

PART A - BACKGROUND

1. The Plaintiff filed an Originating Summons seeking the following Orders pursuant to section 169 of the Land Transfer Act Cap 131 that all Defendants give vacant possession to the Plaintiff the property situated at Waidradra, Navua registered as DP 6185 in Certificate of Title 2504 registered under Vitetnam Land Purchasing Cooperative Society Limited.

PART B: AFFIDAVIT

Plaintiffs Affidavit

2. In the Plaintiffs application, the Plaintiff had filed a supporting Affidavit in which he deposed he was the registered owner of the property under the sub-division of Lot DP 6185 of CT 25044 and annexed a letter from Vietnam Land Purchasing Cooperative Society Limited to confirm the purchase thereof.
3. The Plaintiff deposed that the Defendant occupied the property as a tenant and had been issued notice to vacate and failed to pay rent in arrears.
4. The Defendant did not file an Affidavit despite the Court granting him time to do so.

PART C: SUBMISSION BY BOTH PARTIES

5. On the day of Hearing, the Defendant appeared, he failed to file any Affidavits but sort to argue on issues of law.
6. The Defendant argued that he was intending to leave the premises, however he was awaiting completion of the building of his property in Lapanoni Settlement, Deuba.
7. In oral submissions, the Plaintiff submitted that the Defendant failed to vacate the premises despite numerous notices to do so and owed rent of \$2000. The Plaintiff sort order in terms of the application.

PART C: LAW AND ANALYSIS

8. Section 169 of the Land Transfer Act enables a Lessor to apply for vacant possession of land where there are arrears by the Leasee. The provision is as follows-

Ejectors

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.

9. The Plaintiff is now seeking Orders from the Court for the Defendant to vacate the property on the basis of default in payment of arrears in rentals for the Sub-Lease issued to them.
10. The Plaintiff relies upon Section 169 (1) of the Land Transfer Act arguing that the Defendants have accumulated arrears in rent.
11. According to section 169 (1) of the Land Transfer Act, the Plaintiff is required to prove that he is the registered owner of the property.
12. The Plaintiff has annexed in their supporting Affidavit the Certificate of Title. The Title copy was certified by the Registrar of Title on 16 February 2023 and registers the name of John McPherson Smith and John Meiklejohn Borron and William Smith on 1st of July 1901. There was no endorsement of a transfer to prove registration of ownership to the Applicant.
13. The Court finds there is no evidence to prove that the Plaintiff is the registered owner of the property.

14. Despite there being a letter by the Vietnam Land Purchase Cooperative Society Limited, without the registration of the lease of property deposited to the Plaintiff, the Plaintiff is not recognized in law as a registered owner.
15. Therefore the Court finds that the Plaintiff is not entitled to seek relief of vacant possession from this Court as the Court finds that the Plaintiff is unable to establish himself as the registered owner.
16. I need not go any further to examine the Defendant as the Plaintiff has failed to prove otherwise.
17. The Court will therefore not grant the application for the Plaintiff.
18. The Court will not grant any costs as the Defendant has failed to comply with court orders until the date in which he appeared for Hearing.

PART D: ORDERS

19. The Court orders as follows:

- (a) **Application of Vacant Possession of property registered in Waidradra Subdivision, Navua as DP 6185 in Certificate of Title No 25044 is refused and dismissed;**
- (b) **No order as to costs.**


Justice Senileba Waqainabete-Levaci

Puisne Judge

17 October 2024

