

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**EXERCISING CIVIL JURISDICTON**

**CIVIL ACTION No. HBC 184 of 2024**

**IN THE MATTER** of an Application under Order 113, Rule 1 of the High Court Rules 1988 for Summary Possession of Land.

**BETWEEN** : **OM PRAKASH** of Sabeto, Nadi, Farmer.

**PLAINTIFF**

**AND** : **BIJAY RAJ** of Lavuci, Sabeto, Nadi.

**DEFENDANT**

**BERORE** : Hon. A.M. Mohamed Mackie-J

**COUNSEL** : Mr. S. Nand with Mr. Kumar.P. For the Plaintiff.

: Defendant present (self-represented).

**DATE OF HEARING** : On 18<sup>th</sup> June 2025.

**WRITTEN SUBMISSIONS:** Filed by the Plaintiff on 18<sup>th</sup> June 2025.

: Not filed by the Defendant.

**DATE OF HUDGMENT** : On 15<sup>th</sup> July 2025.

**JUDGMENT**

**A. INTRODUCTION:**

1. Before me is an Originating Summons by the Plaintiff, namely, OM PRAKASH, supported by the Affidavit sworn by him and filed on 20<sup>th</sup> August 2024, together with annexures marked as “OP-1” to – “OP-7”.

2. By the said Summons, the Plaintiff seeks the following reliefs against the Defendant;

1. *The Defendants, their relative(s) and occupant(s) give up immediate vacant possession of the land comprised in State Lease 24201 of Lot 2 of Plan SO 9182 known as Luvuci (part of) formerly Lot 4 ND S094 (Pt of) Viti Levu in the province of Ba having an area OF 1014 square meters to the Plaintiff;*
2. *The Defendant indemnify the Plaintiff of all costs of this application; and*
3. *Any other Order deemed just and equitable in the circumstance(s)*

3. This Application is made under Order 113, Rule 1 of the High Court Rules 1988 on the grounds **that:**

1. The Plaintiff is the last registered proprietor of the Land comprised in State Lease No: 24201 of Lot 2 of Plan SO 9182 known as Luvuci (part of) formerly Lot 4 ND S094 (Pt of) Viti Levu in the province of Ba, having an area of 1014 square meters (subject to survey) situated at Sabeto, in the province of Ba; and
2. The Defendant does not possess any legal, beneficial and/or equitable right to the property nor does he possess any form of license to occupy the same.

#### **B. PLAINTIFF'S EVIDENCE:**

4. The Plaintiff in his Affidavit in support, *inter alia*, states as follows;

1. *THAT he is the last registered owner of Residential Lease 24201 of Lot 2 of Plan SO 9182 known as Luvuci (part of) formerly Lot 4 ND S094 (Pt of) Viti Levu in the province of Ba having an area OF 1014 square meters (hereafter referred to as the "subject property"). Annexed and marked as "OP-1" is a copy of the State Lease 24201.*
2. *THAT his mother, namely, **SHIU KUMARI**, daughter of Raj Gopal, had executed a Last Will dated 28<sup>th</sup> September, 1994 and appointed him as the sole Executor and Trustee of her Estate. Annexed and marked as "OP-2" is a copy of the said Will.*
3. *THAT on the 14<sup>th</sup> of February, 2013, he had obtained an Order from the High court of Suva in action No- HPP 41 of 2012, where it was ordered that Probate in the Estate of SHIU KUMARI be granted to him. Annexed and marked as "OP-3" is a copy of the Order.*
4. *THAT he was granted Probate No. 53731 as the sole Executor and Trustee in the Estate of SHIU KUMARI AKA SHIUKUMARI. Annexed and marked as "OP-4" is a copy of the Probate No. 53731.*
5. *THAT the Defendant is the son of **Khem Raj**, who was a labour of his mother Shiu Kumari and his family, was close to his late father Khem Raj in 1980's*
6. *THAT he is not aware and has no knowledge as to the Defendant's right or access given to reside in the farmhouse, which was not permanently build on the subject property.*

7. *THAT on the 5<sup>th</sup> of June 2023, he made an application to the Ministry of Lands and Mineral Resources seeking consent to transfer the subject property on State Lease 24201. The Ministry responded on 20<sup>th</sup> of June, 2023 informing him that there is a sitting occupant on the subject property and due to that his application was refused. Vide “OP-5”.*
8. *THAT he is unable to proceed with the development of the subject property due to the illegal occupancy of the Defendant and it can only proceed once they are removed from the subject property.*
9. *THAT there was no family or written agreement between his late mother Shiu Kumari and the Defendant’s families for them to reside on the farmhouse which is built on the subject property.*
10. *THAT he had been approaching the Defendant verbally several times to demolish the farmhouse as it was obstructing the access road to the farm. THAT the Defendant had agreed to remove the farmhouse by October 2023 after he showed him the response letter from the Ministry of Lands however, till date the Defendant has not removed the same.*
11. *THAT on his Solicitors advise, wrote the letter dated 17<sup>th</sup> June, 2024 and put the Defendant on notice to demolish the farmhouse within 30 days and the same has not been complied with by the Defendant. Annexed and marked “OP-6” is a copy of the letter.*
12. *THAT the Defendant had responded to his letter on the 24<sup>th</sup> of June, 2024 explaining that his father had built the house on the subject land and therefore he will not remove the farmhouse as it is their dwelling house, which is untrue. Annexed hereto and marked “OP-7” is a copy of the Defendant’s letter.*
13. *THAT the Defendant does not have any consent. License or entitlement in occupying the subject property, which makes him an illegal occupant. THAT he had offered the Defendant Lot 1 which has their residential house in which they are currently residing.*
14. *THAT the Defendant is only using the farmhouse in Lot 2 as a store room, which contain all his working equipment, knowing that Lot 2 does not belong to him and his family.*
15. *THAT he believes that he has a successful claim against the Defendant and that he has been robbed of his lawful and rightful entitlement in his mother’s Estate.*
16. *THAT he verily believes that the Defendant and his relatives and occupants have to give up immediate vacant possession of the land comprised in Residential Lease 24201 of Lot 2 of Plan SO 9182 known as Luvuci (part of) formerly Lot 4 ND S094 (Pt of) Viti Levu in the province of Ba having an area OF 1014 square meter. Therefore, he seeks orders in terms of the Application.*

### **C. DEFENDANT’S EVIDENCE:**

5. The Defendant filed his Affidavit in opposition on 12<sup>th</sup> June 2025 and averred, *inter alia*, **THAT:**
  1. *The Plaintiff is the Trustee/Executer of the estate of Shui Kumari, who was the late owner of the subject property.*
  2. *Shui Kumari was the Plaintiff’s Mother and also his grandmother.*

3. *The Plaintiff and he are related, who is his uncle.*
4. *A probate has been taken out by the Plaintiff in the late Shui Kumari's estate and as per her will the Plaintiff is the sole beneficiary.*
5. *His father, named **Khem Raj**, was told by late shui Kumari to reside on the property since they are related.*
6. *They have been living in the property since the year 1988, built their house and continue to live there. He and his family have nowhere to go and they have done all the investments in the property. Accordingly, moves for the dismissal of the Originating Summons.*

**D. RELEVANT LAW & CONSIDERATION:**

6. The Order 113 rule 1 of the HCR, under which the current Application was filed by the plaintiff, reads;

*"Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over 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 provisions of this Order".*

7. The above rule is based on the English rules of the High Court. The English courts did not have jurisdiction to summarily order for possession of any property, before introduction of this rule into the High Court Rules. This position was explained by the English Court of Appeal in **Manchester Corp v Connolly [1970] 1 All ER 961, [1970] Ch. D 420** in which the court held that, the court had no power to make an order for possession and give leave to issue a writ of possession on an interlocutory motion before final judgment had been obtained. The necessity then arose for a speedy and prompt procedure to summarily obtain a final order for possession where not every wrongful occupier can reasonably be identified (see: The Supreme Court Practice 1988 at paragraph 113/1-8/1 at page 1470). This resulted in introduction of Order 113 to the High Court Rules.
8. The Supreme Court Practice 1988 (White Book) further states at paragraph 113/1-8/1 at page 1470 that:

*For the particular circumstances and remedy described in r.1, this Order provides a somewhat exceptional procedure, which is an amalgam of other procedures, e.g., procedure by ex-parte originating summons, default procedures and the procedure for summary judgment under O. 14. Its machinery is summary, simple and speedy, i.e. it is intended to operate without a plenary trial involving the oral examination of witnesses and with the minimum of delay, expense and technicality. Where none of the wrongful occupiers can reasonably be identified the proceedings take on the character of an action in rem, since the action would relate to the recovery of the res without there being any other party but the plaintiff. On the other hand, like the default and summary procedures under O.13 and O.14, this Order would normally apply only in virtually uncontested cases or in clear cases where there is no issue or question to try, i.e. where there is no reasonable doubt as to the claim of the plaintiff to recover possession of the land or as*

*to wrongful occupation of the land without licence or consent and without any right, title or interest thereto.*

9. The above commentaries in the White Book suggest that, this is the procedure to recover the possession of a land occupied by a trespasser or a squatter. It is simple and speedy machinery that is intended to operate with minimum delay, expense and technicality as opposed to plenary trial involving oral examination of witnesses. Where none of the wrongful occupiers can reasonably be identified the proceedings take on the character of an action in rem, since the action would relate to the recovery of the res without there being any other party but the plaintiff. Kennedy LJ., in *Dutton v Manchester Airport* (supra) said at page 689 that:

*The wording of Order 113 and the relevant facts can be found in the judgment of Chadwick LJ. In Wiltshire C.C. v Frazer (1983) PCR 69 Stephenson LJ said at page 76 that for a party to avail himself of the Order he must bring himself within its words. If he does so the court has no discretion to refuse him possession. Stephenson LJ went on at page 77 to consider what the words of the rule require. They require:*

*“(1) of the plaintiff that he should have a right to possession of the land in question and claim possession of land which he alleges to be occupied solely by the defendant;*

*(2) that the defendant, whom he seeks to evict from his land (the land) should be persons who have entered into or have remained in occupation of it without his licence or consent (or that any predecessor in title of his)”.*

10. It is the duty of a plaintiff, who invokes the jurisdiction of this court under this Order, to primarily satisfy the court that, it is virtually a clear case where there is no doubt as to his claim for the recovery of possession of the land. In that process, he must be able to show to the court his right to claim the possession of the land and then to satisfy that the Defendant (not being a tenant or tenants holding over after the termination of the tenancy) entered into the land or remain in occupation without his licence or consent or that of his predecessor/s in title. Once a plaintiff satisfies these two factors, the Plaintiff shall be entitled for an order against the Defendant or the occupier. Then, the burden shifts on the Defendant or the person occupies that property, if he wishes to remain in possession, to satisfy the court that he had consent either from the plaintiff or his or her predecessor in title or he has title either equal or superior to that of the plaintiff. If the Defendant shows such consent or title, then the Application of the plaintiff ought to be dismissed.
11. The plaintiff hereof marked and tendered the copy of his Crown Lease No. 24201 as “OP-1” and annexed it with his affidavit in support. It is a duly certified Instrument of Title (“instrument of title” includes a certificate of title, Crown grant, lease, sublease, mortgage or other encumbrance as the case may be according to section 2 of Land Transfer Act). The section

18 of the Land Transfer Act specifically provides that, duly certified copy of Instrument of title to be conclusive evidence of proprietorship unless the contrary is proved by the production of the register or a certified copy thereof.

12. The Defendant does not dispute the title of the plaintiff. In his Affidavit in opposition, the Defendant, while stating that the plaintiff is the Trustee/ Executor of the Estate of Shui Kumari, has admitted that she was the predecessor in title to the subject land, she was the Plaintiff's Mother, a Probate has been taken out by the Plaintiff in respect of Shui Kumari's Estate and as per her Will the Plaintiff was the sole beneficiary.
13. The Defendant claims for right to occupy the subject property on the purported basis that the deceased **shui Kumari** was his grandmother, the plaintiff is his uncle and his Father **Khem Raj** was told by the late Shui Kumari to come and reside on the property since they were related.
14. In response to the said claim, the Plaintiff in his Affidavit in reply has reiterated that presently he is the Registered owner of the property, not the Trustee or Executor as stated by the Defendant. The Plaintiff also refutes the claim of the Defendant that he is a blood relative of late Shui Kumari, who had neither married nor had any children for the Defendant to claim that he is a grandson of Shui Kumari and the Plaintiff is an uncle of him.
15. The Plaintiff also states that he is only an adopted Son of late Shui Kumari and in order to substantiate the fact that she had not married, he has submitted her Certificate of Death marked as "OP-8" annexed with his Affidavit in reply. The Defendant has not proffered any evidence to substantiate the purported relationship to the late Shui Kumari or to the Plaintiff.
16. It is to be observed that the contents of the plaintiff's averments in his Affidavit in support, particularly, those of the material averments in paragraphs 12, 13, 14, 15 and 17 have not been denied or disputed by the Defendant in his Affidavit in opposition.
17. The only, purported, defence advanced by the Defendant is that his late father **Khem Raj** was told by late Shui Kumari to reside on the subject property. Plaintiff's position in this regard is that the Defendant's father was only a labourer under Late Shui Kumari and the subject property in **lot 2** is only a Farm-House, which is presently used by the Defendant only as a store to keep his working equipment and not for any residential purpose.
18. In paragraph 18 of his Affidavit in support, the Plaintiff has categorically stated that he had offered the Defendant the **Lot 1**, which has the Defendant's Residential house, he

is residing therein with his family and he still allows the Defendant to reside therein. The Defendant has not refuted this in his Affidavit in opposition.

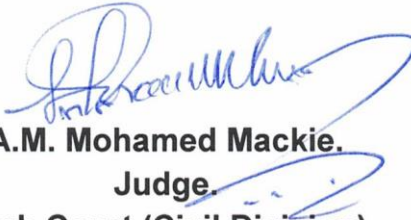
19. The plaintiff claims further that he served on the Defendant the Notice dated 17<sup>th</sup> June 2024 to demolish the subject property. The Defendant has admitted the receipt of this Notice, but has not demonstrated any tangible defence to justify his continued occupation/ usage of the subject building against the right, title and interest of the Plaintiff.
20. Indeed, the Defendant's late Father Khem Raj ,had entered the subject property as a labourer with the consent/ licence of the plaintiff's predecessor in title, namely, the late Shui Kumari , but now the Defendant, being the Son of said Khem Raj, remains in the same property without consent / licence, though the plaintiff demanded him to demolish and vacate it after the Director of Land had refused to grant consent for transfer of subject property, as evidenced by the letter from the Director of Land marked as "OP-5".
21. The question is whether the jurisdiction of this court under Order 113 of the High Court Rules can be invoked in this case when the Defendant's father had entered the property with consent and licence and the Defendant remains without consent and licence now?
22. The Order 113 of the High Court Rules not only applies where the occupier has entered into occupation without licence or consent, but also applies to a person who has entered into possession of land with a licence, but has remained in occupation without a licence. **Pennycuick V-C in Bristol Corporation v. Persons Unknown [1974] 1 W.L.R. 365; [1974] 1 All E.R. 593.**
23. It is clear that, in a summons filed under Order 113 of the HCR, the courts must be satisfied that there is no reasonable doubt on, **(a)** the claim of the plaintiff and **(b)** on the wrongful occupation of the defendant. The court has no discretion to refuse to allow the summary procedure to be used, even where the respondent had been in occupation under consent/ licence for a substantial period and when such consent/ licence has been terminated.
24. In the case before me, the Defendant's Father entered the subject property as a labourer with the consent / licence of the plaintiff's predecessor in title. However, the licence has already been terminated when the plaintiff served the notice on the Defendant demanding him to demolish the building and vacate the property, following refusal of Director of Land to grant consent to transfer. The Defendant has not shown any plausible defence for him to remain in the subject property. Since the plaintiff has invoked the jurisdiction of this court under Order 113, this court has no discretion to refuse the order for possession as prayed for.

**D. FINAL ORDERS:**

- a) The Plaintiff's Originating Summons for vacant possession, filed on 20<sup>th</sup> August 2024, succeeds.
- b) The Defendant and all those holding under him and/ or in occupation of the subject property are ordered to immediately deliver to the Plaintiff the vacant possession thereof as prayed for in the originating summons.
- c) Considering the circumstances, there is no order as to costs.

**On this 15<sup>th</sup> day of July 2025 at the High Court of Lautoka.**



  
**A.M. Mohamed Mackie.**  
**Judge.**  
**High Court (Civil Division)**  
**Lautoka.**

**SOLICITORS:**

**For the Plaintiff- Messrs. S. NAND LAWYERS- Barristers & Solicitors.**

**Defendant- Self Represented.**