

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

**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 38 OF 2014**

**IN THE MATTER** of Section 169 of the  
Land Transfer Act 1971

**BETWEEN** : **ALOESI ADIMADRANO DAKUIDREKETI** of Lot 18,  
Kedrakulu Subdivision, Sigatoka, plant Health Field  
Technician

*Plaintiff*

**AND** : **AMALI ULUIMALOLO, ALIPATE NATOBA** and **PENIASI**  
**NASUSU** of Lot 18, Kedrakulu Subdivision, Sigatoka.

*Defendant*

**Before:** A/Master M H Mohamed Ajmeer

***Counsels:***

Mr Tunidau for the Plaintiff

No appearance for the Defendants

**Date of Hearing** : 9 June 2014

**Date of Judgment** : 9 June 2014

# J U D G M E N T

[1] This is an application together with an affidavit sworn filed by plaintiff under section 169 of the Land Transfer Act (“the LTA”) seeking immediate vacant possession of the leasehold residential property known as Lot 18 DP 1742 Kedrakulu Subdivision, Sigatoka and comprised in Native Lease No. 14900 (“the property”). Section 169 of the LTA, so far as relevant, 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)”*

[2] The application was duly served on the defendants and an affidavit of service has been filed in proof thereof. The defendants neither appeared, nor filed any affidavit to object to the application.

[3] The plaintiff is the present Lessee of the property. She became as such upon a mortgage sale registered on 16 August 2013 following a transfer under her name. The Defendants are illegally occupying flats situated in the property. The defendants refuse to deliver up possession to her despite the Notice of Quit dated 25 September 2013 served on them.

[4] The application giving sufficient description of the property requires the defendants to show cause why they should not handover immediate vacant possession to the Plaintiff of the leasehold residential property.

This complies with the provisions of section 170 of the LTA. 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”.*

[5] The summons was personally served on the defendants on 25 March 2014 returnable on 12 May 2014, a date more than 16 days after the service of the summons. This complies with another requirement of section 170.

[6] The defendants neither appeared in court, nor filed any affidavit in response to the plaintiff's application for eviction. The section 171 of the LTA will apply.

[7] In terms of s. 171 of the LTA, on the summons returnable day, the judge may make order for immediate vacant possession of the land if the defendant does not appear in court. Such order of possession may be made upon proof to the satisfaction of the judge of the due service of such summons and upon proof of the title by the proprietor or lessor and, if any consent is necessary, by the production and proof of such consent. S 171 of LTA provides:

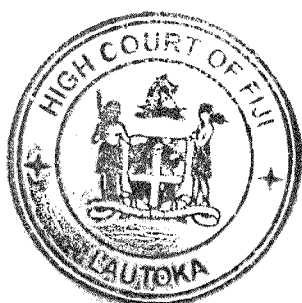
*“On the day appointed for the hearing of the summons, if the person summoned does not appear, then upon proof to the satisfaction of the judge of the due service of such summons and upon proof of the title by the proprietor or lessor and, if any consent is necessary, by the production and proof of such consent, the judge may order immediate possession to be given to the plaintiff, which order shall have the effect of and may be enforced as a judgment in Ejectment.*

[8] The application was personally served on defendants on 25 March 2014 as per affidavit of service of Esira Bosevakaturaga filed on 14 May 2014. I am satisfied with the due service of the application on the defendant.

[9] The plaintiff brought these proceedings against the defendants to eject them from the property on the basis that they are in illegal occupation. The plaintiff produced copy of Native Lease No. 14900 and endorsement sheet confirms that a transfer by mortgage sale in favour of the plaintiff has been recorded.

[10] The proceeding initiated to eject a trespasser is not a dealing affecting the land hence the Director of Lands' consent is not necessary to initiate such proceedings.

[11] Having been satisfied that the plaintiff is the last registered proprietor of the property I enter judgment in favour of the plaintiff and accordingly make order that the defendants must deliver up immediate vacant possession of the property to the plaintiff. I make no order as to costs. Order accordingly.



**At Lautoka**

**09/06/14**

**Solicitors:**

Kevueli Tunidau Lawyers, Barristers & Solicitors for the Plaintiff

No Appearance for the Defendants

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