

**IN THE MAGISTRATES COURT AT NADI
CIVIL JURISDICTION**

Civil Case No. 105 of 2024

BETWEEN : ABID HUSSEIN

Plaintiff

AND : RESHMIKA RUSSELL

Defendant

RULING

This is the Plaintiff's claim filed on 11 September 2024. The remedies sought have been set out in the Claim and essentially seek vacant possession of the subject leasehold property, arrears of rent and/or mesne profits, damages, interest, and costs.

The Defendant filed a Notice of Intention to Defend but no Statement of Defence. The matter has therefore proceeded by way of formal proof on the basis of the Plaintiff's Affidavit Evidence filed on 6 June 2025.

Background

The Court has already dealt with interlocutory applications concerning a Stop Departure Order. Ultimately, the Defendant was permitted to travel to Canada on humanitarian grounds subject to conditions, including the lodgment of a \$5,000 bond and two sureties. She has not returned, and her counsel has since ceased to appear. The matter has therefore proceeded undefended.

Issues for Determination

The Plaintiff claims:

1. Rental arrears for November 2023 to August 2024 in the sum of \$9,520.
2. Mesne profits at the rate of \$1,500 per month from September 2024 until vacant possession is delivered.
3. Loss of use of the property for potential better income.

4. General damages.
5. Special damages.
6. Interest and costs.

The annexures to the Plaintiff's affidavit includes the Lease Title and the Lease Agreement dated 30 August 2023 between the Plaintiff and one *Pratiba Preyanka Narayan*, and various receipts.

Analysis

A central difficulty in this claim is that the Lease Agreement produced is not between the Plaintiff and the Defendant, but between the Plaintiff and Ms. Pratiba Preyanka Narayan, who is not a party to these proceedings. The Defendant's legal basis for occupation has therefore not been clearly established by the Plaintiff. The Court cannot assume that the Defendant was ever a tenant under the Agreement to Lease, nor that she became contractually liable for rent under it.

The Plaintiff does allege that the Defendant has been in occupation since November 2023. Even if that is accepted, without evidence of a tenancy agreement binding her, the Plaintiff cannot recover *rent* from the Defendant. The proper remedy would be mesne profits, being compensation for unlawful occupation without title.

The claim for "rental arrears" of \$9,520 from November 2023 to August 2024 is therefore not maintainable as rent. It can only be considered as mesne profit for that period, and thereafter until vacant possession is delivered. The proper measure of mesne profit is the reasonable rental value of the premises. On the evidence, \$1,500 per month is a fair measure, as it is the agreed rental under the Lease Agreement with Pratiba.

As to the Plaintiff's receipts for airfares and travel, the Court accepts that the Plaintiff resides in New Zealand and had to travel to Fiji to deal with these proceedings. However, such expenses, while understandably incurred, are not legally recoverable as special damages in this tenancy action. Special damages must be directly referable to the breach. Legal costs are already dealt with under the Court's discretion for costs.

The claims for "loss of potential better income" and general damages are either speculative or amount to double recovery when mesne profits are awarded. They are accordingly disallowed.

Conclusion and Orders

Judgment is entered for the Plaintiff as follows:

1. The Defendant **shall deliver vacant possession** of iTaukei Lease No. 33408, Lot 75 on SO 5988, Tikina of Nadi, Province of Ba, being 731 square metres, to the Plaintiff **with immediate effect**.
2. The Defendant shall pay the Plaintiff mesne profits as follows:
 - \$370 for the outstanding balance of November 2023;**
 - \$1,500 per month for the period March 2024 to August 2024 in the sum of \$9,000;**
 - \$1,500 per month from September 2024 until the date vacant possession is delivered.**
3. The Plaintiff's claims for rental arrears (as rent), loss of potential better income, general damages, and special damages are dismissed.
4. The sum of **\$5,000 paid into Court as bond** by the Defendant shall be applied towards satisfaction of the mesne profits due under this judgment, subject to proper accounting.
5. The sureties, namely **Ashendra Nath and Pratiba Preyanka Narayan**, shall remain bound by their undertakings and subject to the Stop Departure Orders until vacant possession is delivered and the Defendant's obligations under this judgment are satisfied.
6. **Interest is awarded at 5% per annum** from the date of Judgment until date of full payment.
7. The Defendant shall pay the Plaintiff's costs of these proceedings, **summarily assessed at \$2,000.**

Final Remarks

The Court emphasises that *rent and mesne profit are distinct*. Rent arises from a contractual tenancy; mesne profit is compensation for unlawful occupation. Where, as here, no tenancy agreement has been shown to exist between the Plaintiff and Defendant, only mesne profit can be awarded.

Any party aggrieved by this decision has the right to appeal.

Setavana Saumatua

Setavana Saumatua
Resident Magistrate
30 September, 2025.

