

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Civil Action No. HBC 63 of 2016

IN THE MATTER of an application under section 169 of Part XXIV of the Land Transfer Act Cap 131, for an Order for immediate vacant possession.

BETWEEN : **YUNUS KOYA** of JP Maharaj, Nakasi, Taxi Driver as Administrator and Trustee of URUMUTI late of Vuna, Taveuni.

PLAINTIFF

AND : **RAFIQ, HAKUIM AND SHIU LAL**, all of Lot 1, Qarawalu, Taveuni, Occupations unknown to the Plaintiff.

DEFENDANT

Appearances : O'Driscoll & Co. for the Plaintiff
No appearance for the Defendants

Before : Acting Master S.F. Bull
Hearing : 14 February 2017
Judgment : 28 February 2017

JUDGMENT

1. This is the Plaintiff's summons under section 169 of the Land Transfer Act, Cap 131, (the Act) for the Defendants to show cause why an order should not be made for them to give up immediate vacant possession of the property they reside in, being of an area of 5 acres, 16 perches more or less, and as comprised in Certificate of Title No. 5199, Lot 1 on DP No. 134 in the District of Vuna in the island of Taveuni.

2. The Plaintiff deposed the affidavit in support of the summons, saying that he is the Administrator and Trustee of the estate of Urumuti, and is the last registered proprietor of the land the subject of these proceedings. He avers that the defendants are related through marriage and have been occupying the property for many years. The licence given to the Defendants has been revoked by way of a notice to quit served on them on 28 September 2016 requiring them to deliver vacant possession of the premises within one month but they remain in occupation.

The law

3. Section 169 of the LTA provides:

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.

4. This section provides a “speedy procedure for obtaining possession where the occupier can show no cause why an order should not be made.” (*Jamnadas v Honson Ltd* [1985] FJCA 8; [1985] 31 FLR 62 (20 July 1985))
5. The procedure for applications under section 169 of the Act is as follows:

1. The person who issues a summons for vacant possession must be one of the following:
 - a. the last registered proprietor of the land;
 - b. a lessor with a power to re-enter where (i) the tenant or lessee is in arrears for the period stated in the lease, or; (ii) when the lessee or tenant is in arrear for one month...whether or not a previous demand has been made for the rent;
 - c. a lessor against a lessee where (i) a legal notice to quit has been given, or (ii) the term of the lease has expired.

2. The summons must meet the requirements of section 170.
That is,
 - (i) it must contain a description of the land, and
 - (ii) it shall require the person summoned to appear at court not earlier than 16 days after service of the summons.

3. On the day of the hearing of the summons,
 - (i) if the person summoned does not appear, the Court may order immediate possession to be given to the plaintiff if satisfied:
 - (a) that the summons has been served on the defendant, and;
 - (b) of the proprietor or lessor's title.
 - (c) If consent is required, then proof of such consent.
 - (ii) if the person summoned appears:
 - (a) he may show cause why he refuses to give possession of such land.

4. If he satisfies the judge he has a right to possession:

- (i) the application shall be dismissed with costs against the proprietor, mortgagee, or lessor, or
 - (ii) the judge may make any order and impose any terms as he may deem fit.
6. The dismissal of the summons is not a bar to the plaintiff's right to take any other proceedings against the defendant as he may otherwise be entitled.

Analysis

7. The summons in this case contains a full description of the property and was served on the Defendants on 17 January 2017, more than 16 days before it was called before me on 14 February 2017. I am satisfied that the requirements of section 170 have been met.
8. The Plaintiff has annexed to his affidavit a copy of the certificate of title, showing that he is the last registered proprietor of the property the subject of this summons. He therefore has standing to bring these proceedings under section 169 of the Act.
9. Section 171 of the Act provides the procedure where the Defendant fails to appear on the day of the hearing. There, the judge will need to be satisfied of three things before an order for vacant possession on the summons is granted:
- (i) that the summons has been served on the Defendant;
 - (ii) it needs to be satisfied with the registered proprietor or lessor's title, and;
 - (iii) if consent is necessary, proof of such consent.
10. I am satisfied with the service of the summons and the affidavit in support on all the Defendants. The first and second named Defendants were personally served. The summons for the third

named Defendant was given to his wife, on the premises, and therefore in compliance with Order 65 Rule 5 (2) (b) of the High Court Rules.

11. It is not necessary for the Plaintiff show consent for consent is not required.
12. The requirements of section 171 of the Act having been satisfied, the application ought to be, and is hereby granted.

Order

1. The Defendants are to give up and deliver to the Plaintiff vacant possession of the property described and as comprised in Certificate of Title No. 5199, Lot 1 on DP No. 134 in the District of Vuna in the island of Taveuni.
2. Execution of the above order is stayed for a period of one month from the date of service of this judgment.
3. The Plaintiff did not ask for costs. I therefore make no order as to costs.


S.F. Bull
Acting Master

