

Relevant law and analysis

3. 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.*

4. 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)).
5. 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.
6. 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.
7. 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.
8. In this matter, the Plaintiff has annexed to its Affidavit in Support a certified true copy of State Lease Number 339209, which is issued to the Plaintiff for a term of 99 years with effect from 20 February 1989. The Defendants do not dispute the fact that the Plaintiff is the last registered proprietor of the Property. Thusly, the requirement under section 169 is met.
9. 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. Block 2, Flat 37, Vakatora Housing, situated on State Lease No. 339209 and more specifically described as Lot 6 on DP 5607*". The certified true copy of the said State Lease attached to the Plaintiff's Affidavit in Support reflects the same land description.
10. The Defendants do not dispute the description of the Property. Therefore, the requirement under section 170 has also been fulfilled by the Plaintiff.

11. Since the Plaintiff has satisfied the requirements of sections 169 and 170 of the LTA, the burden now shifts onto the Defendants to demonstrate their right to occupy the Property.

12. The background to this action as stated in the Plaintiff's Affidavit in Support is as follows:

- a) The Plaintiff is the last registered lessee of the Property;
- b) Situated on the Property are several residential flats being given for rent. The said flats are numbered and situated in different blocks;
- c) The flats are known as '*Vakatora Housing*';
- d) The Defendants are occupying Flat 37 in Block 2;
- e) The Defendants' occupancy stems from a Tenancy Agreement (**Agreement**);
- f) The Agreement was for a term of 3 years with effect from 9 December 2014 with a provision for a 3-year renewal;
- g) One of the conditions of the Agreement was that the Defendants only utilize the Property for residential purposes;
- h) Upon routine inspections it was discovered that without the Plaintiff's consent, the Defendants were operating a canteen from the Property and also selling loose cigarettes. The Plaintiff obtained statements from other residents of Vakatora Housing confirming the same;
- i) On 23 January 2023, the Plaintiff issued to the Defendants a Termination of Tenancy (**Notice**) giving the Defendants 30 days to vacate the Property;
- j) Despite several reminders, the Defendants have failed to vacate the Property.

13. The Defendants' Affidavits collectively state as follows:

- a) 1st named Defendant Vimlesh Reddy (**Vimlesh**) submitted a written application in 2015 to the Plaintiff seeking approval to operate a Mini Market at Vakatora Housing;
- b) Plaintiff verbally informed Vimlesh that the said application was approved and was told to pay weekly charges to operate the Mini Markert
- c) That Vimlesh later declined to operate the Mini Market due to safety reasons and then the Plaintiff gave a verbal approval to operate a canteen from his flat;
- d) He has been operating the canteen from 2015 and the Plaintiff's staff, manager and board members are fully aware of this;
- e) The Plaintiff takes a statutory declaration from Vimlesh every year of his weekly earnings from the canteen;
- f) Canteens are operated in other properties owned by the Plaintiff;

- g) Plaintiff's staff verbally informed other tenants to close their canteen business but only issued the Notice to the Defendant;
- h) Vimlesh has never been charged with the offence of selling cigarettes;
- i) One of the tenants who gave a statement against Vimlesh is now selling cigarettes from her flat;
- j) There is discrimination against the Defendants as they have been vocal about issues at Vakatora Housing;
- k) The Plaintiff has not fixed electrical and water issues at the Property;
- l) The Plaintiff signed with Vimlesh 3 separate tenancy agreements in December 2023 but has not given him a copy;
- m) The Defendants qualify for housing with the Plaintiff and have maintained good reputation; and
- n) The manner in which the Plaintiff is attempting to evict the Defendants is illegal.

14. The question before the Court now is whether the Defendants have any right to remain in possession of the Property, overriding the Plaintiff's title. It is incumbent on the Defendants to demonstrate their right to occupy the Property.

15. To address this question, it is pertinent to note the contents of the Notice which is based on two grounds, reproduced as follows:

*"PRB wishes to advise you that it is giving you **30 days** to vacate **Flat 37, Block 2**, you occupying at the **PRB Vakatora Estate**. And return the flat keys to the PRB Office now located at 14 Tavewa Avenue, Lautoka.*

This is due to the following breaches of the tenancy agreement:

1. Operating Canteen

*There are information and complaints received that you are operating canteen from your flat, this is a breach of the clause on the Tenancy Agreement on **Obligation of The Tenant** on:*

Sec 4.3 The tenant shall use the flat for residential purpose only...

2. Selling of Prohibited Substance

*Information received of selling cigarettes rolls and selling of cigarettes to a person under the age of 18 under section 13(1)a of the Tobacco Control Act 2010 **a person must not sell or supply any tobacco person to a person under the age of 18 years** and section 16 (1) a supply any tobacco person to a person under the age of 18 years and section 16*

(1) a person must not sell or cause or permit to be sold (a) loose cigarette stick or cigarette roll.

We look forward that you treat this notice seriously.

Kind regards

Timoci Naleba

GENERAL MANAGER”

16. The Defendants’ counsel submitted that the Defendants were up-to-date with their rental payments and never went into arrears, and that the Defendants were being targeted by the Plaintiff who have been applying double standards to other tenants in Vakatora Housing.
17. Further, The Defendants’ counsel in his submissions stated that Vimlesh was given both verbal and written approval to operate a canteen at the Property, and that the said approval is attached to the Defendants’ Affidavits.
18. Contrary to the Defendants’ counsel’s submissions there is no such copy of any written approval in the Defendants’ Affidavits. In fact, the Defendants’ Affidavits do not contain any documentary evidence whatsoever.
19. Finally, the Defendants’ counsel submitted that the Plaintiff did not produce any evidence to prove any breaches by the Defendants. The counsel relied on the case of **Public Rental Board v Devi** [2022] FJHC 78; HBC56.2021 (25 February 2022) stating that the Defendants’ case was similar and thus the Summons should be dismissed.
20. In response, the Plaintiff’s counsel submitted that the facts in **Devi** [supra] were distinguishable on the facts. In **Devi** [supra] the 3-year tenancy agreement was still valid and was terminated when the defendant therein refused to relocate to another flat after complaints were made against the defendant by other tenants.
21. The Plaintiff’s counsel further submitted that the Agreement in this case was for a term of 3 years and after the expiration of the 3 years, pursuant to section 89 of the Property Law Act 1971, the act of continuing to receive rental from the Defendants resulted in a weekly tenancy between the Plaintiff and the Defendants. Accordingly, the Plaintiff was only required to give a 1 week notice to the Defendants.

22. To show their interest in the Property, the Defendants state that rules of natural justice were not followed by the Plaintiff in issuing the Notice.
23. Clause 9 of the Agreement clearly states that the tenants “*will use the premises for **RESIDENTIAL** purposes only and will not without the prior written consent of the Board carry out any profession, business or trade therein...*”.
24. Putting aside the fact that there may be insufficient evidence regarding the Defendants alleged conduct of selling cigarettes, there is sufficient evidence proving the other breach on which the Agreement has been terminated which is operation of a canteen by the Defendants without approval. It must be noted that the Defendants have admitted that they are operating a canteen. The Plaintiff maintains that no approval has been granted to the Defendants to operate the same. As stated earlier, no evidence of any such approval has been provided in the Defendants’ Affidavits.
25. Thus, there is no merit in the Defendants’ counsel submissions that the Plaintiff did not produce any evidence to prove the said breaches by the Defendants when the Defendants themselves have agreed to this fact.
26. In regards to the Defendants’ Counsel’s submissions pertaining to *Devi* [supra], this Court agrees with the Plaintiff’s counsel’s submissions that the said case is distinguishable on the facts from the present matter. In *Devi* [supra] the court had considered the fact that the defendant therein had been asked to relocate based on an allegation of nuisance yet there was no evidence of any complaints to any relevant authorities including the police.
27. Moreover, unlike in *Devi* [supra] where the plaintiff had issued a notice to vacate to the defendant without allegedly enquiring into the complaints of nuisance against the defendant therein, in the present matter, the Defendants have themselves admitted to operating a canteen on the premises and have failed to provide any evidence showing the consent of the Plaintiff.
28. Therefore, the Court finds that the Defendants have failed to establish any arguable defence or demonstrate any entitlement to continue occupying the Property. No evidence has been presented to substantiate the Defendants’ claim of interest in the Property. At best the Defendant was occupying the Property pursuant to a weekly tenancy agreement, which was terminated when the Plaintiff served the Defendants with the Notice.

29. There are no complicated issues to be determined in this matter hence the Plaintiff is entitled to a favourable decision.

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

31. Accordingly, I make the following orders:

(a) The Defendants are ordered to immediately deliver vacant possession of all the land comprised Block 2, Flat 37 on State Lease Number 339209; and

(b) Each party to bear its own costs.



**At Lautoka
11 July 2025**

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

Solicitors: Anishni Chand Lawyers for Plaintiff
Daveta Advocates for Defendants