

IN THE HIGH COURT OF THE REPUBLIC OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

Civil Action No. 34 of 2014

BETWEEN: **PUBLIC RENTAL BOARD** a body corporate constituted under the provisions of the Housing Act as amended by the Housing (amendment) Decree 1989 and having its Head Office at 132 Grantham Road, Suva.

PLAINTIFF

A N D: **MATAIASI LABAIBURE** of Block 10 Flat 151 Vuniyayawa Road, Namaka, Nadi

DEFENDANT

Before : Actg Master Mohamed Ajmeer

Appearances:

V Pillai for the plaintiff

No appearance by or for the defendant

Date of Hearing : 22 April 2014

Date of Judgment : 22 April 2014

J U D G M E N T

[1] This is an application for summary eviction of the defendant filed pursuant to section **169 (a)** of the Land Transfer Act, Cap 131 (the LTA) from the land comprised and described in Native Lease No. 27456 as Namaka No.2 Lot 22 on DP 3439 in the Tikina of Nadi Province of Ba being Public Rental Board Flat Number 151 situated in Block 10 of Vuniyayawa Road, Namaka, Nadi (the application). The application is accompanied by a supporting affidavit of Pauliasi Lesu Matawalu, a Customer Service Representative of plaintiff (the supporting Affidavit).

[2] S 169 (a) of LTA permits last registered proprietor of the land to initiate summary proceedings for recovery of possession of land. That section, so far as material provides:

“S169. 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) ... (Emphasis added)”

[3] According to s 170 of the LTA, the summons (the application) must give description of the land and must require the defendant to appear at the court on a day not earlier than 16 days after the service of the summons. That section provides:

“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”.

[4] The summons has been personally served on the defendant on 20 March 2014 returnable on 22 April 2014, a date more than 16 days after the service of the summons. The summons contains sufficient description of the land in question. The requirement of section 170 of LTA has therefore been complied with.

[5] The defendant neither appeared, nor filed any affidavit in response to the plaintiff’s application for eviction.

[6] In terms of s. 171 of the LTA, on the summons returnable day, the judge may make order for immediate vacant possession of the land if the defendant does not appear in court. Such order of possession may

be made 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. S 171 of LTA provides:

“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.

- [7] The application was personally served on defendant on 20 March 2014 as per affidavit of service of Mohammed Zubier Hussain filed on 21 March 2014. I am satisfied with the due service of the application on the defendant.
- [8] The plaintiff, Public Rental Board a body corporate duly constituted under the provisions of the Housing Act is the registered lessee of the land in question as evidenced by annexure “A” being Native Lease No. 27456. The plaintiff has, under s 34 (1) of the Housing Act (as amended) powers to collect rent from lessees, tenants or occupiers of Public Rental Estates managed by it. In June 2011 the plaintiff entered into a Tenancy Agreement (annexure “B”) with the defendant wherein the Plaintiff agreed to let on rent to the Defendant and the Defendant agreed to take on rent the residential premises. The defendant had defaulted and fell into arrears of rent. As a result the plaintiff served a notice to quit on the defendant on 12 December 2012 and 6 January 2014. The defendant occupies the property despite the notice to quit issued by the plaintiff.

[9] There is no indication in the supporting affidavit that the Tenancy Agreement entered into was terminated or expired. Then the question arises whether the notice to quit will operate as termination of the Tenancy Agreement. The notice to quit would operate as termination of the Tenancy Agreement. In the case of **Prasad v Chand** [2001] 1 FLR 164 (30 April 2001), the defendant claimed that there should be revocation of an invitation to occupy before giving notice to quit. However, **Justice Gates** (as he then was) found there need not be a two stage process. He held:

“Where the defendant is an invitee to occupy land, it is not necessary that there should be two stages of eviction-service of revocation and then notice to quit. It would be sufficient if both were given together” (Emphasis added).

[10] Is the Director of Lands’ consent necessary to bring eviction proceedings under s 169 of the LTA against the defendant? The defendant has been served with notice to quit on account of arrears of rent. He has now become a mere occupier without lease or rent agreement. Therefore, the Director of Lands’ consent is not necessary to initiate proceedings for ejection under s.169. Justice Gates (as he then was) in **Prasad v Chand** (supra) held that:

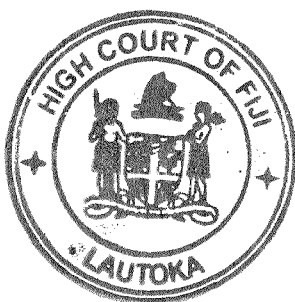
“Director of Lands’ consent is not necessary to initiate proceedings for ejection under Land Transfer Act section 169 of a mere occupier without lease as the lease is not a dealing with land, and the occupier has no title” (Emphasis added).

[11] Furthermore, in the supplementary supporting affidavit the plaintiff has annexed a letter from iTaukei Land Trust Board dated 11 April 2014 (“MZH 1”), which states that:

“Be advised that you do not require the consent of the Board to initiate legal proceedings to evict unlawful occupiers of land as the authority to initiate the same vests in the current lessee of the land in question. **The Board’s consent is only required by law to be sought for “dealings” per se and with respect, we are of the view that court proceedings for eviction cannot be defined as a dealing**” (Emphasis added).

[12] The plaintiff is the last registered proprietor and/or lessee of the property in question. There is nothing in court to challenge or dispute this fact. I am therefore satisfied that the plaintiff is the last registered proprietor and/or lessee of the property in dispute. I am also satisfied with the consent requirement contemplated under section 171 of the LTA. I am also satisfied with the due service of the application. The defendant failed to appear in court and to show cause why he should not give up possession to the plaintiff.

[13] For the reasons stated above, I make order that the plaintiff is entitled to immediate vacant possession of the land comprised and described in Native Lease No. 27456 and commonly known as Flat Number 151 situated in Block 10 of Vuniyayawa Road, Namaka, Nadi. I make no order as to costs.



At Lautoka
22 April 2014

M H Mohamed Ajmeer

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M H Mohamed Ajmeer
Actg Master of the High Court