

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. 200 of 2012

BETWEEN : **I TAUKEI LAND TRUST BOARD** a statutory body incorporated pursuant to the iTaukei Land Trust Act Cap 134, Laws of Fiji, and having its registered office at 31 Victoria Parade, Suva.

PLAINTIFF

AND : **AZUM NISHA** of Koroipita, Naikabula Road, Lautoka, Occupation unknown to the Plaintiff.

DEFENDANT

R U L I N G

1. Before me is the plaintiff's application under section 169 of the Land Transfer Act against the defendant to show cause why she should not give up immediate vacant possession to the plaintiff or part of the land known and referred to as Koroipita Stage 2 Lot 1 on SO 5924 owned by Mataqali Matarisiga Tokatoka Naduanitu.
2. **Section 169** of the Land Transfer Act provides as follows: -

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."
3. Firstly, the plaintiff is a statutory body established by the iTaukei Land Trust Act (Cap 134) with the mandate of managing and administering iTaukei lands for the benefit of iTaukei landowners.
4. The plaintiff in this case had issued to the Rotary Club of Lautoka on 23 December 2009 a Residential Lease being Native Lease No. 29183 for a period of 99 years. The land in question is 8.9784 in size.

5. In her affidavit in opposition, the defendant admits that the land in question belongs to the iTaukei landowners mentioned above and acknowledges the iTLTB's role as stated above. However, she deposes that she has been staying on the land for some 30 years or so and that the "land belonged to my father". The tone of her affidavit suggests that her father was the predecessor in ownership (not title because a totally new lease was issued to Rotary Club by the plaintiff) to the lease in question. She says that at some point in time, her family had made arrangements and paid some goodwill of \$1,000 in March 2004 for a new lease to a person called Semesi Saulada, who was, purportedly, a member of the mataqali land owing unit. The said Saulada also happened to be an employee of the iTLTB. Following that, another payment of \$500 was made to the mataqali in November 2009.
6. I observe that the receipts that the defendant annexes to her affidavit are not iTLTB receipts.
7. In this case, iTLTB qualifies under the third limb of section 169 as a lessor who has issued a Notice to Quit against a lessee whose term has expired. Once that is established, the onus then shifts to the defendant to show cause as to why vacant possession should not be given (see **section 172** of the Land Transfer Act).
8. In discharging that burden, the defendant must show on affidavit evidence some right to possession which would preclude the granting of an order for possession under **section 169**. This does not mean that he has to prove conclusively a right to remain in possession. On the contrary, it is enough to show some tangible evidence establishing a right or at least supporting an arguable case for such a right (see **Morris Hedstrom Limited v. Liaquat Ali (Action No. 153/87 at p2)**).
9. After having considered the affidavits filed by the defendant, I was not convinced that she had shown sufficient cause under section 172. My reasons follow.
 - (i) the defendant had stayed on the land pursuant to a lease issued in favour of her father which has since expired many years ago.

- (ii) the lease in question was not an agricultural lease but a residential lease. There is no right of lease-extension accruing to her father under any law upon expiration of his residential lease.
- (iii) the dealings which the defendant's father did with a member of the mataqali was all made without the knowledge of iTLTB.
- (iv) although the said member of the mataqali was also an employee of the iTLTB, the defendants dealt directly with him in his capacity as member of the mataqali as evidenced by the fact that the said member of the mataqali did give the defendants his own personal receipt for all payments made to him by the defendants.
- (v) there were no official receipts by the iTLTB.
- (vi) by law, the defendant should have negotiated formally with the iTLTB if they were interested in securing a fresh lease over the land in question.
- (vii) the iTLTB was under no obligation whatsoever to issue a fresh lease to the defendant's father, let alone to the defendant personally, upon the expiration of their lease.

For the above reasons, I grant Order in Terms of the Plaintiff's application and order that the defendant vacate the property within 28 days of the date of this Order. I also order costs against the defendant in the sum of \$500 (five hundred dollars only).

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Anare Tuilevuka

JUDGE

04 February 2014