

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 221 of 2024

IN THE MATTER of an Application under Section 169 of Part XXIV of the Lands Transfer Act Cap 131 for an Order for an Immediate Vacate Possession.

BETWEEN: **KASHMIR KAUR** of Lot 20 Nokonoko Road, Laucala Beach Estate, Nasinu, Fiji Islands, presently resides in Labasa, Businesswoman.

PLAINTIFF

AND: **FRANK HAMAGUSHI** of 20, Nokonoko Road, Laucala Beach Estate, Nasinu, Fiji Islands, Occupation Unknown.

DEFENDANT

BEFORE: **Hon. Mr Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Shahrukh Ali Lawyers** for the Plaintiff
No Appearance of the Defendant [Unrepresented]

Date of Judgment: 27th March, 2025 @ 9.30am

JUDGMENT

[Vacant Possession pursuant to Section 169 of Land Transfer Act]

Introduction

1. The Plaintiff filed and Originating Summons pursuant to Section 169 of the Land Transfer Act and sought for the following orders:
 1. That the Defendant **FRANK HAMAGUSHI** do show cause why she should not give up vacant possession to the Plaintiff of the property described and comprised as Certificate of Title No. 17039, Lot 20 on DP 4057, District of Suva and Island of Vitilevu, Province of Naitasiri having an area of One Rood, Eight Perches and Six Tenthe of a Perch.
 2. Cost of this action on Solicitor/Client indemnity basis.
 3. Such other orders that this Honourable Court deems just.
 4. Any other Orders deemed just and equitable in the circumstances.
2. The Defendant was served with the Plaintiff's Application on 05 August 2024.

Plaintiff's Contention

3. That I am the registered proprietor of the property comprised and described as Certificate of Title No, 17039 being Lot 20 on DP No. 4057.
4. That there was no valid tenancy agreement between the parties.
5. The Defendant undertook to rent the premises for \$1,300 on a monthly basis.
6. The Defendant upon occupying the property/premises during February, March, April, May, June and July, failed to pay the rental and stopped to communicate with the Plaintiff or the Agent. He is in arrears of \$7,800.00.
7. The defendant continued to give the Plaintiff false promises and assurance that he would pay the rental. However, he kept making further excuses.
8. The Plaintiff issued an eviction notice on 24 July 2023.
9. However, the Defendant failed to comply with the Eviction Notice and has only paid a sum of \$5,000.
10. He continued with default in rental and owes a sum of \$18,000.
11. The property is being vandalized, and the Defendant is an illegal occupant and a trespasser on my premises.

Defendant's Contention

12. The Defendant neither appeared, nor represented and did not file any affidavit in opposition.

Analysis and Determination

13. *Section 169 of Land Transfer Act* under which the application for Vacant Possession is made, in so far as it is relevant, 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.*

14. There is no doubt that the Certificate of Title No. 17039 on Lot 20 on Deposit Plan No. 4057 confirms that the Plaintiff is the registered proprietor of the land irrespective of any alleged circumstances under which it was obtained.
15. The title is under mortgage to Bank of Baroda as confirmed by the folio of 12 October 2018.
16. Section 169 of the Land Transfer Act calls for the Evidence of the Title as annexed in the affidavit in support of the Plaintiff, Kashmir Kaur.
17. The Defendant neither appeared in Court nor defended the case by Legal representative and/or filed any affidavit in opposition.
18. The Defendant has further shown any right at all to the occupation of the premises of the Plaintiff in the Certificate of Title No. 17039 on Lot 20 on Deposit Plan No. 4057.
19. The present status of facts reveal that the Plaintiff is the registered proprietor of the Certificate of Title No. 17039 on Lot 20 on Deposit Plan No. 4057 and therefore this Court cannot bearing this fact of proprietorship in mind go behind the registration of the Certificate of Title No. 17039.

20. The procedure under section 169 of the *Land Transfer Act* is governed by *Section 171* and *172* of the Act which provides as follows:

"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.

"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."

21. I find that firstly the Defendant failed to file an opposition and/or submissions in this matter. Further, neither appeared in person or by representation, that the Defendant had no regards to this Court and failed to show cause and show any arguable defence standing in his favor against the Plaintiff.
22. This an appropriate case for the Section 169 application pursuant to Land Transfer Act for Vacant possession which provides a summary procedure in cases where the issues involved are straight forward and there is no complicated issues of fact [Case of Ram Narayan v Moti Ram (Civ. App. No. 16/83 FCA - Gould JP refers)].
23. In the outcome, on the evidence tendered before this Court at the Hearing, the Plaintiff coupled with his written submission, and in absence of any opposition evidence/submissions of the Defendant, the Defendant has shown no cause as was required of him under Section 171 of the Land Transfer Act.
24. I find that the Plaintiff is the registered proprietor of the Certificate of Title No. 17039 on Lot 20 on Deposit Plan No. 4057 and therefore entitled to the immediate vacant possession of the Plaintiff's premises by the Defendant.
25. Hence, it is ordered that the Defendant give immediate vacant possession of the premises describe as Certificate of Title No. 17039 on Lot 20 on Deposit Plan No. 4057 to the Plaintiff under the provisions of the Land Transfer Act accordingly.

Costs

26. The matter was heard and the Plaintiff furnished Court with written submissions to support his case.

27. The Defendant was served and failed to appear in court and showed his disrespect the Court by absenting himself from Court and not filing any opposition as was required of him under Section 172 of the Land Transfer Act.
28. The Defendant is ordered to pay the Plaintiff a summarily assessed costs of \$1,000 within 14 days timeframe.

Orders

- (i) The Defendant to give immediate vacant possession of the land comprised and described in Certificate of Title No. 17039 on Lot 20 on Deposit Plan No. 4057 to the Plaintiff.
- (ii) The Defendant to pay the Plaintiff summarily assessed cost of \$1,000 within 14 days timeframe.

Dated at Suva this 27th day of March ,2025.




VISHWA DATT SHARMA
PUISNE JUDGE

*Cc: Shahrukh Ali Lawyers, Suva
Frank Hamagushi, Laucala Beach Estate*