

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

Civil Action No.: HBC 11 of 2018

**IN THE MATTER** of part XXIV of  
the Land Transfer Act.

**BETWEEN : CHALLENGE ENGINEERING LIMITED  
PLAINTIFF**

**AND : SANDEEP NAIDU  
DEFENDANT**

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**APPEARANCES/REPRESENTATION**

**PLAINTIFF :** Ms N Choo [R. Patel Lawyers]

**DEFENDANT :** Mr N Sharma [Nilesh Sharma Lawyers]

**JUDGMENT OF :** Acting Master Ms Vandhana Lal

**DELIVERED ON :** 13 September 2018

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**JUDGMENT**  
**[Section 169 application for vacant possession]**

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**Introduction**

1. The Plaintiff via its originating summons filed on 05 January 2018 seeks orders for vacant possession of property comprised and described in Crown Lease No. 1951 being Lot 43, Wainibuku Subdivision, in the province of Rewa.

Said application is made pursuant to section 169 of the Land Transfer Act [the Act].

It has filed an Affidavit in Support of the application.

2. Matter was first called on 15 March 2018 when the Defendant appeared in person. He was given 21 days to secure legal representative and filed and serve an affidavit in response.
3. On 14 May 2018 Mr. N Sharma appeared for the Defendant. He was allowed 21 days to file affidavit in response.

4. On 28 June 2018, a notice of appointment of solicitors was filed.
5. On 28 June 2018, Mr Sharma sought further 21 days to file the affidavit. His reasons were that there were certain documents which he needs to annex to the affidavit and he is still awaiting response from the police.

He was allowed time to file and serve the affidavit in response on or before 20 July 2018.

A hearing date was assigned for 29 August 2018.

6. On the hearing date, Mr. Sharma made an application for an adjournment and for time to file affidavit in opposition.

His reasons were that the Defendant was sick and was also attending to a sickly father. He had asked his client for the medical report but was not provided with one.

7. This court found that there was no good reason shown why a medical certificate could not be provided hence refused Mr Sharma's application for an adjournment.

#### **Application**

8. As per annexure "SP2" in the affidavit in support of the application, Challenge Engineering Limited is the last registered lessee of the said property.
9. On or about 10 May 2017, the Plaintiff through its solicitors issued a notice to vacate to the Defendant's mother Hira Wati.

However, Hira Wati passed away and the Defendant continued to illegally occupy the premises.

10. On or about 7 December 2017, a second notice to vacate was issued and was served on the Defendant on 11 December 2017.

#### **Law**

11. Section 169 outlines who may apply for an order under the said provision:

*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.

12. Under section 170 the Court may make orders for possession. The said section reads:  
*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.*
13. If the Defendant is able to show cause why he refuses to give possession and proves to the court a right to the possession, the application can be dismissed under section 172, which provides:

*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, mortgagee 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.*

#### **Determination**

14. The onus is on the Defendant to show cause why he should not give up possession.
15. The Defendant has failed to do so, I therefore grant order for possession as sought by the Plaintiff.

Execution is stayed until 13 November 2018.

Order is to be sealed and served in 07 days.



  
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**Vandhana Lal [Ms]**  
 Acting Master  
 At Suva.