

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

**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 145 of 2015**

**BETWEEN** : **SUKENDRA SINGH** of Drasa, Lautoka.

**PLAINTIFF**

**AND** : **LIGAVICI TUIRABE JUNIOR** and **ANUP KUMAR** of 38  
Field 40 Road, Lautoka

**DEFENDANTS**

**Mr. Mark Joseph Anthony for the Plaintiff**  
**Mr. Kevueli Tunidau for the Defendants**

**Date of Hearing: - 11<sup>th</sup> December 2015**  
**Date of Ruling : - 18<sup>th</sup> March 2016**

**RULING**

**(A) INTRODUCTION**

- (1) The matter before me stems from the Plaintiff's Originating Summons dated 27<sup>th</sup> August 2015, made pursuant to **Section 169 of the "Land Transfer Act", Cap 131**, for an Order for Vacant Possession against the Defendants.
- (2) The Defendants are summoned to appear before the Court to show cause why they should not give up vacant possession of the Plaintiff's property comprised in Housing Authority Sub Lease No:- 5037, being Lot 3 on DP 6390 having an area of 724m.
- (3) The application for eviction is supported by an Affidavit sworn by the Plaintiff on 27<sup>th</sup> August 2015.

- (4) The application for eviction is vigorously resisted by the Defendants.
- (5) The first Defendant filed an “Affidavit in Opposition” sworn on 10<sup>th</sup> November 2015 opposing the application for eviction followed by an “Affidavit in Reply” thereto.
- (6) The Plaintiff and the Defendants were heard on the Originating Summons. They made oral submissions to Court. In addition to oral submissions, the Plaintiff filed a careful and comprehensive written submission for which I am most grateful.

**(B) THE FACTUAL BACKGROUND**

- (1) What are the circumstances that give rise to the present application?
- (2) To give the whole picture of the action, I can do no better than set out hereunder the main averments/assertions of the pleadings.
- (3) The Plaintiff in his Affidavit in Support deposes *inter alia*; (as far as relevant)

*Para 2. That I am the registered proprietor of the Housing Authority Sub Lease No. 5037 on Lot 3 on DP 6390 since 1983. Annexed hereto and marked 'A' is the copy of the said Lease.*

*3. That I had an Agreement with the Defendants to occupy my house in the said land with the liberty to terminate the agreement by giving one months notice in writing.*

*4. That on the 9<sup>th</sup> of February, 2015, my Solicitors wrote to the Defendants terminating the agreement with a notice to vacate within 30 days. Annexed hereto and marked 'B' is a copy of the said Notice.*

*5. That the Defendants have refused and neglected to comply with the said notice and has not till date given vacant possession of the subject land and house.*

*6. That in my view of the foregoing we seek an order that the Defendant deliver vacant possession of the subject land forthwith.*

*7. That we pray for order as sought for in the summons for Ejectment filed herein.*

- (4) The Defendants for their part in seeking to show cause against the Originating Summons, filed an Affidavit in Opposition (sworn by the first Defendant) which is substantially as follows;

- Para 1. That I am the First Named Defendant in this case*
- 2. That the facts deposed to herein are true to the best of my knowledge and ability or that I verily believe to be true.*
- 3. That I and my family are renting a flat and the Second Named Defendant and his family are renting another flat at the Plaintiff premises.*
- 4. That I am authorized by the Second Named Defendant to make this Affidavit for and on his behalf.*
- 5. The Plaintiff, I verily believe, resides at Wairabetia and not at Drasa and I verily believe also that he is not a clerk because he is a very sickly person.*
- 6. That I came to know the Plaintiff through my wife SERA ADITAMANA in the year 2010 whilst my family was flatting beside the Plaintiff's premises.*
- 7. The Plaintiff's wife was very sickly in 2010 and the Plaintiff engaged my wife as a Caregiver for his sick wife Vidya Wati about August, 2010 until she died on 1<sup>st</sup> January, 2011. The agreement for the costs of my wife's caregiving work was \$50.00 per week. This amount was never paid by the Plaintiff despite numerous reminders.*
- 8. The total caregiving costs on the Plaintiff's wife by my wife amounts to \$1,000.00 (One Thousand Dollars).*
- 9. That upon the death of his wife the Plaintiff approached me and my wife for my wife to continue her caregiving work for him as he had also fallen sick. The Plaintiff agreed to pay \$70.00 per week for such caregiving work. This amount had not been paid to date by the Plaintiff.*
- 10. That my wife provided her caregiving services to the Plaintiff from January, 2011 till January, 2015, a period of four years.*
- 11. That the total amount owing by the Plaintiff for the care provided to him as per paragraph 10 herein amounts to \$13,448.00 (Thirteen Thousand Four Hundred and Forty Eight Dollars).*

12. *On 23<sup>rd</sup> June 2010, I moved into a self-contained single bedroom flat at the Plaintiff's premises with my wife and children on the request of the Plaintiff and his wife for the caregiving work referred to at paragraph 7 hereinabove.*
13. *That it was verbally agreed that we pay monthly rent of \$150.00 for the single flat. The Second Named Defendant likewise paid similar rent for another two bedroom flat at the same premises but later in the year 2012. The Plaintiff and his wife occupied the third flat at the same premises.*
14. *That since 2010 the Plaintiff issued no receipt to me for the rent paid. The Second Named Defendant was also not issued with receipts for rent paid during his tenancy with the Plaintiff.*
15. *That since 2010 the water meter was registered under the Plaintiff and whenever it was billed for payment such bill was divided in three and each of us namely I and my family pay one third, the Second Named Defendant another third and the Plaintiff with another third.*
16. *That as for electricity bill, each flat has its own meter but all the FEA meters were under the Plaintiff's name.*
17. *That since 2010, I owed the Plaintiff no rent or arrears of rent as I had been faithfully in rent payment. This is the same also for the Second Named Defendant.*
18. *That since 2010. I owed no water or power bill or had arrears of both. The same is similar with the Second Named Defendant.*
19. *That as for water bills they were paid to the Plaintiff by me and the Second Named Defendant in cash and no receipts were given by the Plaintiff.*
20. *That whenever the water bills were in arrears such arrears were incurred by the Plaintiff who did not pay his one third share or had delayed and/or neglected his one third payment.*
21. *That on 9<sup>th</sup> April, 2015 the Water Authority of Fiji (WAF) disconnected the water meter to the premises and affected the use of water by both my family and that of the Second Named Defendant. The water meter had been disconnected since then.*
22. *Upon my wife's enquiry with the WAF it was established that the Plaintiff had made an application for special disconnection of the water meter to the premises. In making the application, I verily believe the Plaintiff had endorsed his special application by placing his thumb print on the application.*

23. *That the Plaintiff had not advised me and the Second Named Defendant about his special application to disconnect the water meter to the premises and the reason for doing so.*
24. *That water was usually paid on a three month basis and the disconnection by WAF was made before the end of the three month period ending May, 2015.*
25. *That since April, 2015 the Second Named Defendant and I had shared the costs of carting water from a Chandar Lok's residence situated at the Navutu Industrial area for our daily water needs including bathing, drinking, washing, toilet use and etc.*
26. *That water cartage was made twice in a day i.e. in the morning and afternoon for both flats of mine and the Second Named Defendant.*
27. *That our costs for water cartage is estimated at \$5,000.00 each between me and the Second Named Defendant for the last seven months since April 2015, totaling about \$10,000.00.*
28. *That the health condition of the Plaintiff deteriorated to such an extent where he suffered stroke on the left side of his body from the head to his feet. The Plaintiff had the stroke in November, 2014. The effect of the stroke confined him to bed most of the time and a wheel chair.*
29. *That the health condition of the Plaintiff required a night shift care between me and the Second Named Defendant. This night care was agreed by the Plaintiff to be at the rate of \$15.00 a night from November, 2014 to the first week of January, 2015. This amount was also paid by the Plaintiff totaling \$840.00.*
30. *That the total amount owed to my wife as caregiver totaled \$14,448.00 as per paragraphs 8 and 11 hereinabove, water cartage totaled \$10,000.00 as per paragraph 27 hereinabove, and night care totaled \$840.00 as per paragraph 29 hereinabove respectively. The aggregate sum being \$25,288.00 (Twenty Five Thousand Two Hundred and Eighty Dollars).*
31. *That said amount owed to us by the Plaintiff was relayed to him many times but he had either ignored and or neglected to settle the same. This I verily believe was the main reason the Plaintiff had instigated this action.*
32. *That for the foregoing reasons I believe I have cause for vacant possession sought for by the Plaintiff not to be granted.*

- (5) The Plaintiff filed an “Affidavit in Reply” which is substantially as follows; (as far as relevant)

- Para 2. *That paragraphs 3 of the Defendants affidavit is admitted, however they are now renting without my consent and neither have they up kept with their rental payments.*
3. *That I deny paragraphs 7 to 14 of the Defendants affidavit and put them on strict proof of the same.*
4. *That I deny Paragraphs 15 to 32 of the Defendants affidavit on put them on strict proof of the same.*
5. *That I further state that the Defendants allegations against me in their affidavit does not give rise to claim to right of possession as there is no substantive proof before this honourable Court in what they claim.*
6. *That as per my first affidavit, I confirm that I have given the Defendants sufficient notices and demands to vacate my property, they have failed to do so.*

### (C) **THE LAW**

- (1) Against this factual background, it is necessary to turn to the applicable law and Judicial thinking in relation to the principles governing the exercise of the discretion to make the Order the Plaintiff now seeks.
- (2) Rather than refer in detail to the various authorities, I propose to set out, with only limited citations, what I take to be the principles of the play.
- (3) Sections from 169 to 172 of the **Land Transfer Act** (LTA) are applicable to summary application for eviction.

#### **Section 169 states;**

*“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) .....

**Section 170 states;**

*“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.”*

**Section 171 states;**

*“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 Ejectionment.*

**Section 172 states;**

*“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;***

*Provided that the dismissal of the summons shall not prejudice the right of the plaintiff to take any other proceedings against the person summoned to which he may be otherwise entitled:*

*Provided also that in the case of a lessor against a lessee, if the lessee, before the hearing, pay or tender all rent due and all costs incurred by the lessor, the judge shall dismiss the summons.*

*[Emphasis provided]*

- (4) The procedure under Section 169 was explained by Pathik J. in **Deo v Mati** [2005] FJHC 136; HBC0248j.2004s (16 June 2005) as follows:-

*The procedure under s.169 is governed by sections 171 and 172 of the Act which provide respectively as follows:-*

*“s.171. 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.”*

*“s.172. If a 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, mortgagee or lessor or he may make any order and impose any terms he may think fit.”*

*It is for the defendant to ‘show cause.’*

- (5) The Supreme Court in considering the requirements of Section 172 stated in **Morris Hedstrom Limited v. Liaquat Ali** (Action No. 153/87 at p2) as follows and it is pertinent:

*“Under Section 172 the person summoned may show cause why he refused to give possession of the land and if he proves to the satisfaction of the judge a right to possession or can establish an arguable defence the application will be dismissed with costs in his favour. The Defendants must show on affidavit evidence some right to possession which would preclude the granting of an order for possession under Section 169 procedure. That is not to say that final or incontrovertible proof of a right to remain in possession must be adduced. What is required is that some tangible evidence establishing a right or supporting an arguable case for such a right, must be adduced.”*

- (6) The requirements of Section 172 have been further elaborated by the Fiji Court of Appeal in **Azmat Ali s/o Akbar Ali v Mohammed Jalil s/o Mohammed Hanif** (Action No. 44 of 1981 – judgment 2.4.82) where it is stated:

*“It is not enough to show a possible future right to possession. That is an acceptable statement as far as it goes, but the section*



*continues that if the person summoned does show cause the judge shall dismiss the summons; but then are added the very wide words "or he may make any order and impose any terms he may think fit" These words must apply, though the person appearing has failed to satisfy the judge, and indeed are often applied when the judge decides that an open court hearing is required. We read the section as empowering the judge to make any order that justice and the circumstances require.*

**(D) ANALYSIS**

- (1) This is an application brought under Section 169 of the Land Transfer Act, [Cap 131].

Under Section 169, certain persons may summon a person in possession of land before a judge in chambers to show cause as to why that person should not be ordered to surrender possession of the land to the Claimant.

For the sake of completeness, Section 169 of the Land Transfer Act is reproduced below;

**169.** *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.*

- (2) In all applications under Section 169 of the Land Transfer Act, the Plaintiff/Applicant must first satisfy the *prerequisites* of Section 169 and 170, before the burden shifts to the Defendant.

The first requirement of Section 169 of the Land Transfer Act is that the Plaintiff must be the “**last registered proprietor**” or a “**lessor with power to re-enter where the lessee or tenant is in arrears**” or a “**lessor against the lessee or tenant where a legal Notice has been given or the term of the lease has expired.**”

I ask myself, under which limb of Section 169 is the application being made?

This is the threshold question. As far as Section 169 (b) and (c) are concerned they apply where there is a landlord and tenant relationship.

According to the housing Authority Sub-lease No. 5037 (**Annexure – A**), the Plaintiff became the lessee of the subject land on 23<sup>rd</sup> December 1983. The Housing Authority Sub-lease is registered with the Registrar of Titles on 17<sup>th</sup> February 1992.

Therefore, the Plaintiff holds a registered lease and could be characterized as the last registered proprietor.

Section 169 (a) of the Land Transfer Act, Cap 131, requires the Plaintiff to be the last **registered proprietor** of the land.

The term “**proprietor**” is defined in the Land Transfer Act as “*the registered proprietor of land, or of any estate or interest therein*”.

The term “**registered**” is defined in the **Interpretation Act**, Cap 7, as “*registered used with reference to a document or the title to any immovable property means registered under the provisions of any written law for the time being applicable to the registration of such document or title*”

On the question of whether a lessee can bring an application under Section 169 of the Land Transfer Act, if any authority is required, I need only refer to the sentiments expressed by Master Robinson in “**Michael Nair v Sangeeta Devi**”, Civil Action No: 2/12, FJHC, decided on 06.02.2013. The learned Master held;

*“The first question then is under which ambit of section 169 is the application being made? The application could not be made under the second or third limb of the section since the applicant is the lessee and not the lessor as is required under these provisions. But is the applicant a registered proprietor? A proprietor under the Land Transfer Act means the registered proprietor of any land, or of an estate or interest therein”. The registration of the lease under a statutory authority, the iTLTB Act Cap 134, creates a legal interest on the land making the applicant the registered proprietor of the land for the purposes of the Land Transfer Act. He can therefore make an application under section 169 of the Land Transfer Act”.*

The same rule was again applied by the learned Master in “**Nasarawa Co-operative Limited v Hari Chand**”, Civil Action No: HBC 18 of 2013, decided on 25.04.2014. The learned Master held;

*“It is clear that the iTLTB as the Plaintiff’s lessor can take an action under section 169 to eject the Plaintiff. This is provided for under paragraphs [b] & [c]. For the lessor to be able to eject the tenant or the lessee it must have a registered lease. It is not in dispute that the Plaintiff holds a registered lease, the lease is an “Instrument of Tenancy” issued by the iTLTB under the Agricultural Landlord and Tenancy Act. It is for all intents and purposes a native lease and was registered on the 29 November 2012 and registered in book 2012 folio 11824. It is registered under the register of deeds. There is nothing in section 169 that prevents a lessor ejecting a lessee from the land as long as the lease is registered. How will the lessee then eject a trespasser if the lessor in the same lease can use section 169? The lessee under section 169 can eject a trespasser simply because the lessee is the last registered proprietor. The Plaintiff does not have to hold a title in fee simple to become a proprietor as long as he/she is the last registered proprietor. A proprietor is defined in the Land Transfer Act as “proprietor” means the registered proprietor of land or of any estate or interest therein”. The Plaintiff has an interest by virtue of the instrument of tenancy and therefore fits the above definition and can bring the action under section 169.”*

A somewhat similar situation as this was considered by His Lordship Justice K.A. Stuart in “**Housing Authority v Muniappa**”, 1977, FJSC. His Lordship held that the Plaintiff Housing Authority holds a registered lease therefore it could be characterised as the last registered proprietor.

In **Habib v Prasad**, [2012] FJHC 22, Hon. Madam Justice Angala Wati said;

*“The word registered is making reference to registration of land and not the nature of land. If the land is registered either in the Registrar of Titles Office or in the Deeds Office, it is still registered land. This land has been registered on 4<sup>th</sup> March, 2004 and is registered at the Registrar of Deeds Office, it is still registered land. The registration is sufficient to meet the definition of registered in the Interpretation Act Cap 7:-*

*“Registered” used with reference to a document or the title to any immovable property means registered under the provision of any written law for the time being applicable to the registration of such document or title”.*

Being guided by those words, I am satisfied that the Plaintiff is the last registered proprietor of the land comprised in Housing Authority Sub-lease No- 5037. The application for eviction is more specifically brought under Section 169 (a) of the Land Transfer Act.

I turn next to consider the requirements of Section 170 of the Land Transfer Act. For the sake of completeness, Section 170 of the Land Transfer Act is reproduced below;

*Particulars to be stated in summons*

*170. 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.*

**Pursuant to Section 170 of the Land Transfer Act;**

(1) **The Summons shall contain a “description of the Land”**

AND

(2) **Shall require the person summoned to appear in the court on a day not earlier than “sixteen days” after the service of Summons.**

The interval of not less than 16 days is allowed to give reasonable time for deliberations and to prevent undue haste or surprise.

**I ask myself, are these requirements sufficiently complied with by the Plaintiff?**

The Originating Summons filed by the Plaintiff does contain a description of the subject land. The subject land is sufficiently described. For the sake of completeness, the Originating Summons is reproduced below.

SUMMONS

*LET the Defendant LIGAVICI TUIRABE JUNIOR and ANUP KUMAR of 38 Field Forty Road, Lautoka attend before Master in Court at High Court at Lautoka on 5<sup>th</sup> day of October, 2015 the hour of 8 o'clock in the fore noon or so soon thereafter as Counsel may be heard on behalf of the Plaintiff for the following Orders:-*

1. ***THAT*** the Defendants do give up immediate vacant possession to the Plaintiff of all the Land **Housing Authority Sub lease number 5037 being Lot 3 on DP 6390 having an area of 724m.**

2. *THAT any further or other Orders this Honorable Court deems fit.*

*The Plaintiff will read and rely on the grounds of this Application as contained in the Affidavit of SUKENDRA SINGH sworn and filed herein.*

*This application is made pursuant to Section 169, 170 and 171 of the Land Transfer Act, Cap. 131 and Pursuant to the inherent Jurisdiction of this Honourable Court.*

*DATED at Lautoka this 27<sup>th</sup> day of August 2015.*

*(Emphasis Added)*

In light of the above, I have no doubt personally and I am clearly of opinion that the **first mandatory requirement of Section 170 of the Land Transfer Act** has been complied with.

(3) Now comes a most relevant and, as I think, crucial **second mandatory requirement of Section 170 of the Land Transfer Act.**

At this point, I cannot resist in saying that no argument was addressed to me by the Counsel for the Defendants on the second threshold criteria in Section 170 of the Land Transfer Act. Moreover, the Defendants did not make any reference to the second threshold criteria in his Affidavit in Opposition.

Leave all that aside for a moment. I desire to emphasize that the court is bound to look into the “*prerequisites*” before the burden shifts to the Defendants. I regard this duty of the Court as more important than anything else in the administration of Justice. Though the applications such as this are directed to be made in Chambers, they are not interlocutory and are concerned with the important matter of the right to the possession of land. The Court is here to administer justice. It is essential bear in mind that the concept of justice is not confined to the interests of particular litigants; it embraces and extends to the protection of the public veil. The crucial point is that the court should arrive at a just result.

Now let me return to the present case to consider the issue of whether the Plaintiff has satisfied the prerequisites of Section 170 of the Land Transfer Act.

The Originating Summons was returnable on 05<sup>th</sup> October 2015.

**It is incumbent upon the Plaintiff to prove that the Defendants were summoned to appear in the Court on a day not earlier than 16 days after the service of the Originating Summons.**

It is worth remarking that the Plaintiff in the case before me did not file the Affidavit of Service of the Originating Summons. Thus, there is no evidence of date of service of the Originating Summons on the Defendants. The Plaintiff should have proved the service of the Originating Summons on the Defendants satisfactorily by filing the Affidavit of Service of the Originating Summons. The burden of satisfying the Court is on the Plaintiff. The Plaintiff failed to discharge the burden.

**The date of service of the Originating Summons on the Defendants is in issue in the case before me.**

No attempt has been made by the Plaintiff who is asking the Court to exercise its discretion in its favour, to file the Affidavit of Service of the Originating Summons. I must confess that this does not leave a good impression. The conduct of the Plaintiff in this respect and in deliberately deciding not to file the Affidavit of Service of the Originating Summons is a matter to be taken into account in assessing the justice of the case.

Despite the skillful advocacy of Counsel for the Plaintiff, the conduct of the Plaintiff in deliberately deciding not to file the Affidavit of Service of the Originating Summons on the Defendants is still not clear to me. The Plaintiff has embarked on a sleeveless errand in seeking an order for vacant possession, without proving that the Defendants were summoned to appear in the Court on a day not earlier than 16 days after the service of the Originating Summons. (The second mandatory requirement of Section 170 of the Land Transfer Act.)

It would be quite wrong, in my opinion, to seek to establish the proof of service of the Originating Summons on the Defendants by Statements of information and belief.

The date of service of the Originating Summons on the Defendants needs to be proved by the Affidavit of Service in order to found jurisdiction.

The lack of proof of the date of service of the Originating Summons on the Defendants is fatal to the application before this Court.

In the Courts view, the lack of proof of service of the Originating Summons on the Defendants is fundamental, which cannot be rectified simply by the use of the Courts discretion. It is not the function of this Court.

In the context of the present case, I am inclined to lean in favour of the judicial thinking reflected in the dictum of Hon. Judge Madraiwiwi in “**Atunaisa Tavuto v Sumeshwar Singh**”, Action No:- HBC 0332 of 1997L. Hon. Judge Madraiwiwi says;

*“This application can be disposed of without the need to consider the parties’ substantive arguments. The summons is defective in not properly describing the subject property. Although the Housing Authority Lease No. 345322 was correctly stated, the plaintiff failed to fully state the additional particulars being “Crown Lease No. 10046 Lot 26 on DP 6420 in the province of Ba tikina of Ba consisting of an area of 552m<sup>2</sup>”. If that were not*

*enough the summons omitted the obligation that “the person summoned to appear on a day not earlier than sixteen days after the service of the summons” as mandated by Section 170 of the act. Their Lordships of the Supreme Court have emphasized the need to follow rules of the court and the consequences for not doing so Ponu Samy v. Dharam Lingam Reddy Appeal No. 1 of 1996 (SC) at 17. In applications such as this, the technicalities are strictly construed if only because of the drastic consequences that follow for one of the parties upon the relief sought being granted. It behooved the Plaintiff and his Counsel to have exercised more diligence in this regard.”*

(Emphasis Added)

Applying those principles to the instant case, I cannot resist in saying that the Plaintiff's Originating Summons can go no further.

In view of the approach, I have adopted, I do not think that there is any need for me to express my views on the merits of the Defendants arguments relating to their right to possession. It will be at best a matter of academic interest only or at worst an exercise in futility to discuss the merits of the Defendants arguments relating to their right to possession.

Essentially that is all I have to say !!!

## **(E) CONCLUSION**

For the reason which I have endeavored to explain, I venture to say beyond a peradventure that the second mandatory requirement of Section 170 of the Land Transfer Act and the legal consequences that flow from non-compliance defeat the Plaintiff's claim for vacant possession.

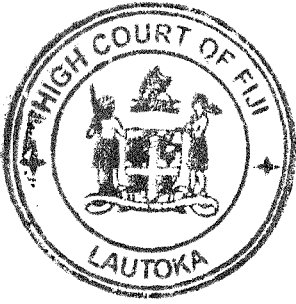
Therefore, the Defendants need not show any evidence of a cause to remain on the property since this matter can go no further. I cannot see any other just way to finish the matter than to follow the law.

Accordingly, there is no alternate but to dismiss the Originating Summons

## **(F) FINAL ORDERS**

- (1) The Plaintiff's Originating Summons is dismissed.
- (2) The Plaintiff is ordered to pay costs of \$1000.00 (summarily assessed) to the Defendants which is to be paid within 14 days from the date hereof.

I do so order.



At Lautoka

18<sup>th</sup> March 2016

**Jude Nanayakkara**  
**Master of the High Court**