



3. While there is reference to a tenancy agreement, neither of the parties have produced copies of any such document.
4. Both parties filed brief written submissions.
5. The relevant provisions of the Land Transfer Act 1971 are 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 or she may show cause why he or she refuses to give possession of such land and, if he or she 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 or she may make any order and impose any terms he or she 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 or she 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.*

6. The process outlined in section 169 of the LTA is a summary procedure designed to swiftly return possession of a property to a registered proprietor when an occupant fails to demonstrate a lawful right to possess that specific property (see **Jamnadas v Honson Ltd** [1985] 31 FLR 62 (at page 65)).
7. The onus lies with the plaintiff to convince the court that the requirements under sections 169 and 170 of the LTA have been met. Once this burden has been met, it shifts to the defendant to demonstrate their right to possess the land. A Court's decision to either grant possession to the plaintiff or dismiss the summons hinges on how effectively each party discharges their respective burden in the proceedings.
8. The Defendant in his affidavit in opposition does not dispute that the Plaintiff is the last registered proprietor of the subject Property. The Plaintiff has in its affidavit in support produced evidence of a certified true copy of CT 26728 which confirms the Plaintiff as the last registered proprietor of the Property.
9. The second requirement pursuant to section 170 of the LTA has also been fulfilled as the relevant land has been clearly described in the summons pursuant to the Certificate of Title No. 26728. There has been no challenge over the description of the land.
10. Hence, since the Plaintiff has satisfied the requirements of sections 169 and 170 of the LTA, the burden now shifts to the Defendant to demonstrate his right to possess the Property in question in this application.
11. In such proceedings, a defendant's obligation is not to present conclusive proof of their right to stay on the property, but rather to provide some concrete evidence establishing a right or supporting a plausible case for their right to remain in possession of the disputed property. This principle was established by the Supreme Court in the well-known case of **Morris Hedstrom Limited v. Liaquat Ali** CA No: 153/87 where the Court held:

*"Under Section 172 the person summonsed may show cause why he refuses to give possession of the land and if he proves to the satisfaction of the Judge a right to possession or can establish an arguable defence the application will be dismissed with costs in his favour. The defendants must show on affidavit evidence some right to possession which would preclude the granting an order for possession under Section 169 procedure. That is not to say that final or incontrovertible proof of a right to remain in possession must be adduced. What is required is that some tangible evidence establishing a right or supporting an arguable case for such a right must be adduced."*
12. As outlined in **Ali v. Jalil** [1982] 28 FLR 31, even if a defendant fails to satisfy a Court according to the above decision, the Court has the discretion to dismiss the summons if it determines that an open court

hearing is necessary. The section empowers Court to make any order deemed necessary by justice and the specific circumstances of the case.

13. In the written submissions, the Defendant's counsel cited the case of **Wati v Channan** [2011] FJHC 464, which addressed rent default issues. However, this is not relevant to the current situation, where the Defendant has been served with the Notices and continues to occupy the Property.

14. The Defendant argues that his rental payments were current. On the other hand, in his affidavit in opposition, the Defendant admitted that the Plaintiff had refused to accept rent from him after the Notices were issued.

15. Section 89 of the Property Law Act 1971 (PLA) provides:

*"89 (1) No tenancy from year to year is implied by payment of rent.*

*(2) In the absence of express agreement between the parties, a tenancy of no fixed duration in respect of which the rent is payable weekly, monthly, yearly or for any other recurring period may be terminated by either party giving to the other written notice as follows –*

*(a) where the rent is payable yearly or for any recurring period exceeding one year, at least 6 months' notice expiring at the end of any year of the tenancy; or*

*(b) where the rent is payable for any recurring period of less than one year, notice for at least a period equal to one rent period under the tenancy and expiring at any time, whether at the end of a rent period or not."*

16. While a notice is not required under sections 169 and 170 of the LTA, the Notices explicitly gave the Defendant a 30-day period to vacate the Property, thereby also meeting the requirements set forth in Section 89(2) of the PLA.

17. In light of the above, and on the material presented to the Court, the Defendant has not shown a right to possession in terms of section 172 of the LTA.

18. This case is straightforward and free from complex issues. As a result, the Plaintiff is entitled to a favourable decision.

19. Plaintiff is granted vacant possession of the Property forthwith. Costs of this action is summarily assessed at \$2,000.00 considering the circumstances of the case.

20. Accordingly, I make the following orders:

- (a) Defendant is ordered to immediately deliver vacant possession of Certificate of Title number 26728 being Lot 26 on DP 2678 to the Plaintiff; and
- (b) Costs of this action summarily assessed at \$2,000.00 to be paid by the Defendant within 7 days.



**P. Prasad**  
**Master of the High Court**

**At Lautoka**  
**27 August 2024**

