

IN THE HIGH COURT OF FIJI AT LABASA
CIVIL JURISDICTION

Civil Action No. HBC 35 of 2019

IN THE MATTER of an application under section 169 of the
Land Transfer Act for an order for vacant possession.

BETWEEN

VIKESH KUMAR T/A ISLAND FASHION

APPELLANT (ORIGINAL DEFENDANT)

AND

PREMIKA DEVI T/A RAM CHARAN 1 STOP SHOP

RESPONDENT (ORIGINAL DEFENDANT)

Counsel : Ms. Sumer A. and Mr. Bale A. for the Appellant
Mr. Kohli A. for the Respondent

Date of Hearing : 18th May 2020

Date of Judgment : 12th June 2020

JUDGMENT

[1] The respondent (original plaintiff) file the originating summons pursuant to section 169 of the Land Transfer Act seeking to evict the appellant (the original defendant) from the parcel of land known as “Lot 9 on DP No. 2196 situated in the District of Savusavu, in the Island of Vanualevu comprised in Certificate of Title No. 15362 containing an area of 34p”.

[2] The learned Master of High Court delivered the judgment on 16th December 2019 granting the following orders:

1. The defendant is to, within 1 month of this order, give up and deliver to the plaintiff that portion of the land which the defendant occupies on Lot 9 on DP No. 2196 situated in the District of Savusavu, in the Island of Vanualevu as comprised in Certificate of Title No. 15362.
2. Costs for the plaintiff in the sum of \$1000.

[3] The appellant appealed the said judgment of the learned Master on the following grounds:

That the learned Master erred in law and in fact holding that the notice dated 19th June 2019 was sufficient notice to quit when:

1. The tenancy had not expired.
 - a) The notice had been prepared and served too early.
 - b) The notice was pre-emptive as there was nothing to terminate.
 - c) The notice did not state anything that, by operation of law was not already effective.
2. That the learned Master erred in law and in fact in holding that a proper notice to quit served following the appellant’s holding over was not needed.
3. That the learned Master erred in law and in fact in holding that section 89 of the Property Law Act was not applicable when the appellant was in possession of the premises even after the term of tenancy had expired.

4. That the learned Master erred in law and in fact in not allowing sufficient time to the appellant to vacate the premises in light of the appellant's circumstances.
5. That the learned Master erred in law and in fact in ordering excessive costs of \$1000.00 payable by the appellant when in civil action No. HBC 31 of 2018, only \$300.00 costs were awarded to the appellant when the judgment on a similar proceeding was in the appellant's favour.

[4] The submission of the learned counsel for the appellant is that the appellant was not served with proper notice to quit, in that the notice was served on him before the expiration of the lease.

[5] Section 169 of the Land Transfer Act 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.

[6] To commence proceedings for eviction under section 169 of the Land Transfer Act it is necessary to give legal notice to quit if the term of lease has not yet expired. Section 169(c) of the Act is very clear that once the term of the lease has expired there is no requirement to give notice to quit.

[7] In this matter there had been a lease agreement between the parties. It is very clearly averred in the affidavit in opposition of the appellant that he occupied the premises under a written agreement dated 01st August 2015 and the term of tenancy was for two years.

- [8] Admittedly the appellant has received notice on 26th June 2019 requiring him to vacate the premises by 31st July 2019 that is upon the expiration of the lease. Therefore, the appellant is not entitled in law to challenge the validity of the notice to quit.
- [9] The learned counsel in her submissions referred to section 89 of the Property Law Act which provides:
- (1) No tenancy from year to year is implied by payment of rent.
 - (2) In the absence of express agreement between the parties, a tenancy of no fixed duration in respect of which the rent is payable weekly, monthly, yearly or for any other recurring period may be terminated by either party giving to the other written notice as follows:-
 - (a) where the rent is payable yearly or for any recurring period exceeding one year, at least six months' notice expiring at the end of any year of the tenancy; or
 - (b) where the rent is payable for any recurring period of less than one year, notice for at least a period equal to one rent period under the tenancy and expiring at any time, whether at the end of a rent period or not.
- [10] Under subsection (1) of section 89 no tenancy from year to year is implied by payment of rent. Provisions of subsection (2) of section 89 are applicable to cases where there is no express agreement between the parties. Since there is admittedly, a written agreement of lease between the parties the provision of section 89 cannot be relied on by the appellant.
- [11] The next ground of appeal is that the cost awarded by the learned Master was excessive since in the earlier matter between the parties she awarded as costs only \$300.00. Awarding cost is a discretionary power of the court. The fact that the learned Master awarded \$300.00 in the earlier matter does not necessarily mean that she has to award the same amount of costs in the subsequent matter.
- [12] The other ground of appeal is that the learned Master has not given sufficient time for the appellant to remove his things from the premises. The learned Master gave him one month to vacate the premises. The appellant does not say how many months more he needs to vacate the premises. On the other hand he knew very

well that after the expiration of the lease he had to leave. Therefore, he should have made arrangements to locate his business in some other place.

[13] For the above reasons I see no merit in the appeal of the appellant. Hence, the court makes the following orders.

ORDERS

1. The appeal of the appellant is dismissed.
2. The appellant is order to pay \$1000.00 as costs of this appeal.




Lyone Seneviratne

JUDGE

12th June 2020