

**IN THE HIGH COURT OF REPUBLIC OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**CIVIL JURISDICTION**

**CIVIL ACTION NO. 116 OF 2013**

**BETWEEN** : **VEENA KIRAN SHARMA** of Navutu, Sigatoka

**PLAINTIFF**

**AND** : **LEELA DEVI SHARMA, ATEN SHARMA,**  
**ASHIKA SHARMA, AMIT SHARMA** all of  
Togobula, Nadroga.

**DEFENDANTS**

**Counsels:**

Mr M. Chand for Plaintiff  
Mr. E.Vula for Defendant

**Date of Hearing** : 20/05/2014

**Date of Judgment:** 20/05/2014

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

1. This is an application under s.169 (a) of the Land Transfer Act (the LTA) seeking immediate vacant possession of the land comprised in Crow Lease 3991 Lot 1 Plan 1651 Togobula (iLTB REF:4/11/80016) ("the property). This application is supported by an Affidavit of the Plaintiff.

2. Section 169 (a) of the LTA, so far as material provides:

**"S169.** *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) ... ;**

**(c) ... (Emphasis added)"**

3. The plaintiff is the last registered proprietor of the property. She gained ownership through a Mortgagee Sale in October 2011. The defendants were residing on the property at the time of the mortgagee sale. The plaintiff entered into a Tenancy Agreement with the defendants. According to which, the defendants had to pay bond of \$500.00 and monthly rent of \$250.00. The defendants defaulted in their monthly payment and are in rental arrears of \$2000.00. As a result, the Plaintiff served a notice to vacate on 21 February 2013. Afterwards, she served two notices of distress. The defendants neither vacated nor paid the arrears of rent.
4. The defendants appear to deny the plaintiff's proprietorship of the property. Mr. Vula counsel for the defendants submitted there had been some unusual transactions taken place according to endorsement sheet. However, he was unable to explain what the unusual transactions were. At hearing, I for the purpose of clarification asked Mr. Vula whether he is really denying the plaintiff's ownership in the property. He was evasive and could not give a straightforward answer to my question.
5. The defendants had entered into a tenancy agreement with the plaintiff. All material averments in the plaintiff's affidavit in support are denied by the defendants. It will be noted that mere denials are not sufficient to rebut the assertion taken in the affidavit in support. However, the defendants admit that the property was later transferred by Mortgagee Sale Veena Kiran Sharma (the plaintiff) on 22 March 2012 under TMS No. 756800 (vide para 5 (e) of the defendants' affidavit in response).
6. Pursuant to **s 170** of the LTA, the summons (the application) must give description of the land and must require the defendant to appear at the court on a day not earlier than 16 days after the service of the summons. That section provides:  
  
*"The summons shall contain a description of the land and shall require the person summoned to appear at the court on a day not earlier than sixteen days after the service of the summons".*
7. The summons has been personally served on the defendants on 11 July 2013 returnably on 29 July 2013, a date more than 16 days after the service of the summons. The summons contains sufficient description of the property. The requirements of section 170 of the LTA had therefore been complied with.

8. When summoned under section 169 to show cause why they refuse to give possession of the property, the defendants must prove to the satisfaction of the judge a right to the possession of the property under section 172 of the LTA. That section provides, so far as relevant as follows:

*"172. If the person summoned appears he may show cause why he refuses to give possession of such land and, if he proves to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons with costs against the proprietor, mortgage or lessor or he may make any order and impose any terms he may think fit;*

9. I am satisfied that the plaintiff is the last registered proprietor of the property as evidenced by the certified true copy of the Crown Lease No. 3991 ("VKS1"). The Defendants merely deny it without any ground whatsoever.

10. The Defendants were tenant of the property. Now they were in arrears of rent in the sum of \$2000.00. That the Plaintiff had served two Notices to quit. By reason of the quit notice the plaintiff's consent given for the defendants to occupation is now revoked.

11. Defendants had not proven to the satisfaction of the court that they have a right to possession of the property. Instead, they merely denied the Plaintiff's proprietorship of the property without any substance.

12. For these reasons, I enter Judgment in favour of the Plaintiff. Accordingly Defendant is to deliver the property to the Plaintiff forthwith. I order the Defendant to pay cost of \$450.00 to the Plaintiff, which is summarily assessed.



*M H Mohamed Ajmeer*

**M H Mohamed Ajmeer**  
**A/Master of the High Court**

**At Lautoka**  
**20/5/2014**

Messrs Pillai Naidu & Associate, Barristers & Solicitors for the plaintiff  
Mr Epeli Vula, Barristers & Solicitors for the defendants