

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

**CIVIL JURISDICTION**

**CASE NUMBER:**

**HBC 310 OF 2024**

**BETWEEN:**

**INSTIWEL HOLDINGS PTE LIMITED**

**PLAINTIFF**

**AND:**

**WAIKAKE KERENI & OTHER OCCUPANTS**

**DEFENDANT**

*Appearances:*

*Mr. G. O' Driscoll for the Plaintiff.*

*Ms. I. Sauduadua for the Defendant.*

*Date/Place of Judgment:*

*Friday 11 April 2025 at Suva.*

*Coram:*

*Hon. Madam Justice Anjala Wati.*

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**JUDGMENT**

**A. Catchwords:**

***LAND TRANSFER ACT 1971: s. 169 application for vacant possession – has the defendant shown a right to possession of the property – defendant relies on his occupation of the property for over 20 years which does not give him a right to possession as his application for vesting order was declined by the Registrar of Titles and he did not challenge that decision – he therefore cannot assert a right through adverse possession – defendant's claim of fraudulent transfer to the plaintiff fails on grounds that he does not have a proprietary interest to rely on fraud.***

**B. Legislation:**

- 1. Land Transfer Act 1971 ("LTA"): ss. 164; 172.***

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***Cause***

- 1. This is the plaintiff's application for vacant possession of the property contained in Certificate of Title No. 15118 being Lot 41 on DP 3904 at Pacific Harbour, against the defendant who is occupying the same as a squatter.*

2. The plaintiff says that it is the registered proprietor of the property, having acquired the same through a tender process. The defendant has not paid any rental or fee in respect of his occupation of the said property. The defendant is alleged to have come on the property when the previous owner was not around.
3. The plaintiff says that it has given to the defendant and other occupants notice to quit but they have failed to abide by the notice and continue to be in wrongful and unlawful occupation.

***Issue***

4. The issue before the Court is whether the defendant has a right to possession of the subject property:  
*s. 172 of the LTA.*

***Law and Analysis***

5. I will deal with the defendant's position on why he says he should not give up vacant possession and whether his claim gives a right to possession of the subject property.
6. The defendant has filed an affidavit in support and says that he had been occupying the property for more than 20 years. He says that he had applied for a vesting order and the same was declined by the Registrar of Titles on the information provided by Estate Management Services Limited.
7. I have seen the letter from the Registrar of Titles office. It states:

***"Application for Vesting Order, Waisake Kaveni – CT 15118.***

1. *I write in reference to the above mentioned for vesting Order Application that was lodged on 13 October, 2020, lodgment number 444386 and to our earlier letter requesting for further information from Estate Management Services Pte Limited.*
  2. *They have responded to our letter and we have confirmed information that you have not occupied the property for 20 years.*
  3. *Therefore your application for vesting application is rejected. Please find enclosed your application."*
8. If the defendant was not satisfied with the Registrar of Titles decision on his application for vesting order, he should have challenged it: *s. 164 of the LTA*. He cannot assert in this proceedings a right of possession when his application for vesting order was declined and by conduct he has accepted the decision.

9. Ms. Sauduadua says that since the defendant had made an application for vesting order in person, he did not know how to challenge the decision of the Registrar of Titles. That is not good enough. If he knew of his right to apply for vesting order, he should also be aware of his right of appeal. All those rights are provided for under the same law, which is, the Land Transfer Act 1971.
10. There was nothing stopping him from enquiring about his legal rights. It is now 4 years since the application was declined and the defendant has not vindicated his rights. He chooses to assert his right in this proceedings which is not the correct forum to do so.
11. The defendant is also asserting that Mei Li Lin of Taiwan was the previous registered owner of the property who bought the same from one Howard Richard Thomas on 28 October 1991 for a sum of \$90,000.
12. The defendant says that Estate Management Services Limited filed a claim in the Navua Magistrates' Court on 14 June 2021 immediately after his application for vesting order was declined. The claim was for \$35,897.20 for unpaid services on the property such as rubbish collection, lot clearing, clearing of drains and garden clippings.
13. The defendant says that Estate Management Services Limited obtained default judgment and then filed an application for sale of the subject property by tender. On 20 September 2022, the Navua Magistrates' Court granted orders for sale by tender. On 9 February 2023, the Court again granted an order for sale by tender to the highest bidder, Instiwell Holdings Limited.
14. The defendant says that Estate Management Services Limited had made fraudulent claims against the previous owner of the property, Mei Li Lin. The defendant says that the sale of the property to the plaintiff at a price much lower than the market value of the property is not appropriate.
15. The defendant also says that the plaintiff is not a bona-fide purchaser. It was through Estate Management Services fraudulent claims that he has lost his application for vesting order.
16. I do not find that the defendant has any proprietary interest in the subject property to challenge the sale to the plaintiff. If he has any grievance that Estate Management Services Limited had provided false information to the Registrar of Titles office, he should address it with that office and like I have reflected before, he should have challenged the decision of the Registrar of Titles. Further, if the owner

of the property Mei Li Lin wanted, she could have challenged the claim in the Navua Court. She did not. Till date, she makes no claim for fraud against Estate Management Services Limited and the plaintiff.

17. The defendant does not have a right to challenge the civil claim of Estate Management Services Limited in this proceedings. If he wanted to claim a right in this property, he could have done so in the Navua Court proceedings. It is not for me to address the validity of the claim filed in the Navua Magistrate's Court and the orders thereon.

18. The defendant does not acquire a right to possession of the property by challenging that the plaintiff is not a bona-fide purchaser. I do not find that the defendant has established a right to possession of the property and as such he should vacate the same.

19. The defendant ought to pay costs of the proceedings to the plaintiff who had to go through the expense of finding a counsel to institute and prosecute its application for vacant possession. The defendant's claim of his right is not founded on any factual or legal basis and was not likely to succeed yet he chose to delay the proceedings and put the plaintiff through expense.

***Final Orders***

20. In the final analysis, I order the defendant and other occupants to deliver up vacant possession of the property contained in Certificate of Title No. 15118 being. Lot 41 of DP No. 3904 "Deuba" [Part of] at 336 Pacific Harbour Scheme Development within 21 days of the date of this order.

21. The plaintiff shall have costs of the proceedings in the sum of \$3,500 to be paid within 21 days.



*Anjala Wati*

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**Hon. Madam Justice Anjala Wati**

**Judge**

**11.04.2025**

**To:**

1. *O'Driscoll & Co., for the Plaintiff.*
2. *Sauduadua Lawyers for the Defendant.*
3. *File: Suva HBC 310 of 2024.*