

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CIVIL JURISDICTION**

**HBC Civil Action No. 144 of 2022**

**IN THE MATTER** of an application

Under Section 169 of the Land Transfer  
Act 1971.

**BETWEEN:**           **PARITOSH DEO** of Lot 35 Kula Street, Samabula, Chartered  
Accountant.

**PLAINTIFF**

**AND:**                   **EMOSI RADRODRO** of Lot 28 Sarita Ben Place, Laucala Beach  
Estate, Nasinu.

**DEFENDANT**

**Representation**       : Mr S. Nand (Nands Law) for the Plaintiff.  
                              : Defendant in Person.

**Date of Hearing**       : 26<sup>th</sup> June 2023.

**JUDGMENT**

1. The Plaintiff filed Originating Summons dated 2<sup>nd</sup> May 2022 pursuant to Section 169 of the Land Transfer Act for an Order that the Defendant show cause why an order for immediate vacant possession of the Land comprised in Certificate of Title No: 23295, Being Lot 28 on DP5689 located at Sarita Ben Place, Laucala Beach Estate. The Summons is supported by an Affidavit of the Plaintiff. The Summons were served on the Defendant. On 20<sup>th</sup> July 2022 the Defendant filed an Affidavit in Opposition. On 29<sup>th</sup> July 2022 an Affidavit in Reply was filed by the Plaintiff.

2. On 9<sup>th</sup> August 2022 Master Lal forwarded the matter to a Judge for hearing. On 3<sup>rd</sup> October 2022. Justice Mutunayagam set the matter for hearing on 27<sup>th</sup> February 2023. On 27<sup>th</sup> February 2023 the Defendant sought to file supplementary affidavit. The Plaintiff's Lawyer objected. Court declined the Defendant's application to file supplementary affidavit. The matter was then listed to be called on 15<sup>th</sup> June 2023. On 15<sup>th</sup> June 2023. Mr Nand (Lawyer for Plaintiff) informed the Court that pleading was complete and sought hearing. The Defendant sought to file an affidavit the same day. He sought to clarify certain allegations. The Defendant also told the Court that he would represent himself. The Court allowed the Defendant to file the Affidavit by close of business of 16<sup>th</sup> June 2023 and gave the Plaintiff chance to reply (if needed) by 23<sup>rd</sup> June 2023. The matter was set for hearing for 26<sup>th</sup> June 2023.
3. On the date of hearing the Defendant wanted another adjournment to file an affidavit. He had not filed one by close of business of 16<sup>th</sup> June 2023. The Court refused further adjournment as the Defendant was given ample opportunity to file an affidavit and he failed to file it. The Court did not wish to delay the hearing of the matter any further.
4. Section 169 of the Land Transfer Act 1971 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) ...
  - (c) ..."

Section 170 of the Land Transfer Act 1971 requires the particulars be stated in the summons and that "*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 of the Land Transfer Act 1971 dealing with order of possession states that "*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 of the Land Transfer Act 1971 provides that *“if the person summoned appears he may show cause why 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, mortgage 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. **Morris Hedstrom Ltd v. Liaquat Ali (SBC 153/87S) Supplementary FLR Volume 1 (Civil) 1887-2000) 141, Gurdial Singh v Shiu Raj (ABU 44/82) Supplementary FLR Volume 1 (Civil) 1887-2000, 84, Shyam Lal v Eric Martin Schultz (1972) 18 FLR 152 and Azmat Ali v. Mohammed Jalil (1982) 28 FLR 31** are some of the cases that have dealt with Section 169 Land Transfer Act 1971 applications. These and a number of other cases have set out the procedure for Section 169 Applications. The submissions of the parties have been noted.
6. The Defendant in his Affidavit in Opposition in Paragraph 3 agreed that the Plaintiff was the Registered Proprietor of Certificate of Title No: 23295, Being Lot 28 on DP5689 located at Sarita Ben Place, Laucala Beach Estate. This gives Plaintiff locus in this matter. There are no dispute on the other procedural requirements under Section 170 of the Land Transfer Act 1971.
7. Is not in dispute that the Plaintiff is the owner of the property since October 2021. The property has 4 flats of which one is occupied by the Defendant. When the Plaintiff acquired the property the Defendant occupied one of the flats. According to the Plaintiff the Defendant did not have any tenancy agreement with the previous owner. The Plaintiff upon taking possession of the property started renovations and requested the occupants to provide vacant possession. The Plaintiff then served eviction notice upon the Defendant.
8. Section 172 of the Land Transfer Act 1971 shifts the burden upon the Defendant to establish his right to remain on the subject property. It was upon the Defendant in this application to adduce some tangible evidence establishing a right or supporting an

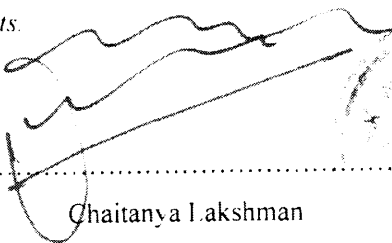
arguable case for such a right for him to remain on the property. Final or incontrovertible proof of right to remain in possession need not be adduced (**Morris Hedstrom Ltd v. Liaquat Ali**). If the person, in this case the Defendant does show cause the Judge shall dismiss the Summons (**Azmat Ali v. Mohammed Jalil**).

9. At the hearing the Defendant had mentioned that he continues to pay the rent and that rent was paid up to February. The Defendant did not furnish any prior agreement nor any receipts or any other documents showing that he was paying any rent for the premises he was occupying. The Defendant at the hearing submitted that he be allowed to stay on the property until January 2024. The Defendant in this matter has not adduced tangible evidence establishing a right or supporting an arguable case for such a right for him to remain on the property. The Plaintiff for his part acknowledged that there was no tenancy agreement with the Defendant. The Defendant here has offered no such information that leads me to consider that he has an arguable claim to possession.
10. The Defendant has failed to show cause why the order sought by the Plaintiff should not be made. The Plaintiff is entitled to an order for immediate vacant possession. The Plaintiff has been generous enough to grant the Defendant 2 weeks to vacate the property. The Defendant should also note that the Plaintiffs are not seeking costs despite his attempt in delaying the matter and unnecessarily being in possession of the property.

### **Orders**

*(a) The Defendant is ordered to deliver vacant possession of the subject property to the Plaintiff within 2 weeks.*

*(b) No orders as to costs.*



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Chaitanya Lakshman  
Acting Puisne Judge

10<sup>th</sup> July 2023