

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CIVIL JURISDICTION**

Civil Action No. **HBC 327 of 2022**

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

**BETWEEN** : **RATU APENISA TUKUTUKUNICAGI RAVUWAME VOTADROKA** of  
Davuilevu, Administration Clerk.

**PLAINTIFF**

**AND** : **JOSAIA BUAKULA VOTADROKA** of Lot 37, Derrick Street Raiwaqa, Suva,  
Taxi Driver.

**DEFENDANT**

**BEFORE** : **Hon. Justice Vishwa Datt Sharma**

**COUNSEL:** **Mr. Tuifagalele R.** for the Plaintiff

**Mr Josaia B Votadroka - In person - [Unrepresented]**

**DATE OF DECISION:** **18<sup>th</sup> January, 2024**

## **DECISION**

*(Vacant Possession pursuant to s169 of the [Land Transfer Act Cap 131](#))*

## A. INTRODUCTION

1. On 18<sup>th</sup> November 2022, the Plaintiff, Ratu Apenisa Tukutukunicagi Ravuwame Votadroka filed this application for the following orders:

- (a) *That the Defendant and his family, agent, administrator and extended family relations to show cause why they should not give up possession of the demised premises known to be Housing Authority lease no. 102708 being Lot 37 on DP No. 2710 within district of Suva and province of Rewa, 6.7 perches in total area (the property) of which the plaintiff is the registered proprietor.*

Upon the Grounds:

- (b) *That a valid legal notice to vacate property or quit possession has been given to the Defendant, but he refused to deliver up possession to the Plaintiff.*
2. The Defendants filed his Affidavit in Opposition on 09<sup>th</sup> February 2023 and disputed as to the ownership and Title of the said property to the Plaintiff.
3. There was no Reply Affidavit filed by the Plaintiff to the opposition affidavit of the Defendant.

## B. LAW

4. Section 169 of the [Land Transfer Act 1971](#)[LTA] provides:

*"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) *lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired."*
5. Section 170 of LTA specifies the particulars that need to be stated in the summons. It states that:

*"The summons shall contain a description of the land and shall require the person summoned to appear at the court on a day not earlier than sixteen days after the service of the summons."*

6. **Section 172 of the Land Transfer Act states:**

*If a person summoned appears he may show cause why he refuses to give possession of such land and, if he proves to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons with costs against the proprietor, mortgagee or lessor or he may make any order and impose any terms he may think fit." (Underlined is mine for emphasis)*

*Provided that the dismissal of the summons shall not prejudice the right of the plaintiff to take any other proceedings against the person summoned to which he may be otherwise entitled:*

*Provided also that in the case of a lessor against a lessee, if the lessee, before the hearing, pay or tender all rent due and all costs incurred by the lessor, the judge shall dismiss the summons.*

**Plaintiff's Contention**

7. That he is the registered owner of the property described as **Housing Authority lease no. 102708 being Lot 37 on DP No. 2710 within district of Suva and province of Rewa, 6.7 perches in total area (property)** lot at Lot 37 Derrick Rd, Raiwaqa, Suva. I annexed herein marked "A" is a copy of the said property title where my name is registered thereupon.
8. That the Defendant currently resides in his property, the above described property located at Lot 37, Derrick Street, Raiwaqa which he purchase from his sister and her husband and transferred to him on 18<sup>th</sup> December, 2019.
9. That his sister and her husband had filed eviction proceedings against the Defendant earlier on before they transferred the said property to him. However, since they sold and transferred the property to him, the Supreme Court dismissed the proceedings filed by them thereon as they were no longer the registered property owners by himself.
10. That he was verily advise to issue the Defendant 30-days vacant possession notice dated 3<sup>rd</sup> August 2022 which was served on the Defendant.
11. That the Defendant and his family refused to give up possession of his property after the expiry of the said notice until now. The Defendant has no defence to file against this application.

**Defendant's Contention**

12. There was a breach of law as referred to in section 3(1) of the succession, probate and administration act.

13. There was no evidence of Probate or Letters of Administration issued on the Deceased's shares.
14. Disputes to the ownership and Title of the said property to the Plaintiff.
15. He made improvements and extensions to the said property.
16. He indirectly alleges fraud and transfer of the said property to the Plaintiff.

### C. DETERMINATION

17. Section 169 of the Land Transfer Act allows the last registered proprietor of the Land to Summon any person in possession of such Land to appear before a Judge to show cause why the person summoned should not give up possession.
18. In *Lanieta Boseisala v Shalendra Prasad* (High Court Case No. HBC 226/2016, 19 July 2017), the High Court of Fiji stated that:

It is trite law that once the **Plaintiff** satisfies the court that she is the **last registered** proprietor or the **lessor** described under the **section 169 (a), (b) and (c) of the Act, the burden shifts to the Defendant to prove that he has a right as to possession.**

19. In the current case, the Plaintiff has satisfied to this Court that the Plaintiff is the Registered proprietor of the property (the subject land) as per the annexed marked 'A' within the affidavit of support filed herein. Thus, the Plaintiff has met the requirements under Section 170 of the Land Transfer Act. Therefore, the burden now shifts onto the Defendant to prove that he has a right of possession to the said land in question.
20. Section 172 of the Land Transfer Act states that on the day of the hearing, the Defendant may "**show cause why he/she refuses to give possession of such land.**"
21. In *Young v Verma (supra)*, the High Court stated that Section 172 of the Land Transfer Act has a mandatory force if the Defendant is intending to resist a Plaintiff's claim to possession of land.
22. In *Lanieta Boseisala v Shalendra Prasad* (High Court Case No. HBC 226/2016, 19 July 2017), the High Court of Fiji stated that:

"27. It is for the **Defendant** to show **cause** why he refuses to give **vacant possession** of the land and must be able to show Court **some tangible evidence of his right to the possession** of the land, which I find the Defendant has failed to do to the extreme,

28. In absence of any **evidence** supporting the **Defendant's** claim to continue and remain in possession of the **Plaintiff's** property fails."
23. The Defendant's Contention is that from his childhood, he lived with his late parents in the said property at Lot 37, Raiwaqa, Derrick Street until to date. There wasn't any improvements or extension done on the said property. As the only son with three of his sisters, he claims that the property should be entitled to him. He disputes the ownership and the Title and that he alleges that the property was illegally titled to the Plaintiff, Ratu Apenisa Tukutukunica Ravuwame Votadroka. The Defendant alleges fraud on the part of the Plaintiff and that the matter has been complained to the Police which is under investigation.
24. At the stage of the summary proceedings. I laid my hand to a correspondence from the Chief Registrar's Office dated 24<sup>th</sup> June 2022 to the Permanent Secretary Office of the Prime Minister with Regards to the Suva High Court Civil Action No., 407 of 2019 [**Simeli Aisake & Ema Ralogi Votadroka v Josaia Buakula Votadroka** Supreme Court Civil Action No. 001 of 2022.
25. In the above mentioned Case, on 27<sup>th</sup> November 2019, Simeli Aisake and Ema Ralogi Votadroka filed an affidavit for Vacant Possession order against the occupants of the property and Josaia Buakula Votadroka in the High Court.
26. On 16<sup>th</sup> March 2020, Master of the High Court ordered that the occupants of the property and Josaia Buakula Votadroka, the Defendant to give Vacant Possession of property to the Registered lessees who are the Plaintiff in this matter. Mr. Josaia B Votadroka appealed to the High Court and the appeal was dismissed on the grounds that there was no appeal on foot. Then the Defendant Josaia B Votadroka appealed to the Court of Appeal and the appeal was dismissed on 24<sup>th</sup> May 2022. Subsequently, the property was transferred from Simeli Aisake and Ema Ralogi to a third Party i.e. Ratu Apenisa Tukutukunica Votadroka, the Plaintiff in the current case on 18<sup>th</sup> December 2019.
27. It is for the Defendant to show cause why he refuses to give Vacant Possession. The Defendant has to put some form of tangible evidence before this court to show cause that it has some right to possession of the property. The Defendant has deposed his affidavit but fails to show and establish that he has some right to possession.
28. Further, there is not a stinca of any material evidence put before this Court in terms of his allegations of fraud on the part of the Plaintiff to allow this Court to dismiss the Plaintiff's Summary proceedings initiated by Originating Summons.
29. In absence of any evidence and/or material evidence by the Defendant supporting his claim to continue and remain in possession of the Plaintiff's property, rather fails.
30. I find that the Defendant has failed to show this Honorable Court any tangible evidence of his right to the possession of the property.
31. Accordingly, for the aforesaid rational, the Plaintiff's application seeking for Vacant Possession order only succeeds against the Defendant, Josaia Buakula Votadroka.

32. This Court cannot grant an order for Vacant Possession against the Defendant's family, agent administrator and extended family relatives since they are not included, and/or named as the defendant and/or parties to the proceedings nor have they been served with the Plaintiff's applications and supporting affidavit in order for them to show cause why they should not give the Plaintiff the Vacant Possession of the said property in question.

**D. COSTS**


33. The Defendant to pay the Plaintiff a sum of \$500 as summarily assessed costs since the matter proceeded to a full hearing and determination accordingly. The costs to be paid within 14 days' time frame hereof.

**E. ORDERS**

- (i) The Defendant, Josaia Buakula Votadroka is hereby ordered to deliver and give vacant possession of the demised property known as Housing Authority Lease No. 102708 being Lot 37 on DP No. 2710 of which the Plaintiff is the required proprietor.
- (ii) The Execution is suspended until the 15<sup>th</sup> February 2024 at 4 pm.
- (iii) The Defendant to pay the Plaintiff a summarily assessed costs of \$500 within 14 days timeframe hereof.

Dated at SUVA this 18<sup>th</sup> day of January ,2024



  
.....  
Vishwa Datt Sharma  
JUDGE

**CC: Tuifagalele Legal, Suva**  
**Josaia Votadroka, Suva**