

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

CASE NUMBER: HBC 284 OF 2024

BETWEEN: **HOLY WATER PTE LIMITED**

PLAINTIFF

AND: **TIMOCI SILI T/A NANUKU SCRAP METAL BUYERS**

DEFENDANT

Appearances: Mr. L. Cati for the Plaintiff.

Mr. P. Niubalavu for the Defendant.

Date/Place of Judgment: Wednesday 17 September 2025 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

RULING

(Application for stay of orders for vacant possession)

1. This is an application for stay of an order for vacant possession granted against the defendant on 19 February 2025. The defendant had to vacate the property and remove all fixtures and structures on the property on or before 1 April 2025.
2. Given the nature of this matter, I will deal with two very important considerations to determine the application for stay. The first is whether the defendant has shown any cause, even at this stage, why an order for vacant possession ought not to have been made against him, and that if stay is not granted, he will be prejudiced by being removed from the property. The second is, whether, on the day of the hearing of the application for vacant possession, the defendant was unfairly precluded from being able to show cause why an order for vacant possession should not be made against him. The grounds of appeal centers around the defendant's rights to be able to argue his case before me.
3. The defendant is challenging the issuance of the lease in respect of the subject property to the plaintiff. He says that he has been occupying the land since 1981 on a tenancy at will. He made substantial

developments on the land and had applied for a lease which was not considered. He says that his application was pending and the Lands Department issued a lease to the plaintiff in July 2024. Before that, the plaintiff was issued a tenancy at will in February 2023. The defendant is alleging fraud, collusion and improper dealing between the Lands Department and the plaintiff.

4. I must say that the defendant never had a tenancy at will or a lease in respect of this property. There was a tenancy at will granted to the defendant's father Manoa Sili. No such tenancy at will was ever granted to the defendant himself.
5. The Tenancy at Will states that the right to occupy and use the land is not transferable. . If it is not, then the defendant cannot assert a beneficial right to the property under his father's Tenancy at Will.
6. The defendant's affidavit establishes that after the demise of his father, he wrote a letter to the Lands Department on 12 June 2017 for a lease over the subject land. Apart from a letter, there is no proper application for a lease. There is no payment of fees and any response by the Lands Department regarding the processing of his application. I cannot fathom how the letter can be processed without proper payment of fees and application. The lack of formality in applying and pushing for his application is inaction on the part of the defendant for which cannot blame anyone else for not securing a proper lease over the property.
7. If the defendant is asserting fraud and collusion between the Lands Department and the plaintiff, then he should have filed an action against the Lands Department and the plaintiff claiming his interest in the land and challenging the issuance of the lease to the plaintiff.
8. The defendant has not filed any action challenging the Lands Department's decision. All it did was to communicate and raise concerns with the Lands Department over the matter.
9. The Lands Department has given the plaintiff consent to issue the application for vacant possession on 19 September 2024. This is indicative that the Ministry of Lands and Mineral Resources has decided to continue with the lease of the plaintiff and that all communications with the defendant has come to an end.
10. When an application for vacant possession was filed by the defendant, the plaintiff was expected to, at least by then, file an action seeking to impeach the title issued in favour of the plaintiff. No such action has been filed and the defendant cannot expect the court to allow him to stay on the land when he has

not initiated proceedings to vindicate his rights. It is now over a year of the issuance of the lease and the defendant has not brought any action. He cannot expect to continue to stay on the land and preclude the plaintiff from enjoying its property.

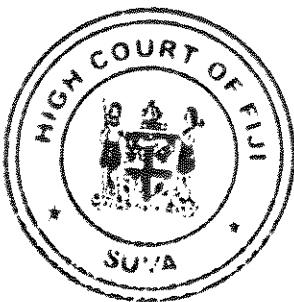
11. The defendant claims substantial development on the land. The Tenancy at Will also prohibited any developments to be carried out in the property. Paragraph 2 of the Tenancy at Will states that:

"The demised land shall be used for carrying out repairs to small boats only and no buildings whatsoever may be erected thereon after the commencement date of this tenancy."

12. The defendant thus, cannot claim a right to stay on the land based on the development he has illegally carried out on the property.
13. Let me now go back to the defendant's contention that he was denied a right to show cause why he should not give up vacant possession of the land. The matter was first called in court on 6 December 2024. I had given the defendant time to find legal representation and to file his response by 31 January 2025. I had also ordered that any right of reply be filed by 15 February 2025.
14. The application for vacant possession was set for hearing on 19 February 2025 at 10-12pm. In fact, the defendant had 16 clear days service of the application. He had not filed his response within the 16 days.
15. I could have granted an order for vacant possession on 6 December 2024 itself, as the defendant failed to show cause why he should not give vacant possession. An application for vacant possession under s.169 of the Land Transfer Act is a summary proceeding and it should be heard immediately after clear service is effected.
16. Out of concern that the defendant was unrepresented, I gave him a chance to engage a legal counsel. On the day of hearing, the defendant was represented by Mr. V. Nandan. No response was filed and an adjournment was sought on the basis that Mr. Niubalavu was engaged by the defendant on 17 February 2025 and there was less time to prepare for the hearing. It was also stated in the letter that Mr. Niubalavu was attending his father's funeral and not in a position to attend court.
17. Apart from my concerns identified in my ex-tempore ruling of 19 February 2025, I now note from the affidavit in support of the application for stay that Mr. Timoci Sili had always engaged Mr. Niubalavu

even before this action, Mr. Niubalavu and his firm were acting for Mr. Sili since 13 January 2023. They knew about this case and the property. They knew about the status of the land.

18. I now find that Mr. Niubalavu had not been honest that Mr. Sili had engaged him late. One of his emails attached to the affidavit in support of the stay application at annexure P clearly indicates that the defendant had engaged him after service of the s.169 application. His email to the Lands Department clearly states that his client had been served with an eviction summons.
19. By then the matter was not even set for hearing. Instead of filing his response, Mr. Niubalavu was liaising with the Ministry of Lands to cancel the lease of the plaintiff.
20. No regard was given to the court proceedings and no interest was shown to defend it. Why should the court allow parties to waste time on summary proceedings without vindicating their rights? The defendant and his counsel chose not to defend the action and they cannot assert that they had been deprived of a right to show cause.
21. I therefore do not find any credibility and merits in the defendant's explanation that he was deprived of a proper legal representation at the hearing or that he has a right to claim in the land. The application for stay is dismissed with costs against the defendant in the sum of \$1,500 to be paid within 7 days.
22. I grant an order for immediate possession pursuant to the writ of possession filed by the plaintiff as the defendant has had enough time to vacate the property. He failed to apply for a stay before 1 April 2025, which is the time within which he was required to vacate the property. He chose to file the application after expiry of the time to vacate when he should have filed an action for stay immediately.



Hon. Madam Justice Anjala Wati

Judge

17.09.2025

1. *August Legal for the Plaintiff.*
2. *Oceanica IP for the Defendant.*
3. *File: Suva HBC 284 of 2024.*