

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

**CIVIL JURISDICTION**

**Action No. HBC 167 of 2014**

**THE MATTER** of Section 169 of the  
Land Transfer Act.

**BETWEEN** : **KULWINDER KAUR** of Anemone Circle, Moreno  
Valley Ca, 92557, United States of America,  
Domestic Duties

**AND** : **ABHINESH VIKASH PRAKASH** of Malomalo,  
Sigatoka

**Appearances:**

Mr Samuel K Ram with Mr Dayal for plaintiff

No appearance for defendant

**Date of Hearing** : 19/1/2015

**Date of Judgment** : 19/1/2015

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

**Introduction**

[1] This is an application under section 169 of the Land Transfer Act (LTA)

[2] By summons dated 22 October 2014 which is supported by affidavit sworn by him, the plaintiff seeks an order that the defendant, Abhinesh Vikash Prasad to give vacant possession of premises

situated on the land contained or show cause to remain in the property situated on the Crown Lease No. 8348, Land known as Part of Maro, Lot 2 Deposited Plan No. N 1948 and Farm 5115 & ML 11 being Lot 17 on deposit Plan No. N 1949, in the District of Malomalo, in the Republic of Fiji, containing an Area of 6.85690 hectares situated at Malomalo, Sigatoka being residential property and farm (the land).

- [3] The defendant, although he filed an affidavit in opposition, did not appear and participate at the hearing.

### **Background**

- [4] The plaintiff, Kulwinder Kaur is the registered proprietor of land being residential property and farm by virtue of Crown Lease No. 8348. She became the registered lessee of the Crown Lease in September 2005. The defendant is in possession of the land and he, according to Kulwinder, does not have any consent or permission from her (Kulwinder). Nor did he have the consent of the Director of Lands to occupy the Crown Land. On 3 October 2013 Kulwinder through his solicitor served a quit notice on the Defendant. But, still the defendant occupies the land.

### **Discussion**

- [5] The plaintiff applies for evicting the defendant from the land. His application is made under s.169 (a) of LTA. That section permits last registered proprietor of the land to 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.
- [6] S. 170 of LTA requires that 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. The summons returnable on 18 November 2014 has been personally served on the defendant on 28 October 2014, a date over 16 days after the service of the summons. The summons contains

sufficient description of the land and the summons requires the defendant to appear and show cause why he should not give up possession to the plaintiff. I am therefore satisfied the requirements of s.170 are complied with.

[7] 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.

[8] The application together with supporting affidavit plus exhibits was personally served on the defendant and an affidavit of service of Keshwa Nand, registered bailiff has been filed. I am satisfied with the due service of the application on the defendant.

[9] The defendant in fact appeared by his solicitor on 18 November 2014, the returnable day. Then the defendant was given 14 days to file and server his affidavit in opposition and 3 days thereafter to the plaintiff to file and serve affidavit in reply, if need be. The matter was then referred to DR for allocation before judge as it is a contested application. The defendant had meanwhile filed his affidavit in opposition. The plaintiff did not file her affidavit in response to the defendant's affidavit in opposition.

[10] Thereafter, the matter was listed for hearing before me today-19 January 2015 and both parties were accordingly notified of today's hearing. Today, when the matter came on for hearing there was no appearance for or by the defendant. The counsel for the plaintiff, Mr Ram made application for order in terms stating that he would rely on the plaintiff's affidavit evidence.

[11] In this judgment, I will consider the affidavit evidence filed by both parties. There was no application by the plaintiff to disregard the affidavit evidence filed by the defendant.

[12] In his affidavit evidence, the defendant states that, *‘in 2006, the plaintiff allowed me to occupy her residential property and cultivate her sugarcane farm No. 5115 under the Crown Lease. In 2007, the Plaintiff migrated to the USA. She has not returned since agreed, I was cultivating and occupying the said land since 2006. After harvesting, part of the cane proceeds would be deducted to pay lease rental to Director of Lands. The balance thereof was paid directly to the Plaintiff’s Bank account.’*

[13] It will be noted that the plaintiff has served a quit notice on the defendant. The service of quit notice will tantamount to terminating any agreement or permission granted to occupy the land. 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:

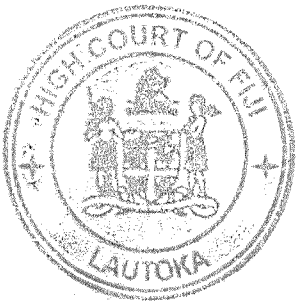
***“Where the defendant is an invitee to occupy land, it is not necessary that there should be two stages of eviction-service of revocation and then notice to quit. It would be sufficient if both were given together”***  
(Emphasis added).

[14] Another question that may arise whether the Director of Lands’ consent is necessary to bring eviction proceedings under s 169 of the LTA against the defendant as the land involved is Crown Land. The defendant has been served with notice to quit. 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 again (as he then was) in **Prasad v Chand** (supra) held that:

***“Director of Lands’ consent is not necessary to initiate proceedings for ejectment 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).

[15] The plaintiff is the last registered proprietor and/or lessee of the property in question. This is evidenced by Crown Lease No. 8348. There is nothing before 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. The defendant’s affidavit evidence fails to show that he occupies the land with lease or rent agreement or with the consent or permission of the proprietor and he also fails to show that he has a right to occupy the land.

[16] For the foregoing reasons, I make order in terms of the summons dated 22/10/14. The respondent will pay summarily assessed cost of \$1,000.00 to the plaintiff.



*M H Mohamed Ajmeer*

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**M H Mohamed Ajmeer**  
**Puisne Judge**

**At Lautoka**

**19/01/2015**