



## 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 Defendants do not dispute 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. 23118 land known as Dreketi & Noiro PT of formerly Lot 4 ND 5014, SO 2216 in the District of Vuda and Province of Ba, containing an area of 2558m<sup>2</sup>. The certified true copy of the said 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 either. 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. According to the Plaintiff's Affidavit in Support, he is the registered proprietor of the Property as the Trustee of his late father's estate i.e. Estate of Nokaiya. The Plaintiff's brother namely Ram Krishna had a life interest over the Property but the said Ram Krishna then migrated to New Zealand where he passed away. The 1<sup>st</sup> Defendant is Ram Krishna's daughter, and the 2<sup>nd</sup> Defendant is the 1<sup>st</sup> Defendant's son. The Plaintiff claims that the Defendants are occupying a house over the Property without the Plaintiff's consent, and that Ram Krishna did not leave any passable Estate to the Defendants. The Plaintiff issued the Defendants with a Notice to Vacate dated 5 March 2024 and when the Defendants did not vacate the Property, the Plaintiff filed the current Summons.
13. The 2<sup>nd</sup> Defendant his Affidavit in Opposition states as follows:
  - a) The 1<sup>st</sup> Defendant has lived on the Property for 35 years.
  - b) The 1<sup>st</sup> Defendant's father, Ram Krishna, in his last Will bequeathed his Estate to the 1<sup>st</sup> Defendant.
  - c) The Plaintiff has fraudulently transferred the Property unto his name.
  - d) Both Defendants have made lease payments for the Property.
  - e) Both Defendants have built the house on the Property they reside in.
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. During the hearing, only the 2<sup>nd</sup> Defendant was present in Court. He explained that his mother, the 1<sup>st</sup> Defendant, was in Navua and unable to attend. In his submissions, the 2<sup>nd</sup> Defendant relied on his Affidavit in Opposition and expressed that he wished to retain the house for his mother and sister.
16. The Plaintiff's counsel relying on **Sagayam v Prasad** [2023] FJSC 51; CVB0006.2021 submitted that the 1<sup>st</sup> Defendant's father, Ram Krishna, only had a life interest in the Property and the same expired upon his death.

17. The Plaintiff is the last registered lessee of the Property as he is the Trustee and Executor of his father's estate – Estate of Nokaiya. Clause 3 (c) of Nokaiya's Will states as follows:

*"to allow my two sons YANTESHU also known as BASAIYA and RAM KRISHNA to occupy and live in their houses built on my land for the rest of their respective lives but they shall not be entitled to cultivate any part of my land nor to occupy more than is necessary as a house site."*

18. The case of **Sagayam** [supra] dealt with a similar dispute over the same Property, but involved Nokaiya's other son, Yanteshu. The Plaintiff in the present matter was also the plaintiff in **Prasad v Sagayam** (HBC 46 of 2017L, 13/10/17), where an Order 113 application was filed seeking the eviction of Yanteshu's son-in-law following Yanteshu's death. In that case, the Learned Master, referring to Clause 3(c) of Nokaiya's Will, held that:

*"The above paragraph of the Will clearly demonstrates the intention of the testator that both of his sons will only have life interest over the land and nothing more. One of them is Basaiya - the father in law of the defendant as he claimed. The said Basaiya did not even have the right to cultivate the land. A person who has only the life interest over any property cannot leave any right to his successors after his death. The defendant also admitted in paragraph 6 of his supplementary affidavit that, the both sons of Nokaiya were only allowed to live in their respective lives and not allowed to cultivate the land. Accordingly, the said Basaiya did not leave any right over the said land to his successors. His life interest too died with him."*

19. On appeal, the High Court set aside the Master's eviction orders; however, the Court of Appeal subsequently allowed the appeal. In overturning the High Court's decision, the Court of Appeal held as follows in **Prasad v Sagayam** [2021] FJCA 106; ABU082.2018 (28 May 2021):

*"[6] On perusal of the facts of this case, it is evident that the Respondent Deo Sagayam's alleged father-in-law, **Basaiya (Vengtesu)** was granted only a life interest in the property by the Will of late Nokaiya, which was also a limited right. He was not entitled to cultivate any part of the land or to occupy more than is necessary for a residence. This is demonstrative of the fact that the testator's intention had been to grant only a life interest over the property to Basaiya (Vengtesu) as well as to Ram Krishna. Hence, upon the death of Basaiya (Vengtesu) his life interest in the property came to an end.*

*[7] As Basaiya's (Vengtesu) rights to the property had perished upon his death, no right devolved on Nirmala Devi or any other person*

*through succession. Therefore, the respondent, who claims his rights through Nirmala Devi as the successor of Basaiya, (Vengtesu) cannot sustain a right over the land in question.*

*[8] Although the Respondent claims to be in occupation since 2008, no cogent evidence in support of this claim is produced before this court, to prove his occupation. Under the circumstances, he could have / should have produced at least an affidavit from Nirmala Devi which he failed to do."*

[emphasis added]

20. The Supreme Court thereafter affirmed the decision of the Court of Appeal in **Sagayam v Prasad** [2023] FJSC 51; CBV0006.2021 (27 October 2023).
21. The issue of life interest has already been conclusively determined by both the Court of Appeal and the Supreme Court in **Sagayam** [supra]. Since Ram Krishna held only a life interest in Nokaiya's Estate, his interests were extinguished upon his death, and no entitlement devolved to the 1<sup>st</sup> Defendant and/or the 2<sup>nd</sup> Defendant by way of succession. Therefore, the 1<sup>st</sup> Defendant, who asserts succession from Ram Krishna, cannot establish any enforceable right over the Property.
22. In addition to the above, in his Affidavit in Opposition, the 2<sup>nd</sup> Defendant annexed documents marked as "PM3", which include copies of receipts issued by the Department of Lands and Mineral Resources. There are three legible receipts dated 04/01/24, 22/06/22, and 17/02/22 respectively, each for an amount of \$50.00 and bearing the reference "AN20811".
23. It remains unclear which parcel of land these receipts relate to. The Property in question is subject to Lease No. 23118, which was issued to the Plaintiff on 28 September 2020. Significantly, all three receipts were issued after the registration of Lease No. 23118 and bear the reference "AN20811" rather than Lease No. 23118. Accordingly, they cannot be regarded as payments made in respect of Lease No. 23118. The Defendants have provided no explanation for this discrepancy.
24. It must be further noted that while the 2<sup>nd</sup> Defendant's Affidavit in Opposition states that they have spent money on improvements on the Property, no evidence has been provided to this Court as to the actual expenditure, if any. In any event, a claim for any money allegedly spent by the Defendants is a separate issue from eviction.
25. In granting an application for vacant possession pursuant to section 169 of the LTA in **Jepsen v Mani (trading as Daks Karwash & Detailing)**

[2024] FJHC 674; HBC116.2024 (13 November 2024) the Hon. Mr. Justice Amaratunga held that:

“[79] Defendant may seek compensation for improvements. This can be done by way of proper civil action, but this clearly does not give Defendant a right to possession in terms of Section 172 of Land Transfer Act 1971. If this is recognized as right to possession any tenant will do some improvements to property and on that basis will request possession till adequate compensation is paid or determined by court. This will make eviction in terms of Section 169 of Land Transfer Act 1971 a dead letter and indefeasibility as unworkable for eviction of commercial tenants.

...

*[81] There is no right for Defendant to remain in possession based on improvements on the land. Already Defendant had benefitted from remaining in the property without increase of commercial rental since 1.3.2021. Any unjust enrichment can be assessed properly through civil action filed by Defendant, but that does not allow Defendant to remain in the premises.*

[emphasis added]

26. Similarly in this matter, the Defendants are at liberty to file a separate action for compensation regarding any alleged construction on the Property. Such investments *per se* do not grant the Defendants a right to remain on the Property.
27. There are no complicated issues to be determined in this matter hence the Plaintiff is entitled to a favourable decision.
28. Accordingly, I make the following orders:
- (a) The Defendants are ordered to immediately deliver vacant possession of all the land comprised in State Lease number 23118 to the Plaintiff; and
  - (b) Costs summarily assessed at \$1,000.00 to be paid by the Defendants to the Plaintiff within 28 days.



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

**At Lautoka**  
**28 November 2025**

