

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 249 of 2024

BETWEEN: **NANISE NAILEVU RICHMOND aka NANISE RATU** of Lot 93 Moti Chandra Crescent, Natabua, Lautoka, Civil Servant.

FIRST PLAINTIFF

AND: **MARK RICHMOND aka MARK STANLEY CRISPIAN RICHMOND** of Lot 93 Moti Chandra Crescent, Natabua, Lautoka, Civil Servant.

SECOND PLAINTIFF

AND: **ONISIMO RABOILIKU, SIVINA RABOILIKU TOGETHER WITH THEIR FAMILY, RELATIVES AND OTHER OCCUPANTS** of Lot 28, Naidu Place, Natabua, Lautoka, both unemployed respectively.

DEFENDANTS

BEFORE : **Master P. Prasad**

Appearance : First Plaintiff and Defendants in person.

Date of Hearing : 4 April 2025

Date of Decision : 19 May 2025

JUDGMENT

1. The Plaintiffs have instituted this action by filing a Summons pursuant to Section 169 of the Land Transfer Act 1971 (**LTA**) thereby seeking an order for the Defendants to give immediate vacant possession of all the piece of land comprised in "Housing Authority Sublease Number 272810, being Lot 8 on DP No 4809 situated in the Province of Ba, in the Tikina of Vuda having an area of approximately 8.7 perches" (**Property**). The Plaintiffs filed an Affidavit in Support of the said application and an Affidavit in Reply.
2. The Defendants opposed the Summons and filed an Affidavit in Opposition of the first named Defendant.

Preliminary issue

3. The Defendants raised an issue that the Plaintiffs were not civil servants yet their Affidavits in Support and Reply, including the intitle state the Plaintiffs occupation as civil servants.
4. The First Plaintiff apologised to the Court and stated that it was an oversight on her part.
5. The Court does not see this as a fatal error as the Plaintiffs have filed the documents in person and are not qualified legal practitioners. Thus, removing the words "civil servant" has no bearing on the substantive application before this Court.
6. I will therefore move on to consider the Summons.

Relevant law and analysis

7. 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.

8. 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)).
9. 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.
10. 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.
11. 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.
12. In this matter, the Defendants do not dispute that the Plaintiffs are the last registered proprietors of the Property. Thusly, the requirement under section 169 is met.

13. 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 Plaintiffs' Summons describes the land as "Housing Authority Sublease Number 272810, being Lot 8 on DP No 4809 situated in the Province of Ba in the Tikina of Vuda having an area of approximately 8.7 perches". The certified true copy of the said Sublease is annexed to the Plaintiffs' Affidavit in Support marked as "NNR-2" and describes the Property as situated in the "Province of Vuda in the Tikina of Ba". While the Property has not been correctly described as per the copy of the Sublease, the LTA does not specify what description is exactly needed for this purpose but necessitates determining whether the summoned individual was fully aware of the specifications of the land or the property they were directed to vacate, ensuring there was no confusion or misunderstanding regarding it (see *Lal v Chand* [2019] FJHC 538).
14. 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 Plaintiffs as the description given in the Summons appears adequate for the purpose of the said section.
15. Since the Plaintiffs have satisfied the requirements of sections 169 and 170 of the LTA, the burden now shifts onto the Defendants to demonstrate their right to occupy the Property.
16. The first named Defendant avers in his Affidavit in Opposition that his family has been residing on the Property as tenants since June 2020 when the rent was \$200. On 01 September 2022, the parties entered into a Tenancy Agreement for \$400.00 a month for a term of 1 year.
17. The first named Defendant also avers that he has contributed financially towards the maintenance, renovation and up-keep of the Property as the Plaintiffs failed to do so.
18. The Defendants admit that there was a delay on their part to pay rent due to the second named Defendant falling ill and the first named Defendant and his daughter having to quit their jobs. The Defendants state that after receiving the Notice to Vacate, they have been searching for another premise to rent within their budget and during the hearing the first named Defendant submitted that they were in need of more time to move out of the Property.
19. The question before the Court now is whether this gives any right to the Defendants to remain in possession of the Property, overriding the Plaintiffs title. It was incumbent on the Defendants to demonstrate their right to occupy the Property.

20. In this case I find that the Defendants have not shown any arguable defence or a right to remain in possession of the Property. The Defendants were tenants of the Plaintiffs and have stopped paying rent as a result of which the Plaintiffs had issued to the Defendants a Notice to Vacate the Property on 20 August 2024.
21. There are no complicated issues to be determined in this matter hence the Plaintiffs are entitled to a favourable decision.
22. It must be further noted that a claim for any money allegedly spent by the Defendants on the maintenance of the Property is a separate issue from eviction.
23. In granting an application for vacant possession pursuant to section 169 of the LTA in **Jepsen v Mani (trading as Daks Karwash & Detailing)** [2024] FJHC 674; HBC116.2024 (13 November 2024) the Hon. Mr. Justice Amaratunga held that:

"[79] Defendant may seek compensation for improvements. This can be done by way of proper civil action, but this clearly does not give Defendant a right to possession in terms of Section 172 of Land Transfer Act 1971. If this is recognized as right to possession any tenant will do some improvements to property and on that basis will request possession till adequate compensation is paid or determined by court. This will make eviction in terms of Section 169 of Land Transfer Act 1971 a dead letter and indefeasibility as unworkable for eviction of commercial tenants."

[80] As Plaintiff admits the improvements on the Land done by Defendant the assessment and extent of improvements can be assessed in a proper action, but that is a separate issue, from eviction.

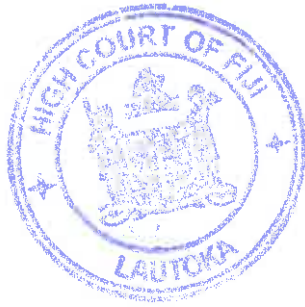
[81] There is no right for Defendant to remain in possession based on improvements on the land. Already Defendant had benefitted from remaining in the property without increase of commercial rental since 1.3.2021. Any unjust enrichment can be assessed properly through civil action filed by Defendant, but that does not allow Defendant to remain in the premises.

[emphasis added]

24. Similarly in this matter, the Defendants are at liberty to file a separate action for compensation against the Plaintiffs regarding any alleged improvements made on/to the Property. Such improvements do not grant the Defendants a right to remain on the Property.
25. The Plaintiffs are granted vacant possession of the Property forthwith.

26. Accordingly, I make the following orders:

- (a) The Defendants are ordered to immediately deliver vacant possession of all the land comprised in Housing Authority Sublease No. 272810 to the Plaintiffs; and
- (b) Each party to bear its own costs.



P. Prasad
Master of the High Court

At Lautoka
19 May 2025