

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 111 of 2016**

**BETWEEN** : **NITYA NAND REDDY** formerly of Saweni, Lautoka but now of  
Auckland, New Zealand.

**PLAINTIFF**

**AND** : **PARMA NAND REDDY** of Saweni, Lautoka.

**DEFENDANT**

**Mr. Aminiasi Turuva for the Plaintiff**  
**Mr. Mark Joseph Anthony for the Defendant**

**Date of Hearing : - 02<sup>nd</sup> November 2016**  
**Date of Ruling : - 10<sup>th</sup> February 2017**

**RULING**

**(A) INTRODUCTION**

- (1) The matter before me stems from the Plaintiff's Originating Summons, dated 15<sup>th</sup> June 2016, made pursuant to **Section 169** of the **Land Transfer Act**, for an Order for Vacant Possession against the Defendant.
- (2) The Defendant is summoned to appear before the Court to show cause why he should not give up vacant possession of the Plaintiff's property comprised in **iTaukei Lease No. 30959 known as Saweni (Part Of) Lot 1 on SO 6687 being the TLTB No. 4/7/7194 containing an area of 2058m<sup>2</sup> in the Province of Ba situated at Saweni, Lautoka.**

- (3) The Originating Summons for eviction is supported by an affidavit sworn by the Plaintiff on 07<sup>th</sup> June 2016.
- (4) The Originating Summons for eviction is strongly contested by the Defendant.
- (5) The Defendant filed an 'Affidavit in Opposition' opposing the application for eviction.
- (6) The Plaintiff and the Defendant were heard on the 'Originating Summons'. They made oral submissions to Court. In addition to oral submissions, Counsel for the Plaintiff filed a careful and comprehensive written submission for which I am most grateful.

**(B) THE LAW**

- (1) In order to understand the issues that arise in the instant case, I bear in mind the applicable law and the judicial thinking reflected in the following judicial decisions.
- (2) Sections from 169 to 172 of the **Land Transfer Act (LTA)** are applicable to summary application for eviction.

**Section 169 states;**

*“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) .....
- (c) ...

**Section 170 states;**

*“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.”*

**Section 171 states;**

*“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.*

**Section 172 states;**

*“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;*

*Provided that the dismissal of the summons shall not prejudice the right of the plaintiff to take any other proceedings against the person summoned to which he may be otherwise entitled:*

*Provided also that in the case of a lessor against a lessee, if the lessee, before the hearing, pay or tender all rent due and all costs incurred by the lessor, the judge shall dismiss the summons.*

[Emphasis provided]

- (3) The procedure under Section 169 was explained by Pathik J in **Deo v Mati** [2005] FJHC 136; HBC0248j.2004s (16 June 2005) as follows:-

*The procedure under s.169 is governed by sections 171 and 172 of the Act which provide respectively 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.”*

*It is for the defendant to ‘show cause.’*

- (4) The Supreme Court in considering the requirements of Section 172 stated in **Morris Hedstrom Limited v. Liaquat Ali** (Action No. 153/87 at p2) 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.”*

- (5) The requirements of Section 172 have been further elaborated by the Fiji Court of Appeal in **Azmat Ali s/o Akbar Ali v Mohammed Jalil s/o Mohammed Hanif** (Action No. 44 of 1981 – judgment 2.4.82) where it is stated:

*“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.”*

(C) **THE FACTUAL BACKGROUND**

(1) What are the facts here? It is necessary to approach the case through its pleadings/affidavits, bearing all those legal principles uppermost in my mind.

(2) The Plaintiff in his ‘**Affidavit in Support**’ deposed *inter alia*;

*Para 1. That I am the Plaintiff in the action herein.*

2. *That save where otherwise expressly stated I depose the truths of all facts in this Affidavit from my own knowledge.*

3. *That I am the registered Lessee of the Itaukei Lease No. 30959 known as Saweni (Part Of) Lot 1 on SO 6687 being the TLTB No. 4/7/7194 containing an area of 2058m<sup>2</sup> in the Province of Ba situated at Saweni, Lautoka. (Annexed herein and marked “NNR-1” is a certified true copy of the Itaukei Lease No. 30959 from the Registrar of titles).*

4. *That the Defendant being my brother, I allowed him to temporarily occupy my dwelling house on the subject land.*

5. *That on 26<sup>th</sup> January, 2016 I issued Notice to quit through my solicitors which was served on the Defendant on 5<sup>th</sup> February, 2016. (Annexed herein and marked “NNR-2” is a copy of the said Notice to Vacate).*

6. *That the Defendant also agreed in writing that he will vacate the subject property in 3 months time from 18<sup>th</sup> February, 2016. (Annexed herein and marked “NNR-3” is a copy of the said undertaking by the Defendant).*

7. *That any permission given by me to the Defendant to occupy my subject property was revoked and/or cancelled upon service of the Notice to Vacate on the Defendant.*

8. *That the Defendant's occupation on the subject property is illegal as there is no consent from the Head Lessor.*

9. *That the Defendant is now refusing to vacate the subject property for the reason best known to him.*

10. *That in the premises I pray for an Order in terms of my application.*

(3) The Defendant for his part in seeking to show cause against the Summons, filed an “**Affidavit in Opposition**”, which is substantially as follows;

*Para 1. THAT I am the above named Defendant in this action.*

2. *THAT I depose to the facts herein as within our own knowledge except where stated to be on information and belief and where so stated we believe to be true.*
3. *THAT I have read and understood the Affidavit in Support sworn by one Nitya Nand Reddy on 7<sup>th</sup> June 2016 (referred to as "the Plaintiff's Affidavit") and in response to the contents of the Affidavit we say as follows:-*
4. *THAT I admit paragraph 3 of the Plaintiff's Affidavit and furthermore, the said lease is made on the 4<sup>th</sup> day of December 2013 and was registered at the registered of Titles on 8<sup>th</sup> January 2014 at 9.30am however in clause 1 of the said lease is from the first day of January 2006 for the term of Ninety Nine (99) years.*
5. *THAT as to paragraph 4 of the Plaintiff's Affidavit I admit that the Plaintiff is my biological brother and deny the rest of the contents thereto.*
6. *THAT I deny paragraph 5 of the Plaintiff's Affidavit.*
7. *THAT I deny paragraph 6 of the Plaintiff's Affidavit and further say that the said document was brought to me by a staff of Messrs KLaw and I was asked to execute the same without been explained the contents of the said document.*
8. *THAT I deny paragraph 7, 8 and 9 of the Plaintiff's Affidavit.*
9. *FURTHERMORE, that I have been residing on the said property since my birth.*
10. *FURTHERMORE, that the said property was leased out to my late father Govind Sami and after his death and upon expiry of the lease I was granted the lease of the said land by the head lessor Native Land Trust Board ("NLTB") now known as ITaukei Land Trust Board ("ILTB")*
11. *FURTHERMORE, that I had paid rental and lease documentation fees to NLTB. Annex hereto and marked with letter "PNR 1" is a copy of the said receipt from NLTB dated 20<sup>th</sup> June 2006.*
12. *FURTHERMORE, that I was issued a Statement of Rent due from NLTB on 1<sup>st</sup> August 2006. Annex hereto and marked with letter "PNR 2" is a copy of the said Statement from NLTB dated 1<sup>st</sup> August 2006.*
13. *FURTHERMORE, that on 10<sup>th</sup> November 2010 I was issued a Notice for reassessment of Rent from NLTB which I agreed to. Annex hereto and marked with letter "PNR 3" is a copy of the said Notice from NLTB dated 10<sup>th</sup> November 2010.*
14. *FURTHERMORE, that I was again issued a Statement of Rent due from NLTB on 1<sup>st</sup> January 2013. Annex hereto and marked with*

letter "PNR 4" is a copy of the said Statement from NLTB dated 1<sup>st</sup> January 2013.

15. *FURTHERMORE, that as per annexure "PNR 3" it states that I was issued the said land for a term of 50 years from 1<sup>st</sup> January 2006.*
16. *THAT we therefore pray the Plaintiff's Application be dismissed with costs awarded to the Defendants on an indemnity basis.*

**(D) ANALYSIS**

- (1) This is an application brought under **Section 169 of the Land Transfer Act, [Cap 131]**.

Under Section 169, certain persons may summon a person in possession of land before a judge in chambers to show cause why that person should not be ordered to surrender possession of the land to the Claimant.

For the sake of completeness, **Section 169 of the Land Transfer Act**, is reproduced below;

169. *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 arrears 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 arrears 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.*

**I ask myself, under which limb of Section 169 is the application being made?**

Reference is made to paragraph (3) of the affidavit in support of the Originating Summons.

3. *That I am the registered Lessee of the Itaukei Lease No. 30959 known as Saweni (Part Of) Lot 1 on SO 6687 being the TLTB No. 4/7/7194 containing an area of 2058m<sup>2</sup> in the Province of Ba situated at Saweni, Lautoka. (Annexed herein and marked "NNR-1" is a certified true copy of the Itaukei Lease No. 30959 from the Registrar of titles).*

The application cannot be made under the second and third limb of Section 169 since the Plaintiff is the lessee and not the lessor as required under the provisions.

Section 169 (a) of the Land Transfer Act, Cap 131, requires the Plaintiff to be the last **registered proprietor** of the land.

The term "**proprietor**" is defined in the Land Transfer Act as "*the registered proprietor of land, or of any estate or interest therein*".

The term "**registered**" is defined in the **Interpretation Act**, Cap 7, as "*registered used with reference to a document or the title to any immovable property means registered under the provisions of any written law for the time being applicable to the registration of such document or title*"

**Is the Plaintiff the last registered proprietor?**

According to the Itaukei Lease No- 30959 (annexure marked NNR-1 referred to in the affidavit of the Plaintiff, sworn on 07<sup>th</sup> June 2016) the Plaintiff is the registered lessee of the subject land. The Lease No- 30959 is registered under the name of the Plaintiff. The Itaukei Lease No- 30959 is registered with the Registrar of Titles on 08<sup>th</sup> January 2014. The lease was executed on 04<sup>th</sup> December 2013 and according to clause one the lease is from 01<sup>st</sup> January 2006 for a term of 99 years. The registration of the lease under a statutory authority, the iTLTB Act Cap 134, creates a legal interest on the land making the



applicant the registered proprietor of the land for the purposes of the Land Transfer Act. He can therefore make an application under section 169 (a) of the Land Transfer Act.

On the question of whether a **lessee** can bring an application under Section 169 (a) of the **Land Transfer Act**, if any authority is required, I need only refer to the sentiments expressed by Master Robinson in “**Michael Nair v Sangeeta Devi**”, Civil Action No: 2/12, FJHC, decided on 06.02.2013. The learned Master held;

*“The first question then is under which ambit of section 169 is the application being made? The application could not be made under the second or third limb of the section since the applicant is the lessee and not the lessor as is required under these provisions. But is the applicant a registered proprietor? A proprietor under the Land Transfer Act means the registered proprietor of any land or of an estate or interest therein”. The registration of the lease under a statutory authority, the iTLTB Act Cap 134, creates a legal interest on the land making the applicant the registered proprietor of the land for the purposes of the Land Transfer Act. He can therefore make an application under section 169 of the Land Transfer Act”.*

The same rule was again applied by the learned Master in “**Nasarawaqa Co-operative Limited v Hari Chand**”, Civil Action No: HBC 18 of 2013, decided on 25.04.2014. The learned Master held;

*“It is clear that the iTLTB as the Plaintiff's lessor can take an action under section 169 to eject the Plaintiff. This is provided for under paragraphs [b] & [c]. For the lessor to be able to eject the tenant or the lessee it must have a registered lease. It is not in dispute that the Plaintiff holds a registered lease, the lease is an “Instrument of Tenancy” issued by the iTLTB under the Agricultural Landlord and Tenancy Act. It is for all intents and purposes a native lease and was registered on the 29 November 2012 and registered in book 2012 folio 11824. It is registered under the register of deeds. There is nothing in section 169 that prevents a lessor ejecting a lessee from the land as long as the lease is registered. How will the lessee then eject a trespasser if the lessor in the same lease can use section 169? The lessee under section 169 can eject a trespasser simply because the lessee is the last registered proprietor. The Plaintiff does not have to hold a title in fee simple to become a proprietor as long as he/she is the last registered proprietor. A proprietor is defined in the Land Transfer Act as “proprietor” means the registered*

*proprietor of land or of any estate or interest therein". The Plaintiff has an interest by virtue of the instrument of tenancy and therefore fits the above definition and can bring the action under section 169."*

A somewhat similar situation as this was considered by His Lordship Justice K.A. Stuart in **Housing Authority v Muniappa** (1977, FJSC.) . His Lordship held that the Plaintiff Housing Authority holds a registered lease therefore it could be characterised as the last registered proprietor.

In **Habib v Prasad** [2012] FJHC 22, Hon. Madam Justice Angela Wati said;

*"The word registered is making reference to registration of land and not the nature of land. If the land is registered either in the Registrar of Titles Office or in the Deeds Office, it is still registered land. This land has been registered on 4<sup>th</sup> March, 2004 and is registered at the Registrar of Deeds Office, it is still registered land. The registration is sufficient to meet the definition of registered in the Interpretation*

*Act Cap 7:-*

*"Registered" used with reference to a document or the title to any immovable property means registered under the provision of any written law for the time being applicable to the registration of such document or title".*

Applying the aforesaid principles to the instant case, I am driven to the conclusion that the Plaintiff is the last registered proprietor of the land comprised in iTaukei Lease No. 30959.

(2) Pursuant to Section 170 of the Land Transfer Act;

(1) **the Summons shall contain a "description of the Land"**

AND

- (2) shall require the person summoned to appear in the court on a day not earlier than “sixteen days” after the service of Summons.

The interval of not less than 16 days is allowed to give reasonable time for deliberations and to prevent undue haste or surprise.

**I ask myself, are these requirements sufficiently complied with by the Plaintiff?**

The Originating Summons filed by the Plaintiff does contain a description of the subject land. The subject land is sufficiently described. For the sake of completeness, the Originating Summons is reproduced below in full.

### Originating Summons

*LET all parties concerned attend before a Master in Chambers at the Lautoka High Court on 13<sup>th</sup> day of July 2016 at the hour of 8.30 o'clock in the forenoon for hearing of an application by the above named Plaintiff that the Defendant do show cause why he should give up immediate vacant possession to the Plaintiff of all the land comprised in Itaukei Lease No. 30959 known as Saweni (Part Of) Lot 1 on SO 6687 being the TLTB No. 4/7/7194 containing an area of 2058m<sup>2</sup> in the Province of Ba situated at Saweni, Lautoka and costs of this application.*

(Emphasis added)

In light of the above, I have no doubt personally and I am clearly of opinion that the first mandatory requirement of Section 170 of the Land Transfer Act has been complied with.

- (3) Now comes a most relevant and, as I think, crucial second mandatory requirement of Section 170 of the Land Transfer Act.

The Originating Summons was returnable on 13<sup>th</sup> July 2016. According to the Affidavit of Service filed by the Plaintiff, the Originating Summons was served on the Defendant on 27<sup>th</sup> June 2016.

Therefore, the Defendant is summoned to appear at the Court on a date not earlier than “sixteen days” after the Service of Summons. Therefore, the second mandatory requirement of Section 170 of the Land Transfer Act has been complied with.

- (4) To sum up; having carefully considered the pleadings, evidence and oral submissions placed before this Court, it is quite possible to say that the Plaintiff has satisfied the threshold criteria spelt out in Section 169 and 170 of the Land Transfer Act. **The Plaintiff has established a prima facie right to possession.**

**Now the onus is on the Defendant to establish a lawful right or title under which he is entitled to remain in possession.**

In the context of the present case, I am comforted by the rule of law expounded in the following judicial decisions.

In the case of Vana Aerhart Raihman v Mathew Chand, Civil Action No: 184 of 2012, decided on 30.10.2012, the High Court held;

*“There is no dispute between parties as to the locus standi of the Plaintiff, and once this is established the burden of proof shifted to the Defendant to prove his right to possession in terms of the Section 172 of the Land Transfer Act.”*

In the case of Morris Hedstrom Limited -v- Liaquat Ali CA No: 153/87, the Supreme Court said that:-

*“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.”*

(Emphasis is mine)

Also it is necessary to refer to Section 172 of the Land Transfer Act, which states;

*“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; Provided that the dismissal of the summons shall not prejudice the right of the plaintiff to take any other proceedings against the person summoned to which he may be otherwise entitled:*

*Provided also that in the case of a lessor against a lessee, if the lessee, before the hearing, pay or tender all rent due and all costs incurred by the lessor, the judge shall dismiss the summons”.*

[Emphasis provided]

- (5) What are the Defendant’s reasons refusing to deliver vacant possession?

The application for vacant possession is opposed by the Defendant on various reasons expressly set-out in the Affidavit in Opposition. There is a considerable amount of overlap between one reason and another and it is more likely to be helpful for them to be looked at cumulatively rather than separately. The reasons fall within a very small compass.

Reference is made to paragraph (9) to (15) of the Defendant’s Affidavit in Opposition.

- Para 9. *FURTHERMORE, that I have been residing on the said property since my birth.*
10. *FURTHERMORE, that the said property was leased out to my late father Govind Sami and after his death and upon expiry of the lease I was granted the lease of the said land by the head lesser Native Land Trust Board (“NLTB”) now known as ITaukei Land Trust Board (“ILTB”)*
11. *FURTHERMORE, that I had paid rental and lease documentation fees to NLTB. Annexure hereto and marked with letter “PNR 1” is a copy of the said receipt from NLTB dated 20<sup>th</sup> June 2006.*
12. *FURTHERMORE, that I was issued a Statement of Rent due from NLTB on 1<sup>st</sup> August 2006. Annexed hereto and marked with letter “PNR 2” is a copy of the said Statement from NLTB dated 1<sup>st</sup> August 2006.*

13. *FURTHERMORE, that on 10<sup>th</sup> November 2010 I was issued a Notice for reassessment of Rent from NLTB which I agreed to. Annexed hereto and marked with letter "PNR 3" is a copy of the said Notice from NLTB dated 10<sup>th</sup> November 2010.*
14. *FURTHERMORE, that I was again issued a Statement of Rent due from NLTB on 1<sup>st</sup> January 2013. Annexed hereto and marked with letter "PNR 4" is a copy of the said Statement from NLTB dated 1<sup>st</sup> January 2013.*
15. *FURTHERMORE, that as per annexure "PNR 3" it states that I was issued the said land for a term of 50 years from 1<sup>st</sup> January 2006.*

(6) Let me now move to examine the Defendant's reasons refusing to deliver vacant possession.

The Defendant says that he has been residing on the said property since his birth.

The Defendant's assertion will not stand as the written consent of the iTLTB was not obtained on the Defendant's occupation of the Native Land as per Section 12 of the Native Land Trust Act. Therefore, the Defendant's occupation on the subject property is illegal. Whatever the nature of the occupation by whatever the identity of the occupier, such occupation is illegal without the consent of Native Land Trust Board having first been obtained. This means that the Defendant cannot justify remain in possession.

The Defendant says that the said property was leased to his father 'Govind Sami' and upon his death and expiry of the lease, the lease was granted to him by ITLTB. Moreover, he says that he was issued a lease over the said land for a term of 50 years from 1<sup>st</sup> January 2006.

The Defendant's assertion will not stand as he has failed to exhibit a **registered lease** issued to him by iTLTB to his affidavit in opposition. A bare assertion is not sufficient. See; **Bidder v Bridges , 1884, Ch.d , Vol 26, p 01.**

The Plaintiff is the last registered proprietor. He has a clear title. There is nothing in the Defendant's Affidavit that alleges that the Plaintiff might have secured his title through his own fraud. Hence, a bona fide purchaser for value who is now the registered proprietor, the Plaintiff's title is protected more or less beyond impeachment by virtue of Section 38, 39 and 40 of the Land Transfer Act, [Cap 132]. In this case, the Defendant has not even made any general allegation of fraud against the Plaintiff.

The Defendant says that he was issued with a 'Statement of Rent' and a 'Notice for reassessment of Rent' by NLTB in 2010 and 2013. In my view, the Defendant cannot rely on this as a basis to remain in possession without exhibiting any registered lease issued to him by iTLTB.

I am not satisfied on the Defendant's evidence that he comes within any of the equitable exceptions or that he has a right to possession.

In the final, I hold that the Defendant has failed to show on Affidavit evidence some right to possession which would preclude the granting of an Order for Possession under Section 169 of the Land Transfer Act. Accordingly, I grant an order for vacant possession.

- (7) To sum up, for the reasons which I have endeavoured to explain, it is clear beyond question that the Defendant has failed to show cause to remain in possession as required under Section 172 of the Land Transfer Act.

At this point, I cannot resist in reiterating the judicial thinking reflected in the following judicial decisions;

In the case of **Morris Hedstrom Limited v Liaquat Ali**, CA No, 153/87, the Supreme Court held,

*“Under Section 172 the person summonsed may show cause why he refused to give possession of the land 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 a right must be adduced.”*

(Emphasis is mine)

In **Shankar v Ram**, (2012) FJHC 823; HBC 54.2010, the Court held;

*“What the Defendant needs to satisfy is not a fully – fledged right recognized in law, to remain possession but some tangible evidence establishing a right or some evidence supporting an arguable case for such a right to*

*remain in possession. So, even in a case where the Defendant is unable to establish a complete right to possession, if he can satisfy an arguable case for a right still he would be successful in this action for eviction, to remain in possession."*

Being guided by those words, I think it is right in this case to say that the Defendant has failed to adduce some tangible evidence establishing a right or supporting an arguable case for such a right. It is not disputed that at the time the Plaintiff commenced the proceedings he was the registered owner of the iTaukei Lease No-30959. Under Section 169, the Plaintiff is entitled to seek possession of the property on the **strength of his title**. His right to possession depends on his **registered ownership**.

**Thus, I disallow the grounds adduced by the Defendant refusing to deliver vacant possession.**

## **(E) CONCLUSION**

Having had the benefit of oral submissions for which I am most grateful and after having perused the affidavits, written submissions and the pleadings, doing the best that I can on the material that is available to me, I have no doubt personally and I am clearly of the opinion that the Defendant has failed to show cause to remain in possession as required under Section 172 of the Land Transfer Act.

In these circumstances, I am driven to the conclusion that the Plaintiff is entitled to an order as prayed in Summons for immediate vacant possession.

## **(F) ORDERS**

- (1) The Defendant is to deliver immediate vacant possession of the land comprised in iTaukei Lease No. 30959 known as Saweni (Part Of) Lot 1 on SO 6687 being the TLTB No. 4/7/7194 containing an area of 2058m<sup>2</sup> in the Province of Ba situated at Saweni, Lautoka.
- (2) The Defendant is to pay costs of \$ 1000.00 (summarily assessed) to the Plaintiff within 14 days hereof.





At Lautoka  
10<sup>th</sup> February 2017

10/2/2017

Jude Nanayakkara  
Master