

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Civil Action No. HBC 24 of 2020

IN THE MATTER of an application by the
Plaintiff under section 169 of the Land
Transfer Act.

BETWEEN : **LEDUA SEMI SALUSALU** **PLAINTIFF**

AND : **SIKELI GONE** **DEFENDANT**

Appearances : Mr. Sen of Maqbool & Co. for the Plaintiff
: No appearance for the Defendant

Judgment : 26 June 2020

JUDGMENT

1. By an application filed 12 May 2020, the Plaintiff summoned the Defendant to show cause why he or any other persons who may be in occupation, should not give to the Plaintiff immediate vacant possession of the Plaintiff's land and premises situated on Native Lease No. 23471 Nasiri Subdivision Showing Lot 1 on Plan No. M. 1630 situated in Wailevu in the province of Macuata in the island of Vanualevu, containing an area of 986 sq. metres; and costs of this application.
2. Though served with the application, the Defendant failed to appear and the application was therefore heard undefended.
3. The application is made pursuant to section 169 of the Land Transfer Act (the Act) which provides:

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.

4. The Plaintiff deposes to being the registered proprietor of all the land described in the summons. He has annexed a copy of the lease which bears this out. He being the last registered proprietor, I hold he has standing under section 169 (a) of the Act to bring these proceedings against the Defendant.
5. The procedure for summary proceedings under section 169 of the Act is contained in sections 170 - 172. Section 170 sets out the mandatory requirements of the summons as follows:
- (i) a description of the land, and;
 - (ii) the person summoned shall not be required to appear in court earlier than 16 days of service on him of the summons.
6. The summons accurately describes the land as contained and described in iTaukei Lease No. 23471.
7. An affidavit of service filed 4 June 2020 deposes that the summons and affidavit in support were personally served on the Defendant on 26 May 2020, one month before the date of he was required to appear in Court.
8. I hold that the Plaintiff has complied with the requirements of section 170 of the Act.
9. Section 171 provides the procedure where the Defendant fails to appear on the day of the hearing. The Court will need to be satisfied of three things before an order for vacant possession on the summons is granted:
- (i) that the summons has been served on the Defendant;

- (ii) the registered proprietor or lessor's title, and;
- (iii) if consent is necessary, proof of such consent.

10. The originating summons and affidavit in support were personally served on the Defendant.
11. The Plaintiff has provided evidence that he is the last registered proprietor of the property concerned.
12. Though section 12 of the iTaukei Land Trust Act requires the consent of the Board for any alienation or dealing with iTaukei land, the section does not specify the need for the consent of the Board for the institution of proceedings for vacant possession. (See also *Prasad v Chand* [2001] FJHC 289; [2001] 1 FLR 164 (30 April 2001))
13. I am satisfied that the requirements of section 171 of the Act have been met.
14. The Defendant having failed to appear to defend the summons, and the Plaintiff having satisfied the requirements of section 171 of the Act, the Court makes the following orders:

1. The Defendant is to give to the Plaintiff immediate vacant possession of the Plaintiff's land and premises occupied by the Defendant on Native Lease No. 23471 Nasiri Subdivision Showing Lot 1 on Plan No. M. 1630 situated in Wailevu in the province of Macuata in the island of Vanualevu, containing an area of 986 sq. metres.
2. Costs for the Plaintiff summarily assessed in the sum of \$800, to be paid within 21 days of this Judgment.




S.F. Bull
Master