

Relevant law and analysis

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 2nd named Defendant (**Defendant**) does not dispute that the Plaintiff is the last registered proprietor of the Property. Thusly, the requirement under section 169 is met.
10. The second requirement pursuant to section 170 of the LTA is for the summons to contain a description of the land and to require the person summoned to appear in court. The Plaintiff's Summons correctly describes the land as "State Lease No. 15417 land known as Maro (pt of) being Lot 8 on Plan No. N 1957 in the District of Malomalo in the Island of Vitilevu having an area of 7.7143 hectares." The certified true copy of the said State Lease attached to the Plaintiff's Affidavit in Support reflects the same land description.
11. The Defendant does not dispute the description of the Property. Therefore, the requirement under section 170 has also been fulfilled by the Plaintiff.

12. Since the Plaintiff has satisfied the requirements of sections 169 and 170 of the LTA, the burden now shifts onto the Defendant to demonstrate her right to occupy the Property.
13. The background to this action as stated in the Plaintiff's Affidavit in Support is as follows:
- a) The Plaintiff is the Executor and Trustee of the Estate of her husband Kishun Lal also known as Kissun Lal;
 - b) The 1st named Defendant and 2nd named Defendant were husband and wife respectively;
 - c) The 1st named Defendant is the Plaintiff's grandson, being the son of her late daughter, Gyan Wati;
 - d) The 1st named Defendant's parents, Gyan Wati and Jai Narayan came onto the Property pursuant to a Sale & Purchase Agreement (**Agreement**) of 02 June 1994 which was entered into between Kishun Lal and Jai Narayan;
 - e) The Director of Lands (**DOL**) consent was not obtained for the Agreement and Jai Narayan also defaulted on his obligations under the Agreement;
 - f) The Plaintiff instituted High Court proceedings (**HBC 351 of 2007**) for the eviction of Gyan Wati and Jai Narayan;
 - g) The High Court delivered its Judgement on 30 April 2015 and made Orders that; (i) Gyan Mati and Jai Narayan cannot remain on Crown Lease pursuant to an illegal Agreement; (ii) Gyan Mati and Jai Narayan can rely on the Agricultural Landlord and Tenants Act and remain on the Crown Lease until their application is adjudicated by the Agricultural Tribunal; and (iii) Gyan Mati and Jai Narayan pay costs of \$1000.00;
 - h) The Agricultural Tribunal delivered its Decision on 5 October 2017 dismissing Gyan Mati and Jai Narayan's application for tenancy over the Crown Lease (Reference No. WD 08 of 2013);
 - i) Gyan Mati and Jai Narayan appealed the Decision of the Agricultural Tribunal and the same was dismissed by the Central Agricultural Tribunal on 13 June 2018 (CAT No. 02 of 2017);
 - j) Gyan Mati and Jai Narayan remained on the Property and have since passed away;
 - k) The Defendant has been occupying the Property without the consent of the Plaintiff and the DOL;
 - l) The Plaintiff's counsel issued the Defendant with a Notice to Vacate on 19 February 2024 (**Notice**); and
 - m) The Defendant has failed to vacate the Property.

14. The Defendant avers in her Affidavit in Opposition that:

- a) Gyan Mati and Jai Narayan occupied the Property from 1971 till they passed away;
- b) Gyan Mati and Jai Narayan paid the Plaintiff the consideration sum as per the Agreement;
- c) Gyan Mati and Jai Narayan cultivated the sugar cane farm on the Property and applied obtained a loan from Sugar Cane Growers Fund;
- d) DOL had granted consent to the Agreement, so the Agreement is valid (**DOL Consent**);
- e) The Plaintiff had made arrangement to transfer the Property to Jai Narayan once the same was transferred to her; and
- f) The Defendant has beneficial and equitable interest in the Property as Jai Narayan had been cultivating the Property and paid the purchase price as per the Agreement.

15. The question before the Court now is whether the Defendant has any right to remain in possession of the Property, overriding the Plaintiff's title. It is incumbent on the Defendant to demonstrate her right to occupy the Property.

16. The Defendant's counsel in her submissions argues that while the DOL Consent was not presented to the High Court in HBC 351 of 2007, this Court should consider the same. The counsel further submits that the Plaintiff was aware of the Agreement and the Defendant's occupation of the Property, and that there needs to be a proper trial in this matter where witnesses can give evidence to confirm the Defendant's interest in the Property. The Defendant's counsel also submits that only at a full trial can a Court decide on the validity of the Agreement given that the DOL Consent had been obtained.

17. A copy of the said DOL Consent is attached to the Defendant's Affidavit in Opposition marked as "RL4", which is in the form of a correspondence from DOL to "Vijay R Singh & Co" regarding the Sale and Purchase between Kissun Lal to Jai Narayan. The document is not very clear but what is legible as contents of the correspondence are as follows:

"...consent has been granted to the dealing below, the necessary consent will be endorsed on production of the documents fully executed by the parties and on payment of \$641.00 being rental to 31/12/94, discharge approval from mortgagee Westpac and acceptance of reassessed rental. Please submit the Agreement/Mortgage/Transfer document in duplicate/triplicate a copy is required for my records..."

18. The Plaintiff in her Affidavit in Reply states that she has never seen the document bearing the DOL Consent.
19. The Plaintiff's counsel's submission on the issue of the DOL Consent and the Agreement is that the said issue is *Res Judicata* and that in any event the Defendant was not a party to the Agreement. The counsel further submitted that there was no consent from the DOL for the Defendant's occupation of the Property, which is contrary to section 13 of the State Lands Act 1945.
20. Moreover, the Plaintiff's counsel submitted that even if this Court decides that the Defendant was a licensee then any licence granted to the Defendant was revoked by the Notice to Vacate.
21. The Defendant did not provide any evidence surrounding the details of her own occupation of the Property and the duration of the same. The Affidavit in Opposition only provides facts pertaining to Gyan Mati and Jai Narayan's occupation of the Property. The Defendant has also failed to show how she has an interest in the respective Estates of Gyan Mati and Jai Narayan apart from the fact that the Defendant was married to their son.
22. To show her interest in the Property, the Defendant relies on the Agreement, its validity and the DOL's Consent of the same. It should be noted that the issue of validity of the Agreement was already dealt with by the High Court in HBC 351 of 2007. The High Court in the same decision had also decided that Gyan Mati and Jai Narayan could not remain on Property pursuant to an illegal Agreement. The said decision is final, and the matter is *Res Judicata*. If unsatisfied with the said decision, Gyan Mati and Jai Narayan should have appealed the same. Instead, they chose to initiate proceedings in the Agricultural Tribunal, which was also dismissed and an appeal on the same by them was subsequently dismissed by the Central Agricultural Tribunal.
23. Since the issues of the validity of the Agreement, the DOL Consent, and occupation of the Property by Gyan Wati and Jai Narayan have been dealt with in prior court actions, this Court now only has to determine whether the Defendant has presented any arguable defence or shown any right to remain in possession of the Property.
24. While the Defendant's counsel submitted that the Defendant's interest in the Property can only be evidenced through a full trial, it was for the Defendant to show some interest in the Property in this Action.

25. In this matter, the Court finds that the Defendant has failed to establish any arguable defence or demonstrate any entitlement to continue occupying the Property. No evidence has been presented to substantiate the Defendant's claim of interest in the Property. At best the Defendant was occupying the Property pursuant to a licence, which was revoked when the Plaintiff served the Defendant with a Notice to Vacate the Property.
26. There are no complicated issues to be determined in this matter hence the Plaintiff is entitled to a favourable decision.
27. It must be further noted that while the Defendant's counsel has submitted that the Defendant has spent money on improvements on the Property, no facts pertaining to this were stated in the Defendant's Affidavit in Opposition. In any event, a claim for any money allegedly spent by the Defendant on the maintenance of the Property is a separate issue from eviction.
28. In granting an application for vacant possession pursuant to section 169 of the LTA in **Jepsen v Mani (trading as Daks Karwash & Detailing)** [2024] FJHC 674; HBC116.2024 (13 November 2024) the Hon. Mr. 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.

...

[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]

- ~~29. Similarly in this matter, the Defendant is at liberty to file a separate action for compensation against the Plaintiff regarding any alleged improvements~~

made on/to the Property. Such improvements *per se* do not grant the Defendant a right to remain on the Property.

30. Therefore, the Plaintiff is granted vacant possession of the Property forthwith.

31. Accordingly, I make the following orders:

- (a) The Defendant is ordered to immediately deliver vacant possession of all the land comprised in State Lease Number 15417 to the Plaintiff; and
- (b) Each party to bear its own costs.

At Lautoka
04 July 2025



P. Prasad
Master of the High Court

Solicitors: Janend Sharma Lawyers for Plaintiff
Legal Aid Commission for Defendant