

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

CIVIL ACTION NO.: HBC 94 of 2018

BETWEEN : **HARI KRISHNA THAKORLAL NARSEY; MAHENDRA KUMAR
MOTIRAM; RAJENDRA JAGMOHAN NARSEY and HEMANT
JAGMOHAN NARSEY**
PLAINTIFFS

AND : **SHAKUNTLA DEVI**
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFFS : Mr P Kumar [Nands Law]
DEFENDANT : In Person
RULING OF : Acting Master Ms Vandhana Lal
DELIVERED ON : **05 December 2018**

JUDGMENT

[Section 169 application for vacant possession]

1. This is an application for an order for vacant possession made pursuant to Section 169 of the Land Transfer Act.

In support of the application Hari Krishna Thakorlal Narsey one of the Plaintiffs and the registered owner of the property filed an affidavit sworn on 05 April 2018.

2. The Plaintiffs state they are the registered owners of the property comprised in Certificate of Title No. 5890 Lot 1 on Deposited Plan 565 in the District of Suva. Annexed to the affidavit (HTN1) is a certified true copy of the certificate of title under the hands of the Registrar of Title.

The Plaintiffs had rented a flat No. 8 to the Defendant at a rental of \$500 per month from January 2014. The Defendant had defaulted in paying the rental on time hence a Notice to Quit was issued for the Defendant to vacate the flat which she has failed to do so.

Another Notice was issued on 23 January 2018 and served on 29 January 2018 giving the Defendant one calendar month to vacate and the Defendant has still failed to vacate the premises.

3. In her Affidavit in Opposition the Defendant denies knowing the Plaintiffs and claims they are not her landlords hence they cannot demand rent or remove her from the flats.

According to her, the Plaintiffs are not the registered proprietors hence the court should dismiss the proceedings.

She wants there to be restraining orders against the Plaintiffs as they have FEA power “*pulled off*” without any authority. She is seeking compensation for defamation of character and buriers’ disruption and disbursement.

4. In reply to the Defendant’s Affidavit, the Plaintiffs state that when served with a notice in July 2014, the Defendant wrote a letter requesting time to stay on the property.
5. Section 169 of the Land Transfer Act reads:

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. Under section 170 the Court may make orders for possession. The said section reads:
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.
7. Pursuant to Section 172 it is for the Defendant to show cause why she refuses to give possession of the land to the plaintiff. If the Defendant satisfies that she has a right to remain in possession, than I should dismiss the proceedings or may make any order and impose any terms I may think fit.
8. In her Affidavit in Opposition the Defendant to denies knowing the Plaintiffs and claim they are not her landlord.

However she does not so any further to state who her landlord is.

9. She also denies the fact that the Plaintiffs are the registered proprietors of the property in question.

Again she has failed to show any evidence why she claims so and evidence in contrary to the copy certificate of title produced by the Plaintiffs.

10. Prior to the proceedings, a Notice to quit was served on her and she has failed to move out of the property.
11. The Defendant, I find has failed to show cause why an order should not be made in favour of the Plaintiffs.

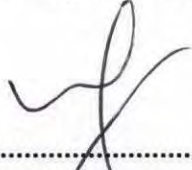
The Plaintiffs have established their case and are entitled to an order for possession.

12. I order that the Defendant delivers the property Flat No. 8 on land comprised and described in Certificate of Title No. 5890 being Lot 1 on Deposited Plan 565 in the District of Suva.

She is to be deliver possession on or before 31st January 2018.

She is further ordered to pay cost summarily assessed at \$1,000 in 14 days.




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Vandhana Lal [Ms]
Acting Master
At Suva.