

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

NO. 68 OF 2013

IN THE MATTER of Part XXIV of the
Land Transfer Act, Cap. 131

BETWEEN : **NAWIN PRASAD SHARMA** of Vuda, Lautoka,
Unemployed

Plaintiff

AND : **RAJESH KUMAR** of Saweni, Lautoka

Defendant

Messrs Iqbal Khan & Associates, Barristers & Solicitors for the Plaintiff

Messrs Qoro Legal, Barristers & Solicitors for the Defendant

Date of Ruling : 09 October 2013

R U L I N G

APPLICATION

1. This is an application by way of Originating Summons filed by the Plaintiff on 25/04/13 seeking immediate vacant possession of land covered by the Native Lease No. 29367 known as Naweiyanitu (pt of) being Lot 1 on SO6127 consisting of 5884m² situated at Saweni, Lautoka. The application has been filed pursuant to section 169 of the Land Transfer Act, Cap 131 (LTA).

2. In support of this application, the Plaintiff has filed three (3) Affidavits; one is Affidavit in Support filed on 25/04/2013, and one Affidavit in Reply to the Affidavit of Rajesh Kumar filed on 03/06/2013 and another Affidavit in Reply to the Affidavit of the Defendant filed on 12/08/2013.
3. The Defendant has filed one Affidavit in Reply on 24/05/2013, and two Supplementary Affidavits one filed on 07/06/13 and another on 17/07/13.

PLAINTIFF'S CASE

4. He is the registered proprietor of Native Lease No.29367 known as Nawaiyanitu (pt of) being Lot 1 on SO6127 consisting of 5884m² situated at Saweni, Lautoka. He says the Defendant and his family are wrongfully in possession of the property and refusing to vacate the same.

DEFENDANT'S CASE

5. The Defendant says that he was one of the Trustees of the estate of his father who administered Native Lease No. 170501. He has been residing on the said Native Lease No. 170501 since birth and the said lease expired on 31st December 2004. He also says that on or about 15thDecember 2004 he went to iTaukei Land Trust Board (TLTB) to seek for renewal of Native Lease No. 170501 wherein he was advised that TLTB would notify him by letter about the renewal of the said lease. He went to TLTB several times to get the offer letter for renewal but nothing was forthcoming. He further says that when he received the Notice to vacate on the 12th day of March 2013, he went to TLTB to inquire about the lease and was advised that the plaintiff was issued with a new Lease No. 29367.

APPLICABLE LAW AND PRINCIPLES TO THIS APPLICATION

6. Sections 169-172 of the LTA are the applicable to this application. These sections provide:

Ejectors

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) ... ;
- (c) ...

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 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, 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.

DISCUSSION

7. By originating summons dated 25 April 2013 the Plaintiff brought these proceedings under section 169 of the LTA to recover possession of premises known as Naweiyaitu (pt of) being Lot 1 on SO6127 consisting of 5884m² situated at Saweni, Lautoka, against the Defendant on the ground that he is in occupation of the premises without licence or consent and refuse to give possession to the Plaintiff.
8. The Plaintiff has invoked section 169 (a) of the LTA. The High Court has jurisdiction under the section to make immediate possession to be given to the Plaintiff. That is an order specially made to deal with people who occupy premises without any colour or right whatsoever and still refusing to go out. It is a speedy summary procedure for the recovery of possession of land.

9. On the day appointed for the hearing of the summons, if the person summoned (Defendant) does fail to 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, the judge may make order to deliver immediate possession to the Plaintiff (s.171).*
10. The summons sufficiently describes the land in question and requires the Defendant to show cause as to why he should not give possession to the Plaintiff hence the requirement under section 170 has been complied with.
11. In this case the Defendant appeared in court and filed affidavit in opposition. Then section 172 applies. According to this section, if the person summoned appears and **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 etc.
12. The only issue to be decided in this matter is that whether the Defendant has shown cause, i.e a right to the possession of the land, for refusing to give possession to the Plaintiff.
13. I will read affidavits filed by both parties.
14. The Defendant in his affidavit in reply sworn and filed on 24 May 2013 states that he is one the trustee of his father's Native Lease No. 170501. He is residing there since his birth. The said lease expired on 31st December 2004. In December 2004, he says, he applied for renewal of the lease and TLTB advised him that he will receive renewal notice in due course. He did not receive any renewal notice from TLTB since. It appears that the Defendant did not follow up his application for the renewal of the lease, if any, for almost 9 long years. I doubt about his application for renewal. The Defendant has opened his eye

only after receiving the show cause summons under s.169. He says is occupying the land since birth.

15. It is to be noted that the Defendant could not answer the question posed by the Court that when the house was built on the land. It is significant to note that the land in dispute was an agricultural land.
16. The Native Lease No. 170501 expired in 2004. The Defendant's father was the lessee. He became one of the trustees of his deceased father's estate. He did not take reasonable steps to get the lease renewed. He cannot now claim to be one of the trustees of the property after the lease has expired. Upon expiry of the lease, the property had been reverted back to the TLTB.
17. The Plaintiff is the last registered proprietor of land. The Defendant admits that he is occupying the land.
18. In the supplementary affidavit sworn and filed 17 July 2013 the Defendant states that the Plaintiff has obtained new Native Lease No. 29367 falsely representing that he (Defendant) had already passed away (para 7 of supplementary affidavit). He has belatedly taken this false representation only in his supplementary affidavit. He did not make any sort of such allegation in his affidavit in reply. If the Plaintiff had told to the TLTB that the Defendant had already died, then the TLTB would have requested a copy of the Death Certificate before proceeding to renew the lease in favour of the Plaintiff. There is no evidence placed before me to show that the Plaintiff falsely represented that the Defendant had already died in order to get a new lease in favour of the Plaintiff. Therefore the allegation of false representation raised by the Defendant cannot be accepted.
19. The summons will be dismissed with cost under section 172, if the Defendant proved to the satisfaction of the judge a right to the

possession of the land. Unfortunately, in this case the Defendant has failed to prove a right to the possession of the land. Therefore an order for immediate vacant possession should be made.

ORDERS

20. The Plaintiff shall have an order for possession against the Defendant in respect of the land covered by the Native Lease No. 29367 known as Naweiyaitu (pt of) being Lot 1 on SO6127 consisting of 5884m² situated at Saweni, Lautoka. The Defendant shall pay the Plaintiff's costs which I fix summarily at \$450.00.

M H Mohamed Ajmeer

Acting Master

At Lautoka.