

IN THE HIGH COURT OF FIJI  
WESTERN DIVISION AT LAUTOKA, FIJI  
EXERCISING CIVIL JURISDICTION

CIVIL ACTION NO. HBC 39 OF 2023

**BETWEEN** : HEMANT KUMAR of Sabeto, Nadil Fiji, Farmer  
**PLAINTIFF**

**AND** : RAKESH KUMAR of Sabeto, Nadi, Fiji, Farmer  
**1<sup>ST</sup> DEFENDANT**

**AND** : ARVEEN KUMAR SINGH of 17 Alexandrina, Forest Lake,  
Queensland 4078, Australia  
**2<sup>ND</sup> DEFENDANT**

**BEFORE** : Mr. A.M. Mohamed Mackie- J.

**COUNSEL** : Ms. Devi M.

**HEARING** : On 24<sup>th</sup> October 2025.

**W. SUBMISSIONS** : By the Plaintiff filed on 05<sup>th</sup> November 2015.  
Supplementary Written Submissions by the Plaintiff filed on 25<sup>th</sup>  
November 2025.

**JUDGMENT** : Delivered on 4<sup>th</sup> December, 2025

**JUDGMENT**

1. The Plaintiff by way of his Notice of Motion filed on filed on 23<sup>rd</sup> February 2023, having obtained leave to issue and serve proceedings against the 2<sup>nd</sup> Defendant out of jurisdiction, on 13<sup>th</sup> March 2023 filed his writ of Summons and the statement of claim against both the Defendants seeking the following reliefs against them;
  - a. *An Order that the Defendants do all necessary things required to sub-divide and convert the allocated portion of the Land on which the Plaintiff resides in a separate title and transfer it to the Plaintiff;*
  - b. *That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and / or its agents be restrained from effecting the Notice to vacate issued by Legal Aid Commission on 19<sup>th</sup> December ,2022;*
  - c. *Alternatively, damages in a sum of FJD 70,000.00 (Seventy Thousand Dollars)*
  - d. *Post -judgment interest of 4% per annum from the date of final judgment to the date of final satisfaction of the judgment sum;*
  - e. *Costs of this action on a full indemnity basis.*
  - f. *Such further and/ or other relief as this Court may deem just and expedient.*

2. Simultaneously, the Plaintiff also filed an Ex-Parte Notice of Motion, seeking the following injunctive reliefs against the Defendants
  1. *That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and/ or its agents be restrained from interfering, dealing with, Leasing, transferring, selling, alienating or otherwise disposing of the land comprised in TLTB number 6/77/7195 in the land known as Koronitama in the province of Ba.*
  2. *That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and /or its agents be restrained from effecting the Notice to Vacate issued by Legal Aid Commission on 19<sup>th</sup> December 2022.*
3. The said Ex-Parte Notice of Motion, being converted as an Inter-Parte Application, when came up for hearing on 24<sup>th</sup> March 2023, as the 1<sup>st</sup> defendant was absent, despite the service of the Application, together with the writ of Summons and the Statement of Claim, this Court granted the interim Injunction Order 2 above on temporary basis and fixed the matter to be heard inter-parte on 28<sup>th</sup> April 2023 with a direction to serve the temporary orders on both the Defendants.
4. Accordingly, when the matter came up on 28<sup>th</sup> April 2023, the 2<sup>nd</sup> Defendant appeared in person, who admitted the service of papers. His Driving License No. 084 207 368 was recorded by the Court in proof of his appearance in Court. Matter was fixed for 17<sup>th</sup> May 2023 with a direction to serve the injunctive Orders on the 1<sup>st</sup> Defendant and for the 2<sup>nd</sup> Defendant to retain the service of a Lawyer.
5. On 17<sup>th</sup> May 2023 as both the Defendants were absent, despite the Service of the Order on the 1<sup>st</sup> Defendant, and the 2<sup>nd</sup> Defendant had already appeared and taken notice of the proceedings hereof , this Court granted the interim injunction as prayed for and left the Plaintiff at liberty to move for further Orders.
6. On 31<sup>st</sup> May 2023, the Court directed the interim injunction orders made on 17<sup>th</sup> May 2023 to be served on both the Defendants and fixed the matter to be mentioned on 28<sup>th</sup> June 2023 and thereafter on 04<sup>th</sup> August 2023. Affidavit of due service were filed and none of the Defendants had responded to it.
7. As none of the Defendant had filed the Notice of Intention to defend and/ or the Statement of Defence, the Plaintiff on 8<sup>th</sup> July 2024 filed a Summons, supported by his Affidavit, moving for formal proof hearing pursuant to Order 13 of the High Court Rules 1988.
8. The formal proof hearing was taken up on 03<sup>rd</sup> September 2025, wherein the Plaintiff gave evidence on his behalf by marking documents out of his bundle of documents filed on 02<sup>nd</sup> September 2025. Plaintiff filed his written submissions on 05<sup>th</sup> November 2025 and thereafter filed his Supplementary submissions.
9. Contrary to the practice and procedure, the Plaintiff along with his supplementary written submissions filed a copy of the Probate and the last will, which were not filed prior to or at the hearing. Careful perusal of those documents showed that those had been obtained from the Probate Registry of High Court Suva on 20<sup>th</sup> November 2025 only after the conclusion of the formal proof hearing. Considering the nature of the said documents and since the admission of those documents as evidence was not

prejudicial to the Defendants, the Court decided to accept those documents and admit as evidence for the Plaintiff.

10. For the purpose of lucidity and easy comprehension of the actual dispute between the parties, who are siblings, I shall reproduce the averments in the statement of claim as follows;

STATEMENT OF CLAIM

1. THAT the Plaintiff is currently a resident on land TLTB Number 6/77/7195 in the land known as Koronitama in the province of Ba (hereinafter referred to as "the Land").
2. THAT the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are the younger siblings of the Plaintiff and registered lessees of the Land.
3. THAT the said land is an Agreement to Tenancy which is governed by the Itaukei Land Trust Board, the statutory body responsible for governing all native lease lands in Fiji.
4. THAT the said Land has two houses constructed in close proximity with each other.
5. THAT the Plaintiff has been residing on the Land since birth.
6. THAT the said Land was first acquired by Sant Kumari, the mother of the Plaintiff, as an Agreement to Tenancy on 1<sup>st</sup> January, 1964.
7. THAT the entire family of the Plaintiff consisting of his late father and mother Dayal Singh and Sant Kumari respectively, his brothers and sisters all lived on the land since its acquisition and continued to live there until the siblings got married and proceeded to live elsewhere.
8. THAT sometime in 1978, a marriage proposal for the Plaintiff was fixed and it was decided amongst all parties that the Plaintiff would need to reside in a separate dwelling after marriage.
9. THAT prior to the Plaintiff's marriage, the Defendants and the Plaintiff used to live in one house that was constructed by Dayal Singh and Sant Kumari.
10. THAT Sant Kumari, being the original registered lessee of the land and mother of the Plaintiff, agreed to give the Plaintiff a portion of the Land as a gift to build his house and reside in that house with his wife.
11. THAT Sant Kumari got all the necessary approvals from the relevant statutory body and the Plaintiff constructed the house on the given portion of the Land and proceeded to live there with his wife while the Defendants lived in the original house with the parents.
12. THAT the house was constructed by the Plaintiff in 1979 on the allocated portion of the land with the proceeds he earned from working in New Zealand.
13. THAT the Plaintiff spent approximately FJD\$20, 000.00 (Twenty Thousand Dollars) for the construction of the house and proceeded to live in it with his wife.

14. THAT at all material time, the Plaintiff has been responsible for the maintenance, repairs and incidentals of the house.
15. THAT the Plaintiff proceeded to extend the house into seven (7) bedrooms and is currently valued at approximately FJD\$70, 000.00 (Seventy Thousand Dollars).
16. THAT sometime in 1997, Sant Kumari had demised and the entire administration of the Land was taken over by the Defendants.
17. THAT prior to the Plaintiff's marriage, the Plaintiff was responsible for the administration of the Land by virtue of him being elder. However, Sant Kumari had taken over the administration of the Land after the marriage of the Plaintiff and after her demise; the administration was taken by the Defendants.
18. THAT there was no will made by Sant Kumari for the distribution of her property after her demise.
19. THAT sometime in 2013, the Tenancy Agreement had expired and unknown to the Plaintiff, the Defendants colluded to apply for the renewal of the tenancy.
20. THAT the Plaintiff was neither informed nor consulted for the application of the renewal of the Tenancy Agreement since the Plaintiff also had a share in the property by virtue of a gift given to him by Sant Kumari, the original lessee of the Land.
21. THAT the Defendants have colluded amongst themselves and fraudulently filed the application and registered themselves as the lessees of the Land to deprive the Plaintiff of the rightful share of the Land.
22. THAT the Plaintiff verily believes that the Defendants ought to have filed Letters of Administration and distributed the property as per the laws of the Land rather than fraudulently applying and registering themselves as the lessees of the Land.
23. THAT the Plaintiff was unaware of the deceptive intentions of the Defendants and continued to live his life as per the arrangement of the early without seeking any remediate actions to claim his share in the Land.
24. THAT the Plaintiff was of the view that the arrangement made by Sant Kumari would be continued upon by the Defendants without any conflicts or disputes.
25. THAT on the contrary, the 1<sup>st</sup> Defendant began harassing and intimidating the Plaintiff after the immediate renewal of the Tenancy Agreement under his name.
26. THAT particulars of the harassment and troubles created by the 1<sup>st</sup> Defendant is as follows:-
  - i. Attempting to destroy the Plaintiff's house by lighting fire near the
  - ii. Plaintiffs house in 2014;
  - iii. Re-attempting to destroy the Plaintiff's house on a second occasion;
  - iv. Verbally threatening and abusing the Plaintiff in a attempt to evict the
  - v. Plaintiff from the house;
  - vi. Dumping rubbish and soil particles around the Plaintiff's house.
27. THAT the Plaintiff has lodged multiple complaints against the 1<sup>st</sup> Defendant for the criminal activities committee by the 1<sup>st</sup> Defendant against the Plaintiff and the 1<sup>st</sup> Defendant has been reprimanded for his actions.

28. *THAT the 1<sup>st</sup> Defendant has attempted and continues to attempt to evict the Plaintiff from the house which the Plaintiff has constructed with his earnings on the portion of the Land which was given to him as a gift by Sant Kumari and to which the Plaintiff is rightfully entitled to.*
  29. *THAT on 19<sup>th</sup> December, 2022, the Plaintiff was served with a notice to vacate from the Legal Aid Commission stating that they act for Rakesh Kumar and demanded that the Plaintiff vacate the Land within 30 days of the service of the letter on the Plaintiff.*
  30. *THAT it is understood that the Notice to Vacate is an attempt by the 1<sup>st</sup> Defendant to evict the Plaintiff from the Land.*
  31. *THAT the Plaintiff has substantially invested in his allocated portion of the Land by building a house and substantially investing by extending it into seven bedrooms with an estimated value of FJD\$70,000.00 (Seventy Thousand Dollars).*
  32. *THAT the Plaintiff, by virtue of the gift of the said allocation of the Land by Sant Kumari, has a vested interest and right in the Land which the and 2<sup>nd</sup> Defendants are attempting to usurp by evicting him.*
  33. *THAT in the event the Defendants succeed in evicting the Plaintiff from the Land, The Plaintiff will be severely prejudiced and would sustain huge loss and damages in losing the house and portion of the land to which he is rightfully entitled to.*
11. At the formal proof hearing, the Plaintiff has given clear and convincing evidence substantiating his averments in the Statement of claim and the content of the documents relied on by him to support and substantiate his claim.
  12. During his evidence, he referred to the documents in his bundle of documents numbered from 1 to 8, out of which the 1<sup>st</sup> document is a copy of declaration by Tenant to iTaukei Land Trust board for the consent application dated 2<sup>nd</sup> November 1997 in respect of the subject land. The annexure No-4 contains number of photographs depicting the present house, where the Plaintiff is said to be in occupation.
  13. The annexure no-6 is the DRAFT WILL of his late mother, by which she said to have had intended to bequeath a portion of the subject land to the Plaintiff. However, adding weight to his evidence, the Plaintiff has subsequently filed a copy of the actual will deposited at the Probate Registry, together with a copy of the Probate. This clearly shows his entitlement to a portion of the subject land. The annexure number 7 is the EFL bill issued in the name of the Plaintiff as the consumer. This document demonstrates that he is in occupation of the land and the premises in question.
  14. The 2<sup>nd</sup> Defendant, who obtained the probate, as the Administrator and Trustee, has not so far fulfilled his obligation towards the Plaintiff. When the Plaintiff has shown his right and entitlement to the portion of the subject land as per the Last Will of his mother, the Defendants have disregarded this right and attempted to evict the Plaintiff.
  15. The Plaintiff's oral and documentary evidence has remained unchallenged. Though, the Summons and injunctive orders were duly served on the Defendants, particularly


on the 2<sup>nd</sup> Defendant who appeared in Court, seem to have decided not to challenge the Plaintiff's claim and orders sought.

16. Accordingly, being satisfied of the evidence adduced, Court decides to grant the reliefs prayed for as follows. As the Plaintiff is granted the substantive relief, no alternative relief of damages is granted. The plaintiff shall be entitled to a sum of \$2,000.00 as summarily assessed costs.

**FINAL ORDERS:**

- a. The Plaintiff's action succeeds.
- b. The Defendants shall take all necessary steps required to subdivide and transfer unto the Plaintiff, the relevant portion of the subject land, where the Plaintiff currently resides.
- c. The Defendants are permanently restrained from harassing, intimidating and evicting the plaintiff from the subject matter land.
- d. Plaintiff's claim for damages declined.
- e. The Defendants shall pay the Plaintiff a sum of \$2,000.00 (Two Thousand Fijian Dollars) jointly and severally, being the summarily assessed Costs.
- f. This Judgment shall be sealed and served on the Defendants forthwith.



  
A.M. Mohamed Mackie  
Judge

At the High Court of Lautoka on this 4<sup>th</sup> day of December 2025.

**SOLICITORS:**

For the Plaintiff- Messrs. Ace Legal, Barristers & Solicitors  
For the Defendants Absent and no representation.