

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 39 of 2016

Civil Action No. HBC 40 of 2016

BETWEEN: PHILIP SATYANAND MADHAVAN of Suva, PITA CILI of Nausori, VILIAME VAKASAUSAU of Suva and PRITAM SINGH of Lautoka and Ministers of Religion and TRUSTEES FOR THE GENERAL CONFERENCE OF THE ASSEMBLIES OF GOD OF FIJI.

1<sup>ST</sup> - 4<sup>TH</sup> PLAINTIFFS

AND: THE GENERAL CONFERENCE OF THE ASSEMBLIES OF GOD OF FIJI a Religious Body registered pursuant to the Religious Bodies Registration Act and having its principle place of business at 85 Robertson Road, Suva.

5<sup>TH</sup> PLAINTIFF

AND: AISAKE KUNANITU of Samabula, Suva, Religious Minister and TRUSTEES for the EVERGREEN CHRISTIAN CENTRE OF THE ASSEMBLIES OF GOD OF FIJI.

1<sup>ST</sup> DEFENDANT

AND: WILLIAM GREEN KUNANITU of Lot 19 Tokai, Matana Street, Nakasi, Religious Minister and TRUSTEES for the EVERGREEN CHRISTIAN CENTRE OF THE ASSEMBLIES OF GOD OF FIJI.

2<sup>ND</sup> DEFENDANT

AND: KINI TUIDRIVA of Suva and TRUSTEE for the EVERGREEN CHRISTIAN CENTRE OF THE ASSEMBLIES OF GOD OF FIJI.

3<sup>RD</sup> DEFENDANT

AND: JIOSEFATI VAKALOLOMA of Suva and TRUSTEE for the EVERGREEN CHRISTIAN CENTRE OF THE ASSEMBLIES OF GOD OF FIJI.

4<sup>TH</sup> DEFENDANT

AND: EVERGREEN CHRISTIAN CENTRE OF THE ASSEMBLIES OF GOD OF FIJI a Religious Body registered pursuant to the Religious Bodies Registration Act and having its principle place of business at Lot 36 and 37, Joyce Road, Laqere.

5<sup>TH</sup> DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSELS: Mr. Isireli Fa - for the Plaintiff  
Mr. Naco - for the Defendants

Date of Ruling: 15<sup>th</sup> February, 2018

## RULING

*(Application seeking Vacant Possession pursuant to  
S.169 of the Land Transfer Act Cap 131)*

### A. INTRODUCTION

#### HBC 39 of 2016:

1. These are the Plaintiff's applications for the following Orders:
  - (i) A Declaration that the Defendants have not shown cause why they should not give their possession to the Plaintiffs' property of Lot 36 on DP 3291 Joyce Place, off Pilling Road, Laqere, being CT No. 13441.
  - (ii) An order that the Defendants give immediate vacant possession of the Plaintiff's property at Lot 36 on DP 3291 Joyce Place, off Pilling Road, Laqere, being CT No. 13441.

#### HBC 40 of 2016:

- (iii) A Declaration that the Defendants have not shown cause why they should not give their possession to the Plaintiffs' property of Lot 37 on DP 3291 Joyce Place, off Pilling Road, Laqere, being CT No. 13442.
  - (iv) An order that the Defendants give immediate vacant possession of the Plaintiff's property at Lot 37 on DP 3291 Joyce Place, off Pilling Road, Laqere, being CT No. 13442.
  - (v) An order that costs of this application be paid by the Defendants.
  - (vi) Any other relief that this honourable court may deem just.
2. The Plaintiffs' application is made pursuant to *Section 169 of the Land Transfer Act.*

3. The Originating Summons and Affidavit in Support has been served on the Defendants who have acknowledged service by entering appearances in this matter.
4. There are **three (3) Affidavits** filed before this court.
  - (i) **Plaintiff's Affidavit in Support** deposed by Viliame Vakasausau.
  - (ii) **Defendant's Affidavit in Opposition** deposed by Aisake Kunanitu and filed on behalf of the 1<sup>st</sup>-5<sup>th</sup> Defendants.
  - (iii) **Plaintiff's Affidavit in Reply** to the Defendant's Affidavit by Jone Soqovale, the new General Secretary of the 5<sup>th</sup> Plaintiff.

**B. PRACTICE and PROCEDURE**

5. The Plaintiff has made his application pursuant to *Section 169 of the Land Transfer Act 1978, Cap 131*.
6. 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)*.
7. Pursuant to *Section 172 of the Act*, the **onus** is on the Defendant to show cause why they are refusing to give up possession to the Plaintiff and why an order for possession should not be made against the Defendant.
8. The Plaintiff is the registered proprietor in this instance as can be ascertained from the Certificate of Title No. 16357. The term "proprietor" is defined as the registered proprietor of land, or of any estate or interest therein in the Land Transfer Act. Hence the term "proprietor" follows within the ambit of the *Section 169 application*.
9. *"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."*

10. Pursuant to *section 172 of the Act* the onus is on the Defendants to show cause why they are refusing to give up possession to the Plaintiffs and why an order for possession should not be made against them.

#### PLAINTIFF'S CASE

11. *The 1<sup>st</sup> - 4<sup>th</sup> Plaintiffs are the Trustees of the General Conference of the Assemblies of God Church of Fiji, the 5<sup>th</sup> Plaintiff. The 5<sup>th</sup> Plaintiff is a religious body registered under the Religious Bodies Registration Act. The 5<sup>th</sup> Plaintiff is the registered proprietor of CT 13441 and CT 13442. The 1<sup>st</sup> - 4<sup>th</sup> Defendants are the Trustees of an organization known as the Evergreen Christian Centre of the Assemblies of God of Fiji, the 5<sup>th</sup> Defendant herein. The 5<sup>th</sup> Defendant is a religious body registered under the Religious Bodies Registration Act.*
12. *At all material times the 1<sup>st</sup> - 5<sup>th</sup> Defendants were members of the 5<sup>th</sup> Plaintiff. The 5<sup>th</sup> Defendant was an affiliate and local church under the Central Eastern Division Council of the 5<sup>th</sup> Plaintiff. At this time, the 1<sup>st</sup> - 5<sup>th</sup> Defendants, whilst being members of the 5<sup>th</sup> Plaintiff were in occupation of CT 13441 and CT 13342 upon which was the premises that was the church. The Church was used as a worship premises for the 1<sup>st</sup> - 5<sup>th</sup> Defendants. The Church premises and the two, CTs 13441 and 13442 belonged to the 5<sup>th</sup> Plaintiff and was registered in the name of the 1<sup>st</sup> - 4<sup>th</sup> Plaintiffs as trustees of the 5<sup>th</sup> Plaintiff. On the 25<sup>th</sup> of September 2011, the 1<sup>st</sup> - 4<sup>th</sup> Defendants as Trustees of the 5<sup>th</sup> Defendant at an Extra Ordinary Meeting of the 5<sup>th</sup> Defendant resolved to sever their association with the 5<sup>th</sup> Plaintiff based on their differences in Church doctrine.*
13. *The 1<sup>st</sup> - 4<sup>th</sup> Defendants upon severing their association/affiliation from the 5<sup>th</sup> Plaintiff, proceeded to claim ownership of Certificate of Title 13441 and 13442 and resolved to transfer the two CTs from the Trustees of the General Conference of the Assemblies of God of Fiji (5<sup>th</sup> Plaintiff) into the Trustees of the Evergreen Christian Center of the Assemblies of God of Fiji (5<sup>th</sup> Defendant).*
14. *The Plaintiffs then entered into correspondences with the 1<sup>st</sup> - 5<sup>th</sup> Defendants seeking them to reconsider their position but the Defendants refused. The 5<sup>th</sup> Plaintiff then had no alternative but to issue the 1<sup>st</sup> - 5<sup>th</sup> Defendants with a 1 (one) month's Notice to vacate CT 13441 and CT 13442 and the premises thereon pursuant to Section 169 of the Land Transfer Act.*
15. *The Defendants have failed to vacate the premises on CT 13441 and CT 13442 resulting in the current proceedings being instituted by the Plaintiffs seeking the Defendants vacant possession of certificated of titles Ct 13441 and CT 13442 and from the premises thereon.*

#### DEFENDANT'S CASE

16. *The Defendants have refused to comply with the Plaintiff's Notice to Vacate. The Defendants rational for failing to vacate the two certificated of titles are set out in the Affidavit of Aisake Kunanitu at paragraphs 7, 8, 9, 14, 18, 20, 21, 24, and 25 and states as follows-*

17. "7. That I wish to state that both the properties CT13441 and CT 13442 were first acquired as vacant lots from the Nasinu Land Purchase Company Limited in 1977 and were bought with funds raised solely by the members of the 5<sup>th</sup> Defendant church themselves."
- "8. That the subsequent development of the properties including the construction of the buildings was done through the efforts of the members themselves and there was no contribution at all from the 5<sup>th</sup> Plaintiff organisation."
- "9. That as to the issue of ownership, the members of the congregations themselves are the rightful owners since they contributed to the initial acquisition and development of the property."
- "14. That ... I wish to state that we as a church had adopted this view because of our belief that the property belonged to that members who had contributed financially to the acquisition of the property and its subsequent development and who had in good faith given it to the Trustees of the AOG Fiji to hold in Trust in complaisance with the constitution."
- "18. That these were the reasons why it was communicated to the General Assembly of our intention to have the two properties transferred back to us as referred to in paragraph 12 because as far as we were concerned we were autonomous and voluntary members of the 5<sup>th</sup> Plaintiff organisation."
- "20. That ... I wish to state that although we have moved out of the General Conference of the Assemblies of God of Fiji, we maintain our rights to the property in that we never received any kind of contribution or assistance at all from the Plaintiffs in the acquisition and development of the property."
- "21. That ... I wish to ask the court that due consideration be given to the sacrifice and efforts put in by the members to purchase the land and finance the development to its current status."
- "24. That the congregation has occupied the two properties since 1977 and has contributed immensely to its upkeep and maintenance sacrificing their personal needs for the cost of development of the two properties."
- "25. That ... I firmly; believe that it is only proper that due recognition be made of the equity ownership of the defendants congregation members in the property and that the Plaintiffs compensate the Defendants according to the valuation before we vacate the properties."

#### ANALYSIS AND DETERMINATION

18. 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?*

19. 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)*

20. 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)*

21. In the instant case, **the first limb of s169 applies**. The Plaintiff's action falls under **Section 169 (a)** applies to the Plaintiffs as the 1<sup>st</sup>- 4<sup>th</sup> Plaintiffs are the **last registered proprietors of Certificate of Titles CT13441 and CT 13442** as trustees of the 5<sup>th</sup> Plaintiff. However, the Defendants vigorously oppose this application and their contention are as follows-

"That the subsequent development of the properties including the construction of the buildings was done through the efforts of the members themselves and there was no contribution at all from the 5<sup>th</sup> Plaintiff organisation. As to the issue of ownership, the members of the congregations themselves are the rightful owners since they contributed to the initial acquisition and development of the property. That the members as a church had adopted this view because of their belief that the property belonged to that members who had contributed financially to the acquisition of the property and its subsequent development and who had in good faith given it to the Trustees of the AOG Fiji to hold in Trust in compliance with the constitution. These were the reasons why it was communicated to the General Assembly of our intention to have the two properties transferred back to us as referred to in paragraph 12 because as far as the members were concerned they were autonomous and voluntary members of the 5<sup>th</sup> Plaintiff organisation."

The Defendants further contended that they have a right to remain in occupation of the property by virtue of a resulting or a *constructive trust* and also in *Equity* having being occupants of the property from its inception. That the Defendants connection to the properties is not merely as contributors to the purchase and the development but they have become *beneficiaries* under the *Trust* where the Plaintiffs hold the property as Trustees.

The Defendant's also brought to this Court's attention through their written submissions that the registration of the names of the Trustees on the Titles of the two (2) properties was done in faithful compliance to the Church Constitution and their doctrinal beliefs.

At the close of the Defendant's submissions, the Counsel said "we now have a situation where the Plaintiffs now possess a legal Title whilst the Defendants have an Equitable claim to the property due to their

occupation and the funds they had expanded in the initial purchase and the subsequent development of the property. In the event that the Court decides to accept the Plaintiff's contentions and orders they seek, the Defendants submit that the Court ought to accept the valuation of the properties and allow the Defendants to be compensated for their contributions to the properties before they move out of the properties.

22. I have thoroughly perused the Certificate of Titles of both properties CT 13441 and 13442 marked as **Annexures "Ä"** contained within the Affidavit deposited by Viliame Vakasausau on 08<sup>th</sup> February, 2016 and filed in Court on 18<sup>th</sup> February, 2016.
23. The Certificate of Title No. 13441 was transferred to the Trustees of the Assemblies of God of Fiji on 14<sup>th</sup> August, 2008. The Certificate of Title No. 13442 was transferred to the Trustees of the Assemblies of God of Fiji on 16<sup>th</sup> December, 1977.
24. Therefore, there cannot be any dispute that the Plaintiffs are the **registered proprietors as Trustees of the Assemblies of God of Fiji** in both the Certificate of Titles No. 13441 and 13442 respectively. Further, this action rightfully has been commenced by the Trustees of the Assemblies of God of Fiji against the Defendants.
25. **After the Plaintiff has established the first limb test of section 169** that is that the Plaintiff is the **registered proprietor of the properties Contained and described In the Certificate of Title Nos. 13441 and 13442 accordingly**. Then the Defendants bear the **onus of showing cause** as to why vacant possession should not be granted by the Defendants to the Plaintiffs.
26. 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).
27. 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).
28. The **Defendants** have raised the **Defence of Equitable Interest** in both the properties CT 13441 and CT 13442.
29. **Equitable Defence** was formerly a defence which was only available in a court of equity. With the procedural merger of law and equity however, equitable defences can be raised along with legal defences in same action.
30. The **Defendants** at all material times were **members of The General Conference of the Assemblies of God of Fiji**. They were an affiliate and local church of The General Conference Assemblies of the Assemblies of God of Fiji and were governed and bound by the **constitution of The General Conference of the Assemblies of God of Fiji**.
31. The **1<sup>st</sup>-5<sup>th</sup> Defendants** passed **resolutions** on 25<sup>th</sup> September, 2011 **severing their membership** from the General Conference of the Assemblies of God of Fiji, the **5<sup>th</sup>**

Plaintiff and sought for the transfer of the two properties CT 13441 and CT 13442 from the 5<sup>th</sup> Plaintiff to the 5<sup>th</sup> Defendant.

It follows that the 1<sup>st</sup>-5<sup>th</sup> Defendants after severing their membership from the 5<sup>th</sup> Plaintiff's Church are no longer part of the 5<sup>th</sup> Plaintiff, The General Conference of the Assemblies of God of Fiji.

32. I have perused The General Conference of the Assemblies of God of Fiji Constitution and the By Laws 2013 within the Affidavit of Jone Sogovale annexed and marked as "A".
33. Reference is made to Article XV at Section 1 which deals with "property".
1. (iii) - All "Church property purchased by the Local Assembly shall be held in trust in the name of The General Conference of the Assemblies of God of Fiji.
  - (iv) - All "church property" purchased by the Divisional Councils shall be held in trust in the name of the General Conference of the Assemblies of God of Fiji.
  - (v) All "church property" purchased by General Conference of the Assemblies of God of Fiji and/or the Executive committee shall be held in trust in the name of The General Conference of the Assemblies of God of Fiji.
  - (vi) All "church property" purchased by recognised Institutions of the Assemblies of God of Fiji shall be held in trust in the name of The General Conference of the Assemblies of God of Fiji.
34. The Affidavit in Reply of Rev Aisake Kunanitu deposed on behalf of the Defendants at paragraphs 20-26 inclusive, stated in summary that they moved out of the General Conference of the Assemblies of God of Fiji. Although they have occupied the two properties since 1977 and contributed immensely with sacrifices to maintain and develop the two properties, no contribution or assistance was received from the Plaintiffs in the acquisition and development of the property. That due compensation should be paid to the Defendants by the Plaintiffs if they succeed in this case in exchange for the properties.
35. The Defendants in the instant case should have been aware of the fact and it is quite obvious that when the members as Defendants made any contributions, sacrifices to maintain and develop the church properties, it was in the interest of the church, its members and the followers of the church holistically but not for individual benefit whatsoever.
36. I note that the 1<sup>st</sup> Defendant's letter written on 30<sup>th</sup> December, 2011 advised the General Secretary of the 5<sup>th</sup> Plaintiff that he and his followers were of the view that the Evergreen Christian Centre Assemblies of God Church property was the property of the members of the same and accordingly steps would be taken to transfer the Certificate of Title Nos. 13441 and 13442 respectively.



37. Further, in terms of the Church Constitution and By-Laws, all the properties that is under the Trusteeship of the 5<sup>th</sup> Plaintiff should be administered pursuant to the Assemblies of God of Fiji Constitution and the By-Laws.
38. The Defendants were served with **Notice to Quit** on 22<sup>nd</sup> July, 2015 and despite the Notice served, have failed to give vacant possession of the properties and continues to occupy the same.
39. It is for the **Defendant** to show **cause** why they are refusing to give immediate **vacant possession** of the land to the Plaintiffs and must be able to show Court **some tangible evidence of their right to the possession** of the land, which I find the **Defendants** have failed to do so to the extreme.
40. I further find that the **Defendant** has failed to raise **any triable issues** nor did they have any **legal or equitable right** to continue occupying the **Plaintiff's** property whatsoever. By simply appraising court that they have immensely contributed towards the church to its maintenance and development is not sufficient evidence per se to prove the defence of the equitable right and defence raised herein. This court needed some tangible evidence of their right to possession to the two properties CT 13441 and CT 13442 respectively.
41. Accordingly, the Defence of Equitable Right and/or interest raised by the Defendants fails.
42. I must reiterate and stress that the **summary procedure** has been provided in the **Land Transfer Act. Cap 131** 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.

This applies in the current case before the court and the **Plaintiffs** are entitled to have their application decided **summarily** accordingly.

43. The **Plaintiff** is for the purposes of **section 169** are the **last registered proprietor and Lessee** of the said property and accordingly has the **locus standi** to commence or bring in this proceeding against the **Defendant**.
44. **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). In this case there is no question of fraud raised.
45. 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 the entire world."

46. I find that the **Defendants** have failed to show any cause including a *right to possession* or have *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.*
47. There is accordingly nothing in *section 172* which requires an automatic order for possession unless "cause "was immediately shown.
48. It has become appropriate now and I am inclined to order costs against the Defendants in this case bearing in mind the time spent in court in representation of the case, usage of court resources and time and so forth. Cost is summarily assessed at \$1,000 against the Defendants in total and to be paid within 14 days' time frame to the Plaintiffs.
49. In **Conclusion**, for the aforesaid rational ,I have no other alternative but to make the following final Orders against the Defendants-

#### FINAL ORDERS

- A. An order that the Defendants give vacant possession of the Plaintiffs' property at Lot 36 on DP 3291 Joyce Place, off Pilling Road, Laqere, being CT No. 13441 to the Plaintiffs in one calendar months' time on or before 15<sup>th</sup> March, 2018 @ 4 pm.
- B. An order that the Defendants give immediate vacant possession of the Plaintiff's property at Lot 37 on DP 3291 Joyce Place, off Pilling Road, Laqere, being CT No. 13442 in one calendar months' time on or before 15<sup>th</sup> March, 2018 @ 4 pm.
- C. Execution is hereby suspended till the 15<sup>th</sup> March, 2018 @4pm.
- D. The Defendant to pay Costs to the Plaintiffs summarily assessed at \$1,000 and to be paid within 14 days' time frame.
- E. Orders accordingly.

Dated at Suva this 15<sup>th</sup> day of February, 2018



MR VISHWA DATT SHARMA  
Master of High Court, Suva