

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 55 of 2014

IN THE MATTER an application made to
pursuant to Section 169 of Part XXIV of the
Land Transfer Act [Cap 131] for the order
for immediate vacant possession.

BETWEEN : BANABA LIMITED a limited liability company having its
registered office at Suva in Fiji.

PLAINTIFF

AND : BANABAN ELDERS AND LANDOWNERS ASSOCIATION
established on the 8th day of September, 2011 under the Industrial
Association Act [Cap 95] situated at 8-10 Pratt Street, Suva.

DEFENDANT

BEFORE: Acting Master Vishwa Datt Sharma

COUNSELS: Ms. Tikoisuva for the Plaintiff.
Mr. Huare for the Defendant.

Date of Hearing: 04th March, 2015
Date of Ruling: 25th August, 2015

RULING

INTRODUCTION

1. The Plaintiff filed a Summons for Ejectment on 24th February, 2014 and sought for the following orders-

- (a) That the Defendant Banaban Elders and Landowners Association to show cause why an Order for immediate vacant possession of the property situated at Shop 3, Banaba House, Pratt Street, Suva being part of that piece be the same a little more or less and situated in the Tikina of Suva in the island of Viti Levu and being Lots 1 and 5, 6, 7 and 3 on Deposited Plan Nos. 882, 883 & 6652 being Allotments 1 and 2 Section 5 (part of) and comprised in Certificate of Title No. 29218 of which the Plaintiff is the registered proprietor, should not be made against him upon the grounds set forth in the Affidavit of Tearikaeto Taremon.
2. This application is supported by an affidavit of Tearikaeto Taremon sworn on 21st February, 2014.
 3. The application is made pursuant to *Section 169 of the Land Transfer Act, Cap 131*.
 4. The application coupled with the affidavit in support was served at the Defendant's office at 8-10 Pratt Street, Suva, on 05th March, 2014 and an affidavit of service to this effect has been filed into court.
 5. The Counsel representing the Defendant was granted 14 days time to file and serve his affidavit in opposition on 22nd April, 2014 and the Plaintiff 7 days thereafter to file and serve any reply
 6. The case was finally adjourned for hearing on 25th May, 2015.
 7. This case proceeded to hearing on a defended basis and both parties to the proceeding were represented by Counsels at the hearing.
 8. 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]*.

THE LAW

9. The application is filed in terms of s 169 of the Land Transfer Act [Cap 131] which provide 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."*

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." *(Underlined 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 Jannadas & Co. Ltd. v. Public Trustee and Prasad Studios Ltd. (Civil Appeal No. 39 of 1972 - unreported) also refers.

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.
16. It is for the defendant to 'show cause' why they refuse to give vacant possession of the property to the Plaintiff as sought for by the Plaintiff.
17. Reference is made to the case authorities of *Caldwell v. Mongston* (1907) 3 F.L.R. 58 and *Perrier Watson v. Venkat Swami* (Civil Action 9 of 1967 - unreported) wherein the Supreme Court held '*that if the proceedings involve consideration of complicated facts or serious issues of law, it will not decide the cases on summary proceedings of this nature, but will dismiss the summons without prejudice to the Plaintiff's right to institute proceedings by Writ of Summons.*'

PLAINTIFF'S AFFIDAVIT IN SUPPORT

18. The Plaintiff together with its application by Summons, filed an affidavit in support and deposed as follows-

- (i) *That I am duly authorised to swear this Affidavit for and on behalf of the Plaintiff as Property Manager of the Plaintiff company.*
- (ii) *I make this affidavit in support against the Defendant.*
- (iii) *This affidavit is made based on my own knowledge of the circumstances of the matter except for where I say I am informed of a matter in which case I believe the same to true.*
- (iv) *As per Certificate of Title No. 29218 the Plaintiff is the registered proprietor of all that piece and parcel of land containing 756.5m2 be the same a little more or less and situated in the tikina of Suva in the island of Viti Levu and being Lots 1 and 5, 6, 7 and 3 on Deposited Plan Nos. 882, 883 & 6652 being Allotments 1 and 2 Section 5 (part of) and comprised in Certificate of Title No. 29218. A certified true copy of the Certificate of Title is annexed herewith and marked "A".*
- (v) *The Plaintiff had issued a Demand Notice for Arrears in Rent on 8th March, 2013 and the Defendants did not make payment. A certificate true copy of the Demand Notice is annexed herewith and marked "B".*
- (vi) *The Plaintiff had issued a Vacation Notice for Arrears in Rent on 29th April, 2013 and the Defendants did not vacate the premises. A certified true copy of the Vacation Notice is annexed herewith and marked "C".*
- (vii) *The Plaintiff then issued another Vacation Notice for breaches of the Tenancy Agreement on 23rd January, 2014 and the Defendants did not vacate the premises. A certified true copy of the Vacation Notice and Tenancy Agreement is annexed herewith and marked "D1" and "D2".*
- (viii) *The Plaintiff then instructed their solicitors to proceed with a Distress for Rent Action and this begun by way of a Demand Notice dated 31st January, 2014 and the Defendants did not adhere to the Notice or pay the amount due. A certified true copy of the Demand Notice is annexed herewith and marked "E".*

- (ix) *A Bailiff was sent by our Solicitors on 7th of February, 2014 to issue a Distress for Rent Notice at the Defendant's premises. A certified true copy of the Distress for Rent Notice is annexed herewith and marked "F".*
- (x) *The bailiff informed us that when he tried to close the premises of the Defendant he was not allowed by the Defendant he was not allowed by the Defendants and their supporters and he was obstructed from carrying out his obligations.*
- (xi) *That the street address of the said property is Shop 3, Banaba House, Pratt Street in Suva.*
- (xii) *I am informed by our solicitors and believe that the Defendant has not responded to the said notice to vacate or adhered to the duties of the Bailiff under the Distress for Rent provisions.*
- (xiii) *That the Defendant is still in occupation of the said property and refuses or neglects to quit from there and continues to be in wrongful and unlawful occupation thereof.*
- (xiv) *Therefore I seek an order in terms of the accompanying Affidavit in Support.*

DEFENDANT'S AFFIDAVIT IN REPLY

19. The Defendant deposed the following-

- (i) *That I have read the Affidavit in Support of the Summons for Ejectment of the Plaintiff Company under SECTION 169 of the Land Transfer Act, Cap 131 and I hereby respond in answer to the same and am duly authorized to swear this Affidavit in Reply.*
- (ii) *This Affidavit in reply in made based on my own knowledge of the circumstances of this action for ejectment by the Plaintiff's Company except where I say I am informed in which case I honestly believe the same to be true.*
- (iii) *The Plaintiff is a limited liability company and as such the proper officer to make the Affidavit, in the Defendant's view, is the Company Secretary and not the Property Manager who in the Defendant's view is not the authorized company officer to swear the Affidavit and therefore paragraph 1 of the Plaintiff's Affidavit hereinafter referred to as "the said Affidavit" is denied and the Plaintiff is put to strict proof thereof.*
- (iv) *In view of paragraph 3 above paragraphs 2 and 3 of the said Affidavit are also denied.*
- (v) *PARAGRAPH 4 of the said Affidavit is partly admitted and partly denied in that our copy of C.T. 29218 (see Plaintiff's Annexure marked 'A') is not a certified true copy as that phrase ('Certified True Copy') is not seen on our copy of the Plaintiff's annexure marked 'A'.*

- (vi) Further to paragraph 5 above the Defendant Association are members of the Plaintiff Company being the same Banaban people of Rabi Island and 699, 998 SHARES of the Plaintiff Company is held by the Rabi Council of Leaders for people of Rabi Island and as such it would be a great injustice to invoke SECTION 169 of the Land Transfer Act Cap 131 in evicting the Defendant Association who are SHAREHOLDERS and OWNERS of the Plaintiff Company.
- (vii) Further to paragraph 6 above we inform this honourable court that the Rabi Council of Leaders which is a body set up by the Banaban Settlement Act, Cap. 123 to administer the affairs of the Banaban people is now dissolved by the Government which has appointed one Administrator who now operates as a Council of Leaders for the Banaban people.
- (viii) Further to paragraph 7 above of the current Directors of the Plaintiff Company were originally appointed by the dissolved Rabi Council of Leaders and therefore I honestly believe that the position of the current company Directors are now illegal and therefore null void.
- (ix) As to paragraph 5, of the said Affidavit, the Defendant Association did not accept the Demand Notice dated 8th March, 2014 because it did not come from the proper officer of the Plaintiff Company. It will be seen that the demand notice was made almost five months after the rent was due.
- (x) The problem of the non - payment of rent in full to the Plaintiff Company was due to the failure of Mr. Jacob Loabo Christopher, the Finance Officer of the Defendant Association not making full payments when due in spite of the fact that the Defendant had the funds to pay in full.
- (xi) When the Defendant Association found out that its Finance Officer was not doing his job he was then removed and replaced by a female officer who was able to pay monthly rentals and arrears from 10,000 to about \$3,000 as of now which should be paid off within the next two months or so.
- (xii) The Demand Notice indicated that the arrears as at February 2013 was \$7,047.85 which we disagree with as our calculation indicated that our arrears on that date, February 2013 is estimated at about \$2,200.00.
- (xiii) As to paragraph 6 of the said Affidavit the Defendant Association did not vacate the premises because our members have complied with the new verbal arrangement agreed by the terminated Executive Director and the Defendant Association that:
- (a) From September, 2013 onward rent must be paid in full on due dates;
 - (b) Make every effort to reduce and pay off the outstanding arrears.

- (xiv) *The Defendant requests this Honourable Court to note that the Defendant Association has faithfully complied with the above arrangements and to note also that as at 28th February, 2014 all rent was paid in full and the arrears was reduced to about \$2,200.00.*
- (xv) *For the reasons stated in paragraph 13 above the Defendant Association pleads with this honourable Court to acknowledge the right of the Company shareholders to manage and appoint company directors to administer the affairs of the Plaintiff Company, for example, in the last twenty years the Board of Directors of the Plaintiff company had failed to produce annual income and expenditure accounts for information of shareholders.*
- (xvi) *In reply to paragraph 7 of the said Affidavit, the Defendant states as follows:*
- (a) *The vacation notice issued by the Plaintiff was not properly authorized by the proper officer of the Plaintiff Company that is the Company Secretary.*
- (b) *No record of any resolution of the Board of Directors of the Plaintiff Company has been filed in Court to support the vacation and eviction notices.*
- (c) *No rubber stamp on the Lease Agreement of Officers signing the document to confirm the legality of the document. Also there is no Company Seal on our copy, see Annexure "D2" of the Plaintiff's Annexure.*
- (d) *Because the Plaintiff Company through their Solicitors continued to receive payments of rent from the Defendant Association who felt they have the right to remain as tenant, and should not be evicted from the premises.*
- (xvii) *As to paragraph 8 of the said Affidavit the issuing of the Demand Notice is not known to the Defendant and is neither admitted nor denied. Annexure "E" in the document handed to the Defendant is not signed by the Defendant for service on them.*
- (xviii) *The Defendant states in response to paragraph 9 of the said Affidavit that the Plaintiff sent their Solicitor's Bailiff to serve Distress for Rent Notice to us and this is neither admitted nor denied and there is no acknowledgement that the Defendant was served with such document.*
- (xix) *Paragraph 10 of the said Affidavit is denied to the extent that the Defendants and supporters did not obstruct the bailiff in carrying out his duties and believed that the Plaintiff company has no legal right to evict the shareholders from their own premises.*
- (xx) *Paragraph 11 of the said Affidavit is admitted.*
- (xxi) *In response to paragraph 12 of the said Affidavit the Defendant Association, in view of the fact that the proper officers of the Plaintiff Company, for example, the Company Secretary did not institute the SECTION 169 proceedings or sign any court documents served on the Defendant*

by the Plaintiff, the Defendant did not think it improper to respond but only to inform this honourable Court of what has happened for a proper decision to be issued to the parties especially that the Defendants are a part of the Banaban people of Rabi who in fact are owners of the Plaintiff Company as Shareholders.

- (xxii) As to paragraph 13 of the said Affidavit the Defendant are still in occupation of the said property as the Plaintiff is still accepting the payment of rent arrears of rent and through their solicitors which should disappear in month or two. As this issue could be peacefully resolved this way and especially when the Defendants are Shareholders and therefore owners of the Company and it would not be fair or justiceable to evict them. Their occupation is not wrongful or unlawful for the reasons in paragraph 1 to 21 above, especially, the arrangements agreed to as in paragraphs 13 above and 22 below.
- (xxiii) As the Affidavit in Support of the Summons for Ejectment is not signed by the Secretary of the Plaintiff Company who is one Ngaia Tekiera or signed by "any officer of the Company authorised generally or specially in that behalf by a resolution of the Board of Directors" in accordance with SECTION 181 (5) of the 1983 Company Act Cap. 247, we respectfully ask this honourable Court that the Plaintiff's request in its Summons for Ejectment for an Order of immediate vacant possession should not be made against the Defendant in view of the explanation given above from paragraph 1 to 21 and this action should be dismissed in accordance with SECTION 172 of the Land Transfer Act.
- (xxiv) Further, SECTION 181(8) of the 1983 Companies Act Cap. 247 specially provide:
"If default is made in complying with this section, the company and every officer of the Company who is in default shall be liable to a fine not exceeding \$400"
- (xxv) Further to paragraph 22 above the Defendant Association does not wish to enforce the Plaintiff's default as we feel that this matter could be amicably resolved as the Defendant is going to eliminate its arrears as indicated in paragraph 13 and also we are shareholders of the Plaintiff Company and belong to the same Banaban people of Rabi Island.
- (xxvi) We request the Court to dismiss the Plaintiff's action in this matter but ask that the Defendant's cost be paid by the Plaintiff totalling \$500.00 for the inconvenience of coming to Court. The reputation of the Defendant is already affected hence for the cost to be paid by the Plaintiff Company.

ANALYSIS and DETERMINATION

20. The question for this court to determine is whether the Plaintiff is entitled to the possession of the property situated at Shop 3, Banaba House, Pratt Street, Suva

being part of that piece be the same a little more or less and situated in the Tikina of Suva in the island of Viti Levu and being Lots 1 and 5, 6, 7 and 3 on Deposited Plan Nos. 882, 883 & 6652 being Allotments 1 and 2 Section 5 (part of) and comprised in Certificate of Title No. 29218 in terms of *s169 of the Land Transfer Act [Cap 131]*?

21. In this case, the Plaintiff 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.*
22. In this instance, the first limb of s169 applies; the plaintiff is the last registered proprietor of the property situated at Shop 3, Banaba House, Pratt Street, Suva being part of that piece be the same a little more or less and situated in the Tikina of Suva in the island of Viti Levu and being Lots 1 and 5, 6, 7 and 3 on Deposited Plan Nos. 882, 883 & 6652 being Allotments 1 and 2 Section 5 (part of) and comprised in Certificate of Title No. 29218.
23. In this respect the plaintiff has annexed in their affidavit a certified true copy of the Certificate of Title No. 29218 which shows and clearly establishes that the said property was registered in the Plaintiff's name on 30th March, 1995 with the Registrar of Titles and the seal of the Registrar of Titles is endorsed therein as per the requirement of the Law.

The Plaintiffs are for the purposes of section 169 the last registered proprietor of the said property situated at Shop 3, Banaba House, Pratt Street, Suva being part of that piece be the same a little more or less and situated in the Tikina of Suva in the island of Viti Levu and being Lots 1 and 5, 6, 7 and 3 on Deposited Plan Nos. 882, 883 & 6652 being Allotments 1 and 2 Section 5 (part of) and comprised in Certificate of Title No. 29218.

24. *Sections 39-42 of the Land Transfer Act Cap 131, and under the Torrens system of land registration which operates in Fiji, the title of the registered proprietor is indefeasible unless actual fraud is proved. (Case of Subramani v Sheela [1982] FJCA 11; [1982] 28 FLR 82 (2 April 1982); Assets Company Ltd v Mere Roihi [1905] AC 176 at p. 210; Fels v Knowles 26 N.Z.L.R. 608, at p 620 refers).*

25. In Subramani (supra) the Fiji Court of Appeal (per Gould V.P.' Marsack, J.A., and Spring J.A.) states as follows-

'The indefeasibility of title under the Land Transfer Act is well recognized; and the principles clearly set out in a judgment of the New Zealand Court of Appeal dealing with provisions of the New Zealand Land Transfer Act which on that point is substantially the same as the Land Transfer Act of Fiji. The case is Fels v Knowles 26 N.Z.L.R. 608. At page 620 it is said:-

"The cardinal principle of the statute is that the register is everything, and that, except in case of the actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against all the world."

26. Bearing the above in mind, I find that the Plaintiff has the locus standi to bring this action against the Defendant in this case.

27. After the Plaintiffs have established the first limb test of section 169 that is that the Plaintiffs are the registered proprietors of the property situated at Shop 3, Banaba House, Pratt Street, Suva being part of that piece be the same a little more or less and situated in the Tikina of Suva in the island of Viti Levu and being Lots 1 and

- 5, 6, 7 and 3 on Deposited Plan Nos. 882, 883 & 6652 being Allotments 1 and 2 Section 5 (part of) and comprised in Certificate of Title No. 29218, then the Defendant bears the onus of showing cause as to why vacant possession should not be granted to the Plaintiff.
28. Pursuant to *section 172 of the Land Transfer Act Cap 131*, the Defendant needs 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).
29. There is no need to prove conclusively a right to possession and it is sufficient for the Defendant 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).
30. I have very carefully perused the entire affidavit in support of the Plaintiff as well as the reply filed by the Defendant in the within action.
31. The Defendant's contention is that the Plaintiff's affidavit in Support has not been properly filed since it has been deposed by the Property Manager who is not the authorised Company officer to swear affidavits. It should have been deposed by the Company Secretary.

Section 40 of Companies Act Cap 247 states- 'A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorized officer of the company, and need not be under its common seal.

Section 182 states- 'The acts of a director or manager shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification.'

Section 2 (1) states as follows-

"document" includes summons, notice, order and other legal process, and registers;

"officer", in relation to an association or a body corporate, includes a director, manager or secretary;

"share" means share in the share capital of a company, and includes stock, except where a distinction between stock and shares is expressed or implied.

32. *Sections 40 and 182 of the Companies Act Cap 247*, read together with the interpretation *section 2 (1)*, does authorise a Manager to swear any affidavit, including summons, notices and other legal documents. Therefore, I hold that the affidavit in support deposed and sworn by Tearikaeto Taremon in his capacity as the property manager is in order and admissible into evidence.

33. At paragraph 5 of the Defendant's affidavit, he suggests that the Certificate of Title has not been certified a true copy.

- The annexure marked within the affidavit as 'A' is certified by the Registrar on 18th February, 2014.

At paragraph 6 and 7- the Defendant states that the Defendant Association are the members of the Plaintiff Company, and the Banaban people of Rabi Island hold shares in the Plaintiff Company and are therefore shareholders and owners of the Plaintiff Company. That Rabi Council of leaders which is a body set by the Banaban Settlement Act Cap 123 is now dissolved by the Government.

- There is no evidence before this court on the above contention before this court. Further, Rabi Council of Leaders is a duly constituted body under the Banaban Settlement Act Cap 123. Rabi Council of Leaders is not a party to this case nor is the registered proprietors of the said property under contention.

At paragraphs 10, 11, 12 and 13- regarding the non-payment of rental to the Plaintiff's premises.

- The Plaintiff's affidavit at paragraph 5 confirms that a demand notice was issued for rental arrears on 08th March, 2013 and the Defendants failed to make the payments as sought for. A Notice to vacate was issued on 29th April, 2013 but the Defendants continued to occupy the said property. Another notice to vacate for the breach of the tenancy agreement was issued on 23rd January, 2014, but still the

Defendants did not vacate. Hereafter, a distress for rent was issued but the Defendants did not allow the closure of the premises.

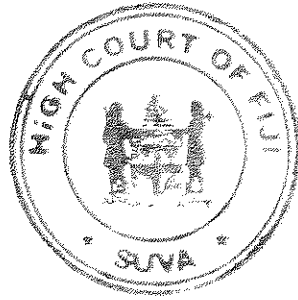
34. The Plaintiff has addressed and represented their case as per the requirements of the set Law and I do not find and can ascertain the existence of any tribal issues in this proceeding
35. For the aforesaid rational, I find that the annexed Certificate of Title No. 29218 clearly establishes that the Plaintiff is the registered proprietor of the property situated at Shop 3, Banaba House, Pratt Street, Suva being part of that piece be the same a little more or less and situated in the Tikina of Suva in the island of Viti Levu and being Lots 1 and 5, 6, 7 and 3 on Deposited Plan Nos. 882, 883 & 6652 being Allotments 1 and 2 Section 5 (part of) and comprised in Certificate of Title No. 29218.
36. 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 Cap 131.*
37. There is accordingly nothing in *section 172* which requires an automatic order for possession unless "cause" was immediately shown.
38. Following are the final orders of this court.


FINAL ORDERS

- A. The Defendants to give vacant possession to the Plaintiff the property situated at Shop 3, Banaba House, Pratt Street, Suva being part of that piece be the same a little more or less and situated in the Tikina of Suva in the island of Viti Levu and being Lots 1 and 5, 6, 7 and 3 on Deposited Plan Nos. 882, 883 & 6652 being Allotments 1 and 2 Section 5 (part of) and comprised in Certificate of Title No. 29218.

- B. The Defendant to deliver vacant possession to the Plaintiff in one (1) months' time on or before the 25th September, 2015.
- C. Cost is summarily assessed at \$500 against the Defendant.

Dated at Suva this 25th day of August, 2015.




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VISHWA DATT SHARMA
Acting Master of High Court, Suva