

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

CIVIL ACTION NO.: HBC 115 of 2019

IN THE MATTER of an application pursuant to Section 169 of the Land Transfer Act, for an Order for immediate vacant possession.

BETWEEN : **STAR AMUSEMENTS LIMITED (NOW KNOWN AS STAR ESTATES PTE LIMITED)**
PLAINTIFF

AND : **NAZRIN BEGUM**
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr. J Serulagilagi [MC Lawyers]
DEFENDANT : Mr. D. Chand [Chand & Young Associates]
RULING BY : Acting Master Ms Vandhana Lal
DELIVERED ON : 22 April 2022

JUDGMENT

1. The Plaintiff seeks orders for the Defendant to show cause why an order for an immediate vacant possession of land comprised on certificate of title number 9957 Lot 2 on deposited plan 2318 and premises known as Flat 4 of which the Plaintiff is the registered owner should not be made against the Defendant.
2. The said application is made pursuant to Section 169 of the Land Transfer Act and is supported by an affidavit sworn by Joe Dong Hua on 14th April 2019.

3. The Defendant filed her opposition on 26th July 2019 to which the plaintiff filed a reply on 05th August 2019.
4. Pursuant to Section 169 of the Land Transfer Act following “person may summon any person in possession of land to appear to show cause why the person summoned should not give up possession;-
 - (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. In his affidavit Mr. Hua states the Plaintiff is the registered owner of the property and has annexed to his affidavit a copy of the title.
6. Annexure “A” is copy of the certificate of title no. 9957 for piece of land situated at Suva being Lot 2 on deposited plan No. 2318.
7. The said document is a certified true copy by the Registrar of Titles dated 02nd April 2019 and the last registered proprietor is “Star Amusements Limited” via memorial dated 20th September 2007.
8. Hence the Plaintiff has locus to bring the action under Section 169 of the Act.
9. Section 170 of the Act requires the Plaintiff to outline the description of the land and the summon should not be served less than 16 clear days from the date of appearance in court.

10. The originating summons on paragraph (a) outlines the property as land comprised in certificate of title 9957 Lot 2 on deposited plan 2318 and premises known as Flat 4.
11. The summon and affidavit was first served on 02nd May 2019 via registered mail to the last know address and later on 13th May 2019 on the Defendant's son and on 18th May 2019 on Defendant's husband.
12. The Defendant was personally served on 17th June 2019 with the application.
13. The matter was heard on 13th November 2019.
14. No dispute was raised regarding service of document.
15. Hence, I find the Plaintiff is in compliance with the provision of Section 170 of the Act.
16. Section 172 of the Act requires the Defendant "*to 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 the land, the Judge shall dismiss the summons.*"
17. According to the Defendant, she was a tenant on the subject property from 05th December 2014 for a period of 12 months and upon expiration of the tenancy period she remained on the property as a monthly tenant.

She resided on the property with her 2 children. When her daughter started attending the University at Lautoka Campus she moved out whilst her son continued to occupy the property with her former husband.

She denies owing plaintiff any rental arrears as she has not received any notice for the same.

She claims to have vacated the property in January 2018. The tenancy contract had expired in 2015 and no new contract was entered between the parties.

The tenancy was at \$470 per month however the plaintiff increased this to \$512.30 per month sometimes in September 2017 which rent she paid till November 2018.

18. The Plaintiff claims the Defendant has remained in occupation of the land either by herself or via the occupation through the family members and has defaulted in paying the rental.

The Plaintiff denies being informed that the Defendant's son and former husband would occupy the premises.

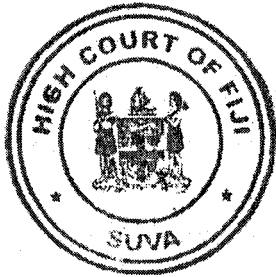
The Plaintiff further alleges that the Defendant has not formally handed over the said premises to the Plaintiff.


19. In **Narsey v The Attorney-General of Fiji & Others, a Fiji Court of Appeal Misc. Action No. 24 of 2011 (delivered on 05 April 2012)** whilst determining an application for extension of time to appeal a High Court decision, the Court of Appeal cited Rimer LJ in **Ibrend Estates BV –v- NYK Logistus (UK) Ltd [2011] 4 All ER 539** who at page 551 defined the concept of vacant possession:

"The concept of vacant possession in the present context is not, I consider, complicated. It means what it does in every domestic and commercial sale in which there is an obligation to give "vacant possession" on completion. It means that at the moment that "vacant possession" is required to be given, the property is empty of people and that the purchaser is able to assume and enjoy immediate and exclusive possession, occupation and control of it. It must also be empty of chattels, although the obligation in this respect is likely only to be breached if any chattels left in the property substantially prevent or

interfere with the enjoyment of the right of possession of a substantial part of the property."

20. In the current proceedings there is no evidence to show that the Defendant had terminated the monthly tenancy after the written tenancy expired on 31st December 2015.
21. She continued to occupy the property and failed to hand the same over when she moved to Lautoka.
22. She has failed to provide sufficient reasons why an order for vacant possession ought not be made.
23. Hence, I find the Plaintiff is entitled to vacant possession and accordingly an order is made for the Defendant to give immediate possession of the land comprised on certificate of title number 9957 Lot 2 on deposited plan 2318 and premises known as Flat 4. The Defendant is also ordered to pay costs summarily assessed at \$850 and is to be paid within 14 days of delivery of this ruling.




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Vandhana Lal [Ms]
Acting Master
At Suva.

22 April 2022

TO:

1. Suva High Court Civil Action No. HBC 115 of 2019;
2. MC Lawyers, Solicitors for the Plaintiff;
3. Chand & Young Lawyers, Solicitors for the Defendant.