

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

**Civil Action # 165 of 2021**

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

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**BETWEEN:** MOHAMMED AYUB KHAN of 98 Whitford Road, Hinchinbrook, NSW  
2168, Landlord.

**PLAINTIFF**

**AND:** MRS UDAY NARAYAN & MITLESH NARAYAN both of Lakena,  
Manoca, Nausori, Fiji, Tenants.

**DEFENDANTS**

**Representation**

**Plaintiff:** Mr. D. Kumar (Dharmendra Kumar Lawyers).

**Defendants:** Mr. V. Maharaj (Vijay Maharaj Lawyers).

**Date of Hearing:** 9<sup>th</sup> August 2024

**Ruling**

**A. Introduction**

- [1] The Plaintiff filed an ex-parte motion for leave to issue writ of possession against the Defendants for property comprised in State Lease No. 23093, Lot 1 on SO 4843 Lakena/Manoca (pt. of) formerly Lot 2 on SO 2176, District of Bau. The motion is accompanied with an affidavit of the Plaintiff.
- [2] On the hearing of the ex-parte motion on 25<sup>th</sup> January 2024 and submissions by Mr. Kumar relying on the affidavit and the orders of Justice Brito on 11<sup>th</sup> May 2023 granting vacant possession of the said property, I granted orders in terms. On 29<sup>th</sup> January 2024 Mr. Maharaj emailed the Registry informing that his clients appeal is pending in the Fiji Court of Appeal. There is also a pending matter in respect of the same land before the Agricultural Tribunal. On 30<sup>th</sup> January 2024 I directed that both parties be served a NOAH (Notice of Adjourned Hearing) and the matter be called on 5<sup>th</sup> February 2024 and the execution of writ of possession be put on hold. Both lawyers were served the NOAH.
- [3] On 5<sup>th</sup> February 2024, Mr. Maharaj appeared, for the Defendants. There was no appearance for the Plaintiff. Mr. Maharaj informed me of the stay by the Agricultural Tribunal and that the subject land was agricultural land. I set aside the ex-parte orders. Mr Maharaj submitted that the Plaintiff's seemed to have misled the Court. I directed

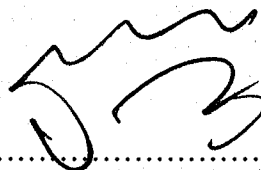
the motion be heard inter parte and served on the Defendants. The Defendants were given 14 days to respond. The Plaintiff was given 1 month to reply.

**B. Analysis**

- [4] I note that Justice Brito granted vacant possession of the subject land. The said matter is on appeal to the Fiji Court of Appeal. The matter relating to the subject land is also before the Agricultural Tribunal. The Defendants on 20<sup>th</sup> July 2023 were granted orders by the Agricultural Tribunal “that the status quo be maintained until the determination of appeal from the Fiji Court of Appeal”. The subject land is an agricultural land.
- [5] Section 4 (1) and 5 (1) of the Agricultural Landlord and Tenant Act 1966 are sections in issue in this matter and respectively provide for presumptions with regards to tenancies and application to declare existence of tenancy. A number of cases have dealt with these issues. In this regard I take note of **Raju v Lal [1976] Fiji Law Rep 28; [1976] 22 FLR 163 (26 November 1976)** and **Ali, In Re [1986] Fiji Law Rep 22; [1986] 32 FLR 30 (23 July 1986)**. What stems from these cases and has been subsequently applied by our Courts is that the High Court lacks jurisdiction to entertain Section 169 application to evict a tenant who is occupying a piece of ALTA Land. Furthermore, Defendant’s application to the Agricultural Tribunal for his entitlement to a declaration of tenancy under Section 5 (1) of ALTA acts as a stay in proceedings for vacant possession under the Land Transfer Act.
- [6] I refuse leave to issue writ of possession against the Defendants for property comprised in State Lease No. 23093, Lot 1 on SO 4843 Lakena/Manoca (pt of) formerly Lot 2 on SO 2176, District of Bau. I grant stay of proceedings pending determination by the Court of Appeal and the Agricultural Tribunal. The Plaintiff is to pay the Defendants \$2000.00 as costs within 21 days. The costs have been summarily assessed.

**Court Orders**

- (a) Leave to issue writ of possession against the Defendants for property comprised in State Lease No. 23093, Lot 1 on SO 4843 Lakena/Manoca (pt. of) formerly Lot 2 on SO 2176, District of Bau, is refused.
- (b) Stay of proceedings pending determination by the Court of Appeal and the Agricultural Tribunal.
- (c) Plaintiff to pay Defendants \$2000.00 as costs within 21 days. The costs have been summarily assessed.



Chaitanya S.C.A. Lakshman

**Puisne Judge**  
29<sup>th</sup> August 2024

