

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 347 of 2013

IN THE MATTER of an Application for possession of Land under Section 169 of the Land Transfer Act.

BETWEEN : **SAIMONI BUINIMASI PARETI** and **KALELI DIRAVODRE NACIKA PARETI** of Makoi, Nasinu, School Teacher and Medical Officer respectively.
PLAINTIFFS

AND : **SIMIONE RASAKE KOROI** of Lot 17 on DP 5701, Ceva Place, Tovata Road, Nasinu.
1ST DEFENDANT

AND : **EMORI KOROIRAVUDI** and **TOKASA KOROIRAVUDI** of Lot 17 on DP 5701, Ceva Place, Tovata Road, Nasinu.
2ND DEFENDANTS

BEFORE : **Acting Master Thushara Rajasinghe**

COUNSEL : **Mr. Lajendra N.** for the Plaintiff
1st and 2nd Defendants are in person

Date of Hearing : **28th March, 2014**

Date of Judgment : **4th April, 2014**

JUDGMENT

A. INTRODUCTION

1. This Originating Summons dated 10th of December 2013 was filed by the Plaintiffs in pursuant of section 169 of the Land Transfer Act (hereinafter referred as “Act”) and sought an order that the Defendants to give immediate vacant possession to the Plaintiffs of all the property which the Defendants are unlawfully occupying being all that land

legally described in Housing Authority Sub- Lease No 227800, Lot 17 on DP 5701 containing an area of 507m² and situated in the Tikina and Province of Naitasiri of which the Plaintiffs are the Registered proprietor

2. The Defendants and the Plaintiffs were given directions to file their respective affidavit in oppositions and affidavit in reply to the oppositions. Accordingly, the Defendant filed his affidavit in opposition, however the learned counsel for the Plaintiff informed the court that he opted not to file any reply to the affidavit in oppositions. This Summons was then set down for hearing on the 28th of March 2014. The learned counsel for the Plaintiff and the Defendants in person made their respective oral submissions and arguments during the cause of the hearing.

B. BACKGROUND,

The Plaintiffs' case.

3. The Plaintiffs stated in their affidavit in support that they are the last registered proprietors of this property. They further deposed that the first Defendant was the previous registered owner and the mortgagor with the Housing Authority under Mortgage No 710360. The Housing Authority called for tenders for the sale of this mortgaged property since the first Defendant as mortgagor fell in arrears. The Plaintiffs were the successful bidders to the tender and purchased the said property. They subsequently became the registered proprietors to this land upon the transferred of the property by the Housing Authority. Having stated the factual back ground of this dispute, the Plaintiffs alleged that the Defendants are still occupying the property without giving the vacant possession of the same.

The Defendants' Case.

4. The Defendants are not represented by a lawyer and filed an affidavit of the first Defendant. The first Defendant tendered a copy of a letter sent to the Prime Minister of

the Republic of Fiji as an annexure and stated that they have been occupying the land with the verbal consent from Housing Authority.

C. THE LAW,

5. Section 169 of the Land Transfer Act states that ;

“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.”

6. Accordingly, the last registered proprietor of the land and/or a lessor with power to re-enter where the lessees or tenant is in arrears of rent and/or a lessor who has issued a legal notice to quit or the term of the lease has expired are allowed to institute proceedings under section 169 of the Act to evict the person who is in possession of the land without a right to the possession.

7. Section 171 and 172 of the Act deal with the scope of the hearing and the burden of the parties. Section 171 states that ;

“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.”

8. Section 172 states that

“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;

9. In view of sections 171 and 172, the onus is on the Plaintiff to satisfy the court that he is the last registered proprietor or the lessor described under the section 169 (a), (b) and (c) of the Act. Once the Plaintiff satisfied it, the burden will shift on the Defendant to satisfy the court that he has a right to the possession of the land. The scope of the Defendant’s burden of prove of a right to the possession of the land was discussed in **Morris Hedstrom Limited-v- Liaquat Ali** CA No: 153/87 , where it was held that

“Under Section 172 the person summonsed 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.”

Accordingly, the defendant is only required to present some tangible evidence to establish a right to the possession or the existence of an arguable case for such right to defeat the Plaintiff’s claim.

D. ANALYSIS,

10. The Plaintiffs have satisfied the court that they are the last registered proprietors of the land by tending a certified copy of the certificate of title to prove that claim. Under such circumstances, the onus is shifted to the Defendants to satisfy the court that they have a right to the possession to the land. However, the Defendant did not provide any evidence to satisfy the court that they have any right to the possession of the land apart from stating that they have been occupying the land with the verbal consent of the Housing Authority.

11. The copy of the certificate of the title clearly indicates that the Plaintiffs are the last registered proprietors of the land. In view of the evidence presented before me, I am satisfied that the Defendants have not satisfied that they have a right to the possession of the land. I accordingly make following orders,
 - i. The Plaintiff is granted vacant possession of the Land described in the Originating Summons,
 - ii. The Plaintiff is granted a cost of \$500 assessed summarily,

Dated at Suva this 4th day of April, 2014.

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R.D.R. Thushara Rajasinghe
Acting Master of High Court, Suva