

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 209 of 2018

BETWEEN : **HAFIZUD DEAN KHAN** of 33 Fairway Palms, Denarau, Nadi,
SAIYAD HUSSAIN of 26 Padamlala Road, Namadi Heights,
Suva and **MOHAMMED HAROON HAKIM** of 22 Kavu Place,
Off Salato Road, Namadi Heights, Suva as **THE TRUSTEES** for
the **FIJI MUSLIM LEAGUE** a religious body duly registered
under the Religious Bodies Act and having its Head Office at
Samabula, Suva, Fiji

Plaintiff

AND : **MAULANA ABDUL FAROOK** of Nadi , Farmer

Defendant

Before : Master U.L. Mohamed Azhar

Counsels : Mr. Janend Sharma for the Plaintiff
Mr. Iqbal Khan for the Defendant

Date of Judgment : 14.10.2019

JUDGMENT

01. This is the summons issued pursuant to section 169 of the Land Transfer Act against the defendant to show cause why he should not give up vacant possession of all that piece and parcel of land comprised in Certificate of Title – Register Vol. 52 Folio No. 5150 together with all the improvements thereon. The defendant was employed by the Fiji Muslim League as the Assistant Pesh Imam and was attached to Nadi Jame Masjid. He was occupying the quarters (official residence) given to Imams. Whilst he was the employee, he was charged with an offence and facing the trial. The Fiji Muslim League, the employer of the defendant terminated his service pending trial and requested him to vacate the official quarters. However, he continued to occupy the same despite several

requests by Fiji Muslim League. This prompted this summons being issued against the defendant seeking an order for immediate vacant possession of the said official quarters.

02. The summons is supported by an affidavit sworn by Javed Ahmed – the secretary of Nadi Branch of Fiji Muslim League. The defendant appearing through his solicitors filed his affidavit in opposition and it was replied by another affidavit sworn by same person who sworn the supporting affidavit. Thereafter the defendant sought leave from the court to file supplementary affidavit and the plaintiff did not object for the same. He then filed his affidavit and plaintiff decided not to file any reply to that supplementary affidavit since it did not show any valid cause as claimed by the counsel for the plaintiff.
03. At hearing of the summons, the counsel for the defendant raised two preliminary issues in relation to the summons. First is in relation to the manner and the way the action was instituted. The second is in relation to the description of the subject property. The Fiji Muslim League being a religious body registered under the Religious Bodies Registration Act Cap 68 should sue and be sued by and against the persons registered as trustee as per section 2 of the said Act. However, the caption of the summons stated “Fiji Muslim League” as the plaintiff; instead, it should have been as “Trustees of Fiji Muslim League”. In other words, the counsel for the defendant stated that, the Fiji Muslim League being the religious body registered under the Religious Bodies Registration Act Cap 68 should sue through its trustees. It is pertinent to note that, the defendant admitted that, the Fiji Muslim League is the registered proprietor and holds the instrument of title through its Trustees (paragraph 5 of defendant’s supplementary affidavit). The defendant also admitted that, he has been occupying the subject quarters by virtue of his employment with Fiji Muslim League and he continues to occupy the same despite termination of his employment. Further it revealed that, it was a slip in the mode of instituting this action and no prejudice would cause to the defendant who admitted proprietorship of the property and his overstay. Therefore, the court decided to deal this first issue in an interlocutory ruling. Accordingly, the interlocutory ruling was delivered on 09.08.2019 and the court allowed amending the caption in accordance with the section 2 of the Religious Bodies Registration Act Cap 68. The court further decided to deliver the final judgment after amendment of summons.
04. The amended summons was filed and served. The counsel for the plaintiff then moved the court to deliver the final judgement as the hearing was already concluded. Mr. Kaloulasulasu the junior counsel of Mr. Iqbal Khan also concurred with plaintiff’s counsel and moved the court to deliver the judgement. However, on the day fixed for judgment, Mr. Iqbal Khan appeared and disapproved his junior’s application on the previous date and sought leave to file his affidavit in opposition for the amended summons before the judgment being delivered. The amendment allowed by the court is

manifestly clear and is on mode of instituting this action by Fiji Muslim League. However, the court allowed his application though it was completely different from and contrary to his associate's application on the previous date. Accordingly, the defendant filed the third affidavit and thereafter the matter came before the court on 11.10.2019. The same junior counsel appeared again and moved the court fix the matter for hearing and also moved for leave to file the written submission. The counsel for the plaintiff on the other hand, opposed the application for further hearing and moved the matter for judgment as the hearing was already conducted. Since the application of the same junior counsel was disapproved earlier by his principal, this court specifically asked him whether he had proper instruction to that effect. The junior counsel then moved to court to stand down the matter for the principal Mr. Khan to appear and make application. The matter was stood down and was called later at 10.00 a.m. However, the principal solicitor was not present. The counsel for the plaintiff then informed that, he did not wish to file any affidavit in reply to the third affidavit filed by the defendant as the same facts were repeated and moved the court to fix for the judgment.

05. On perusal of the third affidavit of the defendant, it revealed that, defendant averred the same defence he took up in his two previous affidavits that, he was promised to be reinstated to his post and Fiji Muslim League should pay all his arrears of salary as promised for him to vacate the property. The only new averment is about his acquittal by the Magistrate in in criminal case that caused his termination and the concern about the amended summons. This will be discussed in detail below. As correctly stated by the counsel for the plaintiff, the hearing was already conducted. The defendant was given three chances to file the affidavit to show case for the summons. The defendant averred the same defences in all three affidavits. Hence I fixed the matter for judgment to consider his defences mentioned in all three affidavits.
06. The law and procedure on the summary eviction under the Land Transfer Act Cap 131 have been settled in many cases by this court and the appellate courts and there is quite number of decisions in this area which does not need much elaboration. However, it is necessary to briefly note the nature of the summary procedure enshrined in the Land Transfer Act Cap 131 and the duty of each party under that procedure. The Land Transfer Act Cap 131 was introduced to Fiji in 1971 and it repealed the Land (Transfer and Registration) Ordinance (see: section 178 of the Land Transfer Act). However, the other two legislations, namely Crown Land Act (now known as State Land Act), Native Land Act (now known as iTaukei Land Act) continue to govern the lands fall under their purview. Both legislations were amended to bring them in line with the Land Transfer Act which is based on the well-known Torrens System of Registration. The effect and application of the said system of registration, that was generally applied in certain

countries in Pacific, was explained in Breskvar v. Wall (1971-72) 126 CLR 376 and Barwick C.J stated at page 385 that:

The Torrens system of registered title of which the Act is a form is not a system of registration of title but a system of title by registration. That which the certificate of title describes is not the title which the registered proprietor formerly had, or which but for registration would have had. The title it certifies is not historical or derivative. It is the title which registration itself has vested in the proprietor. (Emphasis added).

07. In that same case Windeyer J. concurring with the Chief Justice stated at pages 399 and 400 that:

*I cannot usefully add anything to the reasons that he and my brothers McTiernan and Walsh have given for dismissing this appeal. I would only observe that the Chief Justice's aphorism, that the Torrens system is not a system of registration of title but a system of title by registration, accords with the way in which Torrens himself stated the basic idea of his scheme as it became law in South Australia in 1857. In 1862 he, as Registrar-General, published his booklet, *A Handy book on the real Property Act of South Australia*. It contains the statement, repeated from the *South Australian Handbook*, that:*

".....any system to be effective for the reform of the law of real property must commence by removing the past accumulations, and then establish a method under which future dealings will not induce fresh accumulations.

This is effectuated in South Australia by substituting 'Title by Registration' for 'Title by Deed'...

Later, using language which has become familiar, he spoke of "indefeasibility of title". He noted, as an important benefit of the new system, "cutting off the retrospective or derivative character of the title upon each transfer or transmission, so as that each freeholder is in the same position as a grantee direct from the Crown". This is an assertion that the title of each registered proprietor comes from the fact of registration, that it is made the source of the title, rather than a retrospective approbation of it as a derivative right. (Emphasis added).

08. It was further held in **Fels and another v Knowles and another** (1907) 26 NZLR 604 by Stout C.J at page 620 as follows:

'The cardinal principle of the statute is that the register is everything, and that, except in case of 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. Nothing can be registered the registration of which is not expressly authorized by the statute.'

09. Accordingly, the registration is everything and it is the registration that confers the title to person so registered. It is the title by registration and not registration of title. This system of registration cuts off the retrospective or derivative character of the title upon each transfer or transmission, so as that each freeholder or proprietor is in the same position as a grantee direct from the Crown. The registration is made the source of the title, rather than a retrospective approbation of it as a derivative right. The only exception is the actual fraud, and in the absence such fraud as provided in sections 39 to 41 of the Land Transfer Act, the registered proprietor shall have an indefeasible title. This was established by the Fiji Court of Appeal in **Subaramani v Sheela** [1982] 28 FLR 82 (2 April 1982) where the court held that:

*The indefeasibility of title under the Land Transfer Act is well recognised; 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 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."

10. Thus, the Land Transfer Act (Cap 131) provides for title by registration and makes such title indefeasible except in case of actual fraud. As a result of this guarantee given to a registered proprietor, there was a need for a mechanism by which he or she could enforce his or her indefeasible right against any illegal occupant. This need was fulfilled by the special jurisdiction given to this court under the sections 169 to 172 of the Land Transfer Act. The underlying principle of the summary procedure is to protect the last registered proprietor, who has an indefeasible title, from illegal occupation by others at a minimal cost. Thus, having a summary procedure for eviction under those sections of the Land

Transfer Act is the logical consequence of Torrens system of registration. The Fiji Court of Appeal concisely stated that, it is a speedy procedure for obtaining possession when the occupier fails to show cause why an order should not be made (per: *Mishra JA in Jamnadas v Honson Ltd* [1985] 31 FLR 62 at page 65).

11. The *Locus Standi* of a person who can invoke the jurisdiction of this court under this procedure is set out in section 169 and the requirements of the application, namely the description of land and the time period to be given to the person so summoned, are mentioned in section 170. The sections 171 and 172 provide for the two powers that the court may exercise in dealing with the applications under section 169. The burden to satisfy the court on the fulfillment of the requirements, under sections 169 and 170, is on the plaintiff and once this burden is discharged, it then shifts to the defendant to show his or her right to possess the land. The exercise of court's power, either to grant the possession to the plaintiff or to dismiss the summons, depends on how the said burden is discharged by respective party to the proceedings. However, dismissal of a summons shall not prejudice the right of a plaintiff to take any other proceedings to which he or she may be otherwise entitled against any defendant. Likewise, in the case of a lessor against a lessee, if the lessee, before hearing of the summons, pays or tenders all rent due and all costs incurred by the lessor, the summons shall be dismissed by the court.
12. The plaintiffs annexed the copy of the Certificate of Title duly certified by the Registrar of Title. As per section 18 of the Land Transfer Act, a duplicate instrument of title duly authenticated under the hand and seal of the Registrar shall be received 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 of its contents. Accordingly, it proved that, the trustees of Fiji Muslim League are the Registered Proprietors of the subject property. In fact, the defendant in paragraph 5 of his supplementary affidavit admitted this proprietorship. However, the defendant in his third affidavit stated that, the plaintiff ought to have made another affidavit as the plaintiff have been now changed. This argument is fundamentally flawed for several reasons. Firstly, the section 169 (a) of the Land Transfer Act requires the person, who summons the other, to be the last proprietor. The instrument of title is the conclusive evidence that, the trustees of Fiji Muslim League are the proprietors. Secondly, the defendant admitted the same as mentioned above. The locus standi to bring this action is not only proved by the conclusive evidence, but also is admitted by the defendant. Therefore, the necessity does not arise for another affidavit.
13. The defendant further stated in his third affidavit that, he was dealing with the Nadi Branch of Fiji Muslim League and not with the Trustees of Fiji Muslim League. The Fiji

Muslim League, being the religious body must sue or be sued by and against the persons registered as its Trustees as per section 2 of the Religious Bodies Registration Act. The question in this case is whether the Trustees of Fiji Muslim League are the proprietors. This is proved and admitted by the defendant as mentioned above. The question whether the defendant was dealing with the Nadi Branch of Fiji Muslim League or whether Nadi Branch promised to reinstate him after acquittal is the matter for the employment tribunal or employment court to decide as appropriate. In this case the locus of the Trustees of Fiji Muslim League is proved and admitted by the defendant. Therefore, his alleged dealing with Nadi Branch of Fiji Muslim League in relation to his employment is not within the jurisdiction of this court in this proceeding. Further the defendant was given sufficient time to respond the summons and he filed three affidavits.

14. The next question is whether plaintiffs satisfied other requirement of providing description of the property to the defendant. The counsel for the defendant submitted at the hearing that, this requirement was not fulfilled as proper description of the property is not mentioned in the summons. This is the second preliminary issue raised by the counsel for the defendant. The counsel cited the decision in **Atunaisa Tavuto v Sumeshwar Singh** HBC 332/97L and other cases that followed the former and submitted that, the summons should be dismissed on this point. It is necessary to discuss the law in this regard, before analyzing the argument of the counsel and the averments of the defendants in his all three affidavits in relation to the description of the subject property (the official quarters of Imams).
15. The section 170 provides that, the summons under section 169 shall contain a description of the land. The fact that, the application for ejection involves with the property right of a citizen and the order for possession deprives him from such right, which has more effect on his social and economic wellbeing, the courts in all jurisdictions had a tendency to be little tough on the applicants, especially in relation to compliance and the technicalities of the respective statutes. This position is clearly reflected in the judgment of **Atunaisa Tavuto v Sumeshwar Singh** HBC 332/97L which was cited by the counsel for the defendant in support of the second issue. The court in that case held that, in application such as under section 169 of Land Transfer Act, the technicalities are strictly construed, because of the drastic consequences that follow for one of the parties upon the relief sought being granted. That was a case where an application for vacant possession was sought, however, the applicant failed to give the particulars such as Crown Lease number, lot number and the situation of land, though the Housing Authority Lease number was correctly mentioned. The court dismissed the summons stating that, it behooved the plaintiff and his counsel to have exercised more diligence in that regard. It was the view of the court that, the summons did not contain proper description of the property.

16. The above case, however, was distinguished by Prakash J, in **Wati v Vinod** [2000] 1 FLR 263 (20 October 2000) and it was held that:

*“The Court has not been provided nor able to locate any authorities to suggest that "a description" as per section 170 means a full description of the land. The Act itself does not specify what a description of the land entails. What is adequate or full description? What is a sufficient description? The purpose is clearly for the parties to be informed as to what land the application relates to. This is clear from the supporting affidavit. In this regard I cannot concur with the sentiments of my brother Justice Madraiwiwi in **Atunaisa Tavuto v Sumeshwar Singh** (Civil Action No. HBC0332 of 1997L) submitted by the Defence Counsel in support of his argument on s.170. It is not clear what Justice Madraiwiwi had meant in stating that "The Summons is defective in not properly describing the subject property" (emphasis added). It is not clear whether "a description means full or proper description. Further, the Supreme Court in the case of **Ponsami v Dharam Lingam Reddy** (Appeal No. 1 of 1996) was dealing with the need for compliance with the Supreme Court Rules not a statutory provision such as Section 170. The statute does not clearly specify what "a description" requires. In **Vallabh Das Premiji v. Vinod Lal, Nanki and Koki** (Civil Appeal 70 of 1974) the Court of Appeal had accepted a description as in the present summons as sufficient”.*

17. It is obvious that, the view of Prakash J is based on the plain and unambiguous meaning of the statute which does not specify what description of land entails and what is adequate or full description of the land. It is not the duty of the court to impose more conditions and restrict the interpretation of a statute when the wording is clear and unambiguous. What is actually required by the statute is whether the person, so summoned to appear, had the full knowledge, without any misunderstanding, of the land and premises from which he ought to be evicted. If there is any misunderstanding of premises which is the subject matter of the proceeding, it should be brought by the person who is so summoned to show cause and in the absence of any such misunderstanding, the description given by any applicant seems to be sufficient and adequate under the section 170 of the Land Transfer Act. This view is supported by decision of the Court of Appeal in **Premji v Lal** [1975] FJCA 8; Civil Appeal No 70 of 1974 (17 March 1975). It is incumbent on the court to consider the property right of the person so summoned under this application. However, the more emphasis should not be given to such property rights, at the expense of a registered proprietor of a land, who has indefeasible title against the entire world by *Torrens system* of land registration. Accordingly, the reasoning of Prakash J in **Wati v Vinod** (supra) seems to be more rational than the view of Madraiwiwi J in **Atunaisa Tavuto v Sumeshwar Singh** (supra). These two judgments

are from the High Court and in same footing. Therefore, for better reasoning I prefer the view of Prakash J over the other. Accordingly, if an applicant provides the description of a land or premises which can give clear understanding for the persons so summoned under this section, the former is deemed to have discharged his duty under this section.

18. The defendant in his all three affidavits admitted receiving notice to vacate the quarters which he has been occupying even after termination of his employment. However, he claims that, he was allowed to remain there until his criminal case is over. In the first affidavit he stated in paragraph 3 (m) that, he will not vacate until Fiji Muslim League fulfils its promise and pays his wages as it had agreed. Even in the third affidavit he states that, Nadi Branch of Fiji Muslim League employed him on a salary which included the accommodation. Further he never disputed the description of the property in any of his three affidavits. These all clearly indicate that, the defendant has full understanding of the subject property and the submission of his counsel clearly contradicts the averments made by the defendant on oaths. Thus, I refuse to accept the argument of the counsel for the defendant and decide that, the plaintiff has given full and proper description of the property and defendant too has full understanding of the subject property in this case.
19. The section 171 requires the proof and production of consent if any such consent is necessary. The question is therefore, whether any consent from the Director of land is necessary for an application under 169. This matter has been settled by His Lordship the Chief Justice Anthony Gates (as His Lordship then was) in *Prasad v Chand* [2001] FJLawRp 31; [2001] 1 FLR 164 (30 April 2001). His Lordship held that:

*“At first sight, both sections would seem to suggest that an Applicant should first obtain the Director's written consent prior to the commencement of section 169 proceedings and exhibit it to his affidavit in support. However I favour Lyons J.'s approach in *Parvati Narayan v Suresh Prasad* (unreported) Lautoka High Court Civil Action No. HBC0275 of 1996L 15th August 1997 at p 4 insofar as his Lordship found that consent was not needed at all since the:*

"section 169 application (which is the ridding off the land of a trespasser) is not a dealing of such a nature as requires the Director's consent."

This must be correct for the Director's sanction is concerned with who is to be allowed a State lease or powers over it, and not with the riddance of those who have never applied for his consent. With respect I was unable to adopt the second limb of Lyons J's conclusion a few lines further on where

his lordship stated that the order could be made conditional upon the Director's consent. For if the court's order of ejectment was not "a dealing" then such order would not require the Director's consent and the court would not be subject to section 13. The court is not concerned with the grant of or refusal of, consent by the Director, provided such consent is given lawfully. Consent is solely a matter for the Director. The statutory regime appears to acknowledge that the Director's interest in protecting State leases is supported by the court's order of ejectment against those unable to show cause for their occupation of the land which is subject to the lease. The court is asked to make an order of ejectment against a person in whose favour the Director either, has never considered granting a lease, or has never granted a lease. The ejectment of an occupier who holds no lease is therefore not a dealing with a lease. Such occupier has no title. There is no lease to him to be dealt with. The order is for his ejectment from the land. There is no need for a duplicating function, a further scrutiny by the Director, of the Plaintiff's application for ejectment either before or after the judge gives his order".

20. The section reads as '*...if any consent is necessary...*' and the above authority clearly states that, the consent of the Director for the application under 169 is not necessary. Thus, the question of consent does not arise in applications under section 169.
21. The above analysis clearly indicates that, the plaintiffs passed the threshold under sections 169 and 170 of the Land Transfer Act Cap 131. The burden now shifts to the defendant to show cause his defence. The Supreme Court in **Morris Hedstrom Limited -v- Liaquat Ali** CA No: 153/87 explained the duty of a defendant in application of this nature and held that:

"Under Section 172 the person summonsed may show cause why he refused to give possession of the land 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." (Emphasis added)

22. The duty on the defendants is, not to produce any final or incontestable proof of their right to remain in the property, but to adduce some tangible evidence establishing a right

or supporting an arguable case for their right to remain in possession of the property in dispute. **Black's Law Dictionary** defines "tangible evidence" as "physical evidence that is either real or demonstrative" (10th Edition, page 678). Thus, duty of the defendant is to produce some real or demonstrative physical evidence and not bare assertions. A bare assertion is not sufficient for this purpose.

23. Furthermore, the Fiji Court of Appeal in Ali v Jalil [1982] FJLawRp 9; [1982] 28 FLR 31 (2 April 1982) explained the nature of the orders a court may make in terms of the phrase used in section 172 of the Land Transfer Act, which says "*he (judge) may make any order and impose any terms he may think fit*". The Court held that:

"..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". (Emphasis added).

24. According to above decisions, the court is to decide whether a defendant adduced any real or demonstrative physical evidence establishing a right or supporting an arguable case for such a right, or even he failed to adduce such evidence whether an open court hearing is required or not, given the circumstances of a case.
25. The defendant does not claim any proprietary, nor promissory estoppel in his affidavit. the only defence he repeated in his all three affidavits is that, he was promised to be reinstated to his post of Assistant Pesh Imam after acquittal from the criminal charge with full pay which include the accommodation. He attached the certificate of proceeding issued by the Nadi Magistrate's Court with his third affidavit. The said certificate clearly states that, he has now been acquitted from the criminal charge leveled against him. As stated above, the question of reinstatement or any promise for the same is not a defence for proceeding under section 169 of the Land Transfer Act. It is also not within the jurisdiction of this court to consider any such employment related issues. If the defendant has any dispute in relation to his employment and other entitlements under any contract of employment between him and the Fiji Muslim League, he must take up such issue to the appropriate forum which has jurisdiction to hear and determine such issue. It is certainly not within the jurisdiction of this court to consider such employment issues in this application.
26. The defendant relies on the letter dated 26.10.2015 sent by the President of Fiji Muslim League Nadi Branch. Both the plaintiffs and the defendant attached the said letter with

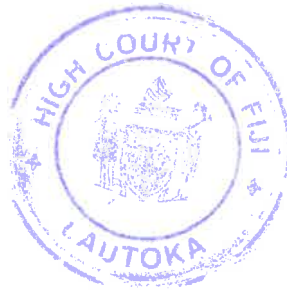
the affidavit and tendered it in evidence. It is the first letter sent to the defendant suspending his employment pending the criminal charge against him. The President of Nadi Branch of Fiji Muslim League has also stated that, the defendant can remain in his quarters. However, on 16.12.2015 (within 2 months from the previous letter) the Acting Secretary of Nadi Branch of Fiji Muslim League sent another letter terminating the service of the defendant and also requested him to vacate the quarters within 14 days from the date thereof. Thereafter, the solicitors of the Fiji Muslim League sent two letters to the defendant requiring him to vacate. The defendant has acknowledged both letters. It follows that, the defendant argument, that he was allowed to remain in the quarters, cannot be accepted. In any event, this will not be a sufficient defence for him to continue in possession of the property.

27. I must re-emphasize the very reason of speedy process for vacant possession under section 169 of the Land Transfer Act Cap 131. The Torrens system of registration resulted in the guarantee and protection for the registered proprietor. The protection of indefeasible title from illegal occupation is the high priority of this registration system. The section 169 (b) allows the lessor, who has power to re-enter the property even the rental for a month is in arrears, to bring the summons for eviction. This shows that, even a tenant who legally entered any property becomes illegal occupant if the rental falls in arrears. At this point the law does not allow considering any dispute between the lessor and lessee in relation to the tenancy agreement, but the court should grant order for vacant possession unless the full rental and cost paid before the hearing as provided in proviso of section 172 of the Land Transfer Act. The rationale is that, the moment any lessee fails to pay the rental, he or she should be evicted and the indefeasible title of the lessor, which is the high priority of the registration system, should be upheld. Any dispute relating to tenancy should be dealt with in an appropriate forum. Same analogy applies to any person who enters any property pursuant to an employment contract. The moment the employment contract is terminated, he or she becomes illegal occupant and ought to be evicted. Any dispute over the contract of employment which allowed the occupation of the property must be dealt with in an appropriate forum and certainly not in a proceeding under section 169 of the Land Transfer Act Cap 131. The defendant states that he will not vacate the property until his full salary is paid by Fiji Muslim League as promised. This issue should be dealt with in the employment tribunal or court as appropriate and not in this proceeding.
28. The summary of the discussion is that, the plaintiff is the last registered proprietor of the property. The defendant who entered the property based on the employment contract continues to possess the same despite his termination and several requests for vacant possession that followed the termination of service. The defendant has been in occupation since 2015, nearly 4 years even after termination of his employment, enjoying rental-free

residency. Thus, the defendant ought to be evicted from the property and should be ordered to immediately deliver the vacant possession to the plaintiffs. Further, the conducts of the defendant in this proceedings show that, he tried every technical point to justify his illegal occupation knowing very well that, he has no valid defence to occupy the official quarters after termination of his service. Thus the conduct of the defendant warrants high amount of the cost, though it does not really warrant indemnity cost.

29. As a result, I make the following orders:

1. The defendant is ordered to immediately hand over the vacant possession of the property described in the summons filed by the plaintiff,
2. The defendant should not cause any damage to the property or its fixtures and fittings, and
3. The defendant should pay a summarily assessed cost of \$ 2,500 to the plaintiffs within a month from today.




U.L.Mohamed Azhar
Master of the High Court

At Lautoka
14/10/2019