

**IN THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION**

**High Court Civil Action No. HBC 70 of 2024**

**IN THE MATTER** of an application under Section 169 Part XXIV of the Land Transfer Act, 1971 for an Order for immediate vacant possession.

**BETWEEN** : **PREMILA DEVI AKA PRAMILA DEVI** of Naitonitoni Road, Navua, Domestic Duties

**PLAINTIFF**

**A N D** : **RAVINESH SHARMA and LYNDA DOBUI** and any other persons including servants, agents and family members residing on Certificate of Title Number 8620, Naitonitoni Road, Navua

**DEFENDANTS**

**Counsel** : Mr. S. Goundar for the Plaintiff  
No Appearance for the Defendants

Date of Hearing : 10<sup>th</sup> July, 2025  
Date of Judgment : 15<sup>th</sup> January, 2026

**JUDGMENT**

*(Application seeking Vacant Possession pursuant to S.169 of the Land Transfer Act Cap 131)*

**INTRODUCTION**

- [1]. The Plaintiff by her Originating Summons dated 13<sup>th</sup> March, 2024 is seeking an order that the Defendants do immediately give **vacant possession** to the Plaintiff of all the property comprised and described in Certificate of Title No. 8620, Piece of land known as “Tokotoko” part of, situated in the District of Deuba in the island of Vitilevu and being Lot 24 on DP Number 1215, containing an area of 25.2 perches of which the Plaintiff is the registered proprietor.
- [2]. The application is made pursuant to *Section 169 of the Land Transfer Act, Cap 131*.
- [3]. There is one (1) affidavit filed before the Court:

- a. Affidavit in Support of Premila Devi (aka Pramila Devi) filed on 13<sup>th</sup> March, 2024 (“**Plaintiff’s Affidavit**”).
- [4]. This case proceeded to hearing on an undefended **basis since the defendants were served on 10<sup>th</sup> May, 2024** and affidavit of service filed on 30<sup>th</sup> May, 2024 but failed to appear in court or filed an affidavit in opposition.

**Plaintiff’s Case**

[5]. *The Plaintiff relies on her Affidavit in Support filed 13<sup>th</sup> March, 2024 in which she states;*

- THAT she is the last Registered Proprietor of the property situated in Naitonitoni Road, Navua, comprising of Certificate of Title Number 8620, piece of land known as "Tokotoko", part of, situated in the District of Deuba in the Island of Vitilevu and being Lot 24 on DP Number 1215, containing an area of 25.6 perches ("the Property"), in which Defendants are currently unlawfully residing on. (I annex hereto and mark as "Annexure 1" is the copy of the Title being Certificate of Title Number 8620).
- THAT the Defendants were her tenants who had started residing on the property from 4<sup>th</sup> March 2023, where from that time, they had been failing to pay rent on time to her, had been creating lots of nuisance to her. Defendants have caused massive losses and hardships during this trying time. From, December 2023, they have completely stopped from paying the rent, they also have some arrears as well.
- THAT she has given Defendants several reminders to vacate and to clear all the outstanding rent, however, until to date, they have failed to pay the rent.
- THAT since the Defendants are now creating issues to pay rent and based on such conduct and attitude of the Defendants, she sees that the relationship between herself and the Defendants is now spoilt and is irreparable. Hence, she does not see any reasons for them to continue to reside in her property anymore.
- THAT on 24<sup>th</sup> January, 2024, she through my lawyers had issued a 30 days' notice to vacate and quit to the Defendants which was served on both of them on 25<sup>th</sup> January 2024, however, until to date, the Defendants have failed to vacate from the said premises. (I annex hereto and mark as "Annexure 2" a copy of the Notice to Vacate and Quit dated 24<sup>th</sup> January 2024).
- THAT the Defendants are the unlawful occupants of the said Property.
- THAT she does not want Defendants to reside anymore in my property.

- THAT she needs the Defendants to immediately give vacant possession of the said Property without any delay and therefore pray to this Honourable Court that an order in terms of Section 169 be granted.

## **ISSUE**

[6]. This Court has a duty to determine the pending issue before the court in a just and fair manner in terms of the laws provided for in **ss169, 171 and 172 of the Land transfer Act [Cap 131]**.

## **LAW**

[7]. The application is filed in terms of **s.169 of the Land Transfer Act [Cap 131]** which provides as follows:

*“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.”*

[8]. Pursuant to **section 172 of the Act** the onus is on the Defendant to show cause as to why they refuses to give up possession to the Plaintiff and why an order for possession should not be made against them.

[9]. The Plaintiff is the **registered owner** as a **Lessee** in this instant case. The term “**Lessee**” is defined as proprietor of a Lease or sub lease in the Land Transfer Act. Therefore, the term “**Lessee**” follows within the ambits of **section 169** application.

[10]. In the case of **Ram Narayan v Moti Ram (Civ. App. No. 16/83)** Gould J.P. said-

*“... the summary procedure has been provided in the Land Transfer Act and, where the issues involved are straightforward, and particularly where there are no complicated issues of fact, a litigant is entitled to have his application decided in that way.”*

- [11]. The procedure under **s.169** is governed by **sections 171 and 172 of the Land Transfer Act (Cap 131)** respectively which stipulates as follows:-

*"s.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."*

*s.172. If a 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."*

**(Underline is mine for emphasis)**

- [12]. As far as the requirements in terms of **section 172** are concerned, the Supreme Court in the case of **Morris Hedstrom Limited v. Liaquat Ali (Action No. 153/87** at p2) said as follows and it is pertinent:

*"Under Section 172 the person summoned may show cause why he refused 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 of 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."*

- [13]. The requirements of **section 172** have been further elaborated by the Fiji Court of Appeal in **Ajmat Ali s/o Akbar Ali v Mohammed Jalil s/o Mohammed Hanif (Action No. 44 of 1981 – judgment 2.4.82)** where the court said:

*"It is not enough to show a possible future right to possession. That is an acceptable statement as far as it goes, but the section continues that if the person summoned does show cause the judge shall dismiss the summons; but then are added the very wide words "or he may make any order and impose any terms he may think fit" These words must apply, though the person appearing has failed to satisfy the judge, and indeed are often applied when the judge decides that an open court hearing is required. We read the section as empowering the judge to make any order that justice and the circumstances require. There is accordingly nothing in section 172 which requires an*

*automatic order for possession unless "cause" is immediately shown. (Emphasis added)*

[14]. In *Premji v Lal* [\[1975\] FJCA 8](#); *Civil Appeal No 70 of 1974 (17 March 1975)* the Court of Appeal said:

*'These sections and equivalent provisions of the Land (Transfer and Registration) Ordinance (Cap. 136-1955 Laws of Fiji) have been considered in a number of cases in this court and the Supreme Court. In Jamnadas & Co. Ltd. v. Public Trustee and Prasad Studios Ltd. (Civil Appeal No. 39 of 1972 - unreported) this court said –*

*'Under Section 172 of the Act the Judge is required to dismiss the summons if the respondent proves to his satisfaction a right to possession ...'*

[15]. Under **Section 172 of the Act** the judge is empowered to dismiss the summons if the respondent proves to his satisfaction that he has a valid defence, a right to possession, locus standi and or a licence. It further provides that a judge may make any order and impose any terms that he may think fit. The dismissal of the summons is not to prejudice the right of a Plaintiff to take any other proceedings to which he may be otherwise entitled.

## **ANALYSIS**

[16]. The issues for this court to determine is whether the Plaintiff is entitled to the vacant possession of the the property comprised and described in Certificate of Title No. 8620, Piece of land known as "Tokotoko" part of, situated in the District of Deuba in the island of Vitilevu and being Lot 24 on DP Number 1215, containing an area of 25.2 perches and whether the Defendants, their family and any other persons residing on that said portion of land is to show cause as to why an order for immediate vacant possession of the abovementioned land should not be made against the Defendants, their family and others.

[17]. In this case, the Plaintiffs must first comply with the requirements of **section 169 of the Land Transfer Act cap 131**, which are stated hereunder as follows-

(a) *The first requirement or the first limb of section 169 is that the applicant must be the last registered proprietor of the subject land.*

(b) *The second is that the applicant be a lessor with power to re-enter where the lessee or tenant is in arrears; and*

(c) *The third is where a lessor against a lessee or tenant where a legal notice has been given or the term of the lease has expired. The second and third limb of*

*section 169 does not appear to apply in that the defendant is not the plaintiff's tenant who is in arrears and/or the term of the lease has expired.*

**(Underline for emphasis)**


- [18]. In this instance, **the first limb of s169 applies; the plaintiff is the last registered proprietor** of the the property comprised and described in Certificate of Title No. 8620, Piece of land known as "Tokotoko" part of, situated in the District of Deuba in the island of Vitilevu and being Lot 24 on DP Number 1215, containing an area of 25.2 perches
- [19]. In this respect the plaintiff has annexed in her affidavit a certified true copy of the the property comprised and described in Certificate of Title No. 8620, Piece of land known as "Tokotoko" part of, situated in the District of Deuba in the island of Vitilevu and being Lot 24 on DP Number 1215 which clearly shows that the said Title was transferred to the Plaintiff by Transfer Document No. 724067 registered on 25/09/2007 at 2.29pm.
- [20]. After the Plaintiff has established the **first limb test of section 169** that is that the Plaintiff is the **registered proprietor** of the the property comprised and described in Certificate of Title No. 8620, Piece of land known as "Tokotoko" part of, situated in the District of Deuba in the island of Vitilevu and being Lot 24 on DP Number 1215, then the **Defendant** bears the **onus of showing cause** as to why **vacant possession** should not be granted to the **Plaintiff**.
- [21]. Pursuant to *section 172 of the Land Transfer Act Cap 131*, the **Defendants** need to satisfy this court on affidavit evidence that they have a right to possession. (Case of **Muthusami v Nausori Town Council** F.C.A. 23/86 refers).
- [22]. There is no need to prove conclusively a **right to possession** and it is sufficient for the **Defendants** to prove that there is **some tangible evidence** establishing the existence of a right or of an **arguable defence**. (Case No. 152 of 1987- **Morris Hedstrom Ltd v Liaquat Ali** refers).
- [23]. In this case, the Defendants have failed to file affidavits in Opposition and neither have they presented themselves in Court.
- [24]. The **Defendants** have failed to show any cause including *a right to possession* or has *tangible evidence establishing a right or* adduced in terms of *section 172 of the Land Transfer Act, Cap 131*.
- [25] There is accordingly nothing in *section 172* which requires an automatic order for possession unless "**cause**" is immediately shown.

## **FINAL ORDERS**

[26]. Following are the final orders of this court.

- (i) THAT the **Defendants and their family or any other persons** to give vacant possession to the **Plaintiff** the property comprised and described in Certificate of Title No. 8620, Piece of land known as “Tokotoko” part of, situated in the District of Deuba in the island of Vitilevu and being Lot 24 on DP No. 1215, containing an area of 25.2 perches **in one months’ time, on or before 16<sup>th</sup> February, 2026.**
- (ii) **Fiji Police to provide all assistance necessary when enforcement of vacant possession is being carried out.**
- (iii) **Execution is hereby suspended till 16<sup>th</sup> February, 2026.**
- (iv) **Defendants to pay the Plaintiff Costs summarily assessed at \$2,000.**



  
Wateen M George  
**Acting Puisne Judge**

Dated at **Suva** this 15<sup>th</sup> day of January, 2026

**Counsel:** *Amrit Chand Lawyers for the Plaintiff*  
*No Appearance from the Defendants*