

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. **HBC 205 of 2025**

IN THE MATTER of an application under
section 169 of the Land Transfer Act 1971.

BETWEEN: **ZHU XIN HUA** aka **ZHUXIN HUA**, of 88 Milverton Road, Suva,
Businesswoman.

PLAINTIFF

AND: **NILESH NATH MOHAN** of Top Shop/ Flat 1, 88 Milverton Road, Suva,
Shopkeeper.

DEFENDANT

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

COUNSEL: **Mr. O'Driscoll G. for the Plaintiff**
Mr. Vulakauvaki for the Defendant

DATE OF JUDGMENT: 25th February, 2026

JUDGMENT

[Vacant Possession - S.169 of the Land Transfer Act 1971]

On the outset, I accede to the oral application of 'Slip Rule' to correct the Defendant's name to read Nikesh Nath Mohan.

Introduction

1. The Plaintiff filed a Summons for Ejectment against the Defendant **Nilesh Nath Mohan** to show cause why an Order for immediate Vacant Possession of the property situated at 88 Milverton Road, Suva being Lot No. 57 on Deposited Plan No. 2274 comprised in Certificate in Title No. 9338 of which the Plaintiff is the registered proprietor should not be made against the Defendant **Nilesh Nath Mohan** upon the grounds set forth in the affidavit of Zhu Xin Hua aka Zhuxin Hua.
2. The Defendant subsequently filed its Affidavit in Opposition on 14th August 2025.
3. A Reply Affidavit was filed by the Plaintiff on 28th August 2025.
4. The Plaintiff filed its written submissions whilst the Defendant made oral submissions.

Practice and Procedure

5. The Plaintiff has filed this application pursuant to **Section 169 of the Land Transfer Act 1978**.
6. **A Section 169 application** is a summary procedure for possession which enables 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 herein 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 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**.
9. Pursuant to **Section 172 of the Act**:
 - (a) *The last registered proprietor of the land,*
 - (b) *A lessor with power to re-enter where the lessee or tenant is in arrears for such period as may be provided in lease and, in 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; and*
- (c) *Lessor against a Lessee or tenant where a legal notice to quit has been given or the term of 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.

The Plaintiff's Contention

11. Is the registered proprietor since 11th October 2024 of Lot 57 on DP No. 2274 comprised on CT No. 9338.
12. Entered into an agreement with the Defendant for a month to month tenancy.
13. On 25th April 2025, the Defendant was notified by Notice to Quit Top Flat and Flat 1 dated 16th April 2025 to vacate the premises for alternative usage.
14. The Defendant had vacated Flat one, but still continues to be in occupation of Top Shop.
15. The Defendant has failed to vacate and refuses or neglects to quit from my premises and continues to be in wrongful and unlawful occupation thereafter Notice to Quit served.

The Defendant's Contention

16. Not disputing proprietorship of Plaintiff, however, challenging service of the Notice to Quit.
17. Who was served with Notice to Quit?
18. The Defendant's name is incorrect, it should be Nikesh Nath Mohan and not Nilesh Nath Mohan.
19. Still paying rental.
20. Seek an order for dismissal of the Plaintiff's claim.

Determination

21. The Plaintiff is seeking an order that the Defendant **Nilesh Nath Mohan** to show cause why an order for immediate vacant possession of the property situated at 88 Milverton Road, Suva on Lot 57 on DP No. 2274 comprised in CT No. 9338 of which the Plaintiff is the registered proprietor should not be made against the Defendant?

22. The Defendant does not dispute the proprietorship of the said property.
23. The Defendant's Contention are:
 - 1) That the name of the Defendant is incorrect. It should read Nikesh Nath Mohan;
 - 2) That he denies the service of the Notice to Quit by the Plaintiff
 - 3) That he continues to pay the monthly rental.
24. The Plaintiff's Contention and submission is that the Defendant was served with multiple lawful Notices to Quit, however, he continues to remain in occupation without the Plaintiff's consent.
25. A Notice to Quit was issued on 16th April 2025 and delivered to the Defendant on 25th April 2025 by a Licensed Bailiff [Annexure 'ZXH-3'].
26. The payments received from the Defendant after service of the Notice to Quit were accepted as mesne profits, not rent and no receipts were issued.
27. The Defendant's Affidavit in Opposition:
 - 1) Denies service of the 16th April 2025 notice,
 - 2) Claiming that the Tenancy was originally with his wife; and
 - 3) Alleges that continued occupation is justified by ongoing payments via internet banking.
28. However, the Plaintiff's Reply Affidavit deposed on 28th April 2025 refutes above claims of the Defendant:
 - 1) The Tenancy Agreement was with the Defendant himself.
 - 2) Annexure 'ZXH-1' Notice to Quit of 11th November 2024 addressed to the Defendant, he accepts having received the same.
 - 3) Annexure 'ZXH-2' letter dated 14th January 2025, signed by both the Defendant and his wife, acknowledging that they have been operating the shop together for the past 16 years and requesting additional time to vacate the premises.
 - 4) The Defendant admitted in writing that he would vacate the premises by 31st March 2025 but failed to do so.
 - 5) His continued occupation of the premises is unlawful and constitutes withholding of possession.
29. I make reference to the Notice to Quit [Annexure 'B'] within the Affidavit in Support of Zhu Xin Hua dated 16th April 2025. It is addressed to **Nikesh Nath Mohan** of Top Shop, 88 Milverton Road, Raiwaqa, Suva, and Flat 1, 88 Milverton Road, Raiwaqa, Suva. It was received by **Nikesh Nath Mohan** on 25th April 2025 at 1.05 pm but refused to acknowledge the same.

30. Further, the Affidavit in Opposition filed on 14th August 2025 is deposed by **Nikesh Nath Mohan**.
31. Certificate of Death [Annexure 'A'] within the Affidavit of Opposition refers to and confirms the death of the Defendant **Nilesh Nath Mohan** on 20th August 2015.
32. The Affidavit of Reply deposed by the Plaintiff Zhu Xin Hua have at least two (2) Annexure 'ZXH-1'- Notice to Vacate addressed to **Nikesh Nath Mohan** dated 11th November 2024 and Annexure 'ZXH-2' a response correspondence addressed to Ms. Zhu Xin Hua dated 14th January 2025. The correspondence seeks for Extension of time with reasons as set out there in (i) to (v) inclusive to vacate the Top Shop and Flat 1 by 31st March 2025 or before.
33. The person appearing before Court admittedly is **Nikesh Nath Mohan** whereas Nilesh Nath Mohan named as the Defendant has already taken demise. Therefore, the Defendant's name is now corrected to read **Nikesh Nath Mohan**.
34. Taking into consideration the Plaintiff's Affidavit in Support, Defendants Affidavit in Opposition, Plaintiff's Reply Affidavit together with all annexures highlighted within the Affidavits as hereinabove, I find that the Defendant has failed to show any cause including a Right to Possession or has tangible **evidence establishing a right or supporting** an arguable case for **such a right that must be adduced** in terms of section 172 of the Land Transfer Act.
35. There is accordingly nothing in Section 172 which requires an automatic order for possession unless '**cause**' is immediately shown.
36. For the aforesaid rational, I find that the Plaintiff is the registered proprietor of the property comprised and described in Certificate of Title No. 9338 being Lot 57 on Deposited Plan No. 2274 accordingly.
37. Thus, the Plaintiff is obviously the owners of the Property in Question for which Vacant Possession is sought.

Costs

38. The matter proceeded to full hearing on oral and written submissions. The Defendant to pay a sum of \$1,000 summarily assessed cost to the Plaintiff within 14 days' timeframe.
39. Following are the final orders of this Court.

Final Orders

- (i) Under 'Slip Rule' the Defendant's name is corrected to read **Nikesh Nath Mohan** accordingly.

- (ii) The Defendant **Nikesh Nath Mohan** to give Vacant Possession of the property situated at 88 Milverton Road, Suva being all that piece and parcel of land containing 24.6 perches be the same a little more or less and situated in the city of Suva and being Lot 57 on deposited plan no. 2274 comprised in Certificate of Title No. 9338 of which the Plaintiff is the registered proprietor, to the Plaintiff accordingly.
- (iii) The Defendant Nikesh Nath Mohan to deliver Vacant Possession of the above-mentioned property on Certificate of Title No. 9338 being Lot 57, Deposited Plan No. 2274 to the Plaintiff in one (1) months' time on or before 25th March 2026 by 4 pm.
- (iv) Execution is hereby suspended till the 25th March 2024 at 4 pm.
- (v) The Defendant to pay the Plaintiff summarily assessed costs of \$1,000 within 14 days' time frame.

Dated at Suva this 25th day of February, 2026.




VISHWA DATT SHARMA
PUISNE JUDGE

CC: O'Driscoll & Co., Suva
Torah Law, Nasinu