

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 136 of 2017

BETWEEN : **POASA VEREVAKABAU** **PLAINTIFF**
AND : **TALICA RARASEA** **1ST DEFENDANT**
AND : **TOMU ILIMEKI** **2ND DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms S Nayacalevu [Shekinah Law]
DEFENDENT : Mr K Maisamoa [Maisamoa & Associates]
JUDGMENT OF : Acting Master Ms Vandhana Lal
DELIVERED ON : 01 October 2018

JUDGMENT
[Section 169 application for vacant possession]

APPLICATION

1. This is an application began by originating summons pursuant to Part XXIV of the Land Transfer Act.

In support of his application, the Plaintiff has files an affidavit in support.

2. Said application is opposed by the Defendants and they have on 9 October 2017 filed an affidavit in opposition.

The Plaintiff thereafter filed his reply to the opposition.

LAW

3. Section 169 of the Land Transfer Act allows following persons to make an application for vacant possession:

(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. Should the persons summoned “proves to the satisfaction of the Court a right to the possession of the land, the Judge shall dismiss the summons” - Section 172.

EVIDENCE IN AFFIDAVIT

5. According to Poasa, the property is a piece of land known as Lot 8 on DP 3632 situated at Kinoya on Lease Number 137638.

Said property was transferred to him by his grandmother by way of love and affection for a consideration sum of \$100. This was done on 01 May 2015. Annexed to the affidavit is a copy lease [annexure B].

Despite the transfer his grandmother continued to reside on the property until she passed away in 2017.

The Defendants who came to attend the funeral of his grandmother, came onto the property and have unlawfully and/or illegally stayed on after the funeral, claiming a share in the property. They refuse to vacate the property.

The Defendants do not have any share in the property.

Since the transfer in 2015 was legal, the Plaintiff is the lawful proprietor.

On 34 March 2017, the 1st Defendant was served with a Notice to Vacate, who refused to acknowledge receipt of the same.

The 2nd Defendant was served with a Notice on 28 March 2017.

6. The 1st Defendant filed an Affidavit in Opposition on 9 October 2017.

Her true name is Talica Irinabuto and her brother is Ilimeki Vakarurulawe.

According to her, the property was initially subleased to a Nand Ali and Jamila Bibi.

Later it was transferred to one George Postulka who was married to one Venilove Liviali aka Venilove Liviali.

Venilove is her aunty [her mother's elder sister].

Postulka and Venilove did not have any children. When the couple were growing old they asked Talica to come and take care of them and to stay with them.

Postulka passed away on 4 September 2013 and Talica continued to stay on the property with Venilove looking after her.

When Talica was about to leave for Samoa, Venilove asked her to ask her (Talica) brother and her mother to take care of her aunty.

Whilst in Samoa, Talica used to send money to her brother to assist in their daily living.

Due to Postulka's death Venilove had the property transferred to her transmission by death. Thereafter the same was registered under Venilove's name.

Before Talica departed for Samoa, Venilove make a Will dated 28 February 2014 witness by one Merelita and Taniela.

This Will was deposited with the High Court registry.

Under the Will, Talica is appointed as sole executor and Trustee of the Estate and Venilove gave the residual estate real and personal including lease number 137638 at Lot 8 Kinoya Road, Nasinu to Talica.

Upon her return from Samoa, Talica continued to take care of Venilove along with her brother until Venilove passed away on 21 July 2017.

She was in process to apply for Probate when she was served with a Notice to Vacate and later with the application.

She alleges the property was transferred by fraud.

The Plaintiff cheated her aunty by saying that he would buy the property in for \$20,000. However the Plaintiff failed to do so and had fraudulently transferred the property to his name.

She and her brother are staying on the property with the consent of her aunty and the fact the property is Willed under her name.

7. The Plaintiff in reply to the Defendants opposition maintains that the property was transferred to him without fraud and duress.

Venilove was in need of financial assistance and had approached her family for same. She had proposed \$20,000 to transfer the property with love and affection as he was her grandson.

Upon the completion of the transfer, he allowed Venilove to reside on the property for her life.

Sum of \$10, 000 was paid by way of Westpac Bank cheque and remaining \$10, 000 by way of withdrawal from his ANZ account and transfer to Venilove's account.

His family continued to provide fortnightly support to her.

Venilove was looked after by him and other close relatives of hers.

He had paid for repairs of the roof and as well as the gate.

His family assisted with groceries shopping for Venilove's welfare.

He paid all hospital costs, ambulance trips to hospital and her funeral and burial expenses.

The 1st Defendant had forcefully chased Ms Venilove's immediate family who rendered assistance financially.

1st Defendant did not tender any financial support for Venilove's living and medical costs.

The 1st Defendants son had withdrawn substantial amount of money from Veniloves ATM without her consent. Matter was reported to Police but later withdrawn as 1st Defendant promised to repay the money which remains unpaid.

The 1st Defendant also withdrew funds from Venilove's Social Welfare account. Matter was reported and as a result the Social Welfare account was ceased.

The 1st Defendant is not an immediate relative to Venilove but through marriage as mentioned in the purported Will.

DETERMINATION

8. The Defendants allege that the property was transferred fraudulently by Poasa under his name and they claim to be unaware of the transfer.

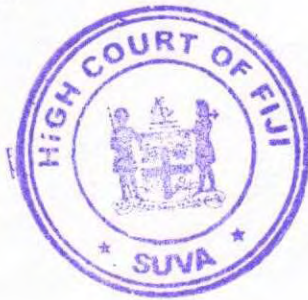
Nevertheless they go ahead and have annexed what they claim is a letter by Venilove claiming Poasa cheated Venilove.
9. Neither the Defendants nor Venilove during her life time took any action have the said transfer declared illegal.
10. Annexure A to the Plaintiff's affidavit in reply has the Application for Housing Authority's consent to transfer and other documents pertaining to the transfer. Venilove's signature was witnessed by a solicitor.
11. The Plaintiff has shown that he did not fraudulently transfer property to his name as after the transfer on 01 May 2015, there were two payments made to Venilove; \$10, 000 on 14 May 2015 and \$10, 000 was transferred from his ANZ account to Venilove's account.
12. The Defendants rely on the purported Will of Venilove claiming entitlement in the property. However the said property was transferred to the Plaintiff well prior to the death of Venilove, thus the Will has no effect concerning the property.
13. With the evidence on hand I am not satisfied that the Defendants have proved any rights to the possession of the land.
14. I am satisfied that the Plaintiff is the last registered owner of the property and is entitled to an order for possession.

FINAL ORDERS

15. The Defendants Talica Irinabuto and Iimeki Vakarurulawe are ordered to give vacant possession of the land known as Lot 8 on DP 3632 situated at Kinoya on Housing Authority Lease Number 137638.

Execution of the Order is stayed for one month.

16. The Defendants are further ordered to pay cost to the Plaintiff summarily assessed at \$800 in total.
17. The first Defendant has in her affidavit informed her and her brother's proper name as Talica Irinabuto and Iimeki Vakarurulawe. Henceforth all documents filed shall have these names as the defendants.



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Vandhana Lal [Ms]
Acting Master
At Suva.