

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CIVIL JURISDICTION**

**Civil Action HBC No. 143 of 2012**

**BETWEEN** : **UTTRA KUMARI aka UTTRA DEVI & AKRAM KHAN**  
of Tuvu, Rabulu, Tavua.

**PLAINTIFF**

**AND** : **FIJI PUBLIC TRUSTEE CORPORATION LTD** as  
Administrator of the estate of **RAM KISSUN OF LICI**  
Building, Level 1, Suva.

**1<sup>ST</sup> DEFENDANT**

**AND** : **ITAUKEI LAND TRUST BOARD** (formerly known as  
Native Land Trust Board) a body corporate duly  
constituted under the Native Land Act, Cap 134 and  
having its registered office at 431 Victoria Parade,  
Suva.

**2<sup>ND</sup> DEFENDANT**

**Appearances** : Mr N. Nawaikula for the plaintiff  
Non-appearance for the defendants

**Date of Trial** : 15 February 2017

**Date of Judgment** : 05 April 2017

**J U D G M E N T**

[01] The plaintiff institutes this action and claims among other things vacant possession of the land in lease NL 974.

[02] On 15 February 2017, the day fixed for trial of the matter, there was no appearance by or for the defendants. Then, counsel appearing for the plaintiff, Mr Nawaikula made an application that the statement of

defence to be struck out. The court allowing that application struck out the statement of claim filed by the defendants. As such, the trial proceeded with in the absence of the defendant pursuant to Order 35, Rule 1(2) of the High Court Rules 1988 ('HCR'), which provides:

*'(2) If, when the trial of an action is called on, one party does not appear, the judge may proceed with the trial of the action or any counterclaim in the absence of that party'.*

[03] Before the commencement of the trial, the plaintiff sought the indulgence of the court and informed that the plaintiff is willing to drop the relief sought in the nature of declaration. The court granted leave to do so.

[04] At the trial, without the defendant being present, Uttra Kumari, the plaintiff gave evidence and produced in court ten documents in support of her claim. She also called two other witnesses.

### **The Background Facts**

[05] The brief background facts, as stated on the statement of claim, are as follows:

- 5.01. The Plaintiffs are the current registered title holders of Native Lease NL 974 known as Tuvu in the district of Tavua comprising 151 acres.
- 5.02. The 1<sup>st</sup> Defendant is the administrator of the estate of the late Ram Kissun, and it is an agricultural tenant of the Plaintiffs pursuant to the order of the Agricultural Tribunal, WD ref no. 53 of 1995, dated the 26<sup>th</sup> day of June 1998 where its agricultural tenancy was extended for 20 years from 1<sup>st</sup> January 2000 to terminate on 1<sup>st</sup> January 2020.
- 5.03. The 2<sup>nd</sup> Defendant is a statutory body established under the iTaukei Land Trust Act Cap 134 to administer native land held under its control for the benefit for its native owners.

- 5.04. The subject matter of this action is the status of the 1<sup>st</sup> Defendant on the termination of its lease by notice under s.37 (1) (b) of Agricultural Landlord and Tenant Act (ALTA).
- 5.05. The Plaintiffs are claiming that the 1<sup>st</sup> Defendant has no more right to be on the Plaintiffs lease after the expiration of the S37(1) (b) Notice and that the 2<sup>nd</sup> Defendant has no power to issue a lease over it given that the Plaintiffs lease is still existing.
- 5.06. The 1<sup>st</sup> Defendant was an agricultural tenant of the Plaintiffs for a term of 20 years from 1980 which tenancy ended in the year 2000.
- 5.07. In 1998, pursuant to an order of the Agricultural Tribunal, WD Ref no 53 of 1995, dated 26 June 1998 the tenancy granted to the 1<sup>st</sup> Defendant was extended for a further term of 20 years from 1<sup>st</sup> January 2000 and to thereby terminate on the 1<sup>st</sup> of January 2020.
- 5.08. The Defendants lease is in arrears and accordingly the Defendant was served with a S37 (1) b notice requiring it to pay rent arrears in the sum of \$1080.00 within three months from the date of receipt of 17/8/11 if not the tenancy will be terminated.
- 5.09. The 1<sup>st</sup> Defendant has failed to apply the required sum within the time required and that therefore in accordance with that notice its tenancy has been terminated.
- 5.10. The 1<sup>st</sup> defendant has refused to vacate and continues to remain on the land.

5.11. The Plaintiff says that the 1<sup>st</sup> Defendant has no more colour of right to be on the land and his continuing occupation is unlawful.

5.12. The plaintiff seeks an order that the 1<sup>st</sup> defendant vacates the plaintiff's land forthwith.

### **The Issue**

[06] The primary issue to be determined by the court is whether the plaintiff is entitled to terminate the tenancy with the 1<sup>st</sup> defendant under section 37 of ALTA and to recover possession of the land in dispute on the ground that the 1<sup>st</sup> defendant is in arrears in the rent for a period of three months or more and that the 1<sup>st</sup> defendant had failed to pay the arrear within three months of the receipt of the written quit notice.

### **The Evidence**

[07] In support of the claim, the plaintiff called three witnesses, namely Ultra Kumari, the plaintiff (PW1), chatur Singh (PW2) and Aisake Ravutubananitu (PW3). I will summarize in turn what each witness stated in evidence.

[08] PW1 in her evidence states that: She owns the land (produces copy of the lease-PE1). Her name appears on the right hand corner of the lease. The Public Trustee is the administrator of the estate of Shah Narayan. That was sold because of an Agricultural Tribunal Declaration. Agricultural Tribunal granted tenancy to her predecessor in title (PE2). She acquired title from him. The map shows the area the Public Trustee is occupying (PE3). Shah Narayan owns the house on the photograph (PE4). He is still residing there. I am also trying to take an action against him (PE5). Sada Nand owns another house, but he has vacated it after the court order. Tribunal's order is the source of the title for the Public Trustee. The declaration was in 1998 and it says that the tenancy granted was to be from 1980 for 20 years which expired in

2000. There was another extension which expires in 2020 (PE7). The Public Trustee is a tenant by virtue of the declaration by the Tribunal. The Public Trustee is not paying rent to me. I caused my solicitor to send a notice to quit (PE8). I want my land back.

[09] PW2 states in evidence that: The Agricultural Tribunal made declaration to many people occupying the land. One of them was Public Trustee. Initial term with the Public Trustee was for 20 years from 1980, which is now expired. There was another extension by the Tribunal, which expires in 2020. I can confirm to the court a notice of termination issued to the Public Trustee on account of arrears of the rent. Three months have expired, but still they haven't paid.

[10] PW3 in evidence states that: he served the written notice to quit to the Public Trustee and had their stamp affixed on the copy of the notice in acknowledgement (PE8). He also served that notice to Shyam Narayan (PE9), Shem Naraya, Rabulu, Tavua and Jagdish Narayan of Rabulu, Tavua (PE10).

[11] None of the witnesses was cross-examined.

### **Discussion and Decision**

[12] The plaintiff is the registered proprietor of the subject land as evidenced by the instrument of lease (PE1).

[13] The 1<sup>st</sup> defendant as administrator of the estate of Ram Kissun is the tenant of the plaintiff. The tenancy was declared by the Agricultural Tribunal. The declared tenancy expires in 2020. Under the tenancy the 1<sup>st</sup> defendant obliged to pay rent to the plaintiff. The rent is to be paid pursuant to section 37 of ALTA. The 1<sup>st</sup> defendant defaulted in the payment of the rent and fell into arrears in the sum of \$1,080. The plaintiff issued section 37 notice to the 1<sup>st</sup> defendant. The notice to quit served upon the first defendant reads:

*"17 August 2011*

The Estate of Ram Kissun  
Public Trustees of Fiji  
LICI Building  
Suva

**NOTICE TO QUIT**

Dear Sir

**Re: NOTICE TO QUIT – S37 (1) b of ALTA**

We act for Uttra Devi and Akram Khan, your landlord over the above (NL 974).

We are instructed you owe the sum of \$1,080.00 in rent.

Under the s37(1)b of ALTA my client as landlord is required to give you notice to pay the arrears failing which your tenancy will be terminated.

Please take notice that unless you pay the \$1,080.00 within 3 months date you receive this notice, your tenancy is hereby terminated and quit and give vacant possession to your client as landlord.

Yours faithfully

Sgd-

**NAWAIKULA ESQUIRE'**

[14] The 1<sup>st</sup> defendant did not settle the rent arrears, but continues to occupy the land without payment of any rent to the plaintiff.

*'Termination by landlord*

**37.-(1) A landlord may terminate his contract of tenancy and may recover possession of an agricultural holding-**

(a) without notice where the tenant deserts such holding and leaves it uncultivated and unoccupied for a period of not less than twelve months and owes rent for a period of twelve months or more;

(b) by one months' written notice to quit-

(i) where the tenant sublets, assigns or subdivides such holding without having previously obtained the consent in writing of the landlord which consent shall not be unreasonably withheld; or

(ii) where the tenant commits a breach of any term or condition of the tenancy which is not capable of being remedied and the interests of the landlord are materially prejudiced thereby;

**(c) by three months' written notice to quit-**

(i) where the tenant is not cultivating or operating such holding according to the practice of good husbandry and the interests of the landlord are materially prejudiced thereby; or

**(ii) if any part of the rent in respect of the holding is in arrear for a period of three months or more** or if any lawful term or condition of the tenancy which is capable of being remedied is not performed or observed by the tenant:

Provided that, **if the tenant pays the rent in arrear** or, in the case of breach or non-observance of any lawful term or condition of the tenancy, the tenant makes good such breach or non-observance **within three months of the notice to quit, the notice to quit shall deemed to be cancelled and of no force and effect.** (Amended by 35 of 1976; s. 13.) [Emphasis Added]

(2) (a) The tenant may, at any time before the expiry of a notice lawfully given and served upon him under the provisions of paragraphs (b) and (c) of subsection (1) and of section 39, apply to the tribunal for relief against forfeiture and pending the award of the tribunal, such tenant shall not be evicted.

(b) The tribunal shall consider and decide upon any application made to it under the provisions of this section within the period of 12 months specified in sub-paragraph (ii) of paragraph (f) of subsection (1) of section 9.

(3) Where the landlord has notice of a mortgage or charge affecting the land the subject of the tenancy the landlord shall serve upon the mortgagee or chargee, as the case may be, a copy of any notice served upon the tenant in accordance with the provisions of subsection (1). (Inserted by 18 of 1968, s. 5.)

(4) For the purposes of sub-paragraph (i) of paragraph (b) of subsection (1) the expression "subdivide" has the same meaning as in the Subdivision of Land Act. (Cap.140)

(5) All applications for relief against forfeiture which may be made under the provisions of any Act shall be made to the tribunal, and for this purpose, the tribunal shall possess all the powers and jurisdiction of the court to which such application may be made under the provisions of such Act. (Amended by 35 of 1976, s.13)

(6) For the purpose of avoiding doubt, it is hereby declared that on the termination of a contract of tenancy any tenancy made or granted by the tenant prior to such termination shall be deemed to terminate at the same time. (Inserted by 35 of 1976, s. 13.)

[15] A landlord may terminate his contract of tenancy and may recover possession of an agricultural holding by giving three month notice to quit the agricultural holding if the tenant is in arrears of the rent for a

period of three months and the arrears in the rent remain unpaid within three months of the service of the written notice to quit upon the tenant. (See: s. 37 (1) (c) (ii))

[16] The plaintiff as the landlord duly gave and served upon the 1<sup>st</sup> defendant the notice to quit (the agricultural land) dated 17 August 2011 on the same day. The 1<sup>st</sup> defendant received the notice, signed the copy and placed their stamp on it. The notice to quit informs the 1<sup>st</sup> defendant that he is in arrears of \$1,080.00 in the rent. It further states that, *'Please take notice that unless you pay the \$1,080.00 within 3 months date you receive this notice, your tenancy is hereby terminated and quit and give vacant possession to your client as landlord.'*

[17] There is no evidence whatsoever in court to show that the 1<sup>st</sup> defendant paid the rent in arrears even after the quit notice and it remains unpaid to date. The 1<sup>st</sup> defendant ought to have paid the arrears in the rent within three months of the receipt of the written notice to quit.

[18] The plaintiff in evidence states that the 1<sup>st</sup> defendant did not pay the rent in arrears albeit the notice was served upon him on 17 August 2011. The plaintiff gave straightforward evidence and her evidence remains unchallenged. I find no reason to disregard her evidence. I therefore accept her evidence.

### **Conclusion**

[19] I find that the 1<sup>st</sup> defendant is in arrear of the rent in respect of the subject land, which is an agricultural holding, for a period of three months or more and that he had failed to pay the arrears in the rent within three months after receiving the written notice on 17 August 2011. The arrears in the rent still remain unpaid. I also find that the plaintiff had lawfully given and served the section 37 notice in writing upon the 1<sup>st</sup> defendant and thereby she had complied with the legal requirements contemplated in section 37. Therefore, the plaintiff is entitled to terminate the declared tenancy with the 1<sup>st</sup> defendant and to recover possession of the land from the 1<sup>st</sup> defendant on the ground



that he is in arrears of the rent for a period of three months or more and that the 1<sup>st</sup> defendant failed to settle the arrears within three months of the service of the written quit notice. She is entitled to do so under section 37 (1) (c) (ii) of ALTA. The tenancy with the 1<sup>st</sup> defendant now stands terminated. It follows that on the termination of a contract of tenancy, any tenancy made or granted by the tenant prior to such termination shall be deemed to terminate at the same time. (**See ALTA s.37 (6)**). The plaintiff's tenancy (declared) with the 1<sup>st</sup> defendant is deemed to terminate. As a result, the 1<sup>st</sup> defendant's occupation on the subject land is unlawful and unwarranted and has no right to occupy the same.

[20] As regard to costs, the plaintiff as a winning party is entitled to costs of these proceedings. The plaintiff filed her claim seeking possession of the land in 2013. She was appearing by counsel throughout. I would, taking all into my account, assess the costs at \$2,500.00, which is to be paid by the 1<sup>st</sup> defendant to the plaintiff.

### **Final Orders**

1. Judgment in favour of the plaintiff.
2. The plaintiff is entitled to recover possession of the subject land from the 1<sup>st</sup> defendant.
3. The 1<sup>st</sup> defendant will pay summarily assessed costs of \$2,500.00 to the plaintiff.

*M H Mohamed Ajmeer*  
5/4/17

**M H Mohamed Ajmeer**

**JUDGE**

**At Lautoka**

**05 April 2017**

