

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 118 of 2024

IN THE MATTER of an Application under
Section 169 of the Land Transfer Act Cap.
131.

BETWEEN : MANJULA DEVI KUMAR registered proprietor of Flat 5, Lot 4, Wainivula
Road, Caubati, Nasinu, Retired.

PLAINTIFF

AND : PRIYA NILESH CHAND of Flat 5, Lot 4, Wainivula Road, Caubati, Nasinu,
Tenant.

DEFENDANT

BEFORE : Hon. Justice Vishwa Datt Sharma

COUNSEL: Mr. Patel A. for the Plaintiff

No Appearance for the Defendant

DATE OF JUDGMENT: 27th March, 2025

JUDGMENT

[Section 169 - Vacant Possession]

A. Introduction

1. The Plaintiffs filed an originating summons pursuant to Section 169 of the Land Transfer Act and sought for the following orders:
 - a. An Order that the Defendant do forthwith give vacant possession of Flat 5 occupied by her upon CT. 10818 known as Lot 4, Wainivula Road, Caubati, Nasinu.
 - b. That all costs incurred by the Plaintiff in this action be borne by the Defendant.
 - c. Such further and/or other relief as the Honourable Court deems just and expedient.
2. The Defendant was served on 12th July 2024 and an Affidavit of service is herein filed.

Plaintiff's Contention

3. She is the registered proprietor of Certificate of Title No. 10818 known as Lot 4 Wainivula Road, Caubati, Nasinu.
4. The Defendant is residing on the property situated at Flat 5, Lot 4, Wainivula Road, Caubati, Nasinu since 2017 as a Tenant and paying a monthly rental of \$350.
5. The Plaintiff wishes to renovate the property.
6. The Plaintiff caused a Notice to vacate in terms of clause 18 of the Landlord and Tenancy Agreement on 13th February 2024.
7. To date, the Defendant has failed and /or neglected and refuses to vacate the said property.
8. She prays for an order for vacant possession accordingly.

Defendants Contention

9. The Defendant neither appeared in Court in person and/or by representation not did he make any attempts to file an opposition and/r a written submissions.

Determination

10. Section 169 of the Land Transfer Act under which the application for vacant possession is made, in so far as it is relevant, 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 [In this case the Defendant] should not give up possession to the applicant:-

(a) the last registered proprietor of the land;

11. There is no doubt that the Certificate of Title No. 10818 confirms that the Plaintiff is the registered proprietor of the land irrespective of any alleged circumstances under which it was obtained. Section 169 of the Act calls for evidence of the title as annexed in the affidavit in support of the Plaintiff, Manjula Devi Kumar as annexure A-1.
12. The Defendant neither appeared in Court nor defended the case by legal representation and has shown no right at all to the occupation of the land in Certificate of Title No. 10818.
13. The present states of facts reveals that the Plaintiff is the registered proprietor of Certificate of Title No. 10818 and therefore this Court cannot bearing this fact of proprietorship in mind go behind the registration of the Certificate of Title 10818.
14. The procedure under section 169 is governed by Section 171 and 172 of the Land Transfer Act which provides as follows:

"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.

"172. If the 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."

15. I find that Firstly the Defendant's failure to file an apposition and/or submissions coupled with the fact that the Defendant had no regards to this Court and failed to show cause and there is no arguable defence filed herein in favour of the Defendant against the Plaintiff.
16. This is an appropriate case for the Section 169 application of the Act which provides a summary procedure in case where the issue involved are straight forward and there is not complicated issue of fact [Case of **Ram Narayan v Moti Ram** (Civ. App. No. 16/83 FCA - Gould JP refers)].
17. In the outcome, on the evidence before me only of the Plaintiff and his written submissions and in absence of any opposition evidence/ submissions of the Defendant, I find that the Defendant has shown no cause as to why he refuses to give possession to the Plaintiff, as was required of him under Section 171 of the Land Transfer Act.
18. I find that the Plaintiff is the registered proprietor of the Certificate of Title No. 10818 and therefore he is entitled to the immediate vacant possession of the same.
19. Hence, it is ordered that the Defendant give immediate vacant possession of the land in the Certificate of Title No. 10818 to the Plaintiff under the provisions of the Land Transfer Act.

Costs

20. The matter proceeded to hearing with the Plaintiff's evidence and written submissions filed, whilst the Defendant failed to file any opposition and/or written submissions.
21. He failed to even appear in person and/or by Legal representative to show cause why he refuses to give vacant possession.
22. The Plaintiff in the circumstances is entitled to summary assessed costs of \$1,000 to be paid by the Defendant within 14 days timeframe.

Orders

- (i) The Defendant to give immediate vacant possession of the land of Flat 5 in Certificate of Title No. 10818 known as Lot 4, Wainivula Road, Caubati, Nasinu to the Plaintiff.
- (ii) The Defendant to pay the Plaintiff summarily assessed cost of \$1,000 within 14 days timeframe.

Dated at Suva this 27th day of March ,2025.



VISHWA DATT SHARMA
PUISNE JUDGE

cc. Patel Skiba Lawyers, Suva
Priya Nilesh Chand, Lot 4, Wainivula Road, Caubati, Nasinu.