Estate. One such Order refers to Sada Siwan's share in the Estate of Muthu arising out of the entitlement of Vijayanti and the Defendant's entitlement arising out of Sada Siwan's Estate;
- (x) On 27 August 2018 the Plaintiff's former solicitor wrote to the Defendant informing her that the Plaintiff intends to wind up Muthu's Estate and sell the Crown Lease. The said letter also stated that as per calculations the Defendant had 1/8 share in Muthu's Estate and her share would be paid upon sale of the Crown Lease. Further the said letter stated that at the time of the sale the Defendant would have to give vacant possession otherwise the sale would not proceed.
- (xi) The Defendant's solicitor on 31 August 2025 responded to the Plaintiff's solicitors stating that the Defendant was agreeable to give vacant possession immediately or 7 days prior to the settlement of the sale and that the Defendant be informed once the Director of Lands grants consent to the sale so that the Defendant may make necessary arrangements. The said letter also sought clarification on how the Plaintiff's solicitors had calculated the 1/8<sup>th</sup> share in Muthu's Estate; and
- (xii) The Defendant denies that she is an illegal occupant over the Property and that her occupancy is based on her entitlement as beneficiary to Muthu's Estate.

16. In her Affidavit in Reply, the Plaintiff averred as follows:

- (i) The Defendant is not a beneficiary in Muthu's Estate;
- (ii) Vijayanti's shares in Muthu's Estate have gone to her son Lalit and not to Sada Siwan;
- (iii) The Defendant is an illegal occupant and owes rent to Muthu's Estate;
- (iv) The Defendant is occupying the Property without consent and depriving Estate of income;
- (v) The letter of 27 August 2018 from the Plaintiff's former solicitor is not conclusive of Defendant's share in Muthu's Estate; and
- (vi) The Estate can be wound up once the Defendant is evicted.

17. Accordingly, the main issue to be determined is whether the Defendant has entered onto or remained in occupation of the Property without the Plaintiff's licence or consent (or that of any predecessor in title).

18. It is evident that the Defendant began residing on the Property with Sada Siwan by virtue of being his *de facto* partner.

19. Muthu's Will, which is attached in the Plaintiff's Affidavit in Support, bequeaths his property as follows:

*"4. **I GIVE DEVISE AND BEQUEATH** all my property both real and personal of whatsoever nature or kind and wheresoever situate unto my daughters **PUSHPA RENU** of Auckland New Zealand, a Clerk, **VIJAYANTI MALA SAROJ** of Nadi, a Social Worker, **NERULA RITA** of Lautoka, Domestic Duties, and **KASI JAN MALA** of Auckland New Zealand, a Clerical Officer respectively in equal shares, share and share alike absolutely."*

20. Consequently, if Vijayanti being a named beneficiary in Muthu's Estate died intestate then Sada Siwan being one of the beneficiaries in Vijayanti's Estate would be entitled to some percentage of shares in Muthu's Estate.

21. Likewise, the Defendant may also be entitled to some percentage of shares in the Estate of Sada Siwan as per the Court Orders in HPP 71 of 2019. The Court in HPP 71 of 2019 made orders pertaining to Vijayanti's Estate and stated that "*the deceased Sadasivan at the time of his death had the following assets:- ... (c) Share in the Estate of Muthusami Padyachi arising out the entitlement of his first wife the late Vijayanti Mala Saroj who died on the 08<sup>th</sup> day of September, 2008.*" The said Order is annexed as "SW-2" to the Defendant's Affidavit in Opposition.

22. The Plaintiff in her respective Affidavits claims that the Defendant has no shares in Muthu's Estate whereas the former solicitor of the Plaintiff via the 27 August 2018 letter stated that the Defendant is a 1/8 beneficiary in Muthu's Estate.

23. The Plaintiff's counsel's submission that the Defendant is not entitled to any shares in Muthu's Estate simply because no administrator has been formally appointed for Vijayanti's Estate, is without any merit as beneficiaries to an estate do not forego their beneficial entitlement due to non-appointment of an administrator.

24. This Court also notes that the said 27 August 2018 letter states that the Plaintiff would advise the Defendant of the sale price of the Crown Lease in order to give the Defendant the first option to purchase the same. By the letter of 31 August 2018, the Defendant's solicitor responded that the

Defendant was willing to give up vacant possession immediately or 7 days prior to the settlement of sale of the Crown Lease. This showed that the Defendant did not have any intention to purchase the Crown Lease and was agreeing to vacate the same.

25. Basically, the Defendant asserts her right to remain on the Crown Lease on two grounds: (i) that Sada Siwan had permitted her to stay there; and (ii) that she is a beneficiary in Muthu's Estate.
26. It is undisputed that Sada Siwan was the Executor and Trustee of Muthu's Estate, and he died leaving Muthu's Estate unadministered. At best, the Defendant may have had the consent of the previous Trustee, Sada Siwan to reside with him on the Property. However, the Crown Lease together with all other properties, both real and personal, in Muthu's Estate is now vested in the Plaintiff by virtue of section 9 of the SPA (See also ***Singh v Karan*** (unreported) decided on 31 October 2022 Fiji High Court (Lautoka) Civil Action No. HBC 248 of 2019).
27. On 8 March 2024, the Plaintiff (in her capacity as the Administratrix of Muthu's Estate) served the Defendant with a Demand Notice requiring her to vacate the Property and pay outstanding rent. Such Notice effectively revoked any previous consent for the Defendant to remain on the Property.
28. The Plaintiff wishes to wind up Muthu's Estate and if the Defendant remains in occupation of the Property, it will hinder the winding up process.
29. The Plaintiff, being the Administrator, is empowered under section 11(3) of the SPA to sell or lease real estate for the purposes of administration. This can be done without prejudice to any beneficiaries where the estate properties are not specifically identified and/or quantified for the purposes of distribution by the deceased.
30. Winding up of Muthu's Estate in such a manner will not relieve the Plaintiff of her responsibilities towards the beneficiaries of the Estate. The Defendant is one of the beneficiaries. In order to claim her beneficial shares in Muthu's Estate, the Defendant would have to obtain and provide the necessary legal documents pertaining to Vijayanti's Estate.
31. The Defendant's counsel in his written submission has relied on ***Sagayam v Prasad*** [2018] FJHC 767 to advance an argument that the Defendant is the beneficiary of Muthu's Estate and was brought onto the Property by her *de facto* partner and is therefore not a trespasser. However, the Defendant's counsel has failed to consider that the said orders in ***Sagayam v Prasad*** [2018] FJHC 767 were set aside by the

Court of Appeal in **Prasad v Sagayam** [2021] FJCA 106; ABU082.2018 (28 May 2021) and the decision of the Court of Appeal was affirmed by the Supreme Court in **Sagayam v Prasad** [2023] FJSC 51; CBV0006.2021 (27 October 2023). Therefore, this Court will not accord any weight to the submissions on this particular point.

32. I find that there are no complicated issues which warrant the dismissal of the Summons filed by the Plaintiff. The Defendant has failed to establish that she has the right to remain in possession of the Property given that the Plaintiff, who is the current Administrator of Muthu's Estate, has essentially revoked any prior consent.

33. Accordingly, I make the following orders:

- (a) The Defendant is ordered to immediately deliver to the Plaintiff vacant possession of the Property described in the Originating Summons; and
- (b) The Defendant to pay costs summarily assessed at \$1,000 to the Plaintiff within one month from today.

At Lautoka  
27 June 2025



**P. Prasad**  
**Master of the High Court**