

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 184 of 2024

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: **SIBUL KELEI RAIKADROKA** as holder of Power of Attorney No. 62755
for and on behalf of **WENDY NARELL BURE** and Power of Attorney No.
62754 for and on half of **MARYANNE ILEEN BURE** both of Sydney,
Australia, the registered proprietors of Certificate of Title No. 23273.

PLAINTIFF

AND: **ILAITIA MELEKI** of Lot 35 Kishore Kumar Road, Laucala Beach Estate,
Nasinu.

DEFENDANT

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

COUNSEL: **Mr. Doidoi R.** for the Plaintiff
Mr. Matanitobua I. for the Defendant

Date of Judgment: 23rd October, 2025 @ 9.30am

JUDGMENT

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

A. Introduction

1. The Plaintiff filed and served a summarily proceedings coupled with an affidavit in support and sought for the following orders therein-
 - The Defendant to show cause why an order for an immediate vacant possession of a piece of land located within the land commonly known as 'Naivoco' (part of) encompassed under Certificate of Title No. 23273 being Lot 12 on Deposit Plan No. 5689 of which the Plaintiff is the registered proprietor, should not be made against the defendant upon the grounds set forth in the Affidavit of **Sibul Kelei Raikadroka**.
2. The Defendant filed and served his affidavit in opposition and in particular deposed that 'He continued to occupy the property following the passing of his brother, Iliesa Bure, at his explicit request. He instructed the Defendant not to vacate the property and to continue with the mortgage repayments, which the Defendant dutifully did in accordance with Iliesa Bure's wishes. He denied any assertion that discussions were held between the Defendant and Iliesa Bure's two (2) daughters regarding the Defendant's relocation from the present property.' 'The Defendant in his prayer seeks 'that the Plaintiff be estopped from evicting the Defendant due to his significant contributions and reliance on the belief that the Defendant had a continuing right to the said property.'"
3. The Plaintiff filed a reply to the Defendant's Affidavit in Opposition and deposed 'her sister and her became the registered proprietors to the property upon the death of their late father, Iliesa Bure, on 22th January 2007. The Defendant has been residing on the said property with Wendy Narell Bure's consent without paying any rental in lieu of upkeeping the property, maintaining the property which included repairs and maintenance of the property. However, the Defendant has disregarded the 'Notice to vacate' and is now living on the property without the Plaintiff's consent and seeks for an order for vacant possession.'
4. The Defendant furnished Court with his written submissions only. The application for vacant possession was heard on written and oral submissions on 28th July 2025 accordingly.

B. Practice and Procedure

5. The Plaintiff has filed this application pursuant to **Section 169 of the Land Transfer Act 1971**.
6. A **Section 169 application** is a summary procedure for possession which enable various categories of persons to call upon a person in possession of a property to show cause why he or she should not give up possession. One such category, specified in paragraph (a) of the section is '**the last registered proprietor of the land**'. (**The Plaintiff falls under this category**).
7. Pursuant to **Section 172 of the Act**, the **onus** is on the Defendant to show cause why he is refusing to give up possession to the Plaintiff and why an order for possession should not be made against the Defendant.

8. The **Plaintiff** is the registered proprietor in this instance as can be ascertained from the **Certificate of Title No 23273** being Lot 12 on Deposit Plan No. 5689. The term "**proprietor**" is defined as the registered proprietor of land, or of any estate or interest therein in the Land Transfer Act. Hence the term "proprietor" follows within the ambit of the **Section 169 application**.
9. **"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) *lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired."*
10. Pursuant to **section 172 of the Act** the onus is on the **Defendant to show cause** why he is refusing to give up possession to the Plaintiff and why an order for immediate vacant possession should not be made against him.

C. Analysis and determination.

11. The Plaintiff has sought for an order for 'immediate vacant possession from the Defendant of all that property comprised in Certificate of Title No. 23273 being Lot 12 on Deposit Plan No. 5689 of which the Plaintiff is the registered proprietor.
12. The Defendant has opposed the Plaintiff's application for immediate vacant possession.
13. This application by the Plaintiff has been filed/served by a 'Summons for ejectment' which understandably in law is by summary proceedings.
14. The Summons is initiated by Sibul Kelei Raikadroka in her capacity as the Power of Attorney holder of her two daughters, Maryanne Ileen Bure and Wendy Narell Bure, who have now attained their age of majority. The deceased, Iliesa Bure [brother of the Defendant, Ilaitia Meliki], was married to Sibul Kelei Raikadroka and subsequently their marriage was dissolved.
15. The property in question was transferred to Iliesa Bure and Sibul Kelei Raikadroka on 5th October 1990 and upon the demise of Iliesa Bure, the property was subsequently transferred on 8th February 2012 to the two (2) daughters, Wendy Narell Bure Maryanne Ileen Bure.


16. A caveat was placed on the said property by the Defendant on 22nd March 2012.
 17. According to the Plaintiff, the Defendant has been illegally occupying the property and often claiming that he had done repairs to the property and that he was entitled to the property.
 18. The Defendant claims that he resided with the deceased, Iliesa Bure and cared for him continuously since 1991.
 19. The Defendant in his Affidavit in Opposition deposes that the Defendant's brother, Iliesa Bure, instructed him not to vacate the property and to continue with mortgage repayments.
 20. That the Defendant has allegedly spent substantial amount of money on the upkeep and maintenance of the property.
 21. In essence, the Defendant is raising the Defences of Promissory and Proprietary Estoppel. Not only that, but he also raised the issue that the deceased's brother, Iliesa Bure gave him concern to reside on the said property and not to vacate the premises.
 22. In the affidavit deposed by Wendy Narell Bure at paragraph 4 deposes that 'the Defendant has been residing on the property with my consent since the passing away of our late father without paying rental in lieu of upkeeping the property, maintaining the property, which included repairs and maintenance of the property. By disregarding the notice to vacate, the Defendant is now living on the property without concern, is now considered a trespass and should be immediately evicted.
 23. I find there are tribal issues raised within all the affidavits filed and served by the Plaintiff and the Defendant. Further, the Defendant has raised the Defence of Promissory and Proprietary Estoppel.
 24. All tribal issues needs to be heard on *viva voce* evidence and a just and fair decision accordingly reached.
 25. This is only possible by filing a Writ of Summons and a Statement of Claim and iron out all the tribal issues and a correct decision is eventually reached.
 26. For the aforesaid rational, I proceed to dismiss the Plaintiff's substantive Summons for Ejectment in its entirety accordingly.
 27. The following are the orders of this Court.
- D. Costs.**
28. The Plaintiff to pay the Defendant a summarily assessed costs of \$1,000 within 21 days timeframe.

E. Orders

- i. The Plaintiff's Summons for ejectment is dismissed in its entirety.
- ii. The Plaintiff to pay the Defendant a summarily assessed cost of \$1,000 to the Defendant within 21 days' timeframe.

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




VISHWA DATT SHARMA
PUISNE JUDGE

Cc: *Law Solutions, Suva*
Ilaitia Meleki, Lot 35 Kishore Kumar Road, Laucala Beach Estate.