

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 289 of 2022

BETWEEN: **SALOTE LEWATU GAUNAVOU, MIKAELE VOSOTA TUIVUNA**
GAUNAVOU, ELIKISANITA CAQE GAUNAVOU all of Lot 10
Legalega Road Matavolivoli, all proprietors and administrators of the
property comprised in freehold title number 38573 situated at Lot 2,
Qaloa, Nadi in the Republic of Fiji

PLAINTIFF

AND: **ILIESA TAIVEI** of Lot 2, Qaloa, Nadi, in the Republic of Fiji.

DEFENDANT

BEFORE **:** **Master P. Prasad**

Counsels **:** **Mr. F. Daveta for Plaintiff**
Mr. T. Cabemaiwai for Defendant

Date of Hearing **:** **11 November 2024**

Date of Decision **:** **4 April 2025**

JUDGMENT

1. The Plaintiff has instituted this action by filing a Summons pursuant to Section 169 of the Land Transfer Act 1971 (**LTA**) thereby seeking an order for the Defendant to give immediate vacant possession of all the piece of land comprised in "Freehold land number 38573, being Lot 2 on Qaloa Nadi containing an area of 2,450 square meters situated at Qaloa Nadi, in the Republic of Fiji Islands" (**Property**). The Plaintiff filed an Affidavit in Support of the said application and an Affidavit in Reply.
2. The Defendant opposed the Summons and filed an Affidavit in Opposition.
3. The application was heard on 11 November 2024 where both counsels made oral submissions and sought time to file written submissions. The

Plaintiff filed its submissions on 22 November 2024. The Defendant however only filed submissions in reply on 17 February 2025.

Preliminary objection

4. During the hearing of this matter, counsel for the Defendant raised a preliminary issue that the Affidavit in Support of the Plaintiff was witnessed by a legal practitioner, who was employed by the Plaintiff's counsel, and as such the said Affidavit should be struck out.
5. This Affidavit in Support was witnessed by the said legal practitioner on 17 October 2022.
6. The Defendant's Affidavit in Opposition has annexed a list of "*Legal practitioners with valid Practising Certificate as at 24th April 2023 for the period 1st March 2023 to 29th February 2024*". The source of this list is unknown. The legal practitioner's name is on the said list as employed by the Plaintiff's counsel, which would be for the period 1 March 2023 to 29 February 2024.
7. The Plaintiff in their Affidavit in Reply disputed this and stated that the said legal practitioner was unemployed in 2022 and joined the Plaintiff's counsel's firm in 2023.
8. There has been no evidence put before this Court to confirm that the legal practitioner was in fact employed by the Plaintiff's counsel at the time of witnessing the Plaintiff's Affidavit in Support.
9. Therefore, I dismiss the preliminary objection raised by the Defendant's counsel.

Relevant law and analysis

10. The relevant provisions of the Land Transfer Act 1971 are as follows.

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.

Particulars to be stated in summons

170. *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.*

Order for possession

171. *On the day appointed for the hearing of the summons, if the person summoned does not appear, then upon proof to the satisfaction of the judge of the due service of such summons and upon proof of the title by the proprietor or lessor and, if any consent is necessary, by the production and proof of such consent, the judge may order immediate possession to be given to the plaintiff, which order shall have the effect of and may be enforced as a judgment in ejectment.*

Dismissal of summons

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 the land, the Judge shall dismiss the summons with costs against the proprietor, mortgagee or lessor or he or she may make any 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 summoned to which he or she 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.*

11. The process outlined in section 169 of the LTA is a summary procedure designed to swiftly return possession of a property to a registered proprietor when an occupant fails to demonstrate a lawful right to possess that specific property (see ***Jamnadas v Honson Ltd*** [1985] 31 FLR 62 (at page 65)).
12. The onus lies with the plaintiff to convince the court that the requirements under sections 169 and 170 of the LTA have been met. Once this burden has been met, it shifts to the defendant to demonstrate their right to possess the land. A Court's decision to either grant possession to the plaintiff or dismiss the summons depends on how effectively each party discharges their respective burden in the proceedings.
13. In such proceedings, a defendant's obligation is not to present conclusive proof of their right to stay on the property, but rather to provide some evidence establishing a right or supporting a plausible case for their right to remain in possession of the disputed property. This principle was established by the Supreme Court in the well-known case of ***Morris Hedstrom Limited v. Liaquat Ali*** CA No: 153/87.

14. Furthermore, as outlined in **Ali v. Jalil** [1982] 28 FLR 31, even if a defendant fails to satisfy a Court according to the above decision, the Court has the discretion to dismiss the summons if it determines that an open court hearing is necessary.
15. In this matter, the Defendant does not dispute that the Plaintiff is the last registered proprietors of the Property. Thusly, the requirement under section 169 is met.
16. The second requirement pursuant to section 170 of the LTA is for the summons to contain a description of the land and to require the person summoned to appear in court. The Plaintiff's Summons describes the land as "Freehold land number 38573, being Lot 2 on Qaloa Nadi containing an area of 2,450 square meters situated at Qaloa Nadi, in the Republic of Fiji Islands". While the Property has not been fully described as per the copy of the Certificate of Title annexed to the Plaintiff's Affidavit in Support, LTA does not specify what description is needed for this purpose but necessitates determining whether the summoned individual was fully aware of the specifications of the land or property they were directed to vacate, ensuring there was no confusion or misunderstanding regarding it (see **Lal v Chand** [2019] FJHC 538).
17. In the current matter, there is no dispute in relation to the description of the Property. Therefore, the requirement under section 170 has also been fulfilled by the Plaintiff as the description given in the Summons appears adequate for the purpose of this section.
18. Since the Plaintiff has satisfied the requirements of sections 169 and 170 of the LTA, the burden now shifts onto the Defendant to demonstrate its right to occupy the Property.
19. The Defendant avers in his Affidavit in Opposition that he has lived on the Property for almost 34 years and that the house he is occupying belongs to Mr. Jale Tuisue, who has unregistered interest in the Property. The Defendant also avers that he has contributed financially and non-financially on maintenance, renovation and up-keep of the Property. He refers to copies of receipts that are annexed to this Affidavit. It must be noted that the said receipts are for 'rent'.
20. There is another matter before this Court, *vide* HBC 306 of 2022 wherein the Plaintiff in this matter has initiated a separate eviction proceeding against one Jale Black Tuisue Mualelele (**Jale**). The Defendant in his Affidavit in Opposition states that Jale is in a better position to explain his interest in the Property and that the Defendant will rely on Jale's affidavit. However, no such affidavit of Jale is annexed to the Defendant's Affidavit in Opposition. Be that as it may, HBC 306 of 2022 is a separate proceeding all together.

21. The question before the Court now is whether this gives any right to the Defendant to remain in possession of the Property, overriding the Plaintiff's title.
22. It is incumbent on the Defendant in such proceedings to demonstrate his right to occupy the Property. The Defendant cannot superficially aver that his interest is through the interest of a third party without providing any material evidence of the same.
23. In any event, Jale's interest in the Property has no bearing on the current proceeding, which is between the current registered proprietor of the Property and the Defendant.
24. Therefore, I find that the Defendant has not shown an arguable defence or a right to remain in possession of the Property. There are no complicated issues to be determined in this matter hence the Plaintiff is entitled to a favourable decision.
25. The Plaintiff is granted vacant possession of the Property forthwith.
26. Accordingly, I make the following orders:
- (a) The Defendant is ordered to immediately deliver vacant possession of all the land comprised in Certificate of Title 38573 to the Plaintiff; and
 - (b) Costs of this action summarily assessed at \$2,000.00 to be paid by the Defendant to the Plaintiff within 28 days.



P. Prasad
Master of the High Court

At Lautoka
4 April 2025

Solicitors:

Messrs Niudamu Lawyers for Plaintiff

Messrs Toganivalu Lawyers for Defendant