

2. The Applicant is the Administrator of the Estate of Moti Lal aka Motilal appointed on 10 February 2023 by way of Letters of Administration *De Bonis Non*.
3. The Executor for the Will under the Estate of Moti Lal had passed in November 2021 without fulfilling the requirements under the will. Thereafter the Applicant applied and was granted Letters of Administration De Bonis.
4. The Defendant is the son of Amrit Lal. Amrit Lal is a beneficiary of the property and was to occupy one flat on 85 Nailuva Road during his lifetime.
5. According to the Will, the remainder of the properties would be held by Surendra Lal during his lifetime and on his death, to the youngest son of Moti Lal, namely Shailendra Lal, for his own use and benefit absolutely.
6. The Plaintiff deposed that the Defendant occupied the same flat without any colour of right.
7. A notice of vacant possession was issued on 3 May 2023 and served on Defendant on 27 June 2023.
8. The Defendant filed their Affidavit in opposition to show cause why they should remain on the property.
9. He deposed that as the son of one of the beneficiaries, the property which consisted of two Certificates of Titles i.e CT 10148 and CT 1221, was occupied by him.
10. Shailendra Lal, the last beneficiary, travelled to Fiji and inspected the property and discussed maintenance of the property under the supervision of Abhinesh Pal, Shalendra's brother in law *vis-à-vis* a Power of Attorney.
11. The rental income was insufficient to assist in the maintenance of the property.
12. The Plaintiff obtained the Letters of Administration without consulting or advising Shailendra Lal.
13. Abhinesh Pal, was informed in writing in February 2023 by the Plaintiff's solicitors that he was prevented from obtaining access to the Estate property or dealing with the tenants on the property. Abhinesh Pal later informed Shailendra Lal.

14. There is a pending High Court proceedings seeking to remove the Plaintiff as the Administrator of the Estate of Moti Lal.

PART B: LAW ON VACANT POSSESSION

15. In section 169, 170, 171 and 172 of the Land Transfer Act provides as follows:

“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) a lessor who seeks to re-enter where the lessee or tenant is in arrear for such period as may be provided 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.

Particulars to be stated in summons

170. Therein 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.

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 ejectment.

Dismissal of summons

172. If the person summoned appears he may show cause why he 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 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.”

16. In Jamnadas -v- Honson Ltd [1985]FjLwRp 13; [1985] 31 FLR 62 (20 July 1985) Speight V.P of CA, Mishra J.A and Roper J.A stated –

“On 1st February, 1985 the respondent applied to a judge in chambers for immediate vacant possession under section 169 of the Land Transfer Act, which provides a speedy procedure for obtaining possession where the occupier can show no cause why an order should not be made. Where, however, he can show an arguable defence the application is dismissed without prejudice to the applicant's right to proceed by way of writ.”

17. In this instance, it is firstly the onus on the Plaintiff to show that they are the registered proprietor.
18. If the Plaintiff proves he is the registered proprietor, the law then requires the Defendant to show cause why he should not vacate the premises. The onus is therefore on the Defendant to show that he has an arguable defence.

PART C: SUBMISSIONS BY PLAINTIFF AND DEFENDANTS

19. The Plaintiff has submitted that Section 9 of the Succession, Probate and Administration Act requires that on grant of probate or administration, all

property possessed or entitled to the deceased in Fiji shall pass to and become vested on the Administrator for all the estate and interest of the deceased. Similarly Counsel submits that the same powers and duties given to administrator as well which were given to the owner. This however is subject to the provisions of the Will and rules of intestacy.

20. He also argues that section 90 of the Trustees Act gives a person with direct or indirect interest vested or contingent to the property to apply to court to review the act or omission of the Administrator.
21. Plaintiff argues that despite the Defendant's argument that he has consent by the beneficiary to reside on the property, there is no notification or evidence of this. Furthermore the beneficiary has no powers or authority to give the consent and ought to have obtained consent from the Administrator/Executor. There are two letters the Defendant relies upon which the Counsel submits is factually incorrect as Shailendra lal is a beneficiary and George Lal has not inherited the property. George Lal is the son of late Amrit lal (brother of Shailendra Lal) whose interest was extinguished on his death with no succession. In essence there is no right to occupy the premises.
22. Reference was made to the case of Denis Sen -v- Dharmend Singh CA HBC 110 of 2016 in which Tuilevuka J dismissed an Appeal and upheld the decision of the Master to grant vacant possession and determined that the administrator of the estate is legally equipped with sufficient interest to assert over individual interest of beneficiaries.
23. Counsel submitted that ejectment could be initiated against beneficiaries who does not have power and authority to consent occupation.
24. Counsel for the Defendant clarified that the land in question was CT 10148 on 85 Nailuva Road. He argued that section 169 of the Land Transfer Act should not be sort for these proceedings given that they are complicated issues requiring the Court to determine. The remaining beneficiaries are the Plaintiff which is a lifetime benefit and the Defendant. The Defendant has already instituted an action regarding the accounts of the estate and seeking reliefs to remove the Administrator of the Estate.
25. The Defendant relied upon the case of Reddy -v- Krishna [2009] FJHC 221; HBC 114.2008L (9 October 2009) where Justice Inoke referred to Premji -v- Lal [1975] FJCA 8; Civil Appeal No. 70 of 1974 (17 March 1975) where the Court of Appeal referred to the unreported case of Jamnadas & Co. Ltd - Public Trustee

and Prasad Studios Ltd (Civil Appeal No. 39 of 1972) which held that if the proceedings in the Supreme Court involve consideration of complicated facts and issues of law, it will not decide them on summary proceedings of this nature, but will dismiss summons without prejudice to the plaintiffs right institute Writ of Summons or where there is a best suited procedure to determine the controversial matters.

26. The Defendant grew up on the property and has resided there all his life. The Counsel for Defendant submits it is unsafe to remove the Defendant without considering the pending court action and the harm on the Defendant in the event that the Plaintiff is removed from being the Administrator.

PART D: ANALYSIS

27. From the Affidavits and submissions made into Court, it is not contested that the Plaintiff is the Executor and Trustee of the Estate of the late Mr Moti Lal by a Will through a Letters of Administration De Bonis No 70711.
28. A Letters of Administrator De Bonis is, according to Master Robinson (as he was then) in the case of Miller -v- Miller [2010] 179; Civil Action 194.2009 (27 May 2010):

[24].Where an estate is left un-administered after the death intestate of the last executor or administrator, his or her administrator does not become the administrator of the original testator (*see Par. 435 page 236 "Halsbury's Laws of England" 3rd Edition*). In other words if the Plaintiff becomes the administrator of the estate of Henry Miller, Henry Miller having died intestate without administering the estate of James Miller, she does not automatically become the administrator of the estate of James Miller. This grant is a grant of administration *cum testamento annexo de bonis non administratis* or in short administration *de bonis non.*"

29. Under Section 93 (4) of the Land Transfer Act, it is deemed in law to have vested the property to an Executor and Trustee of an Estate when the Executor and Trustee registers by transmission their interest in the property. The registration of transmission recognizes the Executor and Trustee as a registered proprietor of the property going back to the date of death of the proprietor from 10 May 1994.

30. Section 93(3) of the Land Transfer Act, the Court provides as follows:

“Person claiming under transmission may be registered

93.-(1) Any person claiming to be entitled to any estate or interest in land subject to the provisions of this Act by virtue of any transmission, whether as the result of the death of the registered proprietor of such estate or interest or otherwise, may make application in the prescribed form to the Registrar to be registered as the proprietor of such estate or interest.

(2).....

(3) If on any application made under the provisions of subsection (1), and upon the evidence adduced in support thereof, the Registrar is satisfied that the applicant is entitled to the estate or interest claimed, the Registrar shall register the applicant as the proprietor thereof, and the person so registered shall hold such estate or interest subject to all equities affecting the same, but for the purpose of any dealing therewith shall be deemed to be the absolute proprietor.”

31. There was no transmission by death duly registered by the Plaintiff to confirm their position, as they claim to be, the registered proprietor of the property. The only registered transmission by death is that of Shailendra Lal for the property.
32. Hence the failure of the Plaintiff to register their interest places this Court in a position to find that the Plaintiff has failed to prove that they are the registered proprietor of the property for Certificate of Title No. 10148 by virtue of the registration of the transmission of property by death.
33. The Court need not look any further. The onus is on the Plaintiff to establish their right to ownership of the property which they have failed to do so. Section 169 of the Land Transfer Act is a summary proceedings. It is also a proceeding that by statute requires registration by law as of right. Without registration, the party’s rights as registered owners are not recognized.

Costs

34. Given that the Plaintiff has not succeeded, the Court will award the Defendants costs at \$800.

Orders of the Court

35. The Court orders as follows:

(a) That the Court will dismiss the application for vacant possession for Certificate of Title number 10148;

(b) Costs of \$800 imposed against the Plaintiff.





Ms Senileba LTT Waqainabete-Levaci
Puisne Judge