

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 294 of 2022

IN THE MATTER of an Application
for possession of Land under Section
169 of the Land Transfer Act 1971.

BETWEEN: **RAJEEN ROHIN KUMAR** and **ASHEEL LATA KUMAR** both of
40 Pathik Crescent, amadi Heights, Suva.

PLAINTIFFS

MOHAMMED SHAHFARAZ ALI TOGETHER WITH HIS
FAMILY A D A Y OTHER PERSON RESIDING at Lot 5
Dokanisuva Road, Tacirua Heights, Suva.

DEFENDANT

Representation : Mr A. Chand (Amrit Chand Lawyers) for the Plaintiffs.
 : Ms. I. Seuduadua (Lal Patel Bale Lawyers).

Date of Hearing : 1st November 2023.

JUDGMENT

[1] The Plaintiff filed Originating Summons on 6th October 2022 pursuant to Section 169 of the Land Transfer Act for an Order that the Defendant show cause why an order for immediate vacant possession of the Land comprised in iTaukei Lease o: 30160, Being Lot 5 on SO 6445, piece of land known as “Tacirua Subdivision Stage 1B” (Part of) and containing an area of 1126 square metres, situated in the Tikina and province of Naitasiri. The Summons is supported by an Affidavit of the Plaintiffs. The Summons was served on the Defendant on 18th October 2022. An affidavit of service

was filed on 21st November 2022. On 5th December 2022 the Defendant filed an Affidavit in Opposition. On 19th December 2022 an Affidavit in Reply was filed by the Plaintiffs. On 25th May 2023, Justice Liyanage set the matter for hearing on 1st November 2023.

[2] Section 169 of the Land Transfer Act 1971 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)
- (c)

Section 170 of the Land Transfer Act 1971 requires the particulars be stated in the summons and that “*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 of the Land Transfer Act 1971 dealing with order of possession states that “*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.*”

[3] Section 172 of the Land Transfer Act 1971 provides that “*if the person summoned appears he may show cause why 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.*”

[4] **Morris Hedstrom Ltd v. Liaquat Ali (SBC 153/87S) Supplementary FLR Volume 1 (Civil) 1887-2000) 141, Gurdial Singh v Shiu Raj (ABU 44/82) Supplementary FLR Volume 1 (Civil) 1887-2000, 84, Shyam Lal v Eric Martin Schultz (1972) 18**

FLR 152 and **Azmat Ali v. Mohammed Jalil (1982) 28 FLR 31** are some of the cases that have dealt with Section 169 Land Transfer Act 1971 applications. These and a number of other cases have set out the procedure for Section 169 Applications. The submissions of the parties have been noted.

- [5] The Defendant in his affidavit in opposition noted that the Plaintiffs were the Registered Proprietor of iTaukei Lease No: 30160, Being Lot 5 on SO 6445, piece of land known as “Tacirua Subdivision Stage 1B” (Part of) and containing an area of 1126 square metres, situated in the Tikina and province of aitasiri. This gives the Plaintiffs locus in this matter. There is no dispute on the other procedural requirements under Section 170 of the Land Transfer Act 1971. It is not in dispute that the Plaintiffs are the owners of the land and property since 21st March 2014. The Plaintiffs through their lawyers served a notice (dated 5th January 2022) to quit and deliver vacant possession of the said property upon the Defendant.
- [6] Section 172 of the Land Transfer Act 1971 shifts the burden upon the Defendant to establish his right to remain on the subject property. It was upon the Defendant in this application to adduce some tangible evidence establishing a right or supporting an arguable case for such a right for him to remain on the property. Final or incontrovertible proof of right to remain in possession need not be adduced (**Morris Hedstrom Ltd v. Liaquat Ali**). If the person, in this case the Defendant does show cause the Judge shall dismiss the Summons (**Azmat Ali v. Mohammed Jalil**).
- [7] At the hearing the Defendant’s submission was that the tenancy agreement was inconsistent. The tenancy agreement made in October 2019 was for one year and has expired in 2020. The Defendant’s do not intend to let the Defendant stay on their property. It was further submitted for the Defendant that he withheld rent due to damage of a TV by the contractors hired by the Plaintiff. The value of the claim is \$2214.00. The rental sum owed to the Plaintiff is \$13,000.00. These issues are before the magistrate’s court. That court will deal will these issues. The Defendant has failed to show cause why the order sought by the Plaintiffs should not be made. The Plaintiffs are entitled to an order for immediate vacant possession.
- [8] The Plaintiff is entitled to costs which is summarily assessed in the sum of \$2500.00 to be paid by the Defendant to the Plaintiff within 30 days. The defendant without any

right has continued to be in possession of the subject property. The action that ensued led to costs in this matter.

Court Orders:

- (a) *The Defendant, Mohammed Shahfaraz Ali together with his family and any other person residing at Lot 5 Dokanisuva Road, Tacirua Heights, Suva is ordered to deliver immediate vacant possession of the subject property to the Plaintiffs.*
- (b) *The Plaintiff is entitled to costs which is summarily assessed in the sum of \$2500.00 to be paid by the Defendant to the Plaintiff within 30 days.*


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Chaitanya Lakshman
Acting Puisne Judge
17th November 2023

