

IN THE HIGH COURT OF FIJI
IN THE WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 228 OF 2020

BETWEEN : **REDDYS ENTERPRISES PTE LIMITED** a limited liability company
having its registered office at 35 Ravouvou Street, Lautoka t/a **TANOA**
APARTMENTS

PLAINTIFF

AND : **MILIKA COKOIONO** c/- Tanoa Apartments, Nadi, Fiji.

DEFENDANT

Appearance : **Mr Shelvin Singh for the plaintiff**
(Ms) Jessie Lagonilakeba for the defendant

Hearing : **Monday, 01st March, 2021 at 11.30am.**

Decision : **Monday, 15th March, 2021 at 9.00am.**

DECISION

(A) INTRODUCTION

- (1) The matter before me stems from the plaintiff's originating summons, dated 21st September 2020, made pursuant to **Section 169** of the **Land Transfer Act**, for an Order for vacant possession against the defendant.
- (2) The defendant is summoned to appear before the Court to show cause why she should not give up vacant possession of the plaintiff's property comprised in Crown Lease No- 3767 being Lots 3 & 3A on Plan ND 4573, Namaka & Crown Lease N0- 4853 being Lots 1 & 1A Plan ND 4573 Namaka.

- (3) The originating summons for eviction is supported by an affidavit sworn by the plaintiff on 22nd September, 2020
- (4) The originating summons for eviction is strongly contested by the defendant.
- (5) The defendant filed an ‘affidavit in opposition’ opposing the application for eviction followed by an ‘affidavit in reply’ thereto.
- (6) The plaintiff and the defendant were heard on the ‘originating summons’. They made oral submissions to Court.

(B) THE LAW

- (1) In order to understand the issues that arise in the instant case, I bear in mind the applicable law and the judicial thinking reflected in the following judicial decisions.
- (2) Sections from 169 to 172 of the **Land Transfer Act (LTA)** are applicable to summary application for eviction.

Section 169 states:

“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)
- (c) ...

Section 170 states:

“The summons shall contain a description of the land and shall require the person summoned to appear at the court on a day not earlier than sixteen days after the service of the summons.”

Section 171 states:

“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.

Section 172 states;

“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.

[Emphasis provided]

- (3) The procedure under Section 169 was explained by Pathik J in **Deo v Mati**¹ as follows:-

The procedure under s.169 is governed by sections 171 and 172 of the Act which provide respectively 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

¹ [2005] FJHC 136; HBC0248j.2004s (16 June 2005)

or lessor or he may make any order and impose any terms he may think fit.”

It is for the defendant to ‘show cause.’

- (4) The Supreme Court in considering the requirements of Section 172 stated in **Morris Hedstrom Limited v. Liaquat Ali**² as follows and it is pertinent:

“Under Section 172 the person summoned may show cause why he refused to give possession of the land and 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.”

- (5) The requirements of Section 172 have been further elaborated by the Fiji Court of Appeal in **Azmat Ali s/o Akbar Ali v Mohammed Jalil s/o Mohammed Hanif**³ where it is stated:

“It is not enough to show a possible future right to possession. That is an acceptable statement as far as it goes, 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. We read the section as empowering the judge to make any order that justice and the circumstances require.”

(C) **THE FACTUAL BACKGROUND**

- (1) What are the facts here? It is necessary to approach the case through its pleadings/affidavits, bearing all those legal principles uppermost in my mind.
- (2) The plaintiff in its affidavit in support deposed *inter-alia* that;

² Action No. 153/87 at p2

³ Action No. 44 of 1981 – judgment 2.4.82

- (1) *I am the Company Secretary of Plaintiff in this matter. I am also the General Financial Controller and I am duly authorized by the Plaintiff to make this affidavit on its behalf.*

Annexed hereto and marked "A" is a copy of the said Authority.

- (2) *The plaintiff is the registered proprietor of the property comprised in Crown Lease No. 3767 being Lots 3 & 3A on Plan ND 4573, Namaka & Crown Lease No. 4583 being Lots 1 & 1A on Plan ND 4573 Namaka, more commonly known as **TANOVA APARTMENTS** ('the said property').*

Annexed hereto and marked "B" is a copy of the said Title.

- (3) *The Defendant is a tenant in the said property and occupies Room 407.*
- (4) *By notice dated 10 August 2020, the plaintiff sought vacant possession of the property from the Defendant to be given on or before 10 September, 2020.*

Annexed hereto and marked "C" is a copy of the said Notice.

- (5) *The said Notice was served on the Defendant on 11 August, 2020.*
- (6) *Despite the said Notice, the Defendant has failed to vacate Room 407 of the property and continues to occupy the same.*
- (7) *I therefore ask the Honourable Court for an Order that the Defendant does give the Plaintiff immediate vacant possession of Room 407 of the property.*

- (3) The defendant for her part in seeking to show cause against the summons, filed an affidavit in opposition which is substantially as follows;

- (1) *I am the defendant and depose this, my affidavit in opposition to the Affidavit in support to Shaneel Padarath filed on 22nd September 2020 ["the Affidavit"].*
- (2) ***THAT** unless I otherwise state the source of my knowledge and belief, I make this Affidavit from facts within my knowledge and from information acquired by me through my Solicitors.*

- (3) *THAT as to paragraph 1 of the affidavit, I do not plead as I am not called upon to do so.*
- (4) *THAT as to paragraph 2 of the affidavit, I do not plead as I am unaware of the same.*
- (5) *THAT as to paragraph 3 of the affidavit, I admit the same.*
- (6) *THAT as to paragraph 4, 5, and 6 of the affidavit, I deny the same as I have not been served with the said notice to evict room 407.*
- (7) *THAT as to paragraph 7 of the affidavit, I deny the same as I have been advised by my Solicitors that the Plaintiff have not satisfied the requirements for an eviction order and accordingly the Plaintiff's Summons and affidavit in support for eviction proceedings filed on 22nd September 2020 should be struck out with costs.*
- (8) *SAVE as for any express admissions hereinabove, all other allegations in the Affidavit of Shaneel Padarath filed on 22nd September 2020 are denied.*

(4) The Plaintiff filed an affidavit in rebuttal deposing *inter-alia* that;

- (1) *I am the Company Secretary of Plaintiff in this matter. I am also the Financial Controller and I am duly authorized by the Plaintiff to make this affidavit on its behalf.*

Annexed hereto and marked "A" is an amended copy of my Authority.
- (2) *I have read what appeared to be an affidavit of **Milika Cokoiono**, sworn and filed on 28 October 2020 ("the said affidavit") and I have understood its meaning and effect.*
- (3) *I join issue with and maintain the contents of paragraph 3 and 4 of my Affidavit in Support filed on 22 September 2020.*
- (4) *I understand from the Plaintiff's solicitors that the Defendant must show cause to remain in possession of the property but she is a Tenant whose tenancy has been terminated and who owes the Plaintiff a substantial amount of rent for which proceedings have been filed in the Magistrates Court for recovery of the Rent owed.*
- (5) *I note the admission at paragraph 5 of the said affidavit.*

- (6) *I deny the allegations in paragraphs 6 and 7 of the said affidavit and say as follows:*
- (a) *that the Defendant has been served with a notice to quit the premises. Her lawyers wrote to our lawyers on 19th August, 2020 and raised some issues including that of being bitten by bed bugs.*
- Annexed hereto and marked "B" is a copy of the said letter.*
- (b) *our lawyers responded to the letter of 19 August 2020 on 11 September 2020.*
- Annexed hereto and marked "C" is a copy of the said letter.*
- (c) *the Defendant occupies the Plaintiff's apartment premises and is charged rent on a daily basis.*
- (d) *no cause has respectfully been shown by the Defendant as to why she should remain in possession of the property.*
- (7) *I respectfully seek that the Defendant gives up vacant possession of the property as claimed in the proceedings filed herein.*

(D) ANALYSIS

- (1) This is an application brought under **Section 169 of the Land Transfer Act, [Cap 131]**.

Under Section 169, certain persons may summon a person in possession of land before a judge in chambers to show cause why that person should not be ordered to surrender possession of the land to the Claimant.

- (2) For the sake of completeness, **Section 169 of the Land Transfer Act**, is reproduced below;

169. *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.

(3) I ask myself, under which limb of Section 169 is the application being made?

Reference is made to paragraph (02) of the affidavit in support of the Originating Summons.

*Para 2. The plaintiff is the registered proprietor of the property comprised in Crown Lease No. 3767 being Lots 3& 3A on Plan ND 4573, Namaka & Crown Lease No. 4853 being Lots 1 & 1A on Plan ND 4573 Namaka, more commonly known as **TANOVA APARTMENTS** ('the said property')*

(4) The application cannot be made under the second or third limb of Section 169 since the plaintiff is the lessee and not the lessor as required under the provisions. There was no relationship of landlord and tenant between the plaintiff and the defendant [See paragraph 29 below].

Section 169 (a) of the Land Transfer Act, Cap 131, requires the plaintiff to be the last **registered proprietor** of the land.

The term "**proprietor**" is defined in the Land Transfer Act as "*the registered proprietor of land, or of any estate or interest therein*".

The term "**registered**" is defined in the **Interpretation Act**, Cap 7, as "*registered used with reference to a document or the title to any immovable property means registered under the provisions of any written law for the time being applicable to the registration of such document or title*"

(5) Is the plaintiff the last registered proprietor?

According to the Crown Lease No- 3767 and 4853 [annexure B referred to in the affidavit of Shaneel Padarath, sworn on 22-09-2020] the plaintiff is the registered lessee of the subject land. The Crown Lease No- 3767 is registered with the Registrar of Titles on 18-09-1964. The crown Lease No- 4853 is registered with the Registrar of Titles on 08.12.1972. Thus, it seems to me tolerably clear that the plaintiff holds a registered lease and could be characterised as the last registered proprietor.

- (6) On the question of whether a lessee can bring an application under Section 169 (a) of the Land Transfer Act, if any authority is required, I need only refer to the sentiments expressed by Master Robinson in “Michael Nair v Sangeeta Devi”⁴. The learned Master held;

“The first question then is under which ambit of section 169 is the application being made? The application could not be made under the second or third limb of the section since the applicant is the lessee and not the lessor as is required under these provisions. But is the applicant a registered proprietor? A proprietor under the Land Transfer Act means the registered proprietor of any land or of an estate or interest therein”. The registration of the lease under a statutory authority, the iTLTB Act Cap 134, creates a legal interest on the land making the applicant the registered proprietor of the land for the purposes of the Land Transfer Act. He can therefore make an application under section 169 of the Land Transfer Act”.

- (7) The same rule was again applied by the learned Master in “Nasarawaqa Co-operative Limited v Hari Chand”⁵. The learned Master held;

“It is clear that the iTLTB as the Plaintiff’s lessor can take an action under section 169 to eject the Plaintiff. This is provided for under paragraphs [b] & [c]. For the lessor to be able to eject the tenant or the lessee it must have a registered lease. It is not in dispute that the Plaintiff holds a registered lease, the lease is an “Instrument of Tenancy” issued by the iTLTB under the Agricultural Landlord and Tenancy Act. It is for all intents and purposes a native lease and was registered on the 29 November 2012 and registered in book 2012 folio 11824. It is registered under the registrar of deeds. There is nothing in section 169 that prevents a lessor ejecting a lessee from the land as long as the lease is registered. How will the lessee then eject a trespasser if the lessor in the same lease can use section 169? The lessee under section 169 can eject a trespasser simply because the lessee is the last registered proprietor. The Plaintiff does not have to hold a title in fee simple to become a proprietor as long as he/she is the last registered proprietor. A proprietor is defined in the Land Transfer Act as “proprietor” means the registered proprietor of land or of any estate or interest therein”. The Plaintiff has an interest by virtue of the instrument of tenancy and therefore fits the above definition and can bring the action under section 169.”

⁴ Civil Action No: 2/12, FJHC, decided on 06.02.2013

⁵ Civil Action No: HBC 18 of 2013, decided on 25.04.2014.

(8) A somewhat similar situation as this was considered by His Lordship Justice K.A. Stuart in Housing Authority v Muniappa⁶. His Lordship held that the Plaintiff Housing Authority holds a registered lease therefore it could be characterized as the last registered proprietor.

(9) In Habib v Prasad⁷, Hon. Madam Justice Angala Wati said;

“The word registered is making reference to registration of land and not the nature of land. If the land is registered either in the Registrar of Titles Office or in the Deeds Office, it is still registered land. This land has been registered on 4th March, 2004 and is registered at the Registrar of Deeds Office, it is still registered land. The registration is sufficient to meet the definition of registered in the Interpretation Act Cap 7:-

“Registered” used with reference to a document or the title to any immoveable property means registered under the provision of any written law for the time being applicable to the registration of such document or title”.

(10) Applying the aforesaid principles to the instant case, I am driven to the conclusion that the plaintiff is the last registered proprietor of the land comprised in Crown Lease No- 3767 being Lots 3 & 3A on Plan ND 4573, Namaka & Crown Lease N0- 4853 being Lots 1 & 1A Plan ND 4573 Namaka,

(11) Pursuant to Section 170 of the Land Transfer Act;

(1) **the Summons shall contain a “description of the Land”**

AND

(2) **shall require the person summoned to appear in the court on a day not earlier than “sixteen days” after the service of Summons.**

(12) The interval of not less than 16 days is allowed to give reasonable time for deliberations and to prevent undue haste or surprise.

⁶ 1977, FJSC.

⁷ [2012] FJHC 22

- (13) **I ask myself, are these requirements sufficiently complied with by the plaintiff?**
- (14) The originating summons filed by the plaintiff does contain a description of the subject land. The subject land is sufficiently described. For the sake of completeness, the originating summons is reproduced below in full.

ORIGINATING SUMMONS

LET ALL PARTIES concerned attend before the Master in Chambers at the High Court, Lautoka on the 23rd day of October, 2020 at 8.30am o'clock on the hearing of an application by the above-named Plaintiff
FOR AN ORDER:

- A. *That the Defendant gives up immediate vacant possession to the Plaintiff of Room 407 in the property more commonly known as TANOA APARTMENTS situated and comprised in Crown Lease No. 3767 being Lots 3 and 3A on Plan NOD 4573, Namaka & Crown Lease No. 4853 beings Lots 1 & 1A on Plan ND 4573 Namaka, of which the Plaintiff is the registered proprietor of which the Defendant occupies; and*
- B. *That the costs of this application be paid by the Defendant to the Plaintiff.*

This Application is made under Section 169 of the Land Transfer Act and the inherent jurisdiction of this Honourable Court.

- (15) In light of the above, I have no doubt personally and I am clearly of opinion that the first mandatory requirement of Section 170 of the Land Transfer Act has been complied with.
- (16) Now comes a most relevant and, as I think, crucial second mandatory requirement of Section 170 of the Land Transfer Act.
- (17) The originating summons was returnable on 23rd October 2020. According to the affidavit of service filed by the plaintiff, the originating summons was served on the defendant on 29th September 2020.
- (18) Therefore, the defendant is summoned to appear at the Court on a date not earlier than “sixteen days” after the service of summons. Therefore, the second mandatory requirement of Section 170 of the Land Transfer Act has been complied with. I cannot agree with the defendant’s submission that “ the plaintiff did not comply with section 170 of the Land Transfer Act as it also did not annex in any of its affidavit the affidavit of

service of the plaintiffs originating summons dated 21 September and filed on the 22 September 2020 to satisfy the requirement that the person summoned to appear in court on a day is to be done not earlier than sixteen days after the service of summons”.
[Paragraph 22 of the defendant’s written submissions filed on 01-03-2021]

- (19) To sum up; having carefully considered the pleadings, evidence and oral submissions placed before this Court, it is quite possible to say that the plaintiff has satisfied the threshold criteria spelt out in Section 169 and 170 of the Land Transfer Act. **The plaintiff has established a prima facie right to possession.**
- (20) **Now the onus is on the defendant to establish a lawful right or title under which she is entitled to remain in possession.**
- (21) In the context of the present case, I am comforted by the rule of law expounded in the following judicial decisions.
- (22) In the case of **Vana Aerhart Raihman v Mathew Chand**⁸, the High Court held;

“There is no dispute between parties as to the locus standi of the Plaintiff, and once this is established the burden of proof shifted to the Defendant to prove his right to possession in terms of the Section 172 of the Land Transfer Act.”

- (23) In the case of **Morris Hedstrom Limited –v- Liaquat Ali**⁹, the Supreme Court said that:-

“Under Section 172 the person summoned may show cause why he refused to give possession of the land and 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 is mine]

- (24) Also it is necessary to refer to Section 172 of the Land Transfer Act, which states;

⁸ Civil Action No: 184 of 2012, decided on 30.10.2012,

⁹ CA No: 153/87

“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”.

(25) Let me now move to consider the defendant’s reason refusing to deliver vacant possession. The defendant did not claim any interest under Section 172 of the Land Transfer Act. As I understand the submissions of (Ms) Lagonilakeba, counsel for the defendant, the precise nature of the complaint is that;

- (*) *the plaintiff’s description of the room/flat in its notice to vacate does not coincide with the room/flat description in its originating summons.*
- (*) *the notice to vacate is not the correct description of the property in which the defendant was residing in at that time and to which the notice to vacate was relying upon.*
- (*) *Therefore, the notice to vacate is defective and void.*
- (*) *The plaintiff did not prove service of notice to vacate. Since the affidavit of service of the notice to vacate was not annexed, the plaintiff has not proven and shown evidence as to who served the notice and when was it served. Reference is made to paragraph (6) of the affidavit in opposition of the defendant sworn on 28-10-2020 and filed on 28-10-2020 where it states;*

“That as to paragraph 4, 5 and 6 of the affidavit, I deny the same as I have not been served with the said notice to evict Room 407”.

(26) (Ms) Lagonilakeba substantially relied on the High Court decision of her Ladyship J. Wati in **Vishal Kumar v Avikash Pillay**¹⁰. My attention was drawn to paragraph (45) of the Judgment. Her Ladyship J. Wati said;

- (45) *A notice to quit is necessary under section 89(2)(b) of the Property Law Act to terminate tenancy. I cannot find any evidence of service and thus I find that the notice to vacate was not served and that the tenancy was*

¹⁰ Civil Appeal Case No. HBA 04 of 2013, decision 14-02-2014

never terminated. If the tenancy was not terminated, the appellant has shown sufficient right to stay on the property as a tenant.

- (27) In reply, Counsel for the plaintiff submitted that the notice to quit is of no consequence to the claim by the plaintiff based on its being the registered owner. Counsel for the plaintiff relied on Fiji High Court decision in **Chand v Prakash**¹¹.
- (28) The only matter in this case which I think calls for serious consideration is a question concerning the notice to quit. The facts which form the basis of the case may be shortly set out as follows. The plaintiff is the holder of Crown Lease No. 3767 being Lots 3 and 3A on Plan ND4573, Namaka & Crown Lease No.4853 being Lots 1 & 1A on Plan ND 4573 Namaka, more commonly known as Tanoa Apartments. The lease is what is known as a “protected lease” under the provisions of State Lands Act, which provides that it shall not be lawful for the lessee under any such lease to deal in any way with the land without the written consent of the Director of Lands first had and obtained.
- (29) The defendant is the plaintiff’s tenant or sub-lessee of room number 407 of the premises. The Director of Lands has not granted consent to sublet the room concerned to the defendant. The possession had been given and taken without the consent of the Director of Lands. The wording of Section 13(1) of the State Lands Act, Cap 132 provides that the consent must be first had and obtained, in default of which the transaction is illegal. The absence of prior consent of the Director of Lands vitiates the letting *ab initio* and the defendant at no time was the legal tenant or legal sub-lessee of the plaintiff. No consent was granted to the sub-lease and therefore the defendant’s entry into possession as a tenant or sub-lessee is wrongful under the State Lands Act, Cap 132. That being so, there was no relationship of landlord and tenant between the plaintiff and the defendant.
- (30) Section 13 of the State Lands Act, Cap 132 so far as is relevant, states;

“(1) *Whenever in any lease under this Act there has been inserted the following clause:*

“This lease is a protected lease under the provisions of the State Lands Act” (herein after called a protected lease) it shall not be lawful for the lessee thereof to alienate or deal with the land comprised in the lease or any part thereof, whether by sale, transfer or sublease or in other manner whatsoeverwithout the written consent of the Director of Lands first had and obtained, nor, except at the suit or with the written consent of the Director of Lands, shall any such lease be dealt with by any court of law or under the process of any court of law..... .

Any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void.

(2)

¹¹ [2011] FJHC 640

(3)

(4)

(5) *For the purposes of this section "lease" includes a sublease and "lessee" includes a "sub-lessee".*

(31) The covenant two (02) of the Crown Lease provides;

(2) *The lessee shall not transfer, sublet, assign or part with the possession of the demised land or any part thereof without the written consent of the lessor first had and obtained.*

(32) **It was not disputed that the Director of Lands had not given his prior written consent to any alienation or dealing of the property of which the plaintiff is the registered lessee. As a result, the inescapable conclusion is that the transaction whereby the lessee alienated or dealt with the property by way of a sub-lease is void from the beginning. The effect of Section 13 is that any sub-lease of State Land granted by the lessee without having first applied for and having obtained the written consent of the Director of Lands shall render the sub-lease null and void and may expose the lessee to prosecution under Section 40 of the State Lands Act.**

(33) **There is no dispute that the leased room No. 407 was the subject of a protected lease. There is no doubt that Section 13 of the State Lands Act applied to the leased property. It is not disputed that at the time the plaintiff commenced the proceedings it was the registered owner of the Crown Lease. Under Section 169, the plaintiff is entitled to seek possession of the property on the strength of its title. Its right to possession does not depend on the sub-lease but on its registered ownership. To be more precise, the plaintiff cannot be classified as a lessor with power to re-enter or as a lessor acting under a notice to quit (whether valid or otherwise) for the purpose of Section 169. This is because the lessee entered into sub-lease with the defendant without the prior written consent of the Director of Lands which was null and void. Therefore, the notice to quit is of no consequence to the claim by the plaintiff based on its being the registered owner. The defendant cannot rely on the defects in the notice to quit and the lack of proof of service of the notice, since she came into possession as a result of a sub-lease that was null and void *ab initio*.**

(34) The defendant cannot derive any assistance from the High Court decision in "Vishal Kumar v Avikash Pillay" (supra). I could not see how the decision in "Vishal Kumar" could have been of assistance to the defendant. The present case is quite different in its facts from "Vishal Kumar". "Vishal Kumar" concerned a freehold land and therefore the leased property was not the subject of a protected lease where no consent was required. Proof of service of a notice to quit on a date when it will, according to its terms, be effective to terminate the tenancy, was essential to the jurisdiction of the court, in a case of the nature in "Vishal Kumar". The present case is quite different in its facts from "Vishal Kumar". In the present case, the leased property was the subject of a protected

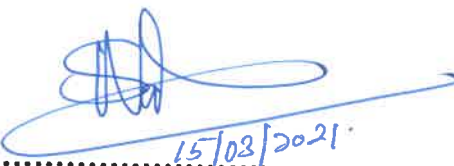
lease and Section 13 of the State Lands Act applied to the leased property and no notice to quit was necessary.

- (35) The defendant in the present case was let into possession without the prior written consent of the Director of Lands. The defendant in the present case has no right to remain in possession. The defendant has not claimed any interest under Section 172 of the Lands Transfer Act. Accordingly, I grant the order for vacant possession.
- (36) The general practice is that costs follow the event and I see no reason to deviate the general practice.

ORDERS:

- (01) I make an order that the defendant deliver immediate vacant possession of the land described in the originating summons dated 21-09-2020 and filed on 22-09-2020.
- (02) I make an order that the defendant pay the costs of this action to the plaintiff which is summarily assessed in the sum of \$2,000.00. The costs to be paid to the plaintiff within seven (07) days from the date of this decision.




15/03/2021
.....
Jude Nanayakkara
[Judge]

High Court – Lautoka
Monday, 15th March, 2021.