

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

Civil Action No. HBC 360 of 2013

**BETWEEN** : **NAUSORI TOWN COUNCIL** a local body corporate duly constituted under  
the Local Government Act, Cap 125

**PLAINTIFF**

**AND** : **SNEH LATA C/-** aka Mrs. Nand Kishore Market Vendor, Nausori Market,  
Nausori

**DEFENDANT**

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

**COUNSEL** : **Ms. Raikaci N.** for the Plaintiff  
**Mr. Vakaloloma A.** for the Defendant

**Date of Hearing** : 09<sup>th</sup> April, 2014

**Date of Ruling** : 20<sup>th</sup> June, 2014

## **JUDGMENT**

### **A. INTRODUCTION**

1. The Plaintiff instituted this action by way of this Originating Summons dated 19<sup>th</sup> of December 2013 seeking an order for immediate vacant possession of all the property which the Defendant is unlawfully occupying being part of that land legally described in Crown lease No 192020 Lot 1 on Plan TL1040 Nasimasima, Nausori Market containing an area of 5970m<sup>2</sup> of which the Plaintiff is the registered proprietor on the ground that the Defendant is unlawfully occupying part of the property.
2. Upon being served with this Summons the Defendant filed his objections on the 20<sup>th</sup> of January 2014. However, the said document though stated on the last page of it as “affidavit in opposition” has not complied with any of the requirement stipulated under

Order 41 of the High Court Rules, wherefore, I do not accept it as the Defendant's affidavit in opposition. The Plaintiff filed his affidavit in reply to this document filed by the Defendant and have correctly raised their objection of the nonconformity of the Order 41 of the High Court Rules. Subsequently this Summons was set down for hearing, where the counsel for the Plaintiff and the Defendant made their oral arguments and submissions.

## **B. BACKGROUND**

### *Plaintiff's case,*

3. The Plaintiff claims that they are the registered proprietor of the property comprised in crown lease No 192020 Lot 1 on Plan TL 1040 Nasimasima comprising the Nausori market therein. The Plaintiff alleges that the Defendant has been illegally occupying six stalls being P5, P6, P7, P29, P30 and P31 respectively without any colour of right and permission of the Plaintiff. This unlawful occupation of the Defendant has prevented the Plaintiff to allocate those stalls in the market to other applicants.

### *Defendant's Case.*

4. As I mentioned above, the document filed by the Defendant on 20<sup>th</sup> of January 2014 has no evidential value as it is not in conformity with the requirements stipulated under Order 41 of the High Court Rules. However, the counsel for the Defendant submitted in his oral submissions, that the Defendant is not occupying a land, and only using the stall at the market, wherefore the Plaintiff could not maintain this action under section 169 of the Land Transfer Act.

## **C. THE LAW**

5. I now turn to briefly review the laws pertaining to the application under section 169 of the Land Transfer Act (hereinafter mentioned as "the Act").

6. Sections 169 to 172 of the Act have stipulated the procedure for the application in this nature. In view of the section 169 of the Act, the last registered proprietor of the land and/or a lessor with power to re-enter where the lessees or tenant is in arrear for such period 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;*

**D. ANALYSIS,**

9. There is no show cause why the Defendant refuses to give vacant possession of this property. However, I will consider the contention of the Defendant counsel that the Defendant is not occupying the land, but only using the stall at the market.


10. Section 2 of the Land Transfer Act has provided an inclusive definition of “land” where it states that;

*"Land" includes land, messuages, tenements and hereditaments, corporeal and incorporeal, of every kind and description, together with all buildings and other fixtures, paths, passages, ways, watercourses, liberties, privileges, easements, plantations, gardens, mines, minerals and quarries, and all trees and timber thereon or there underlying or being unless any such are specially excepted".*

11. In view of the interpretation given in section 2, stalls fixed on either permanently or temporarily on the land or in a building thereon certainly fall within the meaning of "land", wherefore, I disregard and refuse the contention of the learned counsel of the Defendant that the Defendant is not occupying the land.
12. Apart from the objection refused above, 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 192020.
13. 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 dated 19<sup>th</sup> of December 2013,
  - ii. The Plaintiff is awarded with cost of \$ 750 assessed summarily,

Dated at Suva this 20<sup>th</sup> day of June, 2014.



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