

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

Action No. HBC 218 of 2020

**IN THE MATTER** of an application under section 169 of part XXIV of the Land Transfer Act, Cap.131 for an Order for immediate vacant possession.

**BETWEEN:** **SARAS WATI** also known as **SARAS WATI PRASAD** of Lot 35, Caubati Residential Subdivision, Nasinu, Domestic Duties.

**PLAINTIFF**

**AND:** **VIMLESH PRASAD** of Lot 35, Caubati Residential Subdivision, Nasinu, Self Employed.

**RESPONDENT**

**Counsel** : **Plaintiff:** Mr Goundar. R  
: **Respondent: In Person**

**Date of Hearing** : 06.04.2022

**Date of Judgment** : 17.06.2022

**JUDGMENT**

**INTRODUCTION**

1. Plaintiff had instituted this action in terms of Section 169 of Land Transfer Act 1971. In terms of that an action can be instituted by 'last registered proprietor'. Plaintiff does not have a registered title in terms of Section 169 of Land Transfer Act 1971. Plaintiff had instituted this action based on 'Approval Notice of Lease' issued under State Lands (Leases and Licences) Regulations, which were issued in terms of State Lands Act 1945. It is a temporary "Approval Notice" and state that 'If you do not pay the rent and execute this lease within 6 months from the date of this notice, the approval of the lease will be cancelled without further notice". So, this Approval Notice is valid only for six months to formalize the lease which obtains authority under Section 10 of Land Transfer Act 1971,

including the registration. Without that Plaintiff is misconceived to institute an action under Section 169 of Land Transfer Act 1971.

## ANALYSIS

2. This is an action instituted by Plaintiff seeking eviction of his son from a premises. Plaintiff had annexed "Approval Notice" which is not a registered in terms of Section 169 of Land Transfer Act 1971.
3. Section 169 of Land Transfer Act 1971 states,  
"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 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". (emphasis added)
4. Section 2 of the Land Transfer Act 1971, deals with interpretation and accordingly words 'Register' and also 'proprietor' are interpreted. Both words are interpreted restrictively.
5. Word 'Register' is interpreted as  
"register" **means** the Register of Titles to land to be kept in accordance with the provisions of this Act;"
6. Accordingly registered means registration in terms of Land Transfer Act 1971  
Section 2 of Land Transfer Act 1971 states,  
"proprietor" **means** the registered proprietor of land, or of any estate or interest therein;
7. So, the word 'proprietor' has been interpreted in exclusive manner as opposed to inclusive. Hence, the interpretation is restricted to registered proprietor of land or any estate or interest therein. So registration is paramount consideration under Land Transfer Act 1971 for an eviction in terms of Section 169 of Land Transfer Act 1971.

8. Plaintiff in this action does not have a 'registered' interest on the land to be considered as proprietor in terms of Section 2 of Land Transfer Act 1971. Registration is mandatory under Torrens system.
9. So the Plaintiff does not have *locus* to bring this action in terms of Section 169 of Land Transfer Act 1971 as she cannot be considered as 'registered proprietor'. The action is truck off, without cost.

**Final Orders**

- a. The action is struck off.
- b. No order as to cost considering circumstances of the case.

**Dated at Suva this 17<sup>th</sup> day of June, 2022.**



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**Justice Deepthi Amaratunga**  
**High Court, Suva**