

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

Civil Action No. HBC18 of 2014

**BETWEEN** : **SATISH MOTORMART LIMITED** a limited liability company having its  
registered office at Nasekula Road, Labasa, Fiji

**PLAINTIFF**

**AND** : **MICHAEL CHEER & JOSEPH CHEER** of Samabula , Suva

**DEFENDANT**

**BEFORE** : **Master Thushara Rajasinghe**

**COUNSEL** : **Mr. Nandan S.** for the Plaintiff  
**Ms. Nadalevu S.** for the Defendant

**Date of Hearing** : **15<sup>th</sup> April, 2014**

**Date of Ruling** : **13<sup>th</sup> June, 2014**

## **JUDGMENT**

### **A. INTRODUCTION**

1. The Plaintiff instituted this action by way of this originating Summons dated 22<sup>nd</sup> of January 2014 seeking following orders inter alia;

- i. *That the Defendants Michael Cheer and Joseph Cheer do show cause why they should not give up vacant possession to the Plaintiff of the property described as Lot 1 on Plan DP 2573 known as Samabula Indian Settlement ( Part of) in the District of Suva, the province of Rewa and the Island of Vitilevu, ( the Land) under a Approval Notice of Lease LD Ref 4/16/3993 dated 4<sup>th</sup> of December 2012*

*and also described as all that piece of land contained in CL 19232 and CL 19233 respectively,*

- ii. Order for means profits,*
- iii. Cost of this action on an indemnity basis,*
- iv. Such other orders that this honorable court deems just,*

2. Upon being served with this Summons, the Defendants appeared through their solicitors on the date mentioned in the Summons which was 19<sup>th</sup> of February 2014. The Defendants sought further time to file their affidavit in opposition, wherefore directions were given to the Defendants to file their affidavit in opposition within 21 days time and the Plaintiff to file its affidavit in reply within 14 days time thereafter. This Summons was set down for hearing on 14<sup>th</sup> of April 2014. However, the counsel for the Defendant filed a notice of motion and sought further extension of time to file their affidavit in opposition. The learned counsel for the Plaintiff had no objections wherefore, the extension of time was granted and the hearing was vacated on 14<sup>th</sup> of April 2014. The hearing of this Summons was rescheduled on 15<sup>th</sup> of April 2014. The learned counsel for the Plaintiff and the Defendant made their oral arguments and submissions during the cause of the hearing. Having considered the Summons, respective affidavits and oral submissions of the respective parties, I now proceed to pronounce the judgment as follows.

3. The Plaintiff claims that they are the last registered proprietor of the leases namely Crown Lease No 19232 and Crown Lease No 19233. The Defendants have been occupying in a building locate on the land described in those two leases and operating a business in the name and style of "Samabula Cake Shop". Having obtained the lease under their name, the Plaintiff demanded the Defendants to pay monthly rent and enter into a new lease agreement with them since the lease agreement the Defendants had with the previous owner has expired. However, the Defendant refused to pay rent wherefore, the Plaintiff issued a notice to quit.

4. The Defendants in their affidavit in opposition objected this Summons. Their objection is founded on the contention that this Summons was served in contravention with section 170 of the Land Transfer Act. They stated that the Summons was served on them on 11<sup>th</sup> of February 2014 requesting them to appear at the court on the 19<sup>th</sup> of February 2014

which is contrary to the time limit of 16 day stipulated under section 170 of the Land Transfer Act.

5. Section 170 of the Land Transfer Act states that;

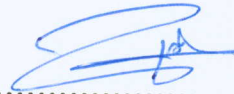
“The Summons shall contain a description of the land and shall require the person summoned to appear at the court on a day not earlier than sixteen days after the service of the Summons”.

6. I find that the purpose of this mandatory requirement is to provide the Defendant a sufficient time to show cause why he refuses to give vacant possession of the land pursuant to section 172 of the Land Transfer Act. Section 172 of the Act requires the Defendant to show cause on the date he was summoned in the summons.
7. However, in this instance case, the Defendants appeared through their solicitors on the 19<sup>th</sup> of February 2014 and sought further time to file their affidavit in opposition. The Defendants were granted 14 days accordingly. Notwithstanding of obtaining of 14 days time, the Defendant failed to file their affidavit in opposition within that time and sought further extension of time for the affidavit in opposition.
8. In view of these facts, I do not find that the Defendants were prejudiced due to the short time given to them to appear at court after the service of summons on them. The Defendants were not compelled to show cause on the day given in the Summons. They were granted sufficient time to file their show case. Beside that the learned counsel for the Defendants did not take up this objection under section 170 of the Act when she appeared in court on 19<sup>th</sup> of February 2014. She only sought further time for their affidavit in opposition. I accordingly refused and dismiss the objection of the Defendants.
9. Apart from the objection made under section 170 of the Act, the Defendants have not raised any show cause to satisfy the court that they have a right of the possession of this land. I am satisfied that the Plaintiff is the last registered proprietor of these crown leases No 19232 and 19233 respectively.

10. Having considered the foregoing findings, I hold that the Defendant failed to prove to the satisfaction of the court a right of the possession of the land or the existence of an arguable case for such a right. I accordingly make following orders that;

- i. The Plaintiff is hereby granted the vacant possession of the land described in the Originating Summons for vacant possession dated 22<sup>nd</sup> of January 2014,
- ii. The Plaintiff is awarded with cost of \$ 750 assessed summarily,

Dated at Suva this 13<sup>th</sup> day of June, 2014.



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

