

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

CIVIL ACTION NO.: HBC 120 of 2018B

BETWEEN : **SHEIK ABDUL TOUFIL aka SHEIK TAUFIL**
PLAINTIFF

AND : **AMINIASI NAVUSO**
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr. Nand [Kohli & Singh]
DEFENDANT : Mr. Valenitabua [Toganivala & Valenitabua]
JUDGMENT OF : Acting Master Ms Vandhana Lal
DELIVERED ON : 27 June 2019

JUDGMENT

[Section 169 of Land Transfer Act – vacant possession of property]

1. The Plaintiff seeks orders for Defendant to give vacant possession of land and premises comprised in Housing Authority sub lease No. 294456 Lot 59 on DP No. 4082 and Housing Authority Sublease No. 312951 Lot 60 on DP No. 4082.

Said application is made under Section 169 of the Land Transfer Act.

2. The Plaintiff is said to be the registered proprietor of the leases. There is a building comprising of various flats on the leases and the Defendant is said to be occupying one of the flats as a licensee.

Upon the Plaintiff's instruction his solicitors issued a notice of eviction to the Defendant on 13 March 2018.

Despite the notice the Defendant is occupying the property:

3. The Defendant informed that he is a tenant occupying one of the flats.

In February 2014 he approached the Plaintiff to rent the premises that time he was not aware the Plaintiff was not the registered proprietor of the property. He claims the Plaintiff promised to draw up terms of agreement till to-date nothing had been done.

The Plaintiff had at the outset requested \$600 which he claim to use to renovate. The Defendant is said to have given \$600 to the Plaintiff. No receipt was issued.

A balance of \$300 was paid.

The Plaintiff kept on issuing notice despite not being the registered owner.

The Plaintiff is further said to be in breach of Section 39 of the Constitution and Section 17 and 19 of the Fair Rent Act.

The Plaintiff is alleged to have deliberately disconnected water and power supply hence in breach of Section 76 and 90 of the Commerce Commission Act and the Constitution. Hence his children and wife had to move out and relocate.

The Plaintiff had also promised to issue to Defendant approved building plan and completion certificate to entitle the Defendant to apply for small business licence.

The Defendant further claims to have an order of the Small Claims Tribunal (SCT) dated 9 June 2016 for sum of \$1,500 being refund of rent paid by the Defendant to Plaintiff.

4. Section 169 of the Land Transfer Act reads:

“ The following person 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 lesser 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 tenant or lessee is in arrears for one month, whether there be or be not sufficient distress found on the premises to countered such rent and whether or not any premises demand has been made for this 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.*

5. Under Section 170 *"the summon shall contain a description of the land and shall require the person summoned to appear at the court on a day not earlier than 16 days after the service of the summon"*.
6. Pursuant to Section 172 if *"the person summoned appears he or she may show cause why he or she refuses to give possession of such land and if he or she proves to the satisfaction of the Judge a right to the possession of such land, the Judge shall dismiss the summons with cost"*.

Section 172 also empowers court to make any other order and impose any terms he or she may think fit provided that the dismissed of the summons shall not prejudice the right of the Plaintiff to take any other proceedings against the person summon to which he or she may be entitled to.

The Judge is also allowed to dismiss the summon if lessee before the hearing pays or tenders all rental due and all costs incurred.

7. The Plaintiff became the registered lessee on 04 April 2018. Certified copy of the leases are annexed to the affidavit in support. Hence I find he had a locus standi to bring the proceedings.

Further the summons has clearly outlined the description of the property in respect of which orders are sought.

6. My findings are that the grounds outlined by the Defendant do not entitle him any interest on the property. He was a tenant and had been served with a notice to vacate.
7. The Judgment obtained at the Small Claims Tribunal can be enforced by the Defendant against the Plaintiff under the rules but does not give him title to continue occupying the premises.
8. For any breach of Constitutional Rights, the Defendant should have within the requisite period sought constitutional redress. He failed to do so and cannot claim title to the property under Section 169.
9. Accordingly I find that the Plaintiff is entitled to the orders sought.
10. The Defendant is to give vacant possession of land and premises comprised in Housing Authority Sublease No. 294451 Lot 59 and Housing Authority Sublease No. 312951 Lot 60 on DP No. 4082. Execution is stayed for 30 days. The Defendant is further ordered to pay cost to Plaintiff summarily assessed at \$1,000. Said costs to be paid in 14 days.



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Vandhana Lal [Ms]
 Acting Master
 At Suva.