

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

**CIVIL JURISDICTION**

**Civil Case No. HBC 143/2025**

**BETWEEN:**                    **SAMUELA ROKONASAU KANAI** of 76 Browning Street,  
Raiwaqa, Suva, Engineer.

**Plaintiff**

**AND:**                            **VETAIA MASIKOSO RAKETEKETE, TUWAI MASIKORO**  
**and TAINA TABUALEVU** all of Lot 110 on DP 3390, Raiwaqa,  
Suva

**Defendants**

**JUDGMENT**

*Plaintiff:*                            *Mr. D. Sharma/Ms. Chool/Mr. S Wally*

*Defendant:*                        *Not Present*

*Date of Hearing:*                *1<sup>st</sup> July 2025*

*Date of Judgment:*            *4<sup>th</sup> July 2025*

**Introduction**

1. This is an application by way of Originating Summons-Expedited Form for the defendants to give immediate possession to the Plaintiff, being the last registered lessee of all that piece of land described as Housing Authority Lease No. 129266 being Lot 110 on DP 3390, known as Raiwaqa, Suva, containing an area of 137 square meters.

**The Facts**

2. The summons is supported by an affidavit sworn by the Plaintiff in which he states that:
  - a. The Defendants are occupying Housing Authority Lease No. 129266 and known as Lot 110 on DP 3390, Raiwaqa, Suva, containing an area of 137 square meters (the subject property) without the consent of the Plaintiff;

- b. The Defendants never paid any rent to the Plaintiff; that they initially sub-leased the said property from the Housing Authority but have defaulted in their payments which resulted in a mortgagee sale;
- c. A copy of the Lease was annexed to the affidavit which shows the Plaintiff as the last registered owner of the lease and that the transfer was registered on 11<sup>th</sup> December 2024;
- d. That the Plaintiff has not been able to occupy the said property as it is being occupied by the Defendants who are refusing to vacate it;
- e. That the plaintiff issued a Notice to Quit dated 24<sup>th</sup> December 2024 which was served on 27<sup>th</sup> December 2024 by Suresh Prasad of 24 Namena Road, Nabua, Suva, Registered Bailiff. Attached to the affidavit was a copy of the said Notice to Quit and photographs of the notice affixed to the door of the property.
- f. That despite being served with the Notice to Quit, the Defendants have failed to vacate the said property.

**The Law**

- 3. The relevant parts of sections 169-172 of the Land Transfer Act, which determines this action are: -

***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;*

.....

***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 may show cause why he refuses to give possession of such land and, if he 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 may make any order and impose any terms he may think fit;*

.....

### **The Hearing**

4. The matter was initially set down for hearing on 15<sup>th</sup> of May 2025 but on that day, the court discovered that the defendants were not in court and the Summons had, contrary to section 170 of the Act, been served less than 16 days before the hearing. The court then ordered the summons to be re-dated to the 1<sup>st</sup> of July 2025 and served on the Defendants.
5. The Plaintiff filed an affidavit of service on 25<sup>th</sup> June 2025 showing the Summons had been served on the 2<sup>nd</sup> and 3<sup>rd</sup> named defendants on 28<sup>th</sup> May 2025, more than 16 days before the day of the hearing. The first named Defendant could not be located by Binesh Kumar, the server, so he returned on the 10<sup>th</sup> of June 2025 and still being unable to locate the 1<sup>st</sup> named defendant, he affixed a copy of the Originating Summons and the Affidavit in Support on the door of the building on the said property.

### **Analysis**

6. The Plaintiff can bring this action because he is the last registered owner of the lease as required by section 169(a) of the Act. He had purchased the property on a mortgagee sale from the Housing Authority, when the previous registered owner had defaulted on his payments. The Plaintiff is therefore entitled to bring this action.
7. The Defendants were not tenants of the Plaintiff and had not been given any rights by the plaintiff to occupy the said property after ownership had been transferred to him on 24<sup>th</sup> December 2025. The Defendants therefore do not have any right to remain on the subject property.
8. The Defendants had been served a notice to vacate on 27<sup>th</sup> December 2024 and had been served twice with the summons to attend court but failed to do so.


9. The Defendants were all served with the summons to attend more than 16 days from the date of the hearing as required by section 170 of the Act.
10. The Defendants failed to appear although their names were called out twice and I find that they have waived their right to show cause under section 172 of the Act to remain on the property.

**Result**

11. For the reasons given above, I find on the balance of probabilities that the Plaintiff has met the requirements of sections 169-171 of the Land Transfer Act, and I order the Defendants to give immediate vacant possession of the subject property, to the Plaintiff.

**Orders**

1. The Defendant is to give immediate vacant possession to the plaintiff of the Housing Authority Lease No. 129266 being Lot 11 on DP No. 3390 and known as Raiwaqa in the City of Suva.
2. The Defendants are jointly and severally liable for costs summarily assessed at \$200.00

  
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Penijamini R Lomaloma  
Acting Puisne Judge

