

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

**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 39 of 2016**

**IN THE MATTER** of Section 169 of  
the Land Transfer Act, Cap. 131.

**BETWEEN** : **KAMAL DEEP SINGH** aka **KAMALDEEP SINGH** of 35-200  
Murison Boulevard, Morningside Mews, Toronoto, Ontario-M1B3R9,  
Canada.

**PLAINTIFF**

**AND** : **SUBEN SINGH** of Taurarau, Ba

**DEFENDANT**

Mr. Roopesh Prakash Singh for the Plaintiff  
Mr. Rohit Ashvin Dayal for the Defendant.

Date of Hearing : - 08<sup>th</sup> July 2016  
Date of Ruling :- 05<sup>th</sup> August 2016

**RULING**

**(A) INTRODUCTION**

- (1) The matter before me stems from the Plaintiff's Originating Summons dated 14<sup>th</sup> March 2016, made 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 **Certificate of Title No:- 41279**

- (3) The application for eviction is supported by an affidavit sworn by the Plaintiff's Power of Attorney holder, Sunil Deep Singh.
- (4) The application for eviction is strongly contested by the Defendant.
- (5) The Defendant filed an 'Affidavit in Opposition' opposing the application for eviction followed by an 'affidavit in reply' thereto.
- (6) The Plaintiff and the Defendant were heard on the 'Originating Summons'. They made oral submissions to Court. In addition to oral submissions, Counsel for the Plaintiff filed a careful and comprehensive written submission for which I am most grateful.

**(B) THE LAW**

- (1) In order to understand the issues that arise in the instant case, I bear in mind the applicable law and the judicial thinking reflected in the following judicial decisions.
- (2) 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 Ejectionment.”*

**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]

- (3) 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 ejectionment.”*

*“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.'*

- (4) 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."*

- (5) 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) **THE FACTUAL BACKGROUND**

- (1) What are the facts here? It is necessary to approach the case through its pleadings/affidavits, bearing all those legal principles uppermost in my mind.

- (2) To give the whole picture of the action, I can do no better than set out hereunder the main averments/assertions of the Pleadings/Affidavits.
- (3) The Plaintiff's Power of Attorney holder, 'Sunil Deep Singh', in his 'Affidavit in Support' deposed *inter alia*;

- Para 1            THAT I am the Plaintiff in the action herein.
- Para 2            THAT in so far as the contents of this Affidavit are within my personal knowledge, they are true; and in so far as they are not within my personal knowledge, they are true to the best of my knowledge and information and belief.
- Para 3            THAT I am the Power of Attorney holder for Kamal Deep Singh aka Kamal Deep Singh who is the registered owner of the Certificate Title Number 41279 situated at Lot 9, Tauarau, Ba. (hereinafter referred to as the said land). I annexed hereto and mark as Exhibit A copy of the Certified True Copy of the title to the said land and annexed hereto and marked as Exhibit B is the Certified True Copy of a Power of Attorney No. 55801.
- Para 4            THAT the Defendant illegally occupies a portion of the said land.
- Para 5            THAT on the 12<sup>th</sup> January, 2016 I instructed our solicitors to write to the Defendant requiring him to vacate the said land. I annexed hereto and marked as Exhibit C is a copy of my solicitor's aforementioned notice which was prepared by our Solicitors.
- Para 6            THAT the aforementioned notice was served on the Defendant on the 26<sup>th</sup> January, 2016 on the Defendant. I annex hereto and mark as Exhibit D a copy of Affidavit of Service of Ravikesh Rajeev Reddy of Lovu Seaside, Lautoka confirming service of the aforementioned notice on the Defendant.
- Para 7            THAT despite the notice being served on the Defendant he continues to reside and occupy a portion of the said land.
- Para 8            THAT the Defendant has no right to remain on the said land.
- Para 9            THAT I therefore seek order in terms of the Summons for Ejectment filed herewith.

- (4) The Defendant for his part in seeking to show cause against the Summons, filed an "Affidavit in Opposition", which is substantially as follows;

- Para 1 I am the Defendant in this action.*
2. *That I agree with 2.3.*
3. *That I deny 4 as we had lease agreement that expired, however we were advised that the said lease will be renewed. I annex hereto and marked 'SS' copy of the said lease agreement.*
4. *That I agree with 5 receiving the said land, however we have rights over the land as we have improved the land and worked for several years.*
5. *That I agree with 6 and 7.*
6. *That I agree with 7.*
7. *That I deny with 8 as I have rights over the said land as I have maintained the said property.*
8. *That I seek that the Plaintiff's application be struck out with costs.*

- (5) The Plaintiff's Power of Attorney holder, Sunil Deep Singh, filed an 'Affidavit in Rebuttal' deposing *inter alia*; (as far as relevant)

*Para 3. THAT as to paragraph 3 of the said Affidavit I say that the Title to the subject land has been transferred to the Plaintiff. I annex hereto and mark as Exhibit B is a Certified True Copy of the Certificate of Title Number 41279 which was transferred to the Plaintiff on the 17<sup>th</sup> August, 2015*

*Further the Defendant has no interest in the said land or any authority to remain thereon. The Plaintiff is now the registered proprietor of the said land.*

4. *THAT as to the letter from the office of the Provincial Administrator, Ba dated the 14<sup>th</sup> of April, 2016 I say that the office has no authority to restrain the Plaintiff from evicting the Defendant from the said land and I am advised by my Counsel and believe that the said letter serves no purpose as it cannot create an interest in the said land in favour of the Defendant as opposed to the Plaintiff.*

5. *THAT* as to paragraph 4 of the said Affidavit I say that the Defendant at all times were are that their interest would expire in any event, I deny that the Defendant has improved the said land.
6. *THAT* the Defendant wrote a letter to me on 28<sup>th</sup> December, 2014 requesting 6 months' time from 1<sup>st</sup> January, 2015 to 30<sup>th</sup> June, 2015 to vacate the said land. I annex hereto and mark as Exhibit C is a copy of the said letter.
7. *THAT* on 1<sup>st</sup> January, 2015 I replied to the said letter as the Power of Attorney holder for Kamal Deep Singh aka Kamal Deep Singh allowing them to vacate the said property by giving a time frame from 1<sup>st</sup> January, 2015 to 15<sup>th</sup> May, 2015 to relocate. A copy of the said letter is annexed hereto and marked as Exhibit D.
8. *THAT* I do not agree paragraph 7 of the said Affidavit.
9. *THAT* the Defendant is now required to vacate the Plaintiffs said land.

(D) **ANALYSIS**

- (1) This is an application brought under Section 169 of the **Land Transfer Act**, [Cap 131].

Under Section 169, 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.

For the sake of completeness, Section 169 of the Land Transfer Act, is reproduced below;

169. *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.*

In all applications under Section 169 of the Land Transfer Act, the Plaintiff/Applicant must first satisfy the prerequisites of Section 169 and 170, before the burden shifts to the Defendant.

The first requirement of Section 169 of the Land Transfer Act is that the Plaintiff must be the 'last registered proprietor' or a 'lessor with power to re-enter where the lessee or tenant is in arrears' or a 'lessor against the lessee or tenant where a legal Notice has been given or the term of the lease has expired'.

**I ask myself, under which limb of Section 169 is the application being made?**

This is the threshold question. As far as Section 169 (b) and (c) are concerned they apply where there is a landlord and tenant relationship.

Reference is made to paragraph (3) of the affidavit in support of the Originating Summons.

Para 3 *THAT I am the Power of Attorney holder for Kamal Deep Singh aka Kamal Deep Singh who is the registered owner of the Certificate Title Number 41279 situated at Lot 9, Tauarau, Ba. (hereinafter referred to as the said land). I annexed hereto and mark as Exhibit A copy of the Certified True Copy of the title to the said land and annexed hereto and marked as Exhibit B is the Certified True Copy of a Power of Attorney No. 55801.*

(Emphasis added)

Section 169 (a) of the Land Transfer Act, Cap 131, requires the Plaintiff to be the last **registered proprietor** of the land.

The term "**proprietor**" is defined in the Land Transfer Act as "*the registered proprietor of land, or of any estate or interest therein*".

The term "**registered**" is defined in the **Interpretation Act**, Cap 7, as "*registered used with reference to a document or the title to any immovable property means registered under the provisions of any written law for the time being applicable to the registration of such document or title*".



According to the memorials of Certificate of Title No. 41279 (Exhibit "A"), the Plaintiff obtained registration on 17<sup>th</sup> August 2015. Therefore, the Plaintiff holds a **registered title** and he is the **last registered proprietor** of the property comprised in Certificate of Title No:- 41279. It is clear beyond question that the application for eviction is brought under Section 169 (a) of the Land Transfer Act. It is pertinent to note that the Plaintiff's "*locus standi*" or legal standing to bring this action is not disputed by the Defendant.

(2) Let me now move to consider the requirements of Section 170 of the Land Transfer Act. Pursuant to Section 170 of the Land Transfer Act;

(1) **the Summons shall contain a "description of the Land"**

AND

(2) **shall require the person summoned to appear in the court on a day not earlier than "sixteen days" after the service of Summons.**

The interval of not less than 16 days is allowed to give reasonable time for deliberations and to prevent undue haste or surprise.

**I ask myself, are these requirements sufficiently complied with by the Plaintiff?**

The Originating Summons filed by the Plaintiff does contain a description of the subject land. The Summons described the land as that '*comprised in Certificate of Title Number 41279 situated at Lot 9, Taurarau, Ba*'. For the sake of completeness, the Originating Summons is reproduced below.

SUMMONS FOR EJECTMENT

*LET ALL PARTIES concerned attend before a Master in Chambers at the High Court Lautoka on the 14<sup>th</sup> day of April, 2016 at 8.30 o'clock in the forenoon on the hearing of **AN APPLICATION** by the above named Plaintiff that the Defendant do show cause why he should not give up immediate vacant possession to the Plaintiff of all*

*that land comprised in Certificate Title Number 41279 situated at Lot 9, Taurau, Ba and costs of this application.*

(Emphasis Added)

In the course of the argument, Counsel for the Defendant sought a dismissal of the Plaintiff's Section 169 Summons on the ground of failure to provide a 'full description' of the land (viz, name of the land, extent and the deposit Plan No.). Reliance was placed by Counsel for the Defendant on "Atunaisa Tavuto v Sumeshwar Singh", High Court Civil Action No:- HBC 0332 of 1997L.

It is true that in the case before me, the Originating Summons does not contain a full description of the land (viz, the name of the land, the extent of the land and the deposit Plan No.)

Counsel for the Plaintiff responds by pointing to the fact that there is no controversy on the Affidavits as to the Plaintiff's title.

What constitutes a "sufficient description" of the land?

In Premji v Lal [1975] FJCA 8; Civil appeal No. 70 of 1974 (17 March 1975), the Summons described the land as that "*Lease No. 100007 situated in Ross St., Nausori*". It is asserted that the Respondent's Summons did not comply with Section 170 of the Land Transfer Act, 1971 which requires that 'the Summons shall contain a description of the land'. The Court of Appeal held that the appellants had not in its affidavits made any suggestion of any misunderstanding and had shown full knowledge of the subject land of the proceedings. In the circumstances, the Court of Appeal held that the description was sufficient.

In Atunaisa Tavuto v Sumeshwar Singh" HBC0332 of 1997L, the property had been described as "*Housing Authority Lease No. 3453222*" and failed to include the additional particulars being "Crown Lease No. 10046 Lot 26 on DP 6420 in the province of Ba, Tikina consisting of an area of 552m<sup>2</sup>." The High Court was of the view that the Summons does not contain a sufficient description of the land.

In Wati v Vinod [2000] Fiji Law Rp 56; [2000] 1 FLR 263 (20 October 2000), the Defendant had sought a dismissal of the Plaintiff's Section 169 Summons on the ground of failure to provide a description of the land as required under Section 170. Prakash J took a different view stating:

*The Court has not been provided nor able to locate any authorities to suggest that "a description" as per section 170 means a full*

*description of the land. The Act itself does not specify what a description of the land entails. What is adequate or full description? What is a sufficient description? The purpose is clearly for the parties to be informed as to what land the application relates to. This is clear from the supporting affidavit. In this regard I cannot concur with the sentiments of my brother Justice Madraiwiwi in Atunaisa Tavuto v Sumeshwar Singh (Civil Action No. HBC0332 of 1997L) submitted by the Defence Counsel in support of his argument on s.170. It is not clear what Justice Madraiwiwi had meant in stating that "The Summons is defective in not properly describing the subject property" (Emphasis added). It is not clear whether "a description means full or proper description. Further, the Supreme Court in the case of Ponsami v Dharam Lingam Reddy (Appeal No. 1 of 1996) was dealing with the need for compliance with the Supreme Court Rules not a statutory provision such as Section 170. The statute does not clearly specify what "a description" requires. In Vallabh Das Premiji v. Vinod Lal, Nanki and Koki (Civil Appeal 70 of 1974) the Court of Appeal had accepted a description as in the present summons as sufficient.*

**Tavuto** (*supra*) and **Wati** (*supra*) are both decisions of the **High Court**. **Premiji** (*supra*) on the other hand is a decision of the **Court of Appeal**. It would appear from the **Court of Appeal decision** that a failure to cite the full description of the property in the Summons may not be fatal to an application for vacant possession if the Defendant was not thereby misled or misunderstood the property.

I am bound by the Fiji Court of Appeal decision.

In the present case, the Defendant in his Affidavit made no suggestion of any misunderstanding of the subject property due to the Plaintiff's failure to cite the full description of the subject property (viz, the name of the land, the extent of the land and the deposit Plan No.) The Defendant's Affidavit revealed full knowledge of the premises concerned. In the circumstances, in my opinion, the description is sufficient.

Therefore, I cannot uphold the Defendant's objection.

- (3) Now comes a most relevant and, as I think, the crucial second mandatory requirement of Section 170 of the Land Transfer Act.

The Originating Summons was returnable on 14<sup>th</sup> April 2016. According to the Affidavit of Service filed by the Plaintiff, the Originating Summons was served on the Defendant on 16<sup>th</sup> March 2016.

Therefore, the Defendant is summoned to appear before the Court on a date not earlier than “sixteen days” after the Service of Summons. Therefore, the second mandatory requirement of Section 170 of the Land Transfer Act too has been complied with.

- (4) To sum up; having carefully considered the pleadings, evidence and oral submissions placed before this Court, it is quite possible to say that the Plaintiff has satisfied the threshold criteria in Section 169 and 170 of the Land Transfer Act. **The Plaintiff has established a prima facie right to possession.**

**Now the onus is on the Defendant to establish a lawful right or title under which he is entitled to remain in possession.**

In the context of the present case, I am comforted by the rule of law expounded in the following judicial decisions.

In the case of **Vana Aerhart Raihman v Mathew Chand**, Civil Action No: 184 of 2012, decided on 30.10.2012, the High Court held;

*“There is no dispute between parties as to the locus standi of the Plaintiff, and once this is established the burden of proof shifted to the Defendant to prove his right to possession in terms of the Section 172 of the Land Transfer Act.”*

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]

- (5) What is the Defendant’s reason refusing to deliver vacant possession? The application for vacant possession is opposed by the Defendant on two grounds expressly set out in the affidavit in opposition. The reasons fall within a very small compass. Thus, I approach the matter as follows;

**Ground (01)** —→ Reference is made to paragraph (3) of the Defendant’s Affidavit in Opposition:-

*Para 3. That I deny 4 as we had lease agreement that expired, however we were advised that the said lease will be renewed. I annex hereto and marked ‘SS’ copy of the said lease agreement.*

**Ground (02)** —→ Reference is made to paragraph (04) of the Defendant’s Affidavit in Opposition:-

*Para 4. That I agree with 5 receiving the said land, however we have rights over the land as we have improved the land and worked for several years.*

(Emphasis Added)

(6) Now let me move to consider the first ground adduced by the Defendant.

It is important to remember that the title to the subject land has been transferred to the Plaintiff on 17<sup>th</sup> August 2015. (Annexure A).

The Plaintiff obtained registration on 17<sup>th</sup> August 2015 and his title is not subject to an 'equitable claim' or 'encumbrance', because at the time of registration there was no any legal agreement affecting the subject land or an agreement which is enforceable either at law or in equity. There is no valid contract or an agreement registered against the Title of the Plaintiff.

As I understand the Pleadings, the Defendant does not allege **fraud** against the Plaintiff in his affidavit in opposition.

Therefore, I am clearly of the opinion that the Plaintiff's title cannot be impeached. Section 39 of the Land Transfer Act provides that a registered proprietor, except in case of Fraud, holds the land free from all encumbrances except those registered against title.

Returning back to the case before me, there is no evidence whatsoever that the Plaintiff had acquired his registered title to the land through fraud; and in fact no allegation of fraud has been made against him. That being so, I would hold that the title of the Plaintiff to the subject Land is not subject to any interest, equitable or otherwise, of the Defendant. **Therefore, the first ground fails.**

In this regard, I am comforted by the following legislative provisions and the rule of law expounded in the following judicial decisions.

Sections 38 and 39 (1) of the Land Transfer Act, can be regarded as the basis of the concept of "indefeasibility of title" of a registered proprietor. Under Torrens System of land law the registration is everything and only exception is **fraud**.

I should quote Section 38 and 39 (1) of the **Land Transfer Act**, which provides;

**Section 38 provides;**

*Registered instrument to be conclusive evidence of title*

*"38. No instrument of title registered under the provisions of this Act shall be impeached or defeasible by reason or on account of any informality or in any application or document or in any proceedings previous to the registration of the instrument of title.*

Section 39 (1) provides;

*“39-(1) Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority, the registered proprietor of any land subject to the provisions of this Act, or of any estate or interest therein, shall except in case of fraud, hold the same subject to such encumbrances as may be notified on the folium if the register, constituted by the instrument of title thereto, but absolutely free from all other encumbrances whatsoever except...”*

I am conscious of the fact that Section 40 of the Land Transfer Act seeks to dispel Notice of a Trust or unregistered interest in existence in the following manner;

*40. Except in the case of fraud, no person contracting or dealing with or taking or proposing to take a transfer from the proprietor of any estate or interest in land subject to the provisions of this Act shall be required or in any manner concerned to inquire or ascertain the circumstances in or the consideration for which such proprietor or in any previous proprietor of such estate or interest is or was registered, or to see to the application of the purchase money or any thereof, or shall be affected by notice, direct or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.”*

(Emphasis added)

With regard to the concept of “**indefeasibility of title of a registered proprietor**”, the following passage from the case of “**Eng Mee Young and Others (1980) AC 331**” is apt and I adopt it here;

*“The Torrens system of land registration and conveyancing as applied in Malaya by the National Land Code, has as one of its principle objects to give certainty to land and registrable interests in land. Since the instant case is concerned with Title to the land itself their Lordships will confine their remarks to this, though similar principles apply to other registrable interests. By s.340 the title of any person to land of which he is registered as proprietor is indefeasible except in cases of fraud, forgery or illegality and even in*

*such cases a bond fide purchase for value, can safely deal with the registered proprietor and will acquire from him on indefensible registered title."*

- (7) Let me now move to consider the second ground adduced by the Defendant.

On the question of whether the Defendant's occupation of the subject land for whatever length of time, a circumstance giving rise to any form of proprietary estoppel or equity, if any authority is required, I need only refer to the sentiments of Fatiaki J in Wati v Raji (1996) FJHC 105; The Hon. Judge held;

*"Turning finally to the question of 'proprietary estoppel', Suffice it to say that the mere occupation of a piece of land on a yearly tenancy for whatever length of time, is not a circumstance capable of giving rise to any form of 'estoppel', proprietary or otherwise, nor in my view is any 'equity' created thereby which the court would protect.*

(Emphasis added)

Applying those principles to the present case and carrying those principles to their logical conclusion, I hold that the Defendant's occupation of the land for whatever length of time is not a circumstance giving rise to any form of proprietary estoppel or equity.

Moreover, the Defendant contends that he improved the land. The Plaintiff denies. The Defendant failed to adduce evidence to establish as to how he improved the subject land. He fails to provide any evidence on the issue. **Therefore, the second ground fails.**

- (8) To sum up, for the reasons which I have endeavored to explain, it is clear beyond question that the Defendant has failed to show cause to remain in possession as required under Section 172 of the Land Transfer Act.

At this point, I cannot resist in reiterating the judicial thinking reflected in the following judicial decisions;



In the case of Morris Hedstrom Limited v Liaquat Ali, CA No, 153/87, the Supreme Court held,

*“Under Section 172 the person summonsed may show cause why he refused to give possession of the land 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 a right must be adduced.”*

(Emphasis is mine)

In Shankar v Ram, (2012) FJHC 823; HBC 54.2010, the Court held;

*“What the Defendant needs to satisfy is not a fully – fledged right recognized in law, to remain possession but some tangible evidence establishing a right or some evidence supporting an arguable case for such a right to remain in possession. So, even in a case where the Defendant is unable to establish a complete right to possession, if he can satisfy an arguable case for a right still he would be successful in this action for eviction, to remain in possession.”*

Being guided by those words, I think it is right in this case to say that the Defendant has failed to adduce some tangible evidence establishing a right or supporting an arguable case for such a right.

I disallow the grounds adduced by the Defendant refusing to deliver vacant possession.

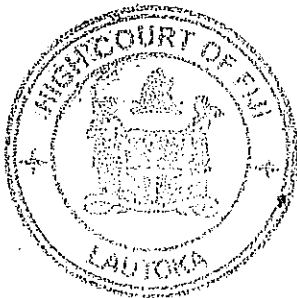
**(E) CONCLUSION**

Having had the benefit of oral submissions for which I am most grateful and after having perused the affidavits, written submissions and the pleadings, doing the best that I can on the material that is available to me, I have no doubt personally and I am clearly of the opinion that the Defendant has failed to show cause to remain in possession as required under Section 172 of the Land Transfer Act.

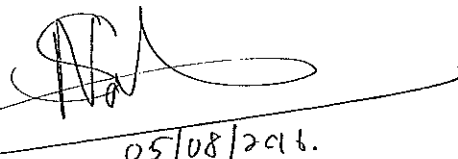
In these circumstances, I am driven to the conclusion that the Plaintiff is entitled to an order as prayed in Summons for immediate vacant possession.

**(F) FINAL ORDERS**

- (1) The Defendant to deliver immediate vacant possession of the land described in the Originating Summons, dated 14<sup>th</sup> March 2016.
- (2) The Defendant to pay costs summarily assessed in a sum of \$ 500.00 to the Plaintiff within 14 days hereof.



At Lautoka  
05<sup>th</sup> August 2016

  
05/08/2016.  
Jude Nanayakkara  
Master