

**IN THE HIGH COURT OF FIJI**  
**NORTHERN DIVISION**  
**AT LABASA**

**[CIVIL JURISDICTION]**

**Civil Action No. HBC 05 of 2025**

**BETWEEN** : **THE FIJI SUGAR CORPORATION** a limited liability company duly incorporated in Fiji and having its registered office at Drasa Avenue, Balawa, Lautoka, Fiji.

**PLAINTIFF**

**AND** : **AVINESH KUMAR** of FSC Compound, Labasa.

**DEFENDANT**

Before : Acting Master L. K. Wickramasekara

Counsel : In-house Counsel of The Fiji Sugar Corporation for the Plaintiff  
John Prasad Lawyers for the Defendant

Date of Hearing : Wednesday, 11<sup>th</sup> June 2025

Date of Judgment : Thursday, 12<sup>th</sup> June 2025

**JUDGMENT**

01. The Plaintiff, as the last registered proprietor of the land and premises comprised in Certificate of Title No. 11376 and the premises described as Mechanics Quarters No. 10B therein, summoned the Defendant, pursuant to section 169 of the Land Transfer Act (Cap 131), to show cause why he should not give up vacant possession of the above-described property to the Plaintiff.
02. The originating Summons of the Plaintiff is supported with an Affidavit sworn by one Shafin Khan, Human Resource Officer for the Plaintiff upon being duly authorized by the Plaintiff to do so. A letter of authority given by the Plaintiff is annexed with the Supporting Affidavit<sup>1</sup>. A duly certified copy of the Certificate of Title No. 11376 as issued by Registrar of Titles is also annexed with the Supporting Affidavit<sup>2</sup>.

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<sup>1</sup> Annexure 'SK1' of the Affidavit of Shafin Khan filed on 18/02/2025

<sup>2</sup> Annexure 'SK2' of the Affidavit of Shafin Khan filed on 18/02/2025

03. The Defendant has been an employee of the Plaintiff, and his employment had been terminated summarily by the Plaintiff on 11/10/2024. Copy of the letter for summary dismissal is annexed with the Supporting Affidavit<sup>3</sup>. This letter has also given notice to the Defendant that pursuant to the termination of his employment, the Defendant is to vacate the corporate quarters and to return the vacant position of the same by 11/11/2024 to the Plaintiff.
04. On 20/11/2024, the Defendant was given a further written Notice to Vacate the said premises within 30 days from such notice<sup>4</sup>. The Defendant has failed to abide by any of the notices to vacate the premises and thus this Originating summons has followed.
05. The Defendant has filed an Affidavit in Opposition, on 07/03/2025. In the said Affidavit, the Defendant has objected to the use of the Affidavit in Support on the grounds that the said Affidavit in Support is in breach of the Court Rules and that the deponent of the Supporting Affidavit had no authority to depose the said Affidavit.
06. The Defendant had not contested the Certificate of Title No. 11376 in his Affidavit and thus there's no contest to the fact that the Plaintiff is, in fact, the last registered proprietor of the subject land and premises.
07. The Defendant submits in the Affidavit in Opposition that, although admitting to receiving the Notices to Vacate, that he has challenged the summary dismissal of his employment and has, therefore, notified the Plaintiff that he is not vacating the subject property till there's a Court order to that effect<sup>5</sup>. It is further submitted that the Defendant has filed an application for 'unfair dismissal' with the Ministry of Employment, Productivity and Workplace Relations, which is currently pending for determination.
08. As per the Affidavit in Opposition by the Defendant, it can safely be ascertained that the main ground of opposition to the Plaintiff's Originating summons is the Defendant's challenge made to the Plaintiff's summary dismissal of his employment. The Defendant is further seeking from this Court, *'That until my matter with the Ministry is not concluded, I be permitted to remain on the said property'*.
09. In its Affidavit in Reply filed 19/03/2025, the Plaintiff submits that there is no defect in the filing of the Supporting Affidavit and that it follows the Court Rules. It is also submitted that the Ministry of Employment, Productivity and Workplace Relations does not deal with the eviction proceedings, and that the Defendant's occupation of the subject property is unlawful given that his employment has been terminated and that he has no right whatsoever to continue the occupation of the said premises.

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<sup>3</sup> Annexure 'SK3' of the Affidavit of Shafin Khan filed on 18/02/2025

<sup>4</sup> Annexure 'SK4' of the Affidavit of Shafin Khan filed on 18/02/2025

<sup>5</sup> Annexure '2' of the Affidavit of Avinesh Kumar filed on 07/03/2025

10. In its written submissions the Plaintiff has correctly submitted the relevant law and has outlined the facts which supports the requirements for ejectment proceedings under Section 169 of the Land Transfer Act.
11. In the written submissions filed on behalf of the Defendant, it is admitted that, in the circumstances of this case, the onus is now on the Defendant to show cause why the vacant possession of the subject property should not be granted to the Plaintiff. It appears that the Defendant relies on the argument that as the dismissal of his employment is being challenged, he should be allowed to continue the occupancy of the subject property.
12. Moreover, the Court notes that the Defendant at paragraph 12 of its written submissions has submitted, '*the Plaintiff has failed to provide any evidence to show that a consequence of dismissal from the employment was for the Defendant to immediately vacate the property*'.
13. During the hearing of the Summons, the parties agreed to rely on the written submissions and the affidavit evidence already submitted in Court. Accordingly, the Court proceed to make its judgment having duly considered all available affidavit evidence and the submissions of the parties.
14. The procedure under Part XXIV of the Land Transfer Act which is known as "169 procedure" is an expedited procedure for obtaining possession when the occupier fails to show cause why an order should not be made<sup>6</sup>.
15. Sections 169 to 173 of the Land Transfer Act provide for this special procedure for ejectment. The *Locus Standi* of a person who can invoke the jurisdiction of this court under this procedure is set out in section 169. Three persons, named in that section, have *locus* to invoke the jurisdiction of this Court under this procedure.
16. Section 170 requires the summons to give full description of the subject property and to serve the summons on the Defendant to appear not earlier than 16 days after service.
17. Sections 171 and 172 provide for the two powers that the court may exercise in dealing with the applications under section 169. The consent of the Director of Land is not necessary as settled by His Lordship the former Chief Justice Anthony Gates (as His Lordship then was) in ***Prasad v Chand*** [2001] FJLawRp 31; [2001] 1 FLR 164 (30 April 2001). It was held in this case,

*At first sight, both sections would seem to suggest that an Applicant should first obtain the Director's written consent prior to the commencement of section 169 proceedings and exhibit it to his affidavit in support. However, I favour Lyons J.'s approach in **Parvati Narayan***

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<sup>6</sup> ***Jamnadas v Honson Ltd*** [1985] 31 FLR 62 at page 65

*v Suresh Prasad* (unreported) Lautoka High Court Civil Action No. HBC0275 of 1996L 15th August 1997 at p 4 insofar as his Lordship found that consent was not needed at all since the:

*"Section 169 application (which is the ridding off the land of a trespasser) is not a dealing of such a nature as requires the Director's consent."*

*This must be correct for the Director's sanction is concerned with who is to be allowed a State lease or powers over it, and not with the riddance of those who have never applied for his consent. With respect I was unable to adopt the second limb of Lyons J's conclusion a few lines further on where his lordship stated that the order could be made conditional upon the Director's consent. For if the court's order of ejectment was not "a dealing" then such order would not require the Director's consent, and the court would not be subject to section 13. The court is not concerned with the grant of or refusal of consent by the Director provided such consent is given lawfully. Consent is solely a matter for the Director. The statutory regime appears to acknowledge that the Director's interest in protecting State leases is supported by the court's order of ejectment against those unable to show cause for their occupation of the land which is subject to the lease. The court is asked to make an order of ejectment against a person in whose favour the Director either has never considered granting a lease or has never granted a lease. The ejectment of an occupier who holds no lease is therefore not a dealing with a lease. Such occupier has no title. There is no lease to him to be dealt with. The order is for his ejectment from the land. There is no need for a duplicating function, a further scrutiny by the Director of the Plaintiff's application for ejectment either before or after the judge gives his order.*

18. The section reads as '*...if any consent is necessary*'. However, the above case authority establishes that the consent of the Director for applications under 169 is not necessary. It follows that the question of consent does not arise in applications under section 169.
19. The burden to satisfy the Court on the fulfillment of the requirements, under sections 169 and 170, is on the Plaintiff and once this burden is discharged, it then shifts to the Defendant to show his or her right to possess the land in dispute.
20. The duty on the Defendant at this instance is not to produce any final or incontestable proof of their right to remain in the properties, but to adduce some tangible evidence establishing a right or supporting an arguable case for their right to remain in possession of the properties in dispute. This was laid down by the Supreme Court in the case of ***Morris Hedstrom Limited –v- Liaquat Ali*** CA No: 153/87. Even if the person defending has failed to satisfy the Court as per the above decision, the Court can dismiss the summons if it decides that an open Court hearing is required<sup>7</sup>.

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<sup>7</sup> *Ali v Jalil* [1982] 28 FLR 31

21. Master Azhar (as his Lordship then was), in the case of **Bir Chand v Anita Devi and Other Occupants**: HBC 195 of 2020 [Judgment; 24/06/2022] stated thus.

*The exercise of court's power, either to grant the possession to the plaintiff or to dismiss the summons, depends on how the said burden is discharged by respective party to the proceedings. However, dismissal of a summons shall not prejudice the right of a plaintiff to take any other proceedings to which he or she may be otherwise entitled against any defendant. Likewise, in the case of a lessor summoning a lessee for default of rentals, if the lessee, before hearing of the summons, pays or tenders all rent due and all costs incurred by the lessor, the summons shall be dismissed by the court.*

22. The Plaintiff has duly submitted a certified copy of the Certificate of Title No. 11376 as issued by the Registrar of Titles. It clearly reflects that the Plaintiff is the last registered proprietor of the subject property since 1973. As stated in the foregoing paragraphs the Defendant has not contested the fact that the Plaintiff is the last registered proprietor of the subject property.
23. The Defendant has claimed that the Plaintiff's Supporting Affidavit is defective and is in breach of the Court Rules and that the deponent of the said Affidavit has no authority from the Plaintiff to depose it. However, having carefully considered the said Supporting Affidavit, I find no defect or non-conformity with the Rules therein. Furthermore, the Court finds that the deponent, Shafin Khan, has been duly authorized by the Plaintiff to depose the said Supporting Affidavit and an authority letter to that effect is already annexed therein. I therefore find that this argument has no merit at all. Moreover, I further note that the Defendant in its written submissions has conveniently abandoned this argument without making any further comments on the same.
24. The Court finds that the Plaintiff has clearly established that it is the last registered proprietor of the subject property and that it has duly revoked any previous consent given to the Defendant to occupy the same. Court therefore finds that the Plaintiff has duly discharged its burden under Section 169/170 of the Land Transfer Act.
25. The Land Transfer Act, which is based on the Torrens System of Registration protects the last registered proprietor, cutting off the retrospective or derivative character of the title upon each transfer or transmission. Each transferee is in the same position as a grantee direct from the Crown. Only exception is an actual fraud by the Plaintiff.
26. Windeyer J, in **Breskvar v. Wall** (1971-72) 126 CLR 376 concurred with the Chief Justice and explained the effect of the Torrens System at pages 399 and 400 as follows:

*I cannot usefully add anything to the reasons that he and my brothers McTiernan and Walsh have given for dismissing this appeal. I would only observe that the Chief Justice's aphorism, that the Torrens system*

*is not a system of registration of title but a system of title by registration, accords with the way in which Torrens himself stated the basic idea of his scheme as it became law in South Australia in 1857. In 1862 he, as Registrar- General, published his booklet, A Handy book on the real Property Act of South Australia. It contains the statement, repeated from the South Australian Handbook, that:*

*“.....any system to be effective for the reform of the law of real property must commence by removing the past accumulations and then establish a method under which future dealings will not induce fresh accumulations.*

*This is effectuated in South Australia by substituting ‘Title by Registration’ for ‘Title by Deed’ ...”*

*Later, using language which has become familiar, he spoke of “indefeasibility of title”. He noted, as an important benefit of the new system, “cutting off the retrospective or derivative character of the title upon each transfer or transmission, so that each freeholder is in the same position as a grantee direct from the Crown”. This is an assertion that the title of each registered proprietor comes from the fact of registration, that it is made the source of the title, rather than a retrospective approbation of it as a derivative right. (Emphasis added).*

27. It was equally held in ***Fels and another v Knowles and another*** (1907) 26 NZLR 604 by Stout C.J at page 620 as follows:

*The cardinal principle of the statute is that the register is everything, and that, except in case of actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against all the world. Nothing can be registered the registration of which is not expressly authorized by the statute.*

28. Master Azhar (as His Lordship then was), in the case of ***Bir Chand v Anita Devi and Other Occupants*** (Supra) further went on to state as follows,

*Accordingly, the registration is everything and it is the registration that confers the title to a person so registered. It is the title by registration and not registration of title. This system of registration cuts off the retrospective or derivative character of the title upon each transfer or transmission, so that each freeholder or proprietor is in the same position as a grantee direct from the Crown/state. The registration is made the source of the title, rather than a retrospective approbation of it, as a*

*derivative right. The only exception is the actual fraud, and in absence of such fraud as provided in sections 39 to 41 of the Land Transfer Act, the registered proprietor shall have an indefeasible title.*

29. The indefeasibility of the title under the Land Transfer Act was acknowledged with approval by the Fiji Court of Appeal in *Subaramani v Sheela* [1982] 28 FLR 82 (2 April 1982), where the Court held that,

*The indefeasibility of title under the [Land Transfer Act](#) is well recognized; and the principles clearly set out in a judgment of the New Zealand Court of Appeal dealing with provisions of the New Zealand [Land Transfer Act](#) which on that point is substantially the same as the [Land Transfer Act](#) of Fiji. The case is *Fels v. Knowles* 26 N.Z.L.R. 608. At page 620 it is said:*

*"The cardinal principle of the statute is that the register is everything, and that, except in case of actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against all the world."*

30. Defendant's position in this matter is that, since he has challenged his termination of employment by the Plaintiff, until such employment dispute is conclusively determined, he has the right to continue the occupancy of the subject property. This position is clearly misconceived in the law. Pursuant to the ejectment procedure under the Land Transfer Act, the determination of the Defendant's employment dispute has no bearing in this proceeding.
31. The Plaintiff is the last registered proprietor of the subject property, and the Defendant had occupied the said property with the consent of the Plaintiff as an employment benefit provided by the Plaintiff to its employees. The Plaintiff has now terminated the employment of the Defendant and has accordingly rescinded the approval for the Defendant to occupy the subject property. This is quite clear from the two notices given to the Defendant to vacate the subject property.
32. The Defendant has argued that the Plaintiff has failed to provide evidence that 'a consequence of dismissal from the employment was for the Defendant to immediately vacate the property'. This argument has no merit as the two notices given to the Defendant is to the effect that he is to vacate the subject property as he is no longer in employment of the Plaintiff. There is no such evidence required under the ejectment procedure pursuant to Land Transfer Act.
33. As already found by this Court, the Plaintiff has duly discharged its burden with regard to the requirements under Sec. 169 and 170 of the Land Transfer Act. It is therefore the

onus of the Defendant to show cause as to a right to the possession of the subject property pursuant to Sec. 172 of the Land Transfer Act.

34. Defendant has not alleged fraud on the part of the Plaintiff and as such it has no application in this matter.
35. A further defence would be to show an equitable right over the subject property. This, for a long time, was believed to be either on promissory estoppel or on proprietary estoppel. *Snell's Principles of Equity* (28th Edition 1982) at page 556 states the rule of promissory estoppel as follows.

*Where by his words or conduct one party to a transaction freely makes to the other an unambiguous promise or assurance which is intended to affect the legal relations between them (whether contractual or otherwise) a, and before it is withdrawn, the other party acts upon it, altering this position to his detriment, the party making the promise or assurance will not be permitted to act inconsistently with it. It is essential that the representor knows that the other party will act on his statement. Yet the conduct of the party need not derive its origin only from the encouragement of representation of the first; the question is whether it was influenced by such encouragement or representation.*  
(Emphasis added)

36. Accordingly, the conditions for the promissory estoppel can be identified as follows,
- (a) word or conduct which can freely make an unambiguous promise,
  - (b) intention to affect the legal relations and,
  - (c) other party's action altering position before withdrawal of promise.
37. The other equitable remedy is the proprietary estoppel. *Snell's Principles of Equity* (28th Edition 1982) at page 558, expounds the rule on proprietary estoppel. It states:

*"Proprietary estoppel is one of the qualifications to the general rule that a person who spends money on improving the property of another has no claim to reimbursement or to any proprietary interest in the property. Proprietary estoppel is older than promissory estoppel. It is permanent in its effect, and it is also capable of operating positively so as to confer a right of action. The term "estoppel", though often used, is thus not altogether appropriate. Yet the equity is based on estoppel in that one is encouraged to act to his detriment by the representation or encouragement of another so that it would be unconscionable for another to insist on his strict legal rights".*

38. At pages 560 and 561 the conditions for the proprietary estoppel have been explained with the illustrations as follows.

- (1) *Expenditure.* In many cases A has spent money on improving property which in fact belongs to O, as by building a house on O's land, or by doing repairs to O's house and paying mortgage instalments and other outgoings, or by contributing to a joint venture to be carried out on O's land, or by paying premiums required to maintain O's life insurance policy.
- (b) *Expectation or belief.* A must have acted in the belief either that he already owned a sufficient interest in the property to justify the expenditure or that he would obtain such an interest. But if A has no such belief and improves land in which he knows he has no interest or merely the interest of a tenant (or licensee), he has no equity in respect of his expenditure.
- (c) *Encouragement.* A's belief must have been encouraged by O or his agent or predecessor in title. This may be done actively, as where a father persuades his son to build a bungalow on the father's land, or a mother assures her daughter that she will have the family home for her life, or a man assures his former mistress that the house in which they lived together is hers.
- (d) *No bar to the equity.* No equity will arise if to enforce the right claimed would contravene some statute or prevent the exercise of a statutory discretion or prevent or excuse the performance of a statutory duty.

- 39. Defendant in this matter has not relied on any equitable right to occupy the property. It is clear that his occupation was only as an employee of the Plaintiff and that it was only an employment benefit.
- 40. Since the Defendant's employment has now been terminated, there is no consent of the Plaintiff for the Defendant to continue the occupation of the subject property. It matters not that the Defendant has challenged his termination from employment with the Ministry of Employment, Productivity and Workplace Relations. Such proceedings relates to the employment dispute and clearly has no bearing on the ejectment proceedings before this Court pursuant to the Land Transfer Act. This legal position was outlined to the Defendant through his solicitor by the Court at the initial stages of the matter. However, the Defendant was adamant to proceed with the hearing.
- 41. Having carefully considered all facts before this Court and the law relating to Sec. 169 proceedings, I find that the Defendant fails to satisfy this Court that he has any colour of right, legal or equitable, to continue occupation of the subject property in this matter.
- 42. It is therefore the conclusion of this Court that the Defendant has failed to satisfy the Court on any right whatsoever to continue to be in possession of the Plaintiff's property as described in the Originating Summons and thus has failed in its duty under Sec. 172 of the Land Transfer Act.

43. Accordingly, I find that the Plaintiff is entitled to immediate vacant possession of the subject property for the reasons outlined in the foregoing paragraphs of this Judgment.
44. The Defendant was aware that he has no consent from the Plaintiff to continue the occupation of the subject property. Further, despite receiving notices to vacate the said property, and having received sufficient time to do so, the Defendant continuously refused to vacate the subject property, compelling the Plaintiff to commence these proceedings under section 169 of the Land Transfer Act. At the initial stages of this matter, the Court without prejudice, explained to the Defendant the legal position relating to ejectment proceedings under Sec. 169 of the Land Transfer Act. As mentioned before, the Defendant was adamant in contesting the proceedings and to further continue his unlawful occupation of the subject property. This conduct of the Defendant makes the Plaintiff entitled to reasonable costs of this action.
45. Consequently, the Court makes the following final orders:
1. The Originating Summons filed by the Plaintiff on 18/02/2025 is hereby allowed.
  2. The Defendant is ordered to immediately deliver the vacant possession of the subject property (as duly described in the Originating Summons filed on 18/02/2025) to the Plaintiff forthwith. In any event, the vacant possession of the subject property shall be delivered to the Plaintiff not less than 07 days from the date of this order,
  3. This order shall have the effect of and may be enforced as a judgment in ejectment pursuant to Sec. 171 of the Land Transfer Act, and,
  4. The Defendant shall pay a summarily assessed cost in the sum of \$ 2000.00 to the Plaintiff within 28 days from today as costs of this proceeding.



  
**L. K. Wickramasekara,**  
**Acting Master of the High Court.**

**At Labasa,**  
**12/06/2025.**