

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 179 of 2022

BETWEEN: **CHANDRA PRAKASH RATNAM** aka **CHANDRA PRAKASH** of Anjan Road, Lautoka, Fiji but also residing at Big Trout Motor Inn, Oberon Street, 2787, NSW, Australia.

PLAINTIFF

AND: **NAVNEET RATNAM** of New Zealand but currently residing at Anjan Road, Lautoka.

1ST DEFENDANT

AND: **SUMANDIRAN** of Brisbane, Australia but currently residing at Anjan Road, Lautoka.

2ND DEFENDANT

AND: **JONE MADRAU** address unknown but currently residing at Anjan Road, Lautoka.

3RD DEFENDANT

BEFORE : **Master P. Prasad**

Counsels : Ms. C. Nainima for Plaintiff
 : Ms. A. Gounder for 1st Defendant
 : No appearance for the 2nd and 3rd Defendants

Date of Hearing : 4 December 2024

Date of Decision : 21 February 2025

JUDGMENT

1. The Plaintiff has instituted this action by filing a Summons pursuant to section 169 of the Land Transfer Act 1971 (**LTA**) and seeking an order for the Defendants to give immediate vacant possession of all the piece of land comprised in iTaukei Lease Number 27282 being land known as

Vitogo CN168 Lot 2 on ND 5113, in the Tikina of Vitogo, in the Province of Ba (**Property**).

2. During the hearing of the Summons, the counsel for the Plaintiff informed the Court that the Plaintiff was only proceeding against the 1st Defendant as the 2nd and 3rd Defendants had moved out of the Property. I will now proceed to determining this application against the 1st Defendant only.
3. The Plaintiff, in his affidavit filed in support of the Summons, states the following (in relation to the 1st Defendant):
 - (i) The Plaintiff is the registered proprietor of the Property, which is an .
 - (ii) The lease over the Property was initially given to the Plaintiff's father, who had built 5 houses on the Property.
 - (iii) When the Plaintiff's father's lease expired, the new lease over the Property was issued to the Plaintiff as he was the sole beneficiary of the same as per his father's Will.
 - (iv) Both the 1st and 2nd Defendants are the Plaintiff's biological brothers.
 - (v) The 2nd Defendant was residing in Australia until he moved back to Fiji and moved into a vacant house on the Property.
 - (vi) The 1st Defendant is a New Zealand citizen and came to Fiji in May 2022 and started living in the same house as the 2nd Defendant.
 - (vii) The 1st Defendant had never asked for consent from the Plaintiff and the Plaintiff was under the assumption that the 1st Defendant would move out of the Property.
 - (viii) The 1st and 2nd Defendants brought certain vehicles and machinery onto the Property for business purposes.
 - (ix) The 1st Defendant became hostile towards the Plaintiff and the Plaintiff served a notice on the 1st Defendant.
 - (x) The Plaintiff through his legal counsel served a notice dated 9 May 2022 on the 1st Defendant for him to remove his machinery and stop trespassing on the Property.

- (xi) On 18 May 2022, the iTaukei Land Trust Board (TLTB) issued the Plaintiff with a notice of breach of lease conditions for illegally subdividing the Property and required the Plaintiff to pay a penalty of \$3,027.00.
 - (xii) The 1st Defendant's counsel responded on 27 May 2022 disputing that he was trespassing as the residential dwelling belonged to the 1st Defendant. The response also put the Plaintiff on notice to surrender the lease over the Property and subdivide the land to regularize the occupation of the 1st Defendant.
 - (xiii) On 2 June 2022 the Plaintiff through his legal counsel sent another correspondence disputing that the 1st Defendant owned the residential dwelling and reiterated the earlier notice of 9 May 2022.
 - (xiv) On 1 June 2022 the Plaintiff also responded to the breach notice issued by TLTB advising them that he will comply with the lease conditions and rectify the breach by demolishing the additional 3 houses on the Property. The Plaintiff had already demolished one of those vacant houses thereafter.
 - (xv) The Plaintiff also issued notices to the 2nd and 3rd Defendants to vacate and at the time of filing the Summons, all the Defendants were still on the Property.
 - (xvi) The Plaintiff faces possible termination of the lease issued over the Property as he is unable to comply with the breach notice issued by TLTB.
 - (xvii) The Defendants have no equitable rights over the Property and are illegally occupying the same.
4. The 1st Defendant has challenged the Summons and filed an Affidavit in Opposition wherein he states the following:
- (i) The 1st Defendant agrees that the Plaintiff is the registered proprietor of the lease over the Property.
 - (ii) That the 1st Defendant did not move into a vacant house but he was allocated the same and resides in it whenever he is in Fiji.
 - (iii) That the 1st Defendant built the house he resides in.
 - (iv) The Plaintiff had consented to the 1st Defendant's occupation of the Property.
 - (v) The Plaintiff had promised the 1st Defendant a share in the Property by subdividing the same.
 - (vi) That the 1st Defendant extended his house in 1987 which cost him \$4,000.00.

- (vii) The Plaintiff is operating a commercial business from the Property and all machinery is owned by him.
- (viii) The 1st Defendant's occupation of the Property is not illegal as he has beneficial interest pursuant to the consent by the Plaintiff to reside there and the promise by the Plaintiff to subdivide the Property.
- (ix) There are complex issues in this matter and this action should be dealt with in the form of a Writ.

5. 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.

6. 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)).
7. 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 hinges on how effectively each party discharges their respective burden in the proceedings.
8. The 1st Defendant in his Affidavit in Opposition does not dispute that the Plaintiff is the last registered proprietor of the Property.
9. 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 as iTaukei Lease Number 27282 being land known as Vitogo CN168 Lot 2 on ND 5113, in the Tikina of Vitogo, in the Province of Ba. There is no dispute over the description of the land.
10. Since the Plaintiff has satisfied the requirements of sections 169 and 170 of the LTA, the burden now shifts to the 1st Defendant to demonstrate his right to occupy the Property.
11. 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 where the Court held:

"Under Section 172 the person summonsed may show cause why he refuses to give possession of the land and if he proves to the satisfaction of the Judge a right to possession or can establish an arguable defence the application will be dismissed with costs in his favour. The defendants must show on affidavit evidence some right to possession which would preclude the granting an order for possession under Section 169 procedure. That is not to say that final or incontrovertible proof of a right to remain in possession must be adduced. What is required is that some tangible evidence establishing a right or supporting an arguable case for such a right must be adduced."

12. 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. The section empowers Court to make any order deemed necessary by justice and the specific circumstances of the case.
13. The 1st Defendant contends that he has the right to stay on the Property based on the alleged promise from the Plaintiff that he will subdivide the Property and there are complex issues in this matter.
14. In the written submissions, counsel for the 1st Defendant submits that the 1st Defendant had built the residential dwelling. However, the 1st Defendant in his Affidavit in Opposition states at paragraph 7 that "*I did not move in one of the vacant house but I was allocated the subject house and I had been residing in it ever since and used to stay in the house upon my visit to Fiji from Australia.*"
15. It is clear from the above that the 1st Defendant had not built the residential dwelling that he has been occupying.
16. In their written submissions, the 1st Defendants counsel further relied on *Datt v Datt* [2023] FJSC 23; CBV0008.2020 (30 June 2023) and *Chand v Gokul* [2024] FJHC 411; HBC12.2024 (4 July 2024) in support of their arguments.
17. Both cases are distinguishable from the current proceedings. In *Datt v Datt* [Supra], there existed a family deed by virtue of which the petitioner was entitled to an area over the residential property. In *Chand v Gokul*, the plaintiff had purchased the land from the defendant itself and as part of the Sales and Purchase Agreement, the plaintiff had agreed to lease the portion of the land occupied by the defendant to the defendant.
18. In the other cases relied on in the 1st Defendants submissions, the vacant possession orders were not granted because the respective defendants in those cases had either satisfied the Court of the requirements of *promissory estoppel* or provided evidence of having substantially expended money to build/purchase the dwelling houses.
19. In the current application, the 1st Defendant has not provided any such evidence. On the contrary, the 1st Defendant has deposed an affidavit wherein he has admitted that he was 'allocated' the residential house. This suggests that the 1st Defendant did not build the said house himself.
20. Moreover, the 1st Defendant has also failed to provide any evidence to show that there are complicated issues that are to be determined in this matter, and that a proper trial is necessary. The only documents annexed to his Affidavit in Opposition are vehicle ownership documents for the

vehicles allegedly parked on the Property; photos of the machinery, and relevant correspondences between the 1st Defendant's legal counsel and the Plaintiff's legal counsel and TLTB respectively.

21. In light of the above, and on the materials presented to the Court, the 1st Defendant has not shown a right to possession under section 172 of the LTA.

22. Furthermore, this is a simple case without any complex issues hence the Plaintiff is entitled to a favourable decision.

23. Plaintiff is granted vacant possession of the Property forthwith.

24. Accordingly, I make the following orders:

(a) The 1st Defendant is ordered to immediately deliver vacant possession of all the land comprised in iTaukei Lease Number 27282 being land known as Vitogo CN168 Lot 2 on ND 5113, in the Tikina of Vitogo, in the Province of Ba to the Plaintiff; and

(b) Costs of this action summarily assessed at \$2,000.00 to be paid by the 1st Defendant to the Plaintiff within 7 days.



P. Prasad
Master of the High Court

At Lautoka
21 February 2025