

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

CIVIL ACTION NO.: HBC <sup>#158</sup> of 2018

158

**BETWEEN : NAVIN KUMAR trading as KARAKA DESIGN PLAINTIFF**

**AND : PENI CAGICAUCAU DEFENDANT**

CIVIL ACTION NO.: HBC 159 of 2018

**BETWEEN : NAVIN KUMAR trading as KARAKA DESIGN PLAINTIFF**

**AND : SEVANAIA TUKAVATU DEFENDANT**

CIVIL ACTION NO.: HBC 160 of 2018

**BETWEEN : NAVIN KUMAR trading as KARAKA DESIGN PLAINTIFF**

**AND : SEUPEPELI CAGICAUCAU DEFENDANT**

---

**APPEARANCES/REPRESENTATION**

**PLAINTIFF : Mr. A Chand [Amrit Chand Lawyers]**

**DEFENDANTS : Mr. Z Lateef [Lateef & Lateef]**

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

**DELIVERED ON : 10 June 2019**

---

**JUDGMENT**

[Section 169 application for vacant possession]

---

1. This is plaintiff's application for possession of land made under Section 169 of the Land Transfer Act.

He is seeking immediate possession of piece of land contained of title number 11245 being Lot 10 on DP 2807, Land known as Naganivatu (part of) in the District of Naitasiri and in the Island of Viti Levu.

2. Said applications are opposed by the Defendants.
3. According to the Plaintiff, he bought the piece of land from the previous owners on or about 23 February 2018. He is the last registered proprietor as per the cop of title attached as annexure 2 in his Affidavit.

The Defendants are an illegal occupant on the property.

A notice to vacate was served on the Defendants on 8 November 2017. Despite the notice the Defendants continue to occupy the land.

4. According to the Defendants, in 1968 the registered proprietors approached their father late Samuela Nagelevuki and asked him to reside on the piece of land and take care of the same.

As a result his father moved onto the land. Peni was born there on 1 August 1970. Sevanaia moved onto the property with his family when his was 04 whilst Serupepeli was 02 years old when he moved onto the property.

Their father looked after the land throughout his life and after their father's demise the Defendants with their siblings looked after the land.

They have maintained the land for 50 years.

No registered proprietor has ever visited the land or makes inquiries with them.

Hence they do not agree to vacate and claim they have legal right to reside on the land.

They are in the process of obtaining an opinion and making application to court or registrar of titles to consider and determine their rights.

5. In the case of **Lesuma & Ors v. Thaggard & Others a Suva High Court Civil Action No. 243 of 2006** delivered on 16 February 2007, the Plaintiff's after purchasing the land had issued notice to quit. The Defendants refused to vacate the property claiming he has right to adverse possession as his grandparents' lived on the property followed by his parents and now him.

Claims were the previous owners knew about the Plaintiffs residing on the property. The Plaintiff is said to have in his affidavit stated the Defendants had chased him out of the property.

Former Singh J had stated:

*On the other hand the plaintiff also deposed that they were willing to buy the land from Mr. Wong which is a recognition of Mr. Wong's title by the plaintiffs and therefore shows a lack of intention of making a title against the registered owner.*

*The question therefore is what constitutes a sufficient degree of exclusive physical control would depend on the circumstances. Such facts would need to be tested by oral evidence. I cannot on the affidavits alone come to any firm conclusion one way or other but I am satisfied that the defendant has raised a realistic arguable case sufficient to convince me that this is not an appropriate case for summary procedure under Section 169 of the Land Transfer Act.*

6. In the present case the Defendants despite living on the property for more than 50 years have not made any claim for adverse possession against the previous owners until this summon was issued.

On the hearing date the Counsel for the Defendant had sought an adjournment to file a supplementary affidavit claiming adverse possession. Said application was refused [reason are outlined in the Court minute for 15 November 2018].

7. There is no evidence of fraudulent dealing between the Plaintiff and the previous owners.
8. The Plaintiff being the last registered proprietor Section 169 makes this application.
9. However the affidavit in support at paragraph 9 the Plaintiff does state that he was aware of the fact that the Defendants were residing on the property during the time of the previous owners. The previous owners were registered since 1998.

The Defendants state that none of the previous proprietors have visited the land or made enquiries with them.

10. According to the Plaintiff, the Defendants are said to be taking advantage of the manpower and overpower him.
11. Furthermore I note that the first Notice to Vacate issued on 08 November 2017 was issued under the previous registered owner's name.



12. This only goes to show that the Plaintiff was aware of the Defendant's occupation and also recognition of the previous owner's title and showing lack of intention of making a title against the registered owner;
13. Accordingly I find the Defendant has raised some arguable case which I find should not be decided on a summary application under section 169 of the Land Transfer Act.
14. Hence am converting the action into a writ action.
15. Further exercising powers under Order 4 rule 2 of the High Court Rules I am consolidating the three files. My reasons are as follows:
  - (a) That same common questions of law and fact arise in all of the three files;
  - (b) That the rights to relief arise out of the same transaction or series of transactions;
  - (c) That it is desirable to do so as the counsels for all parties are the same in the three files and this would save cost and time of all parties interested.
16. Hence forth file number HBC 158 of 2018 will be the active file:

The Plaintiff is directed to file and serve a statement of claim in the consolidated file HBC 158 of 2016 in the next 14 days.
17. The Defendants are to thereafter file and serve a statement of defence in 14 days with liberty to the Plaintiff to reply in 14 days.
18. No orders are made for costs.



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