

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

CIVIL ACTION NO.: HBC 36 of 2018

IN THE MATTER of the property comprised in State Lease No. 8513 being land described as Samabula Sec. 15 within the district of Suva and province of Rewa commonly known as Lot 15 Matuku Street, Samabula.

AND

IN THE MATTER of the Land Transfer Act, Section 169.

BETWEEN : **ADI SALUSALU BA TRUST**
FIRST PLAINTIFF

AND : **OSEA NAIQAMU, AISAKE SAUKAWA, LIVAI DRIU,
LILIETA GAVIDI, VIKA LEAWARAVU, MESAKE DAWAI
& RATU TEVITA T N DAWAI**
SECOND PLAINTIFFS

AND : **VASITI LORD and PERCY LORD**
FIRST DEFENDANTS

AND : **MEREONI KULA aka MEREONI TORA and SAILOSI
RAISELE**
SECOND DEFENDANTS

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr Tuifagalele [Tuifagalele Legal]

DEFENDANTS : Not Present [Lal/Patel/ Bale Lawyers]

JUDGMENT OF : Acting Master Ms Vandhana Lal

DELIVERED ON : 25 July 2019

JUDGMENT

[Section 169 application for Vacant Possession]

1. The First Plaintiff Adi Salusalu Ba Trust a duly registered trust acquired property namely Crown Lease No. 8513 situated at Sec. 15, Samabula.

The Second name Plaintiffs are said to be trustees of the Trust. A variation of Trust Deed for change of trustees was filed with the Registrar of Titles.

2. The Trust was formed to organise annual fundraising events for the people of Yasana ko Ba and was to use the property as a hostel for students from the Yasana ko Ba attending Educational Institution in and around Suva.

The First and Second Defendants are said to be tenants for over three (3) years. The Second Plaintiffs had decided to end their tenancy since 01 October 2016 in order to accommodate all tertiary students from Ba province.

It is further stated by the Plaintiffs that a notice to quit was served on 1 October 2016 and 8 September 2017.

The students at the moment are said to be residing with Osea Naiqumu.

The Plaintiffs had also delegates from Ba Province to request the Defendants to vacate the property however all efforts have been futile.

The Defendants are now said to be illegally occupying the property.

3. The Defendants dispute the appointment of Second Plaintiffs as Trustees.

The First Defendants are said to be living on the property for more than three (3) years and the Second Defendants for about two (2) years.

The First Defendant is said to have become the tenants after successful application to the trust for a rental of \$500 per month. When they moved in they had to clean, repair and paint the property. They claim to be maintaining the property with their own money apart from paying the rent. There is no duration of their tenancy agreement.

The Second Plaintiff do not have power to issue the notice to quit as they were not trustees of the trust they only became trustee by virtue of the Variation of Trust Deed made on 5 February 2018.

According to the Defendants, there was a resolution passed on or about 28 May 2015 that the assets of the trust will be transferred to Bose Ni Momo Ni Yasana ko Ba.

Bose ni Momo Ni Yasana ko Ba are in process of finalising paper works for transfer of the property.

4. Section 169 of the Land Transfer Act pursuant to which the application is made 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.*

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 dismissal 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 the lessee before the hearing pays or tenders all rental due and all costs incurred.

7. Annexure “ONI” to the Affidavit in Support is a certified copy of Crown Lease No. 8513 registered with the Registrar of Titles.

The last memorial shows a transfer registered on 10 August 2010 to Adi Salusalu Ba Trust.

The copy was certified by the Registrar of Titles Office on 2 February 2018 and the said application was filed on 14 February 2018.

8. Apart from alleging that said property is subject to a transfer to Bose Ni Momo Ni Yasana ko Ba, there is no substantial evidence to support this allegation.
9. Hence I find the First Plaintiff to be the last registered lessee of the property having a locus standi to bring the proceedings under Section 169 (c) of the Land Transfer Act.
10. The Trustees (Second Plaintiff) were appointed by a resolution adopted in the annual general meeting of 9 June 2016.

Notice to Quit was said to be served on 1 October 2016 and 8 September 2017. However no copies were annexed to the Affidavit in Support.

The Variation of Trust Deed was only signed on 8 February 2018 and registered with Registrar of Title on 4 February 2018.

11. Pursuant to Section 169 (c) of the Land Transfer Act the lesser is required to serve a legal notice to quit on the lessee.
12. In absence proof of service of a valid notice to quit on the Defendants, I refuse to make an order on the Plaintiff's application.
13. For this reason the application shall fail and is dismissed with costs in favour of both the First and Second Defendants in sum of \$500 each that is a total sum of \$1,000 is to be paid. The Plaintiffs are to pay the costs in 14 days.




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Vandhana Lal [Ms]
Acting Master
At Suva.