

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 3 of 2013

BETWEEN : **MOHAMMED SHAFIL KHAN** of Lovu, Lautoka, Businessman.
Plaintiff

AND : **MOHAMMED TARIQ KHAN** of Lovu, Lautoka
First Defendant

AND : **KIRAN KUMAR** of Lovu, Lautoka.
Second Defendant

R U L I N G

- [1]. The plaintiff has filed a Summons under **section 169** of the Land Transfer Act (Cap 131) against the defendants to show cause why the defendant should not hand over vacant possession to the plaintiff of Native Land Reference No. 4/7/5122, Lease No. 52832.
- [2]. **Section 169** of the Act provides as 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 defendant argues that the plaintiff does not have locus under section 169 to institute the current proceedings because his title is not registered under the Land Transfer Act. A copy of the lease in question is annexed to the plaintiff's affidavit. Indeed, there is nothing on the document to suggest that the title in question is registered pursuant to the Land Transfer Act although, there is some suggest that it may be registered under the Registration Act.
- [4]. Once it is shown that the plaintiff is the last registered proprietor under the first limb, or is a lessor with power to re-enter under the second limb, or is a lessor who has issued a legal notice to quit or whose lease to the

defendant has expired under the third limb, the onus then shifts to the defendant to show cause as to why vacant possession should not be given (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** . This does not mean that he has to prove conclusively a right to remain in possession. On the contrary, it is enough to show 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**).

“Lessor”, “Proprietor” and “Register”

[5]. The above terms have to be defined at the outset to see if the plaintiff qualifies under any of the three limbs under section 169.

[6]. The Act does not define **“last registered proprietor”** but defines **“lessor”, “proprietor”** and **“register”** as follows:

"lessor" - means the proprietor of the land leased and includes a sub-lessor

“proprietor” - means the registered proprietor of land, or of any estate or interest therein

"register" - means the Register of Titles to land to be kept in accordance with the provisions of this Act

[7]. From the above definitions, it is clear that an applicant, to qualify as a “lessor” under the second and third limbs of section 169 must be a “proprietor” which means a “registered proprietor” under Section 2. And a “registered proprietor” means a registered under the provisions of the Land Transfer Act.

Conclusion

[8]. In light of the above, the plaintiff does not have locus to institute proceedings under section 169. Accordingly, I dismiss the application. The parties are to bear their own costs.

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Anare Tuilevuka
JUDGE
07 November 2013