

IN THE HIGH COURT OF FIJI
AT LAUTOKA
WESTERN DIVISION

HBC 165 of 2012

BETWEEN : **AMI CHAND KARAN** of Race Course Road, Namosau, Ba.
PLAINTIFF

AND : **EMOSI SIKURI** of Race Course Road, Namosau, Ba.
DEFENDANT

Appearances : Mr. Dayal for the plaintiff
: No appearance for the Defendant

R U L I N G

1. This is the plaintiff's application for an Order for summary of eviction against the defendant pursuant to section 169 of the Land Transfer Act (Cap 131).
2. Section 169 states follows:

The following persons may summon any person in possession of land to appear before a judge in chambers to show cause why the person summoned should not give up possession to the applicant:-

- (a) the last registered proprietor of the land;
 - (b) a lessor with power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provision therein, when the lessee or tenant is in arrear for one month, whether there be or be not sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;
 - (c) a lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired.
3. The Plaintiff qualifies under the first limb. A copy of the lease is annexed to his affidavit confirming the same.
 4. Once it is shown that the plaintiff is the last registered proprietor, the onus shifts to the defendant to show cause as to why an Order for vacant possession should not be granted in this case (see **section 172** of the **Land Transfer Act**). In discharging that burden, the defendant must show on affidavit evidence some right to

possession which would preclude the granting of an order for possession under **section 169**.

5. This does not mean that he has to prove conclusively a right to remain in possession. On the contrary, it is enough that he shows some tangible evidence establishing a right or at least supporting an arguable case for such a right (see **Morris Hedstrom Limited v. Liaquat Ali (Action No. 153/87 at p2)**).
6. The defendant has not filed any affidavit to show cause under section 172. Nor has he ever appeared in Court. I therefore grant Order in Terms.

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Master Tuilevuka

06 June 2013.