

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

CIVIL ACTION NO. HBC 309 OF 2020

BETWEEN : **NITYA NAND PILLAY** of Navo, Nadi, Landlord.

PLAINTIFF

AND : **KISHAN KUMAR** of Navi, Nadi, Occupation Unknown.

DEFENDANT

Before : Master P. Prasad

Counsels : Mr. S.N. Chandra for Plaintiff
Defendant in Person

Date of Hearing : By way of written Submissions

Date of Decision : 16 October 2024

JUDGMENT

1. The Plaintiff has summoned the Defendant pursuant to section 169 of the Land Transfer Act 1971 (LTA) and sought an order for the Defendant to give immediate vacant possession of the land described as "Crown Lease Ref 4/10/6335 Lot 5 NDSW 1088 (part of) Tiliva & Navo situated in the Tikina of Nadi in Province of Ba" (Property).
2. The Defendant has contested the application and filed an affidavit in opposition. Both parties filed written submissions and wished to rely on the same.
3. The relevant provisions of the Land Transfer Act 1971 (LTA) 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.

4. The process outlined in section 169 of the LTA is a summary procedure designed to swiftly return possession of the property to the registered proprietor when the occupant fails to demonstrate a lawful right to possess that specific property (see ***Jamnadas v Honson Ltd*** [1985] 31 FLR 62 (at page 65)).
5. The responsibility 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. The court's decision to either grant possession to the plaintiff or dismiss the summons hinges on how effectively each party discharged their burden in the proceedings.
6. The Plaintiff in his affidavit in support produced evidence of a photocopy of an Approval Notice of Lease (Approval Notice) for land described as Lot 5 NDSW 1088 proposed subdivision (pt.of) Tiliva & Navo Formerly Lot 2 SO 6461 in the District of Nadi for an estimated area of 1280 metre squared which is subject to survey. This Approval Notice has a Registrar of Deeds seal showing that the same is registered as a Deed.
7. Section 2 of the LTA defines "Proprietor" and "Register" as follows:

"proprietor means the registered proprietor of land, or of any estate or interest therein;...

register means the Register of Titles to land to be kept in accordance with the provisions of this Act;"

8. Accordingly, "registered" pertains to registration under the LTA, and such registration is a key element under the LTA for eviction purposes, as outlined in Section 169.¹
9. Section 5 of the LTA prescribes land which is subject to the LTA as follows:

"5 The following freehold land and leasehold land shall be subject to the provisions of this Act –

¹ Also see ***Kumar v Devi*** [2017] FJHC 269, ***Wati v Prasad*** [2022] FJHC 296, ***Kumar v Kumar*** [2016] FJHC 822 and ***Nairs Transport Co Pte Ltd v Goundar*** [2022] FJHC 397.

All land which has already in any manner become subject to the provisions of the Land (Transfer and Registration) Ordinance 1933;

All land hereafter alienated or contracted to be alienated from the State in fee;

All leases of State land granted pursuant to the provisions of the State Lands Act 1945, all leases of iTaukei land granted pursuant to the provisions of the iTaukei Land Trust Act 1940 and all mining leases, special mining leases, special site rights and road access licences granted pursuant to the provisions of the Mining Act 1965;

All land in respect of which an order is hereafter made under the provisions of any Act now or hereafter in force which has the effect of vesting that land in any person in freehold tenure."

10. Section 12 of the State Lands Act 1945 clearly states that:

"All leases of State land shall be in such form and subject to such conditions and covenants as may be prescribed, and such leases shall be recorded in a register to be kept by the Registrar of Titles entitled "Register of State Leases" and it shall be lawful for the Director of Lands to charge and collect in respect of the preparation of any lease or for any matter in connection therewith such fees as may be prescribed."

11. Regulation 25 of the State Lands (Leases and Licences) Regulations 1980 (Regulations) prescribes the form of leases as follows:

"All leases under these Regulations shall be in Form 1 in the Schedule 1 or as near thereto as circumstances permit."

12. An Approval Notice does not conform to the standard lease form prescribed by the Regulations and is not considered a lease issued pursuant to the State Lands Act 1945. As a result, it is not registered with the Register of Titles and is only recorded as a deed under the Registration Act 1879, which aims to ensure preservation (according to section 3 of the Registration Act 1879).

13. An Approval Notice is issued under Regulation 26 which explicitly states that:

"26 (1) Upon the approval in principle by the Director of an application for a parcel of land the applicant shall be notified in writing of such approval in principle and advised of the terms and conditions under which the Director is prepared to grant a lease.

(2) On acceptance in writing by the applicant of the terms and conditions contained in the notification of approval in principle under subregulation (1), an approval notice of lease shall be issued to the applicant.

(3) The applicant shall not occupy the land approved for leasing until he or she has executed the approval notice of lease and paid all sums due in respect thereof.

(4) Failure on the part of the applicant to execute the approval notice of lease and to pay all sums due in respect thereof within 6 months of notice that such approval notice is ready for execution shall render the approval liable to cancellation.

14. Regulations 27 and 28 further set out the process of obtaining a lease after the issuance of an Approval Notice:

27 (1) Upon completion of the survey a lease embodying the approved terms and conditions shall be prepared in duplicate by the Director and the lessee advised that the lease is ready for execution subject to payment by the lessee of sums then due in respect of the lease.

(2) failure on the part of the applicant to execute the lease within 3 months of notice that such lease is ready for execution shall render the approval of the lease liable to cancellation.

28 The lease in duplicate shall when executed by the lessee be signed by the Director as lessor, and after the lease has been registered by the Registrar of Titles, who shall retain the original, the duplicate shall be transmitted to the lessee."

15. It thus follows that an Approval Notice is just a formal document issued by the Director of Lands to inform the lessee that their lease application has been approved. It is not surveyed and as such does not have a fixed area or boundary. An Approval Notice details the terms and conditions that must be fulfilled before a lease can be officially drafted, signed, and registered by the Registrar of Titles. For these reasons it is only registered as a deed in accordance with the Registration Act 1879.

16. The Plaintiff does not hold a "registered" interest in the land and cannot be considered a proprietor under Section 2 of the Land Transfer Act 1971.

17. Since the Plaintiff has not met the requirements of Sections 169 and 170 of the LTA and therefore does not have the legal standing to pursue this action under Section 169, the case should be dismissed.

18. Accordingly, I make the following orders:

- (a) The Plaintiff's summons is stuck off; and
- (b) No order as to costs.



P. Prasad
Master of the High Court

At Lautoka
16 October 2024