

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**[CIVIL JURISDICTION]**

**Civil Action No. HBC 149 of 2024**

**IN THE MATTER THE LAND TRANSFER ACT 1971**

Section 169 of Part 24

**BETWEEN:**       **MID-WEST HOLDINGS PTE LIMITED** a private company  
incorporated in Fiji having its registered office at Corner Point,  
Corner of Nadi Back Road, Nadi.

**PLAINTIFF**

**AND:**           **HOTEL BULA-BARD PTE LIMITED** a private company  
incorporated in Fiji and having its registered office at Lot 12,  
Wasawasa Road, Nadi, Viti Levu.

**DEFENDANT**

**BEFORE**        :       **Master P. Prasad**

Counsels           :       Messrs Patel & Sharma for Plaintiff  
                              :       Messrs Neel Shivam for Defendant

Date of Hearing     :       By way of written submissions

Date of Decision   :       21 March 2025

**JUDGMENT**

1. The Plaintiff has instituted this action by filing a Summons pursuant to Section 169 of the Land Transfer Act 1971 (LTA) thereby seeking an order for the Defendant to give immediate vacant possession of all the piece of land comprised in Certificate of Title Number 18430 being Lot 12 on DP 4651, land known as "Cawa" (Part of) in the District of Nadi, in the island of Viti Levu, containing an area of one rood five perches and one tenth of a perch (**Property**). The Plaintiff filed an Affidavit in Support of Jiwan Ram (**Jiwan**), a Director of the Plaintiff company.

2. The Defendant opposed the Summons and filed an Affidavit in Opposition of Alen Ashwin Ram (**Alen**), a Director of the Defendant Company. The Plaintiff filed an Affidavit in Reply. Alen is Jiwan's biological son.
3. Both parties have filed comprehensive written submissions pertaining to the application and on 20 January 2025 they moved the Court to have the Ruling made on the written submissions.
4. 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.*

5. 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)).
6. 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 depends on how effectively each party discharges their respective burden in the proceedings.
7. 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 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.
8. Furthermore, 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.
9. In this matter, the Defendant does not dispute that the Plaintiff is the last registered proprietor of the Property. The requirement under section 169 is met.
10. 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.
11. Since the Plaintiff has satisfied the requirements of sections 169 and 170 of the LTA, the burden now shifts to the Defendant to demonstrate its right to occupy the Property.
12. It is also an agreed fact that the Plaintiff and Defendant had entered into an agreement for the Defendant to lease the Property from the Plaintiff for a monthly rent of \$36,000.00 with effect from 1 February 2022 (**Agreement**).
13. Clause 14 of the Agreement provided that the same could be terminated by either party giving the other a notice of one clear month.

14. While the Plaintiff's contention is that the Defendant is in rental arrears and consequently is in breach of the Agreement by only paying \$25,000.00 rent since February 2023, the Defendant disputes this and states that the Plaintiff had agreed to the variation of the Agreement whereby the rent was reduced to \$25,000.00 in exchange for the Defendant to continue investing capital and carry out necessary repairs and upgrades to the buildings on the Property. The Defendant also claims that the Plaintiff had further agreed to sell the Property to the Defendant, but the sale did not eventuate.
15. In the Affidavit in Opposition, Alen states that he has assisted in paying off the Plaintiff's debts from its other company namely Edge Water Resort Pte Ltd, and he has also paid the Plaintiff's credit card debt of \$20,000.00. Alen further states that because of the relationship turning sour between Alen and Jiwan (i.e. Alen obtained a DVRO against Jiwan), the Plaintiff has instituted these proceedings.
16. In addition to the above, the Defendant's counsel in their written submissions alluded to the fact that the Plaintiff never issued the Defendant with a notice to quit and that a correspondence dated 7 December 2024 from the Plaintiff's counsel is in fact a demand for recovery of outstanding rentals. The Defendant's counsel is basing this argument on the requirement of section 169 (c) of the LTA.
17. For the above reasons the Defendant claims that it would be inequitable for the Defendant to deliver vacant possession of the Property after it has made substantial investments in the Property and the rent was mutually varied.
18. The question before the Court now is whether this gives any right to the Defendant to remain in possession of the Property, overriding the Plaintiff's title.
19. At the outset, the Court notes that most of the facts asserted by the Defendant in support of a malafide intent to institute these proceedings are actually personal facts between Alen and Jiwan as individuals, and this has no bearing on the Plaintiff and the Defendant as companies are separate legal entities from the individuals concerned.
20. In regard to the submission made by the Defendant's counsel concerning the application of section 169 (c) of the LTA and the alleged failure of the Plaintiff to serve a notice to quit on the Defendant, the Plaintiff's Affidavit in Support includes a Notice to Vacate dated 7 June 2024 that was issued by the Plaintiff's legal counsel to the Defendant. The existence and service of the said notice was not challenged by the Defendant in its Affidavit in Opposition. The only point of contention in the Defendant's Affidavit in

Opposition regarding the Notice to Vacate was that there were no rental arrears owed to the Plaintiff.

21. In any case, the Plaintiff is entitled to initiate these proceedings as the registered proprietor of the Property in accordance with section 169 (a) of the LTA. The term "Proprietor" is defined in section 2 of the LTA as:

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

22. Based on the above definition, it is evident that any registered proprietor of land has the right to initiate this action through an originating summons under section 169 of the LTA, as is the case here (also see **Jepsen v Mani (trading as Daks Karwash & Detailing)** [2024] FJHC 674).

23. Furthermore, the Defendant has not provided any evidence to support his claim that the rent for the Property had been varied to \$25,000.00. The Plaintiff's counsel had sent an initial correspondence on 7 December 2023 to the Defendant advising him that he had been paying only \$25,000.00 and thus his rental payments were in arrears. This correspondence served to notify the Defendant of the outstanding rent payments. The Defendant did not counter this correspondence with any assertion that the rent had already been varied, at least not until the Plaintiff had filed these proceedings.

24. The Defendant's final argument in essence is based on the equitable grounds of unjust enrichment and promissory estoppel. The Defendant submits that it has made extensive renovations to improve the value of the Property, and for the Plaintiff to benefit from these improvements would unjustly enrich the Plaintiff. Furthermore, it would be unfair if the Plaintiff were allowed to renege from his consensual rent variation and his promise to sell the Property to the Defendant, especially after the Defendant had relied on and acted upon the said representations by the Plaintiff.

25. It must be noted that a claim for investment done on the Property is a separate issue from eviction.

26. In granting an application for vacant possession pursuant to section 169 of the LTA in **Jepsen v Mani (trading as Daks Karwash & Detailing)** [supra] Justice Amaratunga held that:

"[79] Defendant may seek compensation for improvements. This can be done by way of proper civil action, but this clearly does not give Defendant a right to possession in terms of Section 172 of Land Transfer Act 1971. If this is recognized as right to possession any tenant will do some improvements to property and on that basis will request possession till adequate compensation is paid or determined by court. This will make eviction in terms of Section 169

of Land Transfer Act 1971 a dead letter and indefeasibility as unworkable for eviction of commercial tenants.

[80] As Plaintiff admits the improvements on the Land done by Defendant the assessment and extent of improvements can be assessed in a proper action, but that is a separate issue, from eviction.

[81] There is no right for Defendant to remain in possession based on improvements on the land. Already Defendant had benefitted from remaining in the property without increase of commercial rental since 1.3.2021. Any unjust enrichment can be assessed properly through civil action filed by Defendant, but that does not allow Defendant to remain in the premises.

[emphasis added]

27. Similarly in this matter, the Defendant is at liberty to file a separate action for compensation against the Plaintiff regarding any improvements made on/to the Property by the former. Such improvements do not grant the Defendant a right to remain on the Property.
28. The Defendant has not shown an arguable defence or a right to remain in possession of the Property. There are no complicated issues to be determined in this matter hence the Plaintiff is entitled to a favourable decision.
29. The Plaintiff is granted vacant possession of the Property forthwith.
30. Accordingly, I make the following orders:
  - (a) The Defendant is ordered to immediately deliver vacant possession of all the land comprised in Certificate of Title Number 18430 being Lot 12 on DP 4651, land known as "Cawa" (Part of) in the District of Nadi, in the island of Viti Levu, containing an area of one rood five perches and one tenth of a perch, to the Plaintiff; and
  - (b) Costs of this action summarily assessed at \$2,000.00 to be paid by the Defendant to the Plaintiff within 28 days.



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

**At Lautoka**  
**21 March 2025**