

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBC 306 of 2020

Catherine Nisha

Mohammed Shabir

Appellants

v

Kemul Krishnan Sami

Respondent

Counsel:           The appellants in person  
                          Ms J. Prasad for the respondents

Date of hearing:  21<sup>st</sup> April,2022

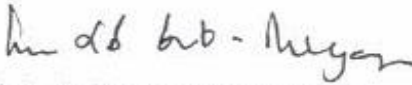
Date of Judgment:  5<sup>th</sup> May,2023

### **Judgment**

1.     The appellants appeal an Order of the Master ordering them to give vacant possession of Crown Lease no 3663, Lot 22, Kinoya Subdivision on Plan R. 1810 in the Tikina and Province of Naitasiri, (property) to the respondent.
2.     The respondent had sought vacant possession, as registered lessee of the property. The respondent's affidavit in support stated that there was no tenancy agreement between the appellants and him. His solicitors served a Notice to the appellants to vacate the property within thirty days.

3. The appellants appeal on the following grounds:
  - i. *The Learned Acting Master of the High Court erred in law and face and/or misdirected herself in law and in fact in holding that the Appellant's do not have any financial interest in the property of the Respondent.*
  - ii. *The Learned Acting Master of the high Court erred and/or misdirected herself in law in fact in failing to determine the authenticity of the Lease Number 3663.*
  - iii. *The Learned Acting Master of the high Court erred in law and in fact in failing to vacate the hearing date the 4<sup>th</sup> of March 2021 and allow the Appellant's further time to file their Affidavit in Opposition.*
  - iv. *The Learned Acting Master of the High Court erred in law and in fact in not considering the fact that the Appellant's had financially incurred expenses in performing maintenance works on the property.*
4. The respondent, in his affidavit in support of the summons filed before the Master attached Crown Lease No 3663, which provides that he was the last registered proprietor of the property.
5. Section 169 of the Land Transfer Act provides that the last registered proprietor of the property may summon any person in possession of land to “*show cause*” why he should not give up possession to him.
6. On 8<sup>th</sup> December,2020, the appellants were given 21 days to file affidavit in opposition. The matter was to be called on 16<sup>th</sup> February,2021, to fix a hearing date.
7. On 16<sup>th</sup> February,2021, the Master granted a final date to the appellants to file their affidavit in opposition on 19<sup>th</sup> February,2021, and the hearing was fixed for 4<sup>th</sup> March,2021.
8. The appellants did not file affidavit in opposition.
9. In my judgment, the Master quite correctly proceeded to take up the matter for hearing on 4<sup>th</sup> March,2021.
10. The penultimate ground of appeal fails.

11. The appellants had failed to show cause in terms of section 172 of the Land Transfer Act, despite the Master giving them two opportunities.
12. In my judgment, the Master was correct in concluding that the appellants had failed to show cause.
13. The contentions in the first, second and ultimate grounds of appeal cannot be considered at the stage of appeal.
14. The appeal of the appellants fails.
15. **Orders**
  - a. The appeal of the appellants is declined.
  - b. The appellants shall pay the respondent costs summarily assessed in a sum of \$1000.00

  
A.L.B. Brito-Mutunayagam  
JUDGE  
5<sup>th</sup> May, 2023

