

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

**CIVIL JURISDICTION**

**CIVIL ACTION NO. 30 OF 2014**

**IN THE MATTER** of Sections 169, 170  
and 171 of the Land Transfer Act Cap.  
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**BETWEEN** : **PRAMAN KUMAR** of Sanasana, Naisoso, Nadi, Carpenter

*Plaintiff*

**AND** : **CHARLE SATMO** of Sanasana, Naisoso, Nadi

*Defendant*

Before: A/Master M H Mohamed Ajmeer

**Counsel:**

Mr A. J Singh for the Plaintiff

No appearance for the Defendant

**Date of Hearing** : 09 June 2014

**Date of Judgment:** 09 June 2014

**J U D G M E N T**

1. There is an application by the Plaintiff seeking summary judgment for possession of the property. The application has been filed pursuant to s – 169 of the Land Transfer Act. The section, so far as material provides:

“**169.** (so far as material) 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).

2. The application is supported by an affidavit of Praman Kumar, the plaintiff (the supporting affidavit).

3. I have carefully perused the supporting affidavit filed by the Plaintiff. It does not comply with Ord. 41. r. 9 (2) of the High Court Rules 1988. That rule provides:

*“Every affidavit must be indorsed with the note showing on whose behalf it is filed and the dates of swearing and filing, and **an affidavit which is not so indorsed may not be filed or used without the leave of the Court**”.* (Emphasis added).

4. That rule requires that an affidavit to be filed in Court must contain an indorsement showing on whose behalf it filed and the date of swearing and filing. The affidavit filed by the Plaintiff does not contain such inducement. Order 41, r 9 is mandatory and must be complied with.

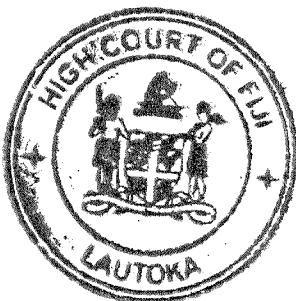
5. In **Chandrika Prasad v Republic of Fiji & Attorney-General** (2001) 2 FLR 39; 217/00L 17 January 200, Justice Gates (as then he was) held that:

**“O.41, r. 9 (2) is not an onerous rule. It is to be emphasized that it is a mandatory rule, and in matters of form it is to be complied with”**

6. When I indicated that defective to the learned counsel for the plaintiff. He did not make any application to seek leave of the court to use that defective affidavit. This is a summary proceedings affidavit evidence is necessary.
7. In this case there is no proper affidavit filed in compliance of Ord. 41, r. 9.
8. Counsel for the plaintiff would have made an application seeking leave of the court to use the defective affidavit.
9. In **Kim Industries, in re (No. 1)** (2000) 1 FLR 14, Justice Gates (as he then was) stated that:  
  
***“O. 41, r. 9 (2)-Normally leave must be obtained for affidavit to be filed or used if affidavit does not carry indorsement note. Failure of counsel will not always result in a court allowing indulgence”.***
10. The supporting affidavit filed by the plaintiff is defective and there is not application by the plaintiff’s counsel to seek leave of the court to use that affidavit despite the defective. I would therefore refuse the application for possession on that ground alone.
11. Assuming that there is a proper affidavit in court, the plaintiff would not succeed in his claim. The application is filed under S.169 (1) of the Land Transfer Act on the ground that the plaintiff is the last registered proprietor of the property. Then he must proof that he is the legal proprietor of the property, which, in my opinion, the plaintiff has filed to do so.
12. The plaintiff says he is the last registered owner. To prove that he has attached a transfer document which does not show that he is the legal proprietor of the property. It says his sister, Nirmala Devi, as the sole executrix and trustee in the estate of Ram Reddy had transferred the

property to the plaintiff. This transfer appears to be improper and unlawful. Mr Singh submitted that this is a native land. However, he provided no documents such as native land lease, albeit the plaintiff states Native Lease No. M/L 144. For one reason or the other that Memorandum of Lease was not produce in court. If the lease was a protected lease, any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without the consent of the Director of Lands would be null and void, see s. 13 of the Crown Land Act.


13. However, on the death of the lessee of any protected lease his executors or administrators may, subject to the consent of the Director of Lands, assign such lease, see s. 13 (2) of the Crown Lands Act.
14. In this case there is nothing before the court to show that the plaintiff sister as the sole executrix and trustee assign the lease to him upon the death of the lessee of the lease with the consent of the Director of Lands in accordance with section 13 (2) of the Crown Lands Act.
15. To conclude, there is no proper affidavit in support. It follows that plaintiff has failed to establish to the satisfaction of the Court that he is the last registered proprietor of the property.
16. I therefore dismiss and struck out the application but without costs.



**At Lautoka**  
**09 June 2014**

**Solicitors:**

Anil J Singh Lawyers, Barristers & Solicitors, Lautoka for the Plaintiff  
No appearance for the Defendant

  
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**M H Mohamed Ajmeer**  
**A/Master of the High Court**