



Action No. HBC 83 of 2019 (*Raju v Raju* [2019] FJHC 745; HBC83.2019 (30 July 2019)) and the presiding Court had dismissed the said summons. Thereafter, the Plaintiff had proceeded to file a Writ Action being HBC 96 of 2020 wherein part of the orders sought from the Court is for the 1<sup>st</sup> Defendant to give vacant possession of the Property to the Plaintiff. The 1<sup>st</sup> Defendant's counsel then submitted that this current proceeding against the 1<sup>st</sup> Defendant should be dismissed on this ground alone.

4. Objecting to this argument, the Plaintiff's counsel submitted that section 172 of the LTA allows the Plaintiff to re-file the current Summons.
5. The Plaintiff's counsel further submitted that in *Raju* [supra] the Court had been misled into believing that the 1<sup>st</sup> Defendant had an interest derived from the 1<sup>st</sup> Defendant's grandfather's Estate, and had the Court been advised of the same, the outcome would have been different.
6. Section 172 of the LTA provides as follows:

*"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."*

[emphasis added]

7. Section 172 of the LTA is very clear wherein it states that if a Summons pursuant to section 169 is dismissed by a court, then a plaintiff can take **any other proceeding** against the same defendant to which the plaintiff may be otherwise entitled. This section does not allow the plaintiff, whose summons has been dismissed, to **file the same proceeding** against the same defendant again.
8. Moreover, in *Raju* [supra] which was also a proceeding between the Plaintiff and the 1<sup>st</sup> Defendant for vacant possession pursuant to section 169 of the LTA, Ajmeer J while dismissing the application stated the following:

*“18. The respondent has been in possession of land (part of) for more than 30 years, which is admitted by the applicant. This possession he has inherited from his father and his father from his father. This leads me to conclude that the respondent has a right to possession of the land.*

*19. For the reasons set out above, I conclude that the respondent has proved to my satisfaction that he has a right to possession of the land. I would accordingly dismiss the application, but without costs.*

*Application for possession of land dismissed without costs.”*

9. The above matter was not dismissed on any technicality or irregularity rather the Court had decided on the substantive issue of whether the defendant therein had a right to possession of the land. The matter is now *res judicata*. If the Plaintiff was unsatisfied with the above decision, he could have appealed the same. Instead, the Plaintiff chose to initiate a Writ Action being HBC 96 of 2020 wherein the Plaintiff has sued the 1<sup>st</sup> Defendant, the Director of Lands, the Registrar of Titles and the Attorney-General of Fiji.
10. During the hearing, counsels for both Plaintiff and the 1<sup>st</sup> Defendant confirmed to this Court that the Plaintiff was seeking an order for vacant possession against the 1<sup>st</sup> Defendant (among other orders) in HBC 96 of 2020, which was filed after the decision in **Raju** [supra].
11. As stated earlier, section 172 of the LTA does not allow a plaintiff, whose summons has been dismissed, to file the same proceeding against the same defendant a second time. The Plaintiff did not appeal the decision in **Raju** [supra] and clearly opted to file a Writ Action via HBC 96 of 2020. The Plaintiff cannot keep filing the same proceeding for vacant possession pursuant to section 169 of the LTA against the 1<sup>st</sup> Defendant after a Court has dismissed it earlier.
12. Therefore, the summons for vacant possession against the 1<sup>st</sup> Defendant is hereby dismissed. The Plaintiff has the option to pursue the same cause of action in HBC 96 of 2020.
13. I will now consider the Summons against the 2<sup>nd</sup> Defendant.

#### Relevant law and analysis

14. 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.*

15. 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)).

16. 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.

17. 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.
18. 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.
19. In this matter, although the 2<sup>nd</sup> Defendant is alleging the transfer of the Property to the Plaintiff as a fraudulent transaction, the 2<sup>nd</sup> Defendant does not dispute that the Plaintiff is the last registered proprietor of the Property. Thusly, the requirement under section 169 is met.
20. 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 describes the land as "*State Lease No. 20451 being Lot 3 on Plan No. 193 situated in the District of Naitasiri on the Island of Viti Levu*". However, the copy of the said State Lease annexed to the Plaintiff's Affidavit in Support marked as "*JR-01*" states the same lease number but provides the description of the land as "*Pt. of Tavanasaisai and Muasara- formerly CT 2239 and CT 6333, in the Province of Nadroga/Navosa, District of Sigatoka, Lot 3 on Plant N 1935*". While the Property has not been correctly described as per the copy of the lease, the LTA does not specify what description is exactly needed for this purpose but necessitates determining whether the summoned individual was fully aware of the specifications of the land or the property they were directed to vacate, ensuring there was no confusion or misunderstanding regarding it (see ***Lal v Chand*** [2019] FJHC 538).
21. In the current matter, the 2<sup>nd</sup> Defendant does not dispute the description of the Property. Therefore, the requirement under section 170 has also been fulfilled by the Plaintiff as the description given in the Summons appears adequate for the purpose of the said section.
22. Since the Plaintiff has satisfied the requirements of sections 169 and 170 of the LTA, the burden now shifts onto the 2<sup>nd</sup> Defendant to demonstrate his right to occupy the Property.

23. To show good cause, the 2<sup>nd</sup> Defendant stated the following in his Affidavit in Opposition:

- a) That he has lived on the Property for the past 30 years.
- b) That his father, namely Kupsamy Raju, used to cultivate the Property until his death and thereafter every time the 2<sup>nd</sup> Defendant wanted to cultivate the land, the Plaintiff stopped him.
- c) That the transfer of the lease over the Property from the Estate of Yankatesh Raju (**Estate**) to the Plaintiff is fraudulent as the last Will of the said Yankatesh Raju bequeathed a share of the Estate to the 2<sup>nd</sup> Defendant's father, Kupsamy Raju and the same has not been distributed to date.
- d) The High Court in **Raju** [supra] had dealt with the issue in relation to the 1<sup>st</sup> Defendant and that the Plaintiff then filed the same action herein.

24. In this matter, the Property was initially leased to the Plaintiff in his capacity as the "administrator of the Estate of Yankatesh Raju also known as Yanktesh Raju" for a period of 99 years with effect from 1 January 2016. This lease was registered on 30 November 2016. Thereafter, on 08 May 2017, the said lease was transferred to the Plaintiff in his personal capacity.

25. The Plaintiff has attached a copy of Yankatesh Raju's Will in his Affidavit in Support marked as "JR – 02". The said Will appoints the 2<sup>nd</sup> Defendant's father, Kupsamy Raju as the executor and trustee and Clause 3 of the Will states as follows:

*"3. I GIVE DEVISE AND BEQUEATH all my property both real and personal of whatsoever nature and wheresoever situated to my trustee UPON TRUST to pay all my debts, funeral and testamentary expenses and then distribute the estate in the following manner:*

- (a) To maintain, support and suitably provide for my children YOGENDRA RAJU and PREMILA DEVI until PREMILA DEVI attains the age of 21 years or marries (which date is herein referred to as the "date of distribution")*
- (b) To maintain support and suitably provide for my wife CHANDRA WATI father's name Shiu Nath until the date of distribution provided she stays on my premises.*

- (c) To pay legacies of \$5000.00 (five thousand dollars) to each of my sons PONSWAMY RAJU, KUPSAMY RAJU, KRISHNA MURTI RAJU and YOGENDRA RAJU and a legacy of \$1000.00 (One thousand dollars) to my daughter PREMILA DEVI.
- (d) To pay legacy of \$500.00 (Five hundred dollars) to my wife CHANDRA WATI father's name Shiu Nath.
- (e) To transfer, convey and pay over all the rest and residue of my property both real and personal of whatsoever nature and wheresoever situated including all accumulations and accretions to my son JANARDHAN RAJU for his own use and benefit absolutely provided however that no transfer or conveyance shall take place until all legacies have been paid or arrangements satisfactory to the legatees have been made for payment thereof."

[emphasis added]

26. The counsel for the 2<sup>nd</sup> Defendant submitted that: the legatees in the Will of Yankatesh Raju have not been paid out and as per the condition in the said Will, the Property should not have been transferred to the Plaintiff; and as a result of the Plaintiff's failure to properly administer the Estate of Yankatesh Raju, the transfer of the Property to the Plaintiff was fraudulent.
27. The counsel for the 2<sup>nd</sup> Defendant further submitted that in **Raju** [supra], the High Court had dismissed the application against the 1<sup>st</sup> Defendant stating that the 1<sup>st</sup> Defendant had been in possession for over 30 years and had an interest in the Property. Counsel submitted that the nature of possession and the interest in the Property of the 1<sup>st</sup> Defendant is equally applicable to the 2<sup>nd</sup> Defendant.
28. In response, the Plaintiff's counsel submitted that there was no evidence presented by the 2<sup>nd</sup> Defendant that Yankatesh Raju's Estate was still unadministered and that the legatees under his Will had not been paid. Further, that by virtue of Yankatesh Raju's Will, the Property was bequeathed only to the Plaintiff and the 2<sup>nd</sup> Defendant has no interest in the same.
29. When questioned by the Court as to how the 2<sup>nd</sup> Defendant is supposed to provide evidence of non-payment as opposed to the Plaintiff providing evidence of payment, the Plaintiff's counsel submitted that the 2<sup>nd</sup> Defendant "*should have undertaken certain steps on the transfer of the land*". Besides this unhelpful submission of the Plaintiff's counsel, there is no evidence before this Court to either prove or disprove whether the legatees of the Will were fully paid off or not. The Plaintiff's counsel also agreed that there was no evidence presented to show that the 2<sup>nd</sup>

Defendant was actually aware of the Property transfer to the Plaintiff prior to initiation of this proceeding.

30. The question before the Court now is whether this gives any right to the 2<sup>nd</sup> Defendant to remain in possession of the Property, overriding the Plaintiff's title.

31. In this case I find that the 2<sup>nd</sup> Defendant has raised some issues that may support an arguable defence and/or a right to remain in possession of the Property. These issues include the question of whether the findings and decision of Ajmeer J in *Raju* [supra] apply to the 2<sup>nd</sup> Defendant's occupation, and whether the Estate of Yankatesh Raju has been fully administered.

32. Therefore, I find that there are triable issues in this case which cannot be determined on affidavit evidence alone. There are disputes over the right of occupancy of the 2<sup>nd</sup> Defendant and this matter is best left to a proper Writ proceeding. The Plaintiff is at liberty to initiate such a Writ proceeding should he wish to.

33. Accordingly, I make the following orders:

- (a) The Plaintiff's Summons for vacant possession is hereby dismissed.
- (b) Costs summarily assessed at \$2,000.00 to be paid by the Plaintiff to each Defendant within 28 days.



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

**At Lautoka**  
**04 September 2025**

**Solicitors:**

*Plaintiff – Messrs Kumar Legal*

*1<sup>st</sup> Defendant – Messrs Amrit Chand Lawyers*

*2<sup>nd</sup> Defendant – Messrs Zoyab Legal*