

- (i) The Plaintiff is the registered lessee of the Property.
 - (ii) The Plaintiff's late husband, namely Moidin had given possession of the property to the Defendants on terms unknown to the Plaintiff.
 - (iii) Moidin died on 23 April 2017 and the Plaintiff is the Administrator of his Estate.
 - (iv) As the said Administrator, the Plaintiff wishes to administer the Estate, which includes disposing of the Property via sale and distributing the sale proceeds to the beneficiaries.
 - (v) A Notice to Quit dated 29 September 2022 was served on the Defendants on 3 October 2022.
 - (vi) The Defendants have refused to vacate and are unlawfully and without any authority, trespassing on and occupying the Property.
3. The second named Defendant has filed an Affidavit in Opposition and a Supplementary Affidavit in Opposition wherein he states the following:
- (i) The second named Defendant is Moidin's cousin.
 - (ii) The Defendants deny that the Plaintiff is the last registered proprietor of the Property as she does not have a provisional title.
 - (iii) Moidin had given the second named Defendant a Power of Attorney on 26 March 2003.
 - (iv) That the Defendants have been occupying the Property for the past 20 years and paying ground rental.
 - (v) That Moidin had given the Defendants authority to occupy the Property and the Plaintiff was always aware of the terms of occupancy as per the Defendants' dealings with Moidin.
 - (vi) On 9 March 2017 Moidin had prepared a sale note executed by both Moidin and the second named Defendant. This sale note was to act as security until such time as Moidin could locate the original lease of the Property and prepare a proper Sales and Purchase Agreement (**sale note**).

- (vii) On 14 July 2017 Moidin sent an e-mail to the second named Defendant attaching a draft Sales and Purchase.
- (viii) On 29 October 2018, the second named Defendant had lodged a caveat over the Property.
- (ix) That on 3 September 2003, lease documents over the Property were released to Moidin from his solicitor but the Plaintiff refuses to hand over the same prolonging the preparation of the Sales and Purchase Agreement.
- (x) That the Defendants have an interest in the Property and are not in illegal occupation.

4. The Plaintiff in her Affidavit in Reply averred as follows:

- (i) That the Plaintiff is unaware of the existence of the sale note which is invalid as it was entered contrary to the provisions of the State Lands Act 1945.
- (ii) The parcels of land described in the sale note are CT 10661 and CT 2470 which were not owned by Moidin and are cancelled in any event.
- (iii) The Defendants have not been paying ground rental as the statement of account at 2 January 2023 shows the account is in arrears of \$6, 616.00.
- (iv) That the Defendants lodged a subsequent caveat on the Property on 13 December 2022 which was removed on 9 March 2023.

5. The relevant provisions of the LTA are 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 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.

Particulars to be stated in summons

170. *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.*

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 or she may show cause why he or she refuses to give possession of such land and, if he or she 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 or she may make any order and impose any terms he or she 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 or she 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.*

6. The process outlined in section 169 of the LTA is a summary procedure designed to swiftly return possession of a property to a registered proprietor when an occupant fails to demonstrate a lawful right to possess that specific property (see ***Jamnadas v Honson Ltd*** [1985] 31 FLR 62 (at page 65)).
7. The onus lies with the plaintiff to convince the court that the requirements under sections 169 and 170 of the LTA have been met. Once this burden has been met, it shifts to the defendant to demonstrate their right to possess the land. A Court's decision to either grant possession to the plaintiff or dismiss the summons depends on how effectively each party discharges their respective burden in the proceedings.
8. While the second named Defendant in his Affidavit in Opposition raised an issue on the Plaintiff's locus to institute these proceedings, the Defendants' legal counsel confirmed at the hearing that the Defendants did not dispute that the Plaintiff was the last registered proprietor of the Property.

9. The second requirement pursuant to section 170 of the LTA has also been fulfilled as the relevant land has been clearly described in the summons as State Lease No. 9869 being Lot 1 on Plan SO 000571 land known as 'Esivo and Qaraqaraweni' in the District of Lautoka, in the Island of Viti Levu containing an area of 1011 square metres. There is no dispute over the description of the land.
10. Since the Plaintiff has satisfied the requirements of sections 169 and 170 of the LTA, the burden now shifts to the Defendants to demonstrate their right to occupy the Property.
11. In such proceedings, a defendant's obligation is not to present conclusive proof of their right to stay on the property, but rather to provide some evidence establishing a right or supporting a plausible case for their right to remain in possession of the disputed property. This principle was established by the Supreme Court in the well-known case of **Morris Hedstrom Limited v. Liaquat Ali** CA No: 153/87 where the Court held:

"Under Section 172 the person summonsed may show cause why he refuses to give possession of the land and if he proves to the satisfaction of the Judge a right to possession or can establish an arguable defence the application will be dismissed with costs in his favour. The defendants must show on affidavit evidence some right to possession which would preclude the granting an order for possession under Section 169 procedure. That is not to say that final or incontrovertible proof of a right to remain in possession must be adduced. What is required is that some tangible evidence establishing a right or supporting an arguable case for such a right must be adduced."

12. Furthermore, as outlined in **Ali v. Jalil** [1982] 28 FLR 31, even if a defendant fails to satisfy a Court according to the above decision, the Court has the discretion to dismiss the summons if it determines that an open court hearing is necessary. The section empowers Court to make any order deemed necessary by justice and the specific circumstances of the case.
13. The Defendants contend that they have the right to stay on the Property as approved by Moidin and that it was Moidin's intention to sell the Property to the Defendants, which is evident by the sale note and the draft Sales and Purchase Agreement. The Defendants further rely on the fact that they have allegedly paid for ground rental for the Property until Moidin's death and lodged a caveat over the Property to secure their interest in the same.
14. In her oral submissions, counsel for the Defendants referred to the same grounds stated in paragraph 13 above as evidence establishing the Defendants' right to remain on the Property.

15. I will firstly discuss the contents of the sale note, which was annexed as "MHY2" in the second named Defendant's Affidavit in Opposition. The sale note is titled "Agreement to sell personal property" and is entered between Moidin Dean (as seller) and Mohammed Yunus (as buyer), dated 9 March 2017. The relevant clauses of the sale note are:-

"1. Seller agrees to sell, and Buyer agrees to buy the following described property:

Farm 719 CT 10661 Lomolomo & CT 2470 Qaraqaraweni & Esiro situated in the Tikina of Lautoka, Fiji Island.

2. Buyer agrees to pay to Seller and Seller agrees to accept as total purchase price the sum of \$75,000.00 U.S Dollars and \$156,000 Fijian dollars.

3. Seller warrants it has good and legal title to said property, full authority to sell said property, and that said property shall be sold by warranty bill of sale free and clear of all liens, encumbrances, liabilities and adverse claims of every nature and description whatsoever. ..."

16. The sale note clearly states that is it for the purported sale of CT 10661 and CT 2470. While the Defendants failed to provide copies of these titles, the Plaintiff provided copies of the same in her Affidavit in Reply.

17. CT 10661 was transferred to the Director of Lands on 29 June 1974 and thereafter wholly cancelled on 15 July 1977. CT 2470, the correct reference for which is CT on Vol. 24 Folio 2470, was also transferred to the Director of Lands on 29 July 1974 and wholly cancelled on 15 July 1977.

18. Moidin was the proprietor of neither of these titles. In any event, the Defendants have failed to show how these titles are connected to the Property. From the evidence before the Court, it is clear that the sale note has no bearing on the current proceedings as it is not related to the land comprised in the Property.

19. The Defendants have further submitted that there was a draft Sales and Purchase Agreement which Moidin had emailed with the intent for the same to be executed. However, the only evidence of this is a copy of the e-mail in the Defendants' Supplementary Affidavit in Opposition marked "MYH4". Attached to the e-mail is a document titled "AGREEME...ERTY.docx" and the contents of the e-mail are as follows:

"As-salam Alaikum,

Hope this email finds in best of health. Here is the sales agreement letter. Please sign and send via e-mail asap. So that we may finish and wrap everything up and finalize.

Best regards"

20. There is nothing further in the contents of the e-mail or the attachment to prove that the agreement was for the alleged sale of the Property. No evidence has been provided by the Defendants to prove that the Sales and Purchase Agreement existed and was executed by the Defendants and Moidin respectfully.
21. In regard to the Caveat, the Defendants' counsel submitted that since the Defendants had been allowed to register the Caveat on the Property it meant that the Defendants had attempted to save their interest over the Property. Again, a copy of the registered Caveat was not provided by the Defendants but only provided by the Plaintiff in her Affidavit in Reply.
22. The second named Defendant had initially attempted to lodge a Caveat on the Property on 29 October 2018 with memorial number 868781. This was never registered by the Registrar of Titles. Thereafter, the second named Defendant lodged another Caveat with memorial 927656 on 13 December 2022, which the Plaintiff was successful in removing on 9 March 2023.
23. Having perused the said Caveat instrument being Caveat number 927656, I note that Caveat 927656 is an amendment of Caveat 868781, which is evident by the document wherein the date 29 October 2018 and the number 868781 has been crossed off and replaced with 13 December 2022 and number 927656 respectively. I further note that the words "*pursuant to Sale and Purchase Agreement dated 15 March 2017*" have been crossed off and replaced with the second named Defendant claiming an interest by "*virtue of construction & development and investments done on the land by upgrading works of the land, bore hole installation, and the rental of the said land has been paid to Lands Department in respect of the land...*"
24. It is obvious that the Defendants had taken no action for the extension of the Caveat when the Plaintiff had applied to have the same removed.
25. This Court is satisfied that the Defendants have also failed to provide any evidence to show that there are complicated issues that are to be determined in this matter, and that a proper trial is necessary.
26. If the Defendants are of the view that they have incurred expenses in paying for land rentals and developing the land as stated in their Caveat document, then they have the option to pursue a separate legal action to claim for the same. However, in the current proceedings, the Defendants cannot assert a right to remain on the Property without demonstrating any legal basis for their claim.

27. In light of the above, and on the materials presented to the Court, the Defendants have not shown a right to possession of the Property under section 172 of the LTA.

28. Furthermore, this is a simple case without any complex issues hence the Plaintiff is entitled to a favourable decision.

29. Plaintiff is granted vacant possession of the Property forthwith.

30. Accordingly, I make the following orders:

(a) The Defendants are ordered to immediately deliver vacant possession of all the land comprised in State Lease No. 9869 being Lot 1 on Plan SO 000571 land known as 'Esivo and Qaraqaraweni' in the District of Lautoka, in the Island of Viti Levu containing an area of 1011 square metres to the Plaintiff; and

(b) Costs of this action summarily assessed at \$2,000.00 to be paid to the Plaintiff within 7 days.



P. Prasad
Master of the High Court

At Lautoka
28 February 2025