

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

Civil Action No. HBC 17 of 2017

**BETWEEN:**                 **SON MATI** of Valley Road, Sigatoka.

**PLAINTIFF**

**AND:**                       **MS. RAJANI PRAKASH CHAND**  
**MR. PUNNAM REDDY**  
**MR. KRISHNIL PRAKASH CHAND**  
**MR. SUBHASH CHAND** of Lot 3 Naduayabi No. 2, Stage 1 LD Ref:  
4/14/7867 Vuci Road, Nausori.

**DEFENDANTS**

**Counsel:**                 **Mr. Sunil Kumar** for the Plaintiff  
**Ms. Karan** for the Defendants

**Before:**                   **Master Vishwa Datt Sharma**

**Date of Ruling:**       **21<sup>st</sup> September, 2017**

**RULING**

*(Amended Originating Summons pursuant to Order 113 of the High Court Rule, 1988  
and the Inherent Jurisdiction seeking an order for vacant possession.)*

## INTRODUCTION

1. The Plaintiff by her **Originating Summons** dated 26<sup>th</sup> January, 2017 is seeking an order that the Defendants do forthwith give Vacant Possession of all those premises being on Lot 3 Naduayabi No. 2 Stage 1 LD Ref. 4/14/7867 in Vuci Road Nausori.
2. There are 3 (Three affidavits) filed before the Court:
  - a) Affidavit in Support of Son Mati filed on 25<sup>th</sup> January, 2017 ("Plaintiff's Affidavit");
  - b) Affidavit in Response of Rajani Prakash Chand filed on 06<sup>th</sup> March, 2017 ("Defendant's Affidavit In Response"); and
  - c) Affidavit in Reply of Son Mati filed on 29<sup>th</sup> March, 2017 ("Plaintiff's Answering Affidavit").

## PRACTICE and PROCEDURE

3. The Plaintiff has made his application pursuant to **Order 113** of the High Court Rules, 1988 and **Section 169 of Part XXIV of the Land Transfer Act 1978, Cap 131**.
4. A Section 169 application is a summary procedure for possession which enable various categories of persons to call upon a person in possession of a property to show cause why he or she should not give up possession. One such category, specified in paragraph (a) of the section is *'the last registered proprietor of the land'*. *(The Plaintiff falls under this category)*.
5. Pursuant to **Section 172 of the Act**, the onus is on the Defendant to show cause why he is refusing to give up possession to the Plaintiff and why an order for possession should not be made against him.
6. The Plaintiff is the registered owner is a Lessee in this instance. The term "Lessee" is defined as proprietor of a lease or sub lease in the Land Transfer Act. Hence the term "Lessee" follows within the ambit of the **Section 169 application**.
7. *"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."*

8. Pursuant to *section 172 of the Act* the onus is on the Defendants to show cause why he refuses to give up possession to the Plaintiff and why an order for possession should not be made against him.
9. This application is also filed in terms of *Order 113 of the High Court Rules, 1988*, since the Plaintiff is the Registered Proprietor under the Deeds Registration and has the better Title to the land.

#### ANALYSIS AND DETERMINATION

10. The First question for this court to determine is whether the Plaintiff has satisfied to this Court the pre-requisites of section 169 and 170 of the Land Transfer Act, Cap 131.

If, the answer to the above question is in affirmative, then the burden shifts to the Defendants where they are required to show cause in terms of their right to remain on the Plaintiff's property and whether the Defendants have any arguable case before this Court, in terms of *s.172 of the Land Transfer Act Cap 131?*

11. 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)*

12. In this case, the Plaintiff 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)*
13. In the instant case, the first limb of S169 applies. Further, the Plaintiff is also the Registered Proprietor under the Registrar of Deeds. The Annexure marked 'A' Transfer of Native Lease within the Affidavit in Support of the Plaintiff refers to the same.
14. However, the Transfer of Native Lease is registered under the Registrar of Deeds. The question that arises in mind is whether the Plaintiff has the Registered Lease of the property as it is mandatory.
15. The Court further makes a notation that the Transfer of Lease upon which the Plaintiff derives and bases his Locus Standi to institute and commence proceedings against the Defendants, was in fact registered under the Registrar of Deeds on 28<sup>th</sup> September, 2015 and not under the Registrar of Titles. There is a difference herein when a Transfer is registered under the Registrar of Deeds and the Registrar of Titles. If it is registered under the Registrar of Deeds then it means it is for Safe keeping purposes of the records otherwise when it is registered under the Registrar of Titles then it confirms that the iTLTB who is the custodian of all iTaukei land in Fiji Jurisdiction has issued the Agreement of Lease to the Lessee and/or the proprietor which is then registered with the Registrar of Titles.
16. This is not the case here. The Plaintiff Son Mati does not have a Registered Lease issued by the iTLTB and therefore, I hold that the Plaintiff does not have the Locus Standi to bring this action against the Defendants.

She will only be able to institute and commence proceedings once she has been issued with a proper and an **Official Registered Lease** by the iTLTB accordingly.

17. It is important and appropriate at this instance that I make reference to **Section 18 of the Land Transfer Act, Cap 131** also which stipulates as follows-

*Instrument of title to be evidence of proprietorship*

18. Every duplicate instrument of title duly authenticated under the hand and seal of the Registrar shall be received in all courts as evidence of the particulars contained in or endorsed upon such instrument and of such particulars being entered in the register and shall, unless the contrary be proved by the production of the register or a certified copy thereof, be conclusive evidence that the person named in such instrument or in any entry thereon as seized of or as taking an estate or interest in the land described in such instrument is seized or possessed of such land for the estate or interest so specified as from the date of such certificate or as from the date from which such estate or interest is expressed to take effect.  
(Underline mine for deliberation)

18. A careful reading of **Section 18** hereinabove makes it very clear that every duplicate Instrument and/or copy of title needs to be endorsed with a seal of the Registrar and can then only be admitted to prove as conclusive evidence unless the Register is produced into Court to prove the Instrument and/or a certified true copy of the Title/Lease is filed with the Court.
19. The Transfer of Native Lease in the present case filed by the Plaintiff seeking an eviction order is not a Certified True Copy of the Original Transfer of Native Lease in terms of **Section 18 of the Land Transfer Act, Cap 131**.
- Further, the Transfer of Native Lease Registered with the Registrar of Deeds is also not a Certified True Copy of the Original copy of the Transfer of Native Lease.
20. Therefore, the defect in the Plaintiff's case cannot be cured by the usage of the Plaintiff's copy of the Transfer of Native Lease annexed within their affidavit. The Plaintiff is required to file the **Official Registered Native Lease** which should now be obtained from the iTLTB upon application and register the same with the Registrar of Titles that will give effect to his Proprietorship entitled accordingly.
21. In absence of any evidence of the Registered Native Lease by the Plaintiff under the hand of the Registrar, the Court will not be able to ascertain the legal Registered Proprietorship and/or Lessee of the said property under contention, which is the first

requirement in terms of Section 169 of the Land Transfer Act, Cap 131 which the Plaintiff must prove to Court.

22. In the circumstances, the Plaintiff's case is fatal and cannot be taken any further to determine the substantive issue of Vacant Possession as sought herein.
23. Counsels and litigants must always ensure that they file applications within the ambits of the Rules and Laws and are in compliance of every procedure set down by the Rules and Laws so that the Courts are able to deal with their applications in an expeditious, just and fair manner.
24. In Conclusion, for the aforesaid rational ,I have no other alternative but to make the following final Orders-

#### FINAL ORDERS

- A. The Plaintiff's Originating Summons seeking an order for the Defendants to give Vacant Possession of all those premises being on Lot 3 Naduayabi No. 2 Stage 1 LD Ref. 4/14/7867 in Vuci Road Nausori, fails and is hereby Dismissed.
- B. There will be an order for Costs summarily assessed at \$500 to be paid within 14 days hereof.

DATED AT SUVA THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2017.



MR VISHWA DATT SHARMA  
Master of High Court, Suva

cc: Sunil Kumar Esq., Nausori.  
Messers Pacifica, Nausori.