

IN THE HIGH COURT AT SUVA IN THE CENTRAL DIVISION
CIVIL JURISDICTION

HBC: 164 of 2022

IN THE MATTER OF PART XXIV OF THE
LAND TRANSFER ACT 1971

BETWEEN:

ISHU KARAN LATA

PLAINTIFF

AND:

RAVIN CHAND –ARISHMA PRASAD
RAVINESH RAM – RONILA PRASAD
CHARLES CHAND AND WIFE
NAVIN JOSEPH STANLEY AND WIFE
JITEN MAHARAJ AND WIFE
SCOTT – TIMAIMA - LAVENIA

DEFENDANTS

Date of Hearing	:	5 October 2023
For the Plaintiffs	:	Mr. Sharma T.
For the Defendant	:	Ms Tavaiqia L. and Mr Baukula
Date of Ruling	:	20 November 2023
Before	:	Levaci SLTTW, Acting Puisne Judge

JUDGEMENT

(APPLICATION FOR VACANT POSSESSION)

Motion

1. The Applicant had filed an Originating Summons seeking orders for vacant possession under section 169 of the Land Transfer Act 1971 and assistance by the police to remove the Defendants from the property.

Background

2. The Plaintiff seeks vacant possession on the premise as a lawful administrator of the Estate of her husband. All the Defendants reside on Lease NLTB Ref 4/14/50031456.

Affidavits

3. The Plaintiff's Affidavit in support provides as follows –

LEASE ADMINISTRATRIX

“1. That I am the legal wife of late Ajeet Singh, the original lease of TLTB lease # 4/14/50031 and that the transfer of the said lease to me is through transmission by death lodged by the Legal Aid Commission on 01.01.2019.

2. Letters of Administration #53391 was granted to me by the High Court of Fiji on 20th June 2013.

SURVEY REPORT

3. A full colour copy of Survey Report showing position of all six squatters appears on this signed certification.

TLTB NOTICE OF UNLAWFUL OCCUPATION

4. Attached is a letter from TLTB signed by ERONIMO RAUTO Manager Central/Eastern sighting occupants illegally on land. As shown in Annex 4.

MATTER FILED AT SCT – BEYOND JURISDICTION

6. This matter was filed at SCT-Nausori to see compensation for obstruction of income due to squatters on land; but the tribunal rules it as out of their jurisdiction and transferred to Magistrates Court who also dismissed ordering matter to be filed in the High Court of Fiji. As shown in Annex 5.”

4. The 2nd Defendants have filed an Affidavit in Opposition as follows –

“10. Charles Chand the 3rd Defendant admits in paragraph 12 that his temple and terrace of his house touches into the property of the Plaintiff.”

5. The 5th Defendant, Jiten Maharaj argues that there are discrepancies in the boundary of the Plaintiff.

Law on Vacant Possession

6. Section 169 of the Land Transfer Act provides as follows –

⁴Ejectors

169. 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.”

7. Section 169 of the Land Transfer Act (“LTA”) empowers the registered proprietor or lessor to re-enter the land where the lease or tenant has fallen into arrears and a notice to quit has been issued.
8. Section 171 and 172 of the LTA provides that –

”s.171. 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.”

s.172. If a 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.”

9. In AG -v- Navakamocca [2022] FJHC 178; HBC 120.2021 (7 April 2022) Sharma VD J held that –

35.Pursuant to *section 172 of the Land Transfer Act*. The Defendant needs to satisfy this court on affidavit evidence that he has a right to

possession. (Case of **Muthusami v Nausori Town Council F.C.A.** 23/86 refers).

36. There is no need to prove conclusively a right to possession and it is sufficient for the Defendant to prove that there is some tangible evidence establishing the existence of a right or of an arguable defence. (Case No. 152 of 1987- **Morris Hedstrom Ltd v Liaquat Ali** refers)."

Analysis

10. In this instance the onus is on the Applicant to firstly establish ownership as registered proprietor on the property she claims for which section 169 of the Land Transfer Act applies.
11. The Applicant has letters of administration in the Estate of the registered proprietor appointing her as administrator. An unregistered transmission by death was filed into court. By virtue of the unregistered Transmission by Death, she claims to be the registered proprietor of the said lands.
12. Section 93 of the Land Transfer Act recognizes the transmission of the proprietorship on registration of a Transmission by Death form provided she can show she has claims to the Estate of the registered proprietor. The provision states –

“Person claiming under transmission may be registered

93.-(1) Any person claiming to be

(3) If on any application made under the provisions of subsection (1), and upon the evidence adduced in support thereof, the Registrar is satisfied entitled to any estate or interest in land subject to the provisions of this Act by virtue of any transmission, whether as the result of the death of the registered proprietor of such estate or interest or otherwise, may make application in the prescribed form to the Registrar to be registered as the proprietor of such estate or interest.

(2) Every application made under the provisions of subsection (1) shall be signed by the applicant and attested by a qualified witness and shall accurately define the estate or interest claimed by the applicant, and shall state that he is entitled to the estate or interest in respect of which he is applying to be registered as proprietor; and the statements in such application shall be supported by the production to the Registrar of the original or certified true copies of all documents under which the applicant claims to be entitled to such estate or interest.

that the applicant is entitled to the estate or interest claimed, the Registrar shall register the applicant as the proprietor thereof, and the person so registered shall hold such estate or interest subject to all equities affecting the same, but for the purpose of any dealing therewith shall be deemed to be the absolute proprietor thereof.

(4) The title of every personal representative of a deceased proprietor registered under the provisions of this section shall relate back to and take effect from the date of death of the deceased proprietor.”

13. Since the Transmission by Death for has been executed in February 2023 but has not been registered, the Applicant has not established that she is a registered and absolute proprietor of the said property.
14. The Defendant has argued that by virtue of the mis-description of title, that the Applicant had not established her proprietorship.
15. According to the Summons, the Land is described as Lease Number 4/450031 also known as Matakuro 4 and 5 on DP subdivision Lot 16 Lot 1 of 1412 on Viti Levu. The Affidavit provides the Lease number as 4/14/50031, which the court finds is a slight error on the description in the summons which correctly should read as *Lease number 4/14/50031 for Lots 4, 5 and 6*. The error cannot be verified only because the registered title is not provided for by the Applicant to prove the ownership of the land by the deceased registered proprietor. Therefore the mis-description remains as it were and the Court is not satisfied that the Summons properly describes the land for which the Applicant claims registered ownership.
16. The Defendants have made certain admissions.
17. However it is for the Applicant to prove first that she is the registered proprietor which she has failed to do before the Court in order to allow the Court to consider whether the Defendants are entitled to occupy the pieces of land.
18. Given that the Applicant has failed to so, the Court cannot grant the application for the Applicant.

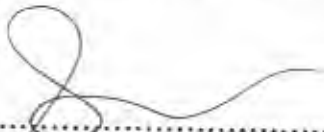
Costs

19. The Court awards costs of \$400 to the Defendants.

Order

20. The Court will order the following:
 - (i) Application for vacant possession be dismissed;
 - (ii) Costs to the Defendants for the sum of \$400 each.




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Senileba LWTT Levaci
Acting Puisne Judge, High Court - Suva
20 November, 2023