

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

CIVIL ACTION NO.: HBC 167 of 2020

BETWEEN : ILIESA CELUA
PLAINTIFF

AND : DIWENDRA SHARMA
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms. N. Mishra [Legal Aid Commission]

DEFENDANT : In Person

RULING BY : Acting Master Ms Vandhana Lal

DELIVERED ON : **04 August 2022**

JUDGMENT

1. This is an application pursuant to section 169 of the Land Transfer Act seeking orders for Defendant to show cause why he should not give vacant possession of the property on instrument of Crown/State lease number 188819 described as Certificate of Title x1/05 6 (part of) Wainibuku Subdivision being Lot Number 162 on DP 4021.
2. Section 169 of the Land Transfer Act allows following persons “*to 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. The Plaintiff claims he is the registered lessee of the property and has to his supplementary affidavit annexed a certified copy of the lease.
4. The lease no. 188819 was registered with the Registrar of Titles on 08th December 1981. On 24th February 2003 the Plaintiff became the lessee as per memorial number 521996.
5. The Plaintiff entered into a tenancy agreement with the Defendant on 24th February 2019 to occupy the property for one year from 13th January 2019 to 13th January 2020 at a rental of \$700 per month.
6. According to the Plaintiff the tenancy agreement has expired on 13 January 2020, however the Defendant is still in occupation of the property.

A notice to vacate was served on 16th January 2020 but the Defendant has failed to vacate later a notice was served on the Defendant by his lawyers on 31st March 2020 but the Defendant has failed to vacate.

7. I find the Plaintiff is entitled to bring the proceeding under section 169 of the Act.
8. Section 170 of the Act requires that description of the land shall be contained in the summon.

The Plaintiff has complied with this provision of the law.

9. Section 170 of the Act further requires “*the person summoned to appear at the court on a day not earlier than 16 days after the service of the summons*”.
10. The summon was first called on 28th September 2020. As per the affidavit of service this was served to the Defendant on 18th June 2020.

Plaintiff is in compliance of this rule as well.

11. Under section 172 of the Act, “*if the person summoned appears he or she may show cause why he or she refuses to give possession of such land and, if he or she 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, mortgage or lessor or he or she may make any order and impose any terms he or she may think fit.*”
12. The Defendant has filed his affidavit in opposition and states as follows:
 - The Plaintiff took a loan of \$9,180 and has not paid him back.
 - He has spent \$11,500 to carry out maintenance of the property.
 - He has filed a Nasinu Magistrates Court action to recover his money. A default judgment was sealed on 10th September 2020.
 - The Plaintiff made numerous attempts to break into the property.
13. The tenancy agreement if any between the parties expired on 13th January 2020 or if a finding is made that the agreement was for two years on 13th January 2021.
14. There is no evidence that the agreement was extended or new agreement was entered between the parties thereafter.
15. In **Kaniappa and Nagappa v Sharma a Lautoka High Court Civil Action HBC 159/2020** delivered on 17th June 2022 Azhar, Master stated following regarding claims by

the Defendant of carrying out maintenance and repair to the property in question. There the subject property was also a State Lease:

“The residential lease is a protected lease and the defendant cannot have any proprietary rights over it. If he has any dispute regarding his claim for carrying out repair and maintenance of the subject property, he has to take action in a different forum to establish his rights.”

16. Snell’s Principles of Equity; 28th Edition; 1982 at page 558, outlines the rule on proprietary estoppel. It states:

“Proprietary estoppel is one of the qualifications to the general rule that a person who spends money on improving the property of another has no claim to reimbursement or to any proprietary interest in the property. Proprietary estoppel is older than promissory estoppel. It is permanent in its effect, and it is also capable of operation positively so as to confer a right of action. The term “estoppel”, though often used, is thus not altogether appropriate. Yet the equity is based on estoppel in that one is encouraged to act to his detriment by the representation or encouragement of another so that it would be unconscionable for another to insist on his strict legal rights”.

17. At pages 560 and 561 the conditions for the proprietary estoppel have been explained with the illustrations as follows:

(a) Expenditure. In many cases A has spent money on improving property which in fact belongs to O, as by building a house on O’s land, or by doing repairs to O’s house and paying mortgage instalments and other outgoings, or by contributing to joint venture to be carried out on O’s land, or paying premiums required to maintain O’s life insurance policy.

(b) Expectation or belief. A must have acted in the belief either that he already owned a sufficient interest in the property to justify the expenditure or that he would obtain such an interest. But if A has no such belief, and improves land in which he knows he has no interest of merely the interest of a tenant (or licensee), he has no equity in respect of his expenditure.

(c) Encouragement. A's belief must have been encouraged by O or his agent or predecessor in title. This may be done actively, as where a father persuades his son to build a bungalow on the father's land, or a mother assures her daughter that she will have the family home for her life, or a man assures his former mistress that the house in which they lived together is hers.

(d) No bar to the equity. No equity will arise if to enforce the right claimed would contravene some statute, or prevent the exercise of a statutory discretion or prevent or excuse the performance of statutory duty

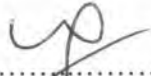
18. In the current proceedings the lease under the Plaintiff's name is a protected lease and there is no evidence that consent of the Director of Lands was obtained prior to subletting of the property to the Defendant.
19. Hence, I find there is no evidence to show the Defendant owned sufficient interest to justify the expenditure or that he would obtain an interest.

Neither is there evidence that the Plaintiff encouraged him that he will have any interest in the property.

20. The Defendant has obtained judgment against the Plaintiff in another civil proceeding and he can proceed to have the judgment executed accordingly.

21. The maintenance of the property and the default judgment against the Plaintiff does not supersede the statutory legal effect of Section 169 of the Act.
22. Plaintiff is entitled to possession and accordingly an order is made on his application as follows Defendant give possession of property on instrument of Crown/State lease number 188819 described as Certificate of Title X1/05 6 (part of) Wainibuku Subdivision being Lot Number 162 on DP 4021. Execution is stayed for 30 days.
23. Parties to bear own costs.




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Vandhana Lal [Ms]
Acting Master
At Suva.

04 August 2022

TO:

1. **Suva High Court Civil Action No. HBC 167 of 2020;**
2. **Legal Aid Commission, Solicitors for the Plaintiff;**
3. **Diwendra Sharma, the named Defendant appearing in person.**