

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

HBC 264 of 2023

IN THE MATTER of an
Application under Section 169 of
the **Land Transfer Act.**

BETWEEN: **JAGDISH PRASAD**

PLAINTIFFS

AND: **VINOD KUMAR**

DEFENDANTS

Date of Hearing : 12 March 2024
For the Applicant : Ms Singh. A and Mr Nandan. V
For the Respondent : In Person
Date of Decision : 18 April 2024
Before : Waqainabete - Levaci SLTT, Judge

JUDGEMENT

***(APPLICATION FOR VACANT POSSESSION PURSUANT TO SECTION
169 OF LAND TRANSFER ACT CAP 131)***

Cause and Background

1. The Plaintiffs have filed an Originating Summons and supporting Affidavit seeking vacant possession of the land and premises comprised as Housing Authority Sub Lease No. 432531 being Lot 16 DP 7689 containing an area of 411 square meters

situated in Province of Naitasiri, **AND** that the costs of this Application be paid by the Defendant.

Affidavit Evidences

2. The Plaintiff has deposed he is the registered owner of the property known as Housing Authority Sub Lease No 432531 being Lot 16 on DP 7689 and has annexed a copy of the Certificate of Title to confirm thereof. A notice to vacate the premises was served on the Defendants on 27th February 2023 as they had also built an illegal structure attached to the property without the consent of the owner.
3. The Defendant had filed an answering Affidavit objecting to the application for vacant possession. He deposes that he had been renting the two bedroom house owned by the Plaintiff since 21 April 2007 for \$250 and on 21 June 2018 the rent was increased to \$300. The Defendant admitted continuous payment of rent despite no receipt being issued. He later maintained the property and also erected an attached structure against the property.
4. In reply, the Plaintiff admitted that the Defendant was a tenant on the said property from 2006 when it was a one bedroom flat although there was no tenancy agreement. He had renovated the property and increased the rent to \$250. In 2019 the ground rent and town council rates had increased so rent was increased to \$300. This increase was mutually agreed between the parties. The rent was paid directly to his mother and later on a tenancy agreement which was offered to the Defendant was never executed by him.
5. The Plaintiff also deposed an illegal timber structure residential building was built by the Defendant on the said property without consent of the Plaintiff and Nasinu Town Council imposed a breach notice. The Defendant was confronted and he refuse to leave the property.

Law and Analysis

6. Section 169, 170, 171 and 172 of the Land Transfer Act provides as follows –

“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.

Particulars to be stated in summons

170. 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.

Order for possession

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.

Dismissal of summons

172. If the 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;

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.”

7. The requirement under section 169 (1) (a) and section 171 of the Land Transfer Act is the Plaintiff to show that he is the last registered owner of the property.
8. The Affidavit in Support of the application, is deposed by the Plaintiff who has shown to this Court, through the annexed Certificate of Title that he is in ownership of the property.
9. In accordance with section 171 of the Land Transfer Act, an Affidavit of Service has been filed to confirm that the document has been property served on the Defendant.

10. The Court is satisfied that the Plaintiff is entitled to seek this Summons for the vacant possession of his registered property.
11. The Court thereafter considered the Defendants arguments and Affidavit. Despite claiming he had nowhere to go and that he had done some repairs on the property, this did not give him an entitlement of interest on the property.
12. The Court finds that the Defendant is unable to show that he has an interest on the property.

Orders

13. **Court Orders the vacant possession of the property described as Housing Authority Sub Lease No 432531 being Lot 16 on DP 7689 to the Defendant and occupiers.**
14. **Costs against the Defendants summarily assessed at \$500.00.**

The seal of the High Court of Fiji, Suva, is a circular emblem. It features a central shield with a crown on top, surrounded by the text "HIGH COURT OF FIJI" and "SUVA".

A handwritten signature in purple ink, appearing to read "Mrs SLTTW-Levaci".

Mrs SLTTW-Levaci
Judge