

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. **HBC 112 of 2025**

IN THE MATTER of an Application under Section 169 of part XXIV of the Land Transfer Act 131 for an Order for immediate vacant possession.

BETWEEN : **JAGDISH PRASAD MAHARAJ** and **PREM LATA MAHARAJ** both being the registered proprietors of Lot 124 Nailuva Road, Raiwai, Suva, in the Republic of Fiji Islands, currently of Sydney, NSW, Australia both Retired..
PLAINTIFFS

AND : **RAMENDRA PRAKASH GOSAI** Lot 124 Nailuva Road, Raiwai, Suva, in the Republic of Fiji Islands, Businessman.
DEFENDANT

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Gosaiy S.** for the Plaintiff

No Appearance of the Defendant (later appeared)

DATE OF JUDGMENT: 23rd October, 2025

JUDGMENT

[Vacant Possession - pursuant to Section 169 of Part XXIV of the Land Transfer Act 131]

A. Introduction

1. The Plaintiffs filed an Originating Summons and sought for the following order:

"The Defendant, Ramendra Prakash Gosai do show cause why an order for immediate Vacant Possession of the property in Certificate of Title No. 9972, as described in Lot 39, as shown on Deposit Plan No. 2364, situated at Lot 124, Nailuva Road, Raiwai, Suva Fiji Islands of which the Plaintiffs are the registered owners, should not be made against them **upon the Grounds** set forth in the Affidavit of Jagdish Prasad Maharaj and Prem Lata Maharaj sworn and filed herein.

2. The application is made pursuant to Section 169 of the Land Transfer Act 131.
3. The application was served onto the Defendant on 11th June 2025 and an Affidavit of Service is filed herein.
4. The Defendant failed to file and serve any Affidavit in Opposition nor did he make any Court appearances, except that he appeared on the Hearing date of 05th September 2025.

B. Plaintiff's Contention

5. The Plaintiff's are the registered proprietors of the property in Certificate of Title No. 9972, situated at Lot 124, Nailuva Road, Raiwai, Suva.
6. A Verbal Agreement Tenancy was made between the Plaintiff's and the Defendant on a monthly rental of \$750.
7. Defendant fell into Rental arrears and Demand Notices were served onto the Defendant on two (2) occasions for Rent and to vacate the property respectively.
8. The Defendant failed to give the Vacant Possession of the said property and owes a total sum of \$7,500 in rental.

C. Defendant's Contention.

9. The Defendant admitted that he was in occupation of the Plaintiff's property.
10. He did not want to argue on this application.
11. He will vacate when he finds an alternative place/flat to reside in.
12. He was not sure when will he be able to find a place/ flat and asked Court to make a Decision rather than granting Vacant Possession by consent.

D. Determination.

13. Section 169 of the Land Transfer Act under which the application for vacant possession is made, in so far as it is relevant, provides:

*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 [In this case the Defendant] should not give up possession to the applicant:-
(a) the last registered proprietor of the land;*

14. There is no doubt that the Certificate of Title No. 9972 confirms that the Plaintiffs are the registered proprietors of the property in Certificate of Title No. 9972, Lot 39 on Deposit Plan No. 2364 situated at Lot 124, Nailuva Road, Raiwai, Suva. Section 169 of the Act calls for evidence of the title as annexed in the affidavit in support of the Plaintiff, Jagdish Prasad Maharaj and Prem Lata Maharaj.
15. The Defendant neither appeared in Court nor defended the case by legal representation until on the date of the Hearing on 5th September 2025 and has shown no right at all to the occupation of the land in Certificate of Title No. 9972.
16. The present states of facts reveals that the Plaintiffs are the registered proprietors of Certificate of Title No. 9972.
17. The procedure under section 169 is governed by Section 171 and 172 of the Land Transfer Act which provides as follows:

"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.

"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."

18. I find that Firstly the Defendant's failure to file an apposition and/or submissions coupled with the fact that the Defendant had no regards to this Court and failed to show cause and that there is no arguable defence filed herein in favour of the Defendant against the Plaintiff.
19. This is an appropriate case for the Section 169 application of the Land Transfer Act which provides a summary procedure in case where the issues involved are straight forward and there is no complicated issues of fact [Case of **Ram Narayan v Moti Ram** (Civ. App. No. 16/83 FCA - Gould JP refers)].
20. In the outcome, on the evidence before me only of the Plaintiff and his written submissions and in absence of any opposition evidence and/or submissions of the Defendant, I find that

the Defendant has failed to show any cause as to why he refuses to give up vacant possession of the said premises to the Plaintiffs, as was required of him under *Section 171 of the Land Transfer Act*, accordingly.

21. I find that the Plaintiffs are the registered proprietors of the Certificate of Title No. 9972 and therefore they are entitled to the immediate vacant possession of the same, as sought for by them in the current application before this Court.
22. Hence, it is ordered that the Defendant to give immediate vacant possession of the said land in the Certificate of Title No. 9972 to the Plaintiff under the provisions of the Land Transfer Act.
23. However, since the Defendant admitted that the Plaintiff's are the rightful owners of the property and that the Defendant will vacate the said premises until he is able to find an alternative place/flat to move into.
24. It is only just and fair that I exercise my discretion in the circumstances and allow the Defendant one month's time to vacate the Plaintiff's premises on Certificate of Title No. 9972 on DP No. 2364 situated at Lot 124 Nailuva Road, Suva.
25. The Defendant is hereby ordered to give vacant possession of the Plaintiff's property on Certificate of Title No. 9972 on DP No. 2364 situated at Lot 124 Nailuva Road, Suva on or before the 30th October 2025 at 4 pm.

E. Costs.

26. The matter proceeded to Hearing and notably the Defendant was served with 'notice to vacate' twice and the Defendant did not given any heed to the Notices and/or take the matter seriously until he was served with the Plaintiff's Court Documents seeking for immediate vacant possession. The Defendant also owes rental and continues to default payment of monthly rental. Further, he did not make appearances before this court when required to do so. He failed to show any cause as to why he should continue to remain on the said premises, hence, delayed the disposition of this matter expeditiously. It is only appropriate that I order a summarily assessed costs of \$1,000 against the Defendant to be paid within 21 days time frame.


F. Orders

- i. The Plaintiff's application seeking for Vacant Possession order against the Defendant succeeds.
- ii. The Defendant is hereby ordered to give the Plaintiff vacant possession of the property in Certificate of Title No. 9972 Lot 39 on Deposit Plan No. 2364, situated at Lot 124, Nailuva Road, Raiwai, Suva on or before 30th October 2025 at 4pm.
- iii. The execution of the order of Vacant Possession is suspended till the 30th October 2025 at 4pm.

- iv. The Defendant is ordered to pay the Plaintiffs a summarily assessed costs of \$1,000 within 21 days' timeframe.

Dated at Suva this 23rd day of October ,2025.




VISHWA DATT SHARMA
PUISNE JUDGE

- cc. Sunil Gosaiy Law Firm, Valelevu
Ramendra Prakash Gosai, Lot 124, Nailuva Road, Raiwai, Suva.