

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

Civil Action No. HBC 295 of 2015

**IN THE MATTER** of an application under  
Section 169 of part XXIV of the Land  
Transfer Act, Cap. 131 for an Order for  
immediate vacant possession.

**BETWEEN:** DEEP SINGH of Razak Road, Lautoka.

**PLAINTIFF**

**AND:** DEVINA DEVI PRASAD of Lot 23, Nakunuku Place, Navosai.

**DEFENDANT**

**BEFORE:** Master Vishwa Datt Sharma  
**COUNSELS:** Mr. Kumar. P - for the Plaintiff  
Ms. Kean. T - for the Defendant

Date of Hearing: 06<sup>th</sup> June, 2016  
Date of Ruling: 5<sup>th</sup> September, 2016

**RULING**

*(Application seeking Vacant Possession pursuant to  
s169 of the Land Transfer Act Cap 131)*

**INTRODUCTION**

1. The Plaintiff filed the Originating Summons on 01<sup>st</sup> September, 2015 and sought for the following orders:

- (a) That the Defendant do show cause why an Order for immediate vacant possession of the premises on the land comprised and described on Native Land No. 22721 Navosai Subdivision Lot 175 as Shown Lot 23 on SO. 2563 which the Plaintiff is the registered proprietor should not be made against the Defendant upon the grounds set forth in the Affidavit of Deep Singh.
2. There are 2 (Two) affidavits filed before the Court:
- a) Affidavit in Support of Deep Singh filed on 01<sup>st</sup> September, 2015 ("Plaintiff's Affidavit");
- b) Affidavit in Opposition of Devina Devi Prasad filed on 19<sup>th</sup> November, 2015 ("Defendant's Affidavit");
3. The proceedings was heard on a defended basis and therefore this court has to determine the pending issue in terms of the laws provided for in **ss169, 171 and 172 of the Land Transfer Act [Cap 131]**.

### THE LAW

4. The application is filed in terms of **s.169 of the Land Transfer Act [Cap 131]** which 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) *lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired."*

5. Pursuant to **section 172 of the Act** the onus is on the **Defendant to show cause** why she refuses to give up possession to the Plaintiff and why an order for possession should not be made against her.

6. In the case of **Ram Narayan v Moti Ram (Civ. App. No. 16/83)** Gould J.P. said:

*"... the summary procedure has been provided in the Land Transfer Act and, where the issues involved are straightforward, and particularly where there are no complicated issues of fact, a litigant is entitled to have his application decided in that way."*

7. The procedure under **s.169** is governed by **sections 171 and 172 of the Land Transfer Act (Cap 131)** respectively which stipulates 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."*

(Underline is mine for emphasis)

8. As far as the requirements in terms of **section 172** are concerned, the Supreme Court in the case of **Morris Hedstrom Limited v. Liaquat Ali (Action No. 153/87** at p2) said 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."*

9. The requirements of **section 172** have been further elaborated by the Fiji Court of Appeal in **Ajmat Ali s/o Akbar Ali v Mohammed Jalil s/o Mohammed Hanif (Action No. 44 of 1981 - judgment 2.4.82)** where the court said:

*"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. There is accordingly nothing in section 172 which requires an automatic order for possession unless "cause" is immediately shown.*

*(Emphasis added)*

10. In **Premji v Lal [1975] FJCA 8; Civil Appeal No 70 of 1974 (17 March 1975)** the Court of Appeal said:

*"These sections and equivalent provisions of the Land (Transfer and Registration) Ordinance (Cap. 136-1955 Laws of Fiji) have been considered in a number of cases in this court and the Supreme Court. In Jamnadas & Co. Ltd. v. Public Trustee and Prasad Studios Ltd. (Civil Appeal No. 39 of 1972 - unreported) this court said -*

*'Under Section 172 of the Act the Judge is required to dismiss the summons if the respondent proves to his satisfaction a right to possession ...'*

11. Under **Section 172 of the Act** the judge is empowered to dismiss the summons if the respondent proves to her satisfaction that she has a valid defence, a right to possession, locus standi and or a licence. It further provides that a judge may make any order and impose any terms that he may think fit. The dismissal of the summons is not to prejudice the right of a **Plaintiff** to take any other proceedings to which he may be otherwise entitled.
12. Reference is made to the case authorities of **Caldwell v. Mongston (1907) 3 F.L.R. 58** and **Perrier Watson v. Venkat Swami (Civil Action 9 of 1967 - unreported)** wherein the **Supreme Court** held-

*'that if the proceedings involve consideration of complicated facts or serious issues of law, it will not decide the cases on summary proceedings of this nature, but will dismiss the summons without prejudice to the Plaintiff's right to institute proceedings by Writ of Summons.'*

### **Plaintiff's Case**

**13. The Plaintiff's Affidavit filed in this case deposed as follows:**

- (i) That he is the registered lessee of the above mentioned property situated at 23 Nukunuku Street, Navosai Subdivision in the Island of Vitilevu.
- (ii) That the said property in question is comprised on Native Lease No. 22721 being Lot 23 on SO.2563 in the District of Naitasiri and Island of Vitilevu, upon which is constructed a single storey wooden house with 3 bedrooms residential building.
- (iii) That the Defendant and he were divorced on the 17<sup>th</sup> day of February 2010.
- (iv) That the Defendant had filed an application seeking a share in the said matrimonial property. The Defendant was not given any share of the matrimonial property.
- (v) That the Defendant has been illegally occupying the property in the above mentioned premises.
- (vi) That the Defendant refused to give vacant possession of the said premises when requested which is now illegally occupied by the Defendant.
- (vii) That he was informed and verily believed that his then solicitor Messrs Koroi Law on 12<sup>th</sup> March 2014 duly served the defendant with a Notice to Vacate.
- (viii) That the said Notice to Quit was served on the Defendant by Ms. Nani of Mobile Police Post on 14<sup>th</sup> March, 2014.
- (ix) That the Defendant has failed to vacate the said premises as requested in the Notice to Quit.
- (x) The Defendant has also failed to pay off the city rates and ground rental since 2010 and all bills, city rates and ground rentals should be cleared.

### **Defendant's Case**

**14. The Affidavit in Response deposed by the Defendant states as follows:**

- (i) *The Plaintiff and the Defendant separated in 2008 and the house in question is under the Plaintiff's name. The property was given to Mr Singh on 10<sup>th</sup> April, 2002 by way of a mortgage sale.*
- (ii) *The Plaintiff and the Defendant did have a family matter which was heard in the High Court of Fiji, where she was the Applicant. When the learned Judge Ms Anjala Wati delivered her judgment on 5<sup>th</sup> September, 2013 it was noted that back then the house in question now in the Plaintiff's application was still under debt. The certificate showed that two financiers assisted in the buying of the property namely the FNPF and the Housing Authority mortgage noted on the memorial would have been discharged.*
- (iii) *But now looking at the Plaintiff's affidavit where he has annexed the title it is seen that the Housing Authority mortgage has been cancelled and only the FNPF charge remains. So the Plaintiff must have somehow cleared it prior to filing this application in High Court.*
- (iv) *When the Plaintiff and the Defendant built their house in 2003 - 3004 they had given up part of the house for rent in 2004 and then they went to Lautoka as a family to stay there. The house was rented out for \$150 to \$250 per month. It was a single house and a self-contained flat.*
- (v) *The Plaintiff then later gave her a letter dated 12<sup>th</sup> December 2008 and said for them including their two children to go and stay in the house in question. He then gave another handwritten document dated 12<sup>th</sup> December 2008 allowing them to stay and rent on the property.*
- (vi) *She would pay the water, electricity bills and also the town rates.*
- (vii) *In addition she paid the Nasinu Town Council from the period in 2012 until March 2015. The receipts would be under Josateki's name from 2012 but from 2014 her name was then put on the receipt.*
- (viii) *She ceased making payments in 2013 since there were made by the Family Magistrates Court Nasinu allowed to reside and stay on the property. This order was made on 12<sup>th</sup> September 2013. It was also needs to be stated that prior to the orders made in 2013 there were interim orders as well made by the learned Magistrate Tomasi Bainivalu in Suva Family Court on 1<sup>st</sup> March, 2011 that the Plaintiff not remove her from the said property until determination of the property.*
- (ix) *At present she solely paid the native lease. On 11<sup>th</sup> February 2014 she paid \$1000, on 24<sup>th</sup> October, 2014 she paid \$842.90, on 2<sup>nd</sup> February 2015 she paid \$178,75, on 26<sup>th</sup> August 2015 she paid \$100. She also received a letter from iTaukei Land Trust Board on 12<sup>th</sup> April, 2013 indicating that the Plaintiff owed \$1082.87.*
- (x) *Due to this verbal and written representation by the Plaintiff and her mistaken belief that the same would be done, her family and the Defendant moved onto the said property.*
- (xi) *To further assist her family and the Defendant, she had made some renovations to the house like change the roof , replaced the timber of the house, build a terrace in front of the house, done maintenance work all around the house, painted the house, changed the windows and also did some electrical work to the house. This was also given verbal consent from the Nasinu Town Council to do such works. The receipts attached are under Parveen*

Kumar as he was the carpenter at that time. The address noted in the receipted annexed is for the house in question thou. She mainly did improvement in the year 2014 - 2015.

- (xii) She has extended and spent quite a substantial amount of money on the said property aside from the small repairs that are necessary to maintaining such an old house and the rented flat. Her family has always treated the said house that they reside on as their own and has had no worries and/or issues with respect to their living on the property until recently. He had verbally given her permission in improve the house and perform renovations to the said house but at her expense.
- (xiii) The Plaintiff had however tried to dismantle the house in 2008 after allowing them to live on the property. However she took out a restraining order against him and certain order were made against him. She was also able to lodge a police report against him for assault. The order is dated 27<sup>th</sup> November, 2008.
- (xiv) Further in response to paragraph 6 she stated that she was not living on the property illegally as he had initially asked her and the children to live on teh said property and as per order by the Family Court was told to remain on the said property.
- (xv) She verily believe that due to the express authority of the Plaintiff initially after moving from Lautoka, the tacit approval of the Plaintiff and her residing on the said property for over 7 years are viable reasons for her not vacating the said property.

### **ANALYSIS and DETERMINATION**

- 15. The question for this court to determine is **whether the Plaintiff is entitled to the vacant possession** of the premises on the land comprised and described on Native Land No. 22721 Navosai Subdivision Lot 175 as Shown Lot 23 on SO. 2563, of which the Plaintiff is the registered proprietor or Lessee of in terms of **s.169 of the Land Transfer Act Cap 131?**
- 16. In this case, the Plaintiffs must first comply with the requirements of **section 169 of the Land Transfer Act cap 131**, which are stated hereunder as follows:
  - (a) The first requirement or the first limb of section 169 is that the applicant must be the last registered proprietor of the subject land.
  - (b) The second is that the applicant be a lessor with power to re-enter where the lessee or tenant is in arrears; and
  - (c) The third is where a lessor against a lessee or tenant where a legal notice has been given or the term of the lease has expired. The second and third limb of

*section 169 does not appear to apply in that the defendant is not the plaintiff's tenant who is in arrears and/or the term of the lease has expired.*

*(Underline for emphasis)*

17. In this instance, **the first limb of s169 applies**; there is no dispute that the Plaintiff is the **registered Lessee** or a **proprietor** in this instant case.
18. In this respect the plaintiff has annexed in his affidavit a **certified true copy of the Native Lease No. 22721**.  
  
The **Native Lease No 22721** clearly shows that the **Lease** was **transferred to the Plaintiff** by a Mortgagee sale on 10<sup>th</sup> April, 2002.
19. The term "**Lessee**" is defined as proprietor of a Lease or sub lease in the Land Transfer Act. Therefore, the term "**Lessee**" follows within the ambits of **section 169** application.
20. The Plaintiff is for the purposes of **section 169** the **last registered proprietor and Lessee** of the said property.
21. After the Plaintiff has established the **first limb test of section 169** that is that the Plaintiff is the **registered proprietor and Lessee of the property**, then the **Defendant** bears the **onus of showing cause** as to why **vacant possession** should not be granted to the Plaintiff.
22. Pursuant to **section 172 of the Land Transfer Act Cap 131**. The **Defendant** needs to satisfy this court on affidavit evidence that she has a right to possession. (Case of **Muthusami v Nausori Town Council F.C.A. 23/86** refers).
23. There is no need to prove conclusively a **right to possession** and it is sufficient for the **Defendant** to prove that there is **some tangible evidence** establishing the existence of a right or of an **arguable defence**. (Case No. **152 of 1987- Morris Hedstrom Ltd v Liaquat Ali** refers).
24. **Sections 39-42 of the Land Transfer Act**, and under the Torrens system of land registration which operates in Fiji, the title of the registered proprietor is indefeasible unless actual fraud is proved. (Case



of *Subramani v Sheela* [1982] FJCA 11; [1982] 28 FLR 82 (2 April 1982); *Assets Company Ltd v Mere Roihi* [1905] AC 176 at p. 210; *Fels v Knowles* 26 N.Z.L.R. 608, at p 620 refers).

25. In *Subramani* (supra) the Fiji Court of Appeal (per Gould V.P.' Marsack, J.A., and Spring J.A.) states as follows-

*"The indefeasibility of title under the Land Transfer Act is well recognized; and the principles clearly set out in a judgment of the New Zealand Court of Appeal dealing with provisions of the New Zealand Land Transfer Act which on that point is substantially the same as the Land Transfer Act of Fiji. The case is Fels v Knowles 26 N.Z.L.R. 608. At page 620 it is said:-*

*"The cardinal principle of the statute is that the register is everything, and that, except in case of the actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against all the world."*

#### *Proprietary Estoppel*

26. The **Defendant** raised the defence of **Proprietary Estoppel** stating-

*"...Upon living on the property after being chased from Lautoka in 2008, the Defendant spent a lot of money and made a lot of payments towards the house and even did improvements to the house.....also the Plaintiff gave a letter allowing her to stay on the said property and in his affidavit confirms the same.. "*

27. In ***Denny v Jessen*** [1977] 1 NZLR 635 at 639 Justice White summarized **proprietary estoppel** as follows:

*"In Snell's Principles of Equity (27th ed) 565 it is stated that proprietary estoppel is "... capable of operating positively so far as to confer a right of action". It is "one of the qualifications" to the general rule that a person who spends money on improving the property of another has no claim to reimbursement or to any proprietary interest in the property. In *Plaimmer v Wellington City Corporation* (1884) 9 App Cas 699; NZPCC 250 it was stated by the Privy Council that "...the equity arising from expenditure on land need not fail merely on the ground that the interest to be secured has not been expressly indicated."(ibid, 713, 29). After referring to the cases, including *Ramsden v Dyson* (1866) LR 1 HL 129, the opinion of the Privy Council continued, "In fact the court must look at the*

circumstances in each case to decide in what way the equity can be satisfied" (9 App Cas 699, 714; NZPCC 250, 260). In Chalmers v Pardoe[1963] 1WLR 677:[1963] 3 All ER 552 (PC) a person expending money was held entitled to a charge on the same principle. The principle was again applied by the Court of Appeal in Inwards v Baker [1965] 2 QB 29; [1965] 1 All ER 446. There a son had built on land owned by his father who died leaving his estate to others. Lord Denning MR, with whom Danckwerts and Salmon L JJ agreed, said that all that was necessary:

"... is that the licensee should, at the request or with the encouragement of the landlord, have spent the money in expectation of being allowed to stay there. If so, the court will not allow that expectation to be defeated where it would be inequitable so to do."(*ibid*, 37,449).

28. Reference is made to the case of **Wilfred Thomas Peter v Hira Lal and Frasiko**; HBC 40 of 2009 where Her Ladyship Justice Wati said:

*'I must analyse whether the four conditions have been met for the defense of proprietary estoppel to apply. The four conditions are:*

- i. An expenditure;*
- ii. A mistaken belief*
- iii. Conscious silence on the part of the owner of the land; and*
- iv. No bar to the equity*

29. The Defendant submitted the following in order to satisfy this court on the **Four (4) conditions of the proprietary test-**

- (i) **Expenditure-** *The Defendant submitted 'that paragraphs 13, 15, 18, 19 and 21 of the Defendant's affidavit filed on 16<sup>th</sup> October, 2015 mentions that she spent a lot of money, made payments and did a lot of improvements towards the said house.'*
- (ii) **Mistaken Belief-** *the Defendant submitted 'that it is evident from her affidavit that at all times she was under a mistaken belief that she was allowed to reside on the said property with the children and improve the house. Further as per the Family Magistrates Court order that she was not to be removed from the property until the final determination of the property matter.'*
- (iii) **Conscious silence on the part of the Plaintiff-** *The Defendant submitted 'that it was evident from the Defendant's affidavit as well as the Plaintiff's reply Affidavit at paragraph 12c, that the Defendant had been in occupation of the said property for over 6 years without there being any eviction by the Plaintiff and even when parties were married, they used to reside on the said property. The Plaintiff only issued a notice to vacate 6 years later. Stating further, the Plaintiff willfully remained silent especially when the Defendant went on to extend the home which therefore showed their tacit approval of her occupation on the said property. The failure on the part of the Plaintiff to take action against the Defendant clearly demonstrates that the Plaintiff had willfully stood by and encouraged the mistaken belief on the part of the Defendant that he had an unfettered right to reside on the said property.'*

- (iv) **No Bar to Equity-** *The Defendant referred the case of **Blue Latitude Ltd** supra Snell's Equity at page 576 (29<sup>th</sup> Edition 3<sup>rd</sup> Impression 1994) under 'No bar to equity' which stated as follows:*

*"No equity will arise if to enforce the right claimed would contravene some statute, or prevent the exercise of a statutory discretion or prevent or excuse the performance of a statutory duty."*

*The Defendant stated that in the instant case, no statute or performance of a statutory duty will be contravened if equity arises.*

30. The Defendant further submitted that 'she was allowed verbally to improve and make improvements to the property but at her own cost and that is what she did. There was no written agreement and contract and no issues for Defendant to reside on the property.'
31. On the other hand, the **Plaintiff submitted as follows-**
- (i) **Expenditure** - *The Plaintiff submitted that the improvement made on the property was without the consent and authority of the Plaintiff. The Defendant neither consulted nor advised the Plaintiff about any improvements on his property. Further, he stated that there was no promise made by the Plaintiff to the Defendant to reside in his house and pay the town rates and land rent. The Plaintiff did not give consent to the Defendant to improve or renovate his property. Therefore, the principle of Promissory Estoppel does not apply to the Defendant. Also Estoppel cannot be pleaded against the Plaintiff.*
- (ii) **Adverse Possession** - *The Plaintiff submitted that the Defendant has been living forcefully in the property after the Nasinu Family Magistrate's Court and Suva Family High Court dealt with the property issue.*
32. It is noted that the Plaintiff did not think appropriate to submit on the remaining three (3) conditions of the proprietary test but submitted otherwise as contained in his written submissions.
33. I will now deliberate on the aforesaid arguments raised by both parties to the proceedings in terms of the **Defence of Proprietary Estoppel**.
34. The **Plaintiff's contention** has been that at no time he made any promises nor gave any consent to the Defendant to carry out the improvements to the property as has been outlined by the Defendant and therefore, the Principle of Estoppel does not apply in this case as pleaded by the Defendant and the Plaintiff is entitled to have an order for vacant possession.

As far as the **Defendant** is concerned, the Plaintiff allowed her to reside on the property and she carried out the improvements and expenditure as outlined by her in her affidavit. Further, the Plaintiff continuously remained silent which caused the Defendant to have a mistaken belief of her right to reside on the property and therefore, her contention is that she is entitled to reside on the property accordingly.

35. It is also pertinent to note that there was a Family case initiated by the Defendant (Wife) with regards to the same property for which the Plaintiff is now seeking for an order for vacant possession.

The related Nasinu Family Magistrate's Court matter on **Alteration of Property Interests** and a subsequent appeal decision of the Family High Court in Suva, reference nos. 08/NAS/0931 and 12/SUV/0004 refers respectively.

36. On 27<sup>th</sup> February, 2009, the wife (The Defendant in this case) filed an application for **distribution of the property** of the parties to the marriage. The application **related to the single storey wooden house with 3 bedrooms with all amenities situated at lot 22 Narere, Navosai** (The same property as in this case) and the FNPF monies of the Respondent (The Plaintiff in this case).
37. The Family Magistrates Court heard the application on **distribution of property** on 17<sup>th</sup> February, 2010 and subsequently made an order of **50% distribution on the wife's (Defendant's) contribution as a homemaker parent and her financial and non-financial contributions towards the house on the Native Land (the property in this case)**.
38. The wife (Defendant in this case) appealed the Family Magistrate's Court decision and after a hearing and determination a ruling was delivered on 05<sup>th</sup> September, 2013.

**The appeal was dismissed and the Family High Court affirmed the orders of the Family Magistrate's Court.** Further the Family High Court **extended the orders to include that if FNPF is able to transfer the 50% of the monies in the husband's (Plaintiff in this case), account as at 17<sup>th</sup> February, 2010, the wife's (Defendants) account then such exercise may be undertaken by the FNPF otherwise the orders of the lower Court is to be complied with.**

39. I also note from the annexure marked 'DP8 (a)' within the affidavit in opposition of the Defendant that there is a Family Magistrate Court order made on 01<sup>st</sup> March, 2011 - "that the Respondent (Plaintiff) is hereby ordered not to remove the Applicant lady (Defendant) and the 2 children of the marriage from the property located at Lot 23, Nukunuku Place, Narere, Navosai until the determination of the property matter." (underline is mine).

The Court order as per annexure 'DP8 (a)' would have lapsed after the Family High Court delivered its ruling on 01<sup>st</sup> March 2011 and therefore the Defendant should have moved out of the said property. She continued to reside on the property and now claims that the Plaintiff gave her promise and allowed her to reside on the property and therefore she has carried out certain improvements and incurred expenditure to the property on the mistaken belief that the Plaintiff has remained silent and would not seek an order for a vacant possession.

**However**, there is no concrete evidence to what she has stated hereinabove apart from the fact that she had paid the Town Council rates and bought hardware material as per invoices annexed within her affidavit whilst she resided on the property.

*In Snell's Principles of Equity- 'It is "one of the qualifications" to the general rule that a person who spends money on improving the property of another has no claim to reimbursement or to any proprietary interest in the property.'*

The Family Magistrate's Court as well as the Family High Court, on appeal, has made a final decision on the **property matter** and that is the reason why the Plaintiff has now commenced the current proceedings seeking an order for a **vacant possession** against the Defendant (Wife). I therefore find in terms of the Family Court's initial interim order and the final Decision that the Defendant (Wife) cannot continue to reside on the said property since the property matter by the Family Court has been finalized.

40. Finally, the Defendant was aware of the fact that the Family Magistrate's Court had granted an interim order that the Plaintiff (Husband) not to remove the Defendant (Wife) from the property until the final determination of the property matter. Further, if she thought that the Plaintiff (Husband) had given any

promise to her in terms of the occupation of the said property or premises, then why did she not think appropriate and important that in the said circumstances she should have made an appropriate application for a '**Vesting Order**' and seek a legal interest and entitlement to the property in occupation, rather she thought fit and proper to continue with the occupation of the said premises in the manner that she did and is now faced with an application for vacant possession by the Plaintiff (Husband), accordingly.

41. For the aforesaid rational, I find that the **property comprised and described on Native Land No. 22721, Navosai Subdivision, Lot 175 as Shown Lot 23 on SO. 2563** was transferred by the mortgagee sale to the Plaintiff on 10<sup>th</sup> April, 2002 as the lessee and the registered proprietor. Thus, the Plaintiff being the owner of the property in question on the Native Lease No 22721.
42. The defendant has failed to show any cause including *a right to possession* or has *tangible evidence establishing a right or supporting an arguable case for such a right that must be adduced in terms of section 172 of the Land Transfer Act Cap 131*.
43. There is accordingly nothing in *section 172* which requires an automatic order for possession unless "cause" is immediately shown.
44. Further, the Defendant has failed to satisfy this court on the four (4) limb test for the proprietary estoppel which she raised in her Defence.
45. Following are the final orders of this court.

#### FINAL ORDERS

- A. **The Defendant to give vacant possession of the premises on the land comprised and described on Native Land No. 22721, Navosai Subdivision, Lot 175 as Shown Lot 23 on SO. 2563 to the Plaintiff.**
- B. **The Defendant to deliver vacant possession to the Plaintiff in one (1) month's time on or before the 5<sup>th</sup> October, 2016.**

- C. Execution is hereby suspended till the 5<sup>th</sup> October, 2016.
- D. There will be no order as to Costs made against the Defendant since she is represented by the Legal Aid Commission.

Dated at Suva this 5<sup>th</sup> day of September, 2016



MR VISHWA DATT SHARMA  
Master of High Court, Suva

cc: M. A. Khan Esq., Suva  
Legal Aid Commission, Suva.