

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

**[CIVIL JURISDICTION]**

**Civil Action No. HBC 44 of 2020**

**IN THE MATTER** of application under section 169 of Part XXIV of the Land Transfer Act, Cap 131 for an Order for immediate vacant possession

**BETWEEN** : **CHANDRA WATI** of Vunisamaloa, Ba, Retired.

**Plaintiff**

**A N D** : **UGESH CHANDRA** of Vunisamaloa, Ba, Farmer.

**Defendant**

Before : Master U.L. Mohamed Azhar

Counsels : Ms. J. Naidu for the Plaintiff  
Mr. W. Rosa for the Defendant

Date of Judgment : 19.04.2023

**JUDGMENT**

01. The plaintiff summoned the defendant pursuant to section 169 of the Land Transfer Act (Cap 131) to show cause why he should not be ordered to deliver the vacant possession of the Crown Lease 15415 known as Lot 3 BA 2346 and Lot 20 BA 2390 Part of Rarawai and Vunisamaloa formerly CT 7822 in the Island of Vitilevu, and Tikina of Ba containing an area of 3.3993 hectares (**the subject property**) to the plaintiff. The summons is supported by an affidavit sworn by the plaintiff and contains two annexures. The defendant opposed the summons and filed an affidavit in opposition. The defendant annexed three documents with his affidavit. This was replied by the plaintiff by her affidavit which contains three more documents.

02. The solicitors filed the written submission and moved the court to deliver the judgment based on the affidavits and their legal submission. The procedure under Part XXIV of the Land Transfer Act which is known as “169 procedure is a speedy procedure for obtaining possession of a particular property when the occupier fails to show cause why an order should not be made (**Jamnadas v Honson Ltd** [1985] 31 FLR 62 at page 65). Sections 169 to 173 provide for this special procedure for ejection.
03. The *Locus Standi* of a person who can invoke the jurisdiction of this court under this procedure is set out in section 169. Three persons named in that section have locus to invoke the jurisdiction of this court under this procedure. The section 170 requires the summons to give full description of the subject property and to serve the summons on the defendant to appear not earlier than 16 clear days from the date of service. The sections 171 and 172 provide for the two powers that the court may exercise in dealing with the applications under section 169. The consent of the Director of Land is not necessary as settled by His Lordship the former Chief Justice Anthony Gates (as His Lordship then was) in **Prasad v Chand** [2001] FJLawRp 31; [2001] 1 FLR 164 (30 April 2001). 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.
04. The duty on defendants in this application is not to produce any final or incontestable proof of their right to remain in the properties, but to adduce some tangible evidence establishing a right or supporting an arguable case for their right to remain in possession of the properties in dispute. This was laid down by the Supreme Court in the decision of **Morris Hedstrom Limited –v- Liaquat Ali** CA No: 153/87. Even the person appearing has failed to satisfy the court as per the above decision; the court can dismiss the summons if it decides that an open court hearing is required (**Ali v Jalil** [1982] 28 FLR 31).
05. 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 summoning a lessee for default of rentals, 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.
06. The plaintiff annexed a copy of the Crown Lease No. 15415 to prove her locus to summon the defendant in this matter. The defendant denied the proprietorship and requested the plaintiff to prove the same. The annexure **CW 1** is certified by the Registrar

of Title to be the true copy of the instrument of title. The section 18 of the Land Transfer Act provides that, every duplicate instrument of title duly authenticated under the hand and seal of the Registrar shall be received in all courts 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. Accordingly, the plaintiff's locus is proved. There is no dispute in other procedural requirements under the section 170 of the Land Transfer Act.


07. The defendant denied the allegation that he has been forcefully occupying the subject property. The defendant annexed a copy of the Sale and Purchase Agreement (UC 1) he entered into with the late husband of the plaintiff. The said agreement was witnessed by the both solicitors for the vendor and purchaser at the time of execution. The defendant by virtue of the said agreement agreed to purchase the subject property from the late husband of the plaintiff on the terms and conditions mentioned in the said agreement. The defendant also lodged a Caveat No. 885260 on the subject property to show his interest over it based on the said agreement.
08. The plaintiff stated in his affidavit that, the plaintiff is not Citizen of Fiji and cannot hold any lease in Fiji. The defendant also moved the court to convert this Originating Summons into a Writ to enable him to join the Executor and Trustee of the Estate of Muni Ranam on the grounds that, (a) the defendant paid a substantial amount for purchasing the subject property and (b) the Executor and Trustee breached his duties as the Executor and Trustee and failed to transfer the subject property to him (defendant).
09. The plaintiff admitted the Sale and Purchase Agreement between her late husband Muni Ratnam and the defendant. However, the plaintiff alleged that, the defendant breached the said agreement and listed number of alleged breaches by the defendant in her affidavit in reply. According to the affidavits filed by the both the plaintiff and the defendant in this matter, there are number of issues and facts which need full trial to solve the dispute between the plaintiff and the defendant. It is the settled law that, order for vacant possession should not be granted in cases where complicated matters need to be determined by the court in an open court trial. (Lal v Schultz [1972] 18 FLR 152 (30 October 1972); Devi v Sharma [1985] 31 FLR 130 (1 January 1985); Wati v Vinod [2000] 1 FLR 263 (20 October 2000);
10. Furthermore, the purpose of the special procedure under the section 169 of the Land Transfer Act Cap 131 is to provide prompt and speedy relief for the last registered proprietor who has indefeasible title from any illegal occupant who is unable to show a right to occupy the property. However, if it is shown that, any registered proprietor

intended to alienate the property and entered into a sale and purchase agreement, this procedure should not be employed by him to evict the potential purchaser who entered into such agreement with him (proprietor). The issues regarding the sale and purchase agreement should be resolved by a proper action and not by obtaining the vacant possession under this special procedure. If the registered proprietors are allowed to evict the potential purchasers after sale and purchase agreement it will lead to abuse of the process under the section 169 of the Land Transfer Act.

11. The plaintiff is fully aware of the sale and purchase agreement between her late husband and the defendant in this case. The defendant entered the land upon the said agreement and paid portion of the sale price as agreed by the both the plaintiff and the defendant. However, there are allegations of breach by the defendant and the Executor and Trustee of the Estate of Muni Ratnam, and the plaintiff is fully aware of them. In this circumstance, it is proper for the parties to resolve their complicated issues in a proper trial as they cannot be summarily determined by way of affidavits only.
12. In result, I make the following orders:
  1. The summons filed by the plaintiff is dismissed, and
  2. The parties to bear the costs.

At Lautoka  
19.04.2023



  
U.L. Mohamed Azhar  
Master of the High Court