

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 83 OF 2019

BETWEEN : **JANARDHAN RAJU** aka **JANARDHAN NAIDU** of Olosara,
Sigatoka, Cultivator.

PLAINTIFF

AND : **DAVENDRA RAJU** of Olosara, Sigatoka, Cultivator.

DEFENDANT

Appearances : Ms Esiteri Radrole for the plaintiff
Mr Amrit Chand for the defendant
Date of Hearing : 25 July 2019
Date of Oral Judgment : 25 July 2019
Date of Written Judgment: 30 July 2019

J U D G M E N T

Introduction

- [01] On 25 July 2019, after hearing both parties I announced that I would dismiss the application and said I would deliver a written judgment at a later date. This serves to be my written reasons for doing so.
- [02] This is a summary application for the recovery of possession of the land.
- [03] By his application filed 8 April 2019, the applicant has invited the respondent to show cause why he should not give up possession to him (the applicant) over the property described as State Lease Number 20451 being Lot 3 on Plan Number N1935, having an area of 5.9161 hectares situated at Olosara, Sigatoka (*‘the property’*).

- [04] The application appears to have been made under section 169 of the Land Transfer Act ('LT Act'). The application does not expressly state the section which the application is made under.
- [05] The respondent has shown cause by way of affidavit in opposition. Since there is no affidavit in reply by the applicant to the affidavit filed by the respondent, the respondent's affidavit in opposition remains unchallenged. The respondent's position is that he has an interest in the property as he has been occupying the same for more than 30 years.
- [06] At the hearing, I had the benefit of the oral submissions advanced by both counsel.

Background facts

[07] The background facts, as alleged by the respondent, are as follows.

- 7.1 Janardhan Raju, the applicant is Davendra Raju's (the respondent's) father's younger brother.
- 7.2 The original title for the property was a Crown Lease Number 8687-Lot 3 on Plan No. 1935 part of Tavanasaisai and Muasara Formerly CT 2239 & CT 1633 (Farm 5415) comprising an area of 5.9160ha (14A2R19P), which had the lease for 22 years 9 months commencing from 1 April 1973 (*'the property'*).
- 7.3 Kupswami Raju, the respondent's father was initially planting sugarcane on the farm. Kupswami also built a residential house on the property where the respondent is residing now with his family.
- 7.4 After Kupswami's death, his Estate was intestate and the respondent became the beneficiary and took control of the Estate of his father the property and the farm in dispute.

- 7.5 The applicant, according to the respondent, has somehow applied for and got a new lease in his favour. The lease submitted by the applicant highlights that he has obtained an agricultural lease in November 2016.
- 7.6 The applicant seeks possession of the property on the basis that he is the last registered proprietor of the property.

Legal framework

[08] Sections 169-172 of the LT Act are relevant to this application. These sections provide, so far as material, as follows:

Ejectors

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) ... ;*
- (c) ... (Emphasis added).*

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 16 days after the service of the summons.

Order for possession

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 Ejection.

Dismissal of summons

172. If the person summoned appears he or she may show cause why he or she 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 or she may make any order and impose any terms he or she 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 or she 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.

Show cause

- [09] The respondent appeared in court and filed an affidavit in response where he shows the reasons for not giving possession to the applicant.
- [10] His show cause is that: *'He's been residing on the property for more than 30 years. He had inherited the property from his father. The property belonged to his grandfather. His grandfather and his father were cultivating it. Now he is cultivating it. He is entitled to the shares as beneficiary. He has been residing on the land with his family. A new lease has been granted in favour of the plaintiff without his (respondent) knowledge.'*
- [11] Interestingly, the applicant did not file a reply to the affidavit in response filed by the respondent showing the cause. Instead, the applicant admits that **it is a family property and that the defendant is in occupation for more than 30 years.**

Discussion

- [12] The applicant summoned the respondent to appear at court and to show cause why he refuses to give possession of the land to the applicant. As the last registered proprietor of the land, the applicant, under section 169, can summon

the respondent who is in possession of the land to appear before the court to show cause for his refusal to deliver up possession.

- [13] The particulars of the land to which this application relates has been sufficiently described as required by section 170. There was no dispute about this.
- [14] The applicant is the last registered proprietor of the land as per the State Lease No. 20451 registered on 30 November 2016, which is an agricultural lease (*annexure 'B'*). The respondent said the applicant had obtained a new lease under his name without his (respondent) knowledge.
- [16] In terms of section 172, the court may dismiss the application if the respondent proves to the satisfaction of the court a right to possession of the land.
- [17] About the right to possession it was held in *Morris Hedstrom Limited v. Liaquat Ali* (Action No.153/87SC at p2) that:

'That is not to say that final or incontrovertible proof of a right to remain in possession must be adduced. What is required is to some tangible evidence establishing a right or supporting an arguable case for such a right, must be adduced.'

- [18] The respondent has been in possession of the land (part of) for more than 30 years, which is admitted by the applicant. This possession he has inherited from his father and his father from his father. This leads me to conclude that the respondent has a right to possession of the land.

Conclusion

- [19] For the reasons set out above, I conclude that the respondent has proved to my satisfaction that he has a right to possession of the land. I would accordingly dismiss the application, but without costs.

The result

Application for possession of the land dismissed without costs.

M. H. Mohamed Ajmeer
30/7/19

.....
M. H. Mohamed Ajmeer
JUDGE



At Lautoka
30 July 2019

Solicitors:

Legal Aid Commission for the applicant

Amrit Chand Lawyers, Barristers & Solicitors for the respondent