

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

**Civil Action No. 196 of 2020**

**IN THE MATTER** of the Land transfer Act 1971, Section 169

BETWEEN

**RAVINDRA KUMAR** of Lot 35, Naulu Housing, Naulu, Nakasi,  
Self Employed.

**PLAINTIFF**

AND

**ATIK AVINESH LAL** of lot 35, Naulu Housing, Naulu, Nakasi,  
Businessman.

**DEFENDANT**

**Counsel** : Mr. Singh S. with Ms. Lutu I. for the Plaintiff  
Mr. Gosai S.P. for the Defendant

**Date of Hearing** : 23<sup>rd</sup> December 2020

**Date of Judgment** : 12<sup>th</sup> January 2021

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## JUDGMENT

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- [1] The plaintiff filed this Originating summons pursuant to section 169 of the Land transfer Act 1971 seeking an order that the defendant do show cause why an order for immediate vacant possession of the land comprised in Housing Authority Sublease No. 427391 being Lot 35 on DP 7784 of which the plaintiff is the registered owner, should not be made against him upon the grounds set forth in the affidavit of RAVINDRA KUMAR sworn and filed herein.
- [2] The plaintiff on 29<sup>th</sup> May 2020 served the notice to vacate the premises on 28<sup>th</sup> June 2020 on the defendant but the defendant did not comply with the notice.
- [3] The defendant has state in the affidavit in response; that the property is a residential property and the plaintiff has not obtained approval from the Housing Authority; that the tenancy agreement was for one year and to be renewed upon expiry; that he has invested a substantive amount of money to purchase the stock and other appliances; that the plaintiff has caused him substantial loss; and that if the business has to be relocated it will be costly and will have grave effects on his family.
- [4] Section 169 of the Land Transfer Act 1971 (the Act) 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.

Section 172 of the Act 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.

[5] In the case of **Attorney General of Fiji v Premium Plastics Ltd** [2014] FJHC 159; HBC297.2013 (14 March 2014) it was held:

[6] The scope of the hearing of the application under section 169 constitutes with two main limbs. The first is the onus of the Plaintiff to satisfy the court that he is the last registered proprietor or the lessor described under the section 169 (a), (b) and (c) of the Act. Once the Plaintiff satisfied it, the burden will shift on the Defendant to satisfy the court that he has a right to the possession of the land. The scope of the Defendant's burden of prove of a right to the possession of the land was discussed in **Morris Hedstrom Limited-v- Liaquat Ali** CA No: 153/87.

[7] In the case of **Morris Headstrom Limited v Liaquat Ali** C.A. No.153/87 the following observations were made by the Court of Appeal:

"Under Section 172 the person summoned 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 Defendant 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."

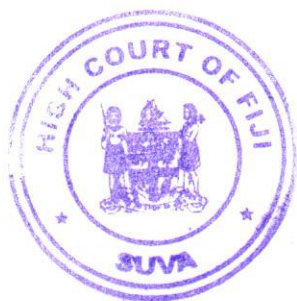
- [8] The plaintiff has tendered in evidence the Certificate of Title which proves that he is the current lessee of this property. The defendant has admitted that he came into occupation of the premises as the tenant of the plaintiff and that the notice to quit was served on him. Therefore, the burden is on the defendant to prove that he has a right to remain in possession of the property.
- [9] The tenancy agreement between the parties is for a period of one year and it expired on 31<sup>st</sup> December 2020. The defendant has no right whatsoever to remain on the land after expiry of the tenancy. The defendant's position is that there was an understanding between him and the plaintiff to extend the tenancy for a further period. Such an understanding, even if there was one, is not enforceable in law.
- [10] While admitting the tenancy the defendant say that the agreement of tenancy is illegal for the reason that he cannot run a business on a property leased out by the Housing Authority. The question is whether this alleged illegality permits the defendant to remain in occupation. As averred in the affidavit in response if the plaintiff had misled the defendant by failing to disclose that he might have face problems with the Housing authority. In this matter what the defendant is expected to do is to satisfy court that he has a right to be in possession of this land. Having problems or expecting to have problems with the Housing Authority is not a reason for him to continue to be in possession.
- [11] The other ground alluded to by the defendant is that the business is registered in his name and if it has to be relocated it will be very costly and have grave effects on him and the family. When the plaintiff entered into the tenancy agreement and there is no clause to extend the contract he should have known that at the end of the period of one year he had to vacate the premises. The plaintiff in this matter gave notice to vacate requiring the defendant to vacate the premises before the period of one year expired. However, the defendant occupied the premises for the entire period of one year.

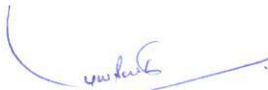
[12] Taking all these factors into consideration the court is of the opinion that the defendant has no right to continue to be in possession of this property.

[13] The court accordingly makes the following orders.

**ORDERS**

1. The defendant is ordered to vacate the property and hand over the vacant possession to the plaintiff within thirty days from the date of this judgment.
2. The defendant is also ordered to pay the plaintiff \$1500.00 as costs of this action within thirty days from the date of this judgment.



  
Lyone Seneviratne

**JUDGE**

12<sup>th</sup> January 2021