IN THE HIGH COURT OF FIJI

WESTERN DIVISION

AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 151 of 2014

BETWEEN : **ASMIN PRAKASH** of Buabua Road, Lovu, Lautoka, Businessman currently in Australia

PLAINTIFF

A N D : **PRAKSH CHAND** of Buabua Road, Lovu, Lautoka

DEFENDANT

Mr. Victor Vishal Sharma for the Plaintiff
(Ms) Jyoti Sangeeta Singh Naidu for the Defendant

Date of Hearing :- 16th March 2015
Date of Ruling :- 29th May 2015

EXTEMPORE RULING

(A) INTRODUCTION

(1) Before me is the Plaintiff's Originating Summons pursuant to Section 169 of the Land Transfer Act for an Order for vacant possession against the Defendant.

(2) The Defendant is summoned to appear before the court to show cause why he should not give up vacant possession of the Plaintiff's property comprised in i-Taukei Lease No. 31350 known as Nasauniwaqa Lot 2 No. 4647 situated in the Tikina of Ba, TLTB Reference No. 4/7/40162 comprising an area of 27 acres 2 roods and 16 perches.

(3) The Defendant filed an affidavit in opposition opposing the application followed by an affidavit in reply thereto.

(4) The Plaintiff and the Defendant were heard on the summons.
They made oral submissions to court. In addition to oral submissions, they filed careful and comprehensive written submissions for which I am most grateful.

(B) THE LAW

(1) Sections from 169 to 172 of the Land Transfer Act (LTA) are applicable to summary application for eviction.

Section 169 states;

"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) ...

Section 170 states;

"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."

Section 171 states;

"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.

Section 172 states;

"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.

[Emphasis provided]

(2) The procedure under Section 169 was explained by Pathik J in **Deo v Mati** [2005] FJHC 136; HBC0248j.2004s (16 June 2005) as follows:-

The procedure under s.169 is governed by sections 171 and 172 of the Act which provide respectively as follows:-

"s.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."

"s.172. If a 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, mortgagee or lessor or he may make any order and impose any terms he may think fit."

It is for the defendant to 'show cause.'

(3) The Supreme Court in considering the requirements of section 172 stated in **Morris Hedstrom Limited v. Liaquat Ali** (Action No. 153/87 at p2) as follows and it is pertinent:

"Under Section 172 the person summoned may show cause why he refused 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 of 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."

(4) The requirements of section 172 have been further elaborated by the Fiji Court of Appeal in ***Azmat Ali s/o Akbar Ali*** *v* ***Mohammed Jalil s/o Mohammed Hanif*** *(Action No. 44 of 1981 – judgment 2.4.82) where it is stated:*

"It is not enough to show a possible future right to possession. That is an acceptable statement as far as it goes, but the section continues that if the person summoned does show cause the judge shall dismiss the summons; but then are added the very wide words "or he may make any order and impose any terms he may think fit" These words must apply, though the person appearing has failed to satisfy the judge, and indeed are often applied when the judge decides that an open court hearing is required. We read the section as empowering the judge to make any order that justice and the circumstances require."

(C) FACTUAL BACKGROUND AND ANALYSIS

(1) The Plaintiff's affidavit in support reads as follows;

1. ***THAT*** *I am the registered proprietor of iTaukei Lease No: 31350 known as Nasauniwaqa Lot 2 ND4647 situated in the Tikina of Vitogo in the Province of Ba, TLTB Reference number 4/7/40162 comprising an area of 27 acres 2 roods and 16 perches. Annexed hereto and marked with letter "AP 1" is a certified true copy said Native Lease.*

2. ***THAT*** *the lease was made on the 8th of April, 2014 and registered on the 30th of April, 2014 with the Registrar of Titles. That I obtained the said lease from iTltb for valuable consideration in the sum of $4,000.00. I also paid for other charges for stamping, registration and other related expenses. That I hold an indeleasable titile over the subject land.*

3. ***THAT*** *the Defendant is occupying the said property illegally, forcefully and without my consent from the date of the making and registration of the said lease. I have verbally notified him on various occasions to vacate the said property.*

4. ***THAT*** *the Defendant failed and / or neglected thereafter to give vacant possession.*

5. ***THAT*** *I on the 8th of June, 2014, through my lawyers issued a notice to vacate on the Defendant. The notice was formally served on the Defendant notifying them to deliver vacant possession by 30 days of delivery. Annexed hereto and marked "**AP 2**" is a copy of the said Notice to Vacate with.*

6. ***THAT*** *the Defendant failed and / or neglected to adhere to the said Notice to Vacate, and shows no intention of vacating the said property. That the Defendant is a trespasser on my property.*

7. ***THAT*** *out of legal duty to this honourable Court I must inform this Court that the Defendant is seeking relief against one Raj Gopal vide Agricultural*

Tribunal Action number W/D 4 of 2010 and 5 of 2010. Raj Gopal held a previous title under Native Lease number 13052 however, I am not a party to the action and further the any Orders by the Learned Tribunal in any event would not have any bearing on this matter.

8. ***THAT*** *I incurred substantial costs in this matter because of the inconvenience I have suffered due to the Defendant are acts and/or omissions and the same are continuing. That I pray for an Order that the Defendant quit and deliver Vacant Possession of my property.*

(2) The Defendant filed an affidavit in opposition stating;

1. ***THAT*** *Raj Pal is my biological Father's real brother and he was the Registered Lessee of all the piece of land described as Nausauniwaqa no. 2 situated in the District of Vuda in the province of Ba and containing an area of approximately 27 acres 2 Rood 16 Perches. The Native Lease Number is 13052 with NLTB Reference Number 4/7/2062 (The said Lease), a copy of the said Lease is annexed herein and marked as "PC 1"*

2. ***THAT*** *Raj Pal was also registered with the Fiji Sugar Corporation (FSC) as Grower 00199 under sector 112, Lovu, but all this time, he resides in New South Wales, Australia and I have been in occupancy of the said land since 1989.*

3. ***THAT*** *on or about 1995, Raj Pal and I entered into an agreement whereby Mr Pal agreed to sell the said land to me for $40,000. Based on that agreement, I paid him $11,000 (eleven thousand dollars) as deposits and the balance of $29,000 (twenty nine thousand dollars) to be paid by way of income derived from sugar cane harvested from the said land.*

4. ***THAT*** *I have been cultivating and harvesting sugar cane on 17 acres of the said land since 1995 and my rental payments were deducted from cane proceeds derived from sugar cane cultivated by me and paid directly to Native Land Trust Board by FSC. The other 10 acres had been cultivated by Mr Raj Pal's Pravin Chand.*

5. ***THAT*** *by letter dated 9th March 2010, Mr Raj Pal through his then solicitors Iqbal Khan & Associates gave me 30 days notice to vacate the said on grounds for non-payment of rent as well as being a nuisance causing unnecessary trouble to him. This I disagree. A copy of the said letter is annexed herein and marked as "PC 2."*

6. ***THAT*** *I then instructed my Solicitors Qoro Legal to file an application for relief against eviction and/or forfeiture and another application for declaration of tenancy at the Agricultural Tribunal which was filed on 12th April, 2010, a copy of the same are annexed herein and marked as "PC 3" and "PC 4".*

7. ***THAT*** *I also held a Power of Attorney No. 17343 for Mr Raj Pal since 1989. Another Power of Attorney No. 112/01212 was given to my younger brother*

*Pravin Chand in 1995. A copy of my Power of Attorney No. 17243 is annexed herewith and marked as "**PC 5**" and Power of Attorney No. 112/012/12 to my brother is annexed and marked "**PC 6**".*

8. ***THAT** as per the High Court decision I was permitted to cultivate and harvest sugar cane on the said land till the ruling is given for the matter before the tribunal.*

9. ***THAT** all cane proceeds were paid by iTLTB to Mr Raj Pal's ANZ bank account No. 238549. (Annexed herewith and marked "**PC7**" is a copy of the said FSC Growers 00199 Statement of Account for 15th February, 2010).*

10. ***THAT** as per further High Court decision, Fiji Sugar Corporation (FSC) is restrained from releasing funds from the FSC Growers Account No. 00199 to Mr Pal or me and/or to their agents and/or servants while permitting me to cultivate and harvest sugar cane on the said land.*

11. ***THAT** it is now imperative to note the said lease of the Mr Raj Pal had expired while the applications are before the Tribunal to decide on.*

12. *THAT a new Lease has been issued to Mr Raj Pal's son, Asmin Prakash whilst the matter being pending in the Tribunal. A copy of the said new lease is annexed herein and marked as "**PC 8**".*

13. ***THAT** Raj Pal is my Father's real brother and so Ashmin Prakash is my first cousin and I know him personally since we are related.*

14. ***THAT** I also believe Ashmin very well knows about the Agriculture Tribunal matter since he was attending the Tribunal matters on his father's behalf.*

15. ***THAT** the new Registered Lessee, the Applicant herein has issued a Notice to Vacate upon me. A copy of the same is annexed herein and marked "**PC 9**".*

16. ***THAT** I have been in possession and remain in possession of the land and I have already harvested the sugarcane for this crushing season and cultivated for next season.*

17. ***THAT** the Tribunal matter is still pending and it is set for hearing on 12th November, 2014 for the application filed by me through my Solicitors for Orders that the Tribunal still has the power to adjudicate the matter. Further the Tribunal has also given orders for Status Quo to be maintained until it decides on our application. A copy of the said order is annexed herein and marked as "**PC 10**".*

(3) The Plaintiff filed an affidavit in rebuttal stating;

(a) *The Description of the land which the Defendant has applied to Agricultural Tribunal reads as Native Lease No. 13052, Naisauniwaqa No. 2 Reference No. 4/7/2062. Whereas the application for eviction before this Honorable Court is for Land described as Itaukei Lease No. 31350 in Nasauniwaqa Lot 2 on ND*

4647. It is quite clear that legally the two piece and parcels of land are different.

(b) *That the Status quo which the Defendant alleges in paragraph 20, only involves the Defendant, Raj Pal and The Itaukei Land Trust Board. In any event this "status quo"is not an injunction to this Court proceeding since it deals with a different piece and parcel of land (description). That the lease for the subject piece of Land involved in the proceedings before the Agricultural Tribunal has expired and no longer in existence.*

(c) *The alleged claim for tenancy was at all material times against Raj Pal I am, not a party between any alleged dealing the defendant may have had with Raj Pal.*

(d) *That I hold an indefeasible title of all the Land in Native Lease number 31350 duly registered with the Registrar of Title under the provisions of the land Transfer Act. I am a bonafide proprietor for valuable consideration. I have paid for the necessary fees for the subject land.*

(4) This is an application brought under section 169 of the Land Transport Act,[Cap 131].

(5) The question that I ask myself is under which ambit of Section 169 is the application being made?

(6) Under Section 169 of the Land Transfer Act, certain persons may summon a person in possession of Land before a judge in Chambers to show cause why that person should not be ordered to surrender possession of the land to the claimant.

(7) The Plaintiff in support of his application filed an affidavit sworn by him on 04th September 2014. The Plaintiff deposed as follows;

1. ***THAT*** *I am the registered proprietor of iTaukei Lease No: 31350 known as Nasauniwaqa Lot 2 ND4647 situated in the Tikina of Vitogo in the Province of Ba, TLTB Reference number 4/7/40162 comprising an area of 27 acres 2 roods and 16 perches.*

(8) In support of the above statement; the plaintiff attached to the affidavit a copy of iTaukei Lease No. 31350.

(9) Therefore, I hold that the Plaintiff is entitled to make an application under Section 169 of the Land Transfer Act, because he falls under first category of ejectors envisaged in Section 169.

(10) It is also noteworthy, that the Defendant conceded that the Plaintiff is the last registered proprietor of the land in question.

(11) The onus of proof is therefore upon the Defendant to show on affidavit evidence some right to possession which would preclude the granting an order for possession under section 169 of the Land Transfer Act.

(12) In this regard, I would like to refer to the decision in the following case.

In the case of **Morris Hedstrom Limited –v- Liaquat Ali** CA No: 153/87, the Supreme Court said that:-

> *"Under Section 172 the person summoned may show cause why he refused 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 of 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."*** (Emphasis is mine)

Also it is necessary to refer to section 172 of the Land Transfer Act, which states;

"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.

[Emphasis provided]

(13) Being acutely aware of the need for the Defendant to show on affidavit some tangible evidence establishing a right or supporting an arguable case for such a right, I approach the evidence with that principle uppermost in my mind.

(14) After an in-depth analysis of the totality of the affidavit evidence in this case, the following salient facts have to be noted;

- ❖ The subject land is an agricultural land
- ❖ The Plaintiff is the last registered proprietor of the land and it is conceded by the Defendant
- ❖ The Defendant has been in possession, occupation and cultivation of the land since 1989 and still enjoying the same right
- ❖ The Defendant filed his application for Declaration of Tenancy in the Agricultural Tribunal in 2010.
- ❖ The Native lease No. 13052 (owned by the father of the Plaintiff) expired in 2013 and iTLTB issued a new lease No. 31350 to the son (Plaintiff)
- ❖ The new Lease was issued in 2014 whilst the Defendant's application is pending before the Agricultural Tribunal.
- ❖ No allegation of fraud has been made against the Plaintiff
- ❖ There is no evidence whatsoever that the Plaintiff acquired his registered title to the land through fraud.
- ❖ The Plaintiff is bonafide purchaser for value of the land having obtained a good title in 2014.
- ❖ The Agricultural Tribunal application is against the previous owner and not against the Plaintiff
- ❖ The Defendant has been in possession, occupation and cultivation of the land well before the Plaintiff became interested in the lease.
- ❖ The Defendant's application for relief is still pending before the Agricultural Tribunal.

(15) At the beginning of the hearing of the matter, the Plaintiff strenuously argued that;

> *"The Description of the land which the Defendant has applied to Agricultural Tribunal reads as Native Lease No. 13052, Naisauniwaqa No. 2 Reference No. 4/7/2062. Whereas the application for eviction before this Honorable Court is for Land described as Itaukei Lease No. 31350 in Nasauniwaqa Lot 2 on ND 4647. It is quite clear that legally the two piece and parcels of land are different."*

The argument of the Plaintiff, though exceedingly ingenious, was, in my opinion, really calculated to obscure and not to elucidate the point which the court is called upon to decide.

The comparison of the Native Lease No. 13052 and iTaukei Lease No. 31350 shows that the subject land giving rise to the action is substantially the same. The land is known as Nausauniwaqa no. 2 situated in the District of Vuda in the province of Ba and containing an area of approximately 27 acres 2 Rood 16 Perches. The Native lease No. 13052 (owned by the father of the Plaintiff) expired in 2013 and iTLTB issued a new lease No. 31350 to the son (Plaintiff) in 2014.

(16) The proven facts in this case show that the Defendant's interest in the land owned by the Plaintiff stems from his entitlement to a declaration of tenancy under Section 5 (1) of Agricultural Landlord and Tenant Act (which for the sake of brevity I shall hereafter refer to as **ALTA**).

Therefore, it is necessary to examine the **ALTA.**

The preamble to the Act says;

"An Ordinance to provide for the relations between landlords and tenants of agricultural holdings and for matters connected therewith."

Section 4 (1) states;

"Where a person is in occupation of and is cultivating an agricultural holding and such occupation and cultivation has continued before or after the commencement of this Ordinance for a period of not less than three years and the landlord has taken no steps to evict him, the onus shall be on the landlord to prove that such occupation was without his consent, and if the landlord fails to satisfy such onus of proof, a tenancy shall be presumed to exist under the provisions of this Ordinance."

Section 5 (1) states;

"A person who maintains that he is a tenant and whose landlord refuses to accept him as such may apply to a tribunal for a declaration that he is a tenant and, if the tribunal makes such a declaration, the tenancy shall be deemed to have commenced when the tenant first occupied the land."

Reading as best, I can between the sections of **ALTA,** it seems to me, that Section 4(1) raises a strong presumption in favour of occupiers of Agricultural land who come within the ambit of the section.

Section 5 (1) comes into operation if the landlord refuses to accept the tenant.

In the present case, the evidence shows that the Defendant has been in possession, occupation and cultivation of the land since 1989, well before the Plaintiff became interested in the lease and he is still enjoying the same right. But the previous owner had refused to accept him as a tenant as such and in the circumstances he had made an application to the Agricultural Tribunal under section 5 (1) of **ALTA.**

(17) In *adverso*, the Plaintiff forcefully submits that;

- ❖ He is the registered proprietor of the land on which the Defendant is residing and that the indefeasibility of Title provisions of the Land Transfer Act (which for the sake of brevity I shall hereafter refer to as **LTA**) override the right and protection, under **ALTA**.

- ❖ An application to the Agricultural Tribunal should not be used as a device to deny or indefinitely delay legal owners from enjoying their right to possession and use of their land.

(18) Therefore, what concerns me is that whether in the circumstances and having regard to the nature of the pending application in Agricultural Tribunal and the relief sought in that application, the Plaintiff should be prevented from his right to possession and use of the Land under LTA, until the relief sought in the pending application in the Agricultural Tribunal has been finally determine?

Put another way, whether the Defendant's all rights and protection under **ALTA** overrides the indefeasibility of Title provisions (Section 39 and 40) of **LTA**?

The answer to this is in the positive which I base on the Court of Appeal decision in **"Soma Raju v Bhajan Lal"** (1976) 22 FLR 163. The Court of Appeal affirm the view that the provisions of **ALTA** override the provisions of **LTA**. The conclusion drawn is that the High Court lacks jurisdiction to entertain Section 169 application to evict a tenant who was occupying a piece of **ALTA** land.

In this Court of Appeal decision, Spring J.A. said at page 174

"I agree with the learned judge when he said:

> *"In my view the right f the plaintiff to have his tenancy terminated in the manner provided by [**ALTA**] is clearly contrary to the defendant's contention that as registered proprietor he had the right to enter upon his land notwithstanding the plaintiffs tenancy."*

Both counsel referred to Miller v Minister of Mines [1963] 1 All E.R. 109 which was a case where a mining licence granted under the Mining Act 1926 was not registrable under the Land Transfer Act and it was held nevertheless to be a burden on the title of the registered proprietor. Their Lordships at p. 113 said:

> *"It is not necessary in their Lordships' opinion that there should be a direct provision overriding the provisions of the Land Transfer Act, 1952. It is sufficient if this is the proper implication from the terms of the relative statute."*

*Therefore in my view while [**ALTA**] provides its own individual code for the registration of contracts of tenancy it does not make it mandatory that such registration should be effected; the rights to occupation of agricultural land under [**ALTA**] exist in law independently of the Land Transfer Act and in my view prevail against the indefeasibility provisions of the Land Transfer Act. Section 13 of [**ALTA**] states that subject to the provisions for termination contained in [**ALTA**]a tenant shall be entitled to be granted two extensions to his contract of tenancy each extension to be for not less than 10 years so long as he has cultivated the land and committed no breach of his tenancy (unless he is given one year's written notice of termination upon the grounds set out in the [Act]). If a contract of tenancy under [**ALTA**] is not registrable under the Land Transfer Act and the indefeasibility provisions of that Act are to override the contract of tenancy then the tenancy would*

*be of no value to the tenant except as against the original landlord. Upon a transfer of the land the successor would be entitled by virtue of the indefeasibility provisions of the Land Transfer Act to disregard the contract of tenancy. I do not agree that this (could) have been the intention of the legislature in enacting [**ALTA**] and creating by statute tenancies which can exist for as long as 30 years. In my view I agree with the learned judge when he says:*

> *"I therefore hold that the plaintiff was the lawful tenant of the land and held a tenancy under [ALTA] which prevailed against the plain terms of section 39 and 40 of the Land Transfer Act.*

And at page 175;

"*I turn now to consider the 5th ground of appeal. Mr Koya argued that when section 3 of the Land Transfer Act 1971 was enacted it had the effects of overriding ALTO; and that the Land Transfer Act being a later Act than ALTO had the effect of annihilating the application of ALTO to lands under the Land Transfer Act; further the intention of the Legislature in passing into law the Land Transfer Act was to strengthen the principle of indefeasibility of title. Section 3 of the Land Transfer Act says:*

> *"**3. All written laws, Acts and practice whatsoever so far as inconsistent with this Act shall not apply or be deemed to apply to any land subject to the provisions of this Act or to any estate or interest therein."***

Mr Koya argued that section 3 of the Property Law Act 1971 provides that the Property Law Act is not to be reads so as to conflict with either ALTO or the Land Transfer Act 1971. It is to be noted that the Property Law Act became law the same day as the Land Transfer Act and both came into effect on 1st August 1971. If Mr Koya's submission is correct then it would indeed be strange that on the one hand the Legislature should see fit in section 3 of the Property Law Act to recognise ALTO and on the other hand intend that lands under the Land Transfer Act should cease to be subject to ALTO. This would destroy the effect of ALTO – an intention which is diametrically opposed to the Legislature's intention as portrayed in section 3 of the Property Law Act.

Mr Shankar argued that ALTO being special legislation dealing exclusively with agricultural land and passed into law before the Land Transfer Act is not to be derogated from by the general words of section 3 of the Land Transfer Act affecting all land under the Act. HE relies upon the ***maxim genralia specialibus non derogant.*** *In* ***Barker v Edger*** *[1898] A.C. 748 at p. 754 Lord Hobhouse said:*

> *"The general maxim is "**Generalia specialibus non derogant**." When the Legislature has given its attention to a separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms."*

*In **Seward v The Vera Cruz** (1884) 10 A.C. 59 at p.68 Lord Selbourne said:*

> *"Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so."*

*Further, ALTO deals with rights in agricultural land. It creates rights and evidences those rights by contracts of tenancies. On the other hand the Land Transfer Act deals with the registration of interest in land and the priorities conferred by registration – it is a system of registration of interests in land. In **Breskvar v. Wall (1971)** 126 C.L.R. 376 at p.376 at p.385 Sir Garfield Barwick said:*

> *"The Torrens System of registration is not a system of registration of title but a system of title by registration."*

Here it seems that the Legislature in passing ALTO into law directed its attention to agricultural land and had it been the intention of the Legislature that the general terms of the Land Transfer Act which deals with all lands were intended to overrule ALTO then the Legislature could easily have said so.

A somewhat similar situation as this was considered by the Court of Appeal in **"Azmat Ali v Mohammed Jalil & NLTB,** (1986) FCA, Civil Appeal 111 of 1985. At page 12 of the Judgment, the Court of Appeal said;

*"A person seeking a declaration of tenancy under **ALTA,** however, has no contract and, therefore, no right (to sublet) so arising. His right to a tenancy is created not by any agreement but, under section 4 of **ALTA**, by Parliament itself, the ultimate repository of all power. The tribunal is merely the machinery to give effect to that right. Section 23 (3) requires that it shall declare a tenancy and direct that a contract of tenancy be entered into, but only where it considers it just and reasonable so to do...*

When after a hearing the tribunal, the ultimate judge of reasonableness, does make a declaration, the Parliament, in our view, must be taken to have intended that such a declaration of a statutory right be binding upon everyone including the Crown, NLTB or any other holder of title."

(19) Given the above, I have no hesitation in holding that any application that has to be determined under the **LTA** is now subject to and affected by the **ALTA**. Therefore, the Defendant's application to the Agricultural Tribunal for his entitlement to a declaration of Tenancy under Section 5 (1) of the **ALTA** act as a Stay in proceedings for vacant possession under **LTA**. Therefore, I certainly agree with the sentiments which are expressed inferentially in the Defendant's submissions.

(20) The iTLTB was duty bound to maintain the ***status quo*** of the subject matter upon expiry of the lease until a final determination is made by the Agricultural Tribunal, because the matter is *"**sub judice**"*. The issuance of a new lease by iTLTB to the

Plaintiff without waiting for the decision of the Agricultural Tribunal is tantamount to contempt of court. I echo the words of J.Fatiaki in **Keppel v A.G.** (1998) FJHC 16,

*"The maintenance of the **'status quo'** of a **'sub judice'** matter is a fundamental requirement of the due administration of justice and any conduct which is calculated to prejudice that requirement or undermine the public confidence that it will be observed borders on contempt of court and is punishable as such. (See: **M. v. Home Office** op. cit at **p.405** where the relevant Minister's contempt was said to be that he:*

> ***"interfered with the administration of justice by completing the removal from the Court's jurisdiction and protection of a litigant who was bringing proceedings against him."***

(D) CONCLUSION

Having had the benefit of written submissions and as well as arguments from Counsel, for which I am most grateful, and after having perused all the pleadings by the parties, doing my best on the material before me, this court concludes that, the Defendant's application before the Agricultural (Landlord and Tenants) Tribunal for a declaration of Tenancy under Section 5(1) of **ALTA** act as a stay in proceedings for vacant possession.

(E) FINAL ORDERS

1. The application for vacant possession is stayed pending the decision of the Agricultural Tribunal

2. The Plaintiff is granted liberty to activate this application on the application before the Agricultural Tribunal being refused.

3. I make no order for costs.

HIGH COURT OF FIJI LAUTOKA

29/05/2015

Jude Nanayakkara
Acting Master of the High Court

At Lautoka
29th May 2015