

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBC Civil Action No. 342 of 2023


IN THE MATTER of an application
Under Section 169 of the Land Transfer
Act 1971.

BETWEEN: **JOHN VAIVAO FATIAKI** trading as Y K Holdings of Lot 15,
Dudley Street, Toorak, Suva.

PLAINTIFF

AND: **MOBIL OIL AUSTRALIA PTY LTD** a company incorporated in
Australia (ABN 88 004 052 984) and registered in Fiji as a foreign
company under the Companies Act, trading as Mobil Oil (Fiji) and
having its place of business in Fiji at Level 6, ANZ House, Victoria
Parade, Suva.

DEFENDANT

Representation : Ms. Y. A. Fatiaki for the Plaintiff.
 : Mr E. Kumar O/I from Lateef & Lateef.

Date of Hearing : 23rd July 2024.

RULING

1. The Plaintiff filed Summons 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 property situated at Vuda on Lot 1 on Plan SO 1345 on Native Lease No. 9354 (part of) and comprised in Crown Lease No. 248965. The Summons is supported by an Affidavit of the Plaintiff. The Defendant filed an affidavit in opposition. The Plaintiff filed an affidavit in reply.
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*

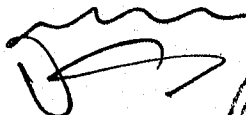
immediate possession to be given to the Plaintiff, which order shall have the effect of and may be enforced as a judgment in ejectment."

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."*

3. Section 169 (a) of the Land Transfer Act, requires the Plaintiff to be the **last registered proprietor** of the land. The term **"proprietor"** is defined in the Land Transfer Act as *"the registered proprietor of land, or of any estate or interest therein"*. The term **"registered"** is defined in the Interpretation Act, as *"registered used with reference to a document or the title to any immovable property means registered under the provisions of any written law for the time being applicable to the registration of such document or title"*.
4. The Plaintiff in his affidavit in support in paragraph 3 stated that he is the *"... registered proprietor of all that piece and parcel of land containing 9596m² be the same a little more or less and situated in the tikina of Vuda in the island of Vitilevu and being Native Lease No.9354 (part of) Lot 1 on Deposited Plan SO.1345 and comprised in Certificate of Title No. 29218."* A certified copy of the Title is annexed in the affidavit marked "A". I have perused the certified copy of the Title. The affidavit in opposition of Narongkorn Charusakwong, Lead Country Manager for the Defendant company in paragraph 4 highlight that *"...the Plaintiff lacks 'locus standi' to institute these proceedings. The Plaintiff's annexure marked as "A" clearly shows that the Plaintiff's lease has been cancelled by Re-Entry No. 927101 on 30/11/2022 at 11.20am by the Registrar of Titles."*
5. I note from the endorsement on Lease No. 248965 (NL. 9354) that Dealing no. 927101 through re-entry cancelled Lease No. 248965 (NL. 9354) on 30th November 2022. Which effectively cancelled the lease. Following the cancellation of the Lease the Plaintiff does not hold a lease and is not the last registered proprietor of the said property. The Plaintiff does not have locus to institute the proceedings against the Defendant. The Summons is dismissed. Cost is summarily assessed to be paid by the Plaintiff to the Defendant in the sum of \$2000.00 within 30 days.

Court Orders

- (a) *The summons is dismissed.*
- (b) *The Plaintiff to pay the Defendant \$2000.00 as costs within 30 days. Costs have been summarily assessed.*


Chaitanya S.C.A Lakshman
Puisne Judge
30th July 2024

