

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CIVIL JURISDICTION**

**Civil Action No. HBC 98 of 2025**

**BETWEEN : SHRI NEWAS CHAND**  
**Plaintiff**

**AND : LESLIE VICTOR SHAW**  
**Defendant**

**Counsel : Ms A Singh for the Plaintiff**  
**Ms A Duabaubau for the Defendant**

**Hearing : 27 June 2025**

**Judgment : 27 June 2025**

**EXTEMPORE JUDGMENT**

[1] The Plaintiff filed an Originating Summons against the Defendant seeking vacant possession of land situated in Navua. The application is opposed by the Defendant.

**Background**

[2] The land in question is Certificate of Title No. 20200, Crown Grant No. 584, being *‘that piece of land known as ‘Vuninokonoko’ (part of) and containing 17 acres, 3 roods and 16 perches, be the same, a little more or less and situated in the District of Navua in the island of Viti Levu and being Lot 6 on deposited plan number 5005’ (the property)*.

- [3] The Plaintiff is the registered owner of the property and has been since May 2010. There is currently a Caveat on the title held by Parmesh Kumar and Sheetna Prasad, lodged in September 2021. The Plaintiff filed the present proceedings in March 2025.
- [4] The Defendant filed an affidavit in opposition on 9 June 2025. He deposes that he was and is lawfully on the property as a tenant. He has annexed to his affidavit a copy of the tenancy agreement. The tenancy agreement is dated 1 October 2021 and is between the Defendant and Rajesh Naidu/Vignesh Naidu. The tenancy is a month-to-month tenancy, effective from 1 October 2021 for a two-year period.<sup>1</sup> Also annexed to the Defendant's affidavit is a document dated 4 August 2024 headed '*Termination of Tenancy Agreement*' signed by Rajesh Naidu and Vignesh Naidu as well as the Defendant - although the Defendant has signed it '*without prejudice*'. The document reads:

*Please take Notice that the tenancy agreement between us for the premises which you occupy at Naitata, Navua is hereby terminated with effect from November 30, 2024. You are therefore required to contact Rajesh Naidu and Vignesh Naidu on November 30, 2024 to hand over the vacant possession of the said premises. I would appreciate it if all the rent in arrears will be settled and the premises is cleaned before you vacate, failing which I will have to deduct the bond for the same. I submit this for your most favourable consideration and thank you in the anticipation of the same.*

- [5] On 24 October 2024, the Plaintiff, through his solicitor, sent an eviction notice to the Defendant requiring that he deliver vacant possession within one calendar month of receipt of the eviction notice. It appears that the notice was served on the Defendant on 26 October 2024.
- [6] Despite the termination of the tenancy and the eviction notice, the Defendant has not vacated the premises. As such, the Plaintiff has brought the present proceedings seeking vacant possession under s 169 of the Land Transfer Act 1971.

## **Decision**

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<sup>1</sup> Expiring on 1 October 2023.

[7] To be entitled to an order for vacant possession, pursuant to s 169 the Plaintiff must first establish that he is the last registered proprietor of the land. There is no dispute by the parties as to this fact.

[8] The next requirement is under s 170. The Plaintiff must provide, in the originating summons, a description of the land upon which the order for vacant possession is to be made. One of the grounds raised by the Defendant in opposition to the present application, is that the description by the Plaintiff in his originating summons is inadequate and does not satisfy the requirement under s 170. That this failure is fatal to the Plaintiff's application.

[9] The description of the property in the originating summons reads:

*...the land and premises comprise in Certificate of Title Number 20200 known as 'Vuninokonoko' (part of) situate in the District of Navua and in the Island of Vitilevu having an area of seventeen acres, three roods and 16 perches.*

[10] Does the abbreviated description of the property by the Plaintiff fall short of the requirement under s 170?

[11] The Plaintiff relies on two decisions to support the proposition that it does not. The first is a decision by the Court of Appeal in *Premji v Lal* [1975] FJCA 8 (17 March 1975). The Court of Appeal stated:

*...The summons described the land as that 'comprised in Lease No. 100007 situated in Ross Street, Nausori'. The appellant in his affidavits made no suggestion of any misunderstanding but revealed full knowledge of the premises concerned. In the circumstances in our opinion the description was sufficient.*

[12] In light of the Court of Appeal's decision, I am satisfied that the description in the present case suffices. The description in the originating summons adequately identifies the land in question. The Defendant does not dispute that the house he occupies is on the property described in the Plaintiff's Originating Summons or the land identified in the

Certificate of Title annexed to the supporting affidavit from the Plaintiff filed with the Originating Summons.

- [13] As the Plaintiff is the last registered proprietor of the property and has provided a description of the property that is in compliance with s 170, the onus shifts to the Defendant under s 172 to prove ‘*to the satisfaction of the judge a right to the possession of the land*’. In *Sen v Singh* [2016] FJHC 808 (2 September 2016) then Master Nanayakkara stated:

*The Supreme Court in considering the requirements of Section 172 stated in **Morris Hedstrom Limited v. Liaquat Ali** (Action No. 153/87 at p2) as follows and it is pertinent:*

*“Under Section 172 the person summoned may show cause why he refused to give possession of the land and if he proves to the satisfaction of the judge a right to possession or can establish an arguable defence the application will be dismissed with costs in his favour. The Defendants must show on affidavit evidence some right to possession which would preclude the granting of an order for possession under Section 169 procedure. **That is not to say that final or incontrovertible proof of a right to remain in possession must be adduced. What is required is that some tangible evidence establishing a right or supporting an arguable case for such a right, must be adduced.**”<sup>2</sup>*

- [14] The Defendant argues that the Plaintiff has misrepresented the situation and has not informed the Court of the Defendant's true position and right to occupy the property under the tenancy agreement. The evidence before the Court shows that the Defendant had a tenancy agreement with Rajesh Naidu and Vignesh Naidu – not the Plaintiff. The evidence from the Plaintiff, in his Affidavit in Reply dated 16 June 2025, shows that Rajesh Naidu and Vignesh Naidu entered into a Sale and Purchase Agreement with the Plaintiff in 2017 to purchase part of the property. It appears that that purchase has not yet been completed, as evidenced by the Certificate of Title which shows that the Plaintiff remains the sole registered proprietor of the property.

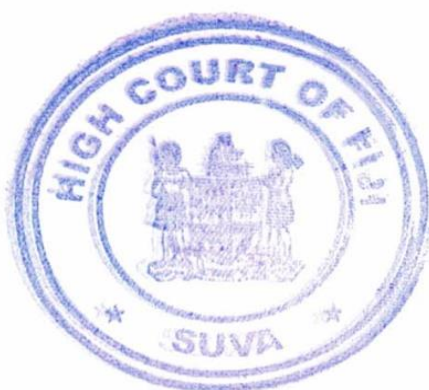
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<sup>2</sup> My emphasis.

[15] Whatever the situation between the Plaintiff and Rajesh Naidu/Vignesh Naidu, which is unclear, the Defendant presently has no right to possession of the property. Rajesh Naidu/Vignesh Naidu terminated the Defendant's tenancy in November 2024 in line with the Tenancy Agreement - whether that agreement was lawful or not. The Plaintiff sent an eviction notice to the Defendant in October 2024 requiring him to vacate in November 2024. As such, the Defendant has had no right to remain in possession from, at the very least, December 2024.

[16] Accordingly, I make the following orders:

- i. The application by the Plaintiff for vacant possession under s 169 is granted.
- ii. The Defendant is to deliver to the Plaintiff vacant possession by or before **1 September 2025** of Certificate of Title No. 20200, Crown Grant No. 584, being that piece of land known as 'Vuninokonoko' (part of) and containing 17 acres, 3 roods and 16 perches, be the same, a little more or less and situated in the District of Navua in the island of Viti Levu and being Lot 6 on deposited plan number 5005.
- iii. The Plaintiff is entitled to costs summarily assessed in the amount of \$750 to be paid by the Defendant within one month of this judgment.



  
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**D. K. L. Tuiqereqere**  
**JUDGE**

**Solicitors:**

Kohli & Singh for Plaintiff

Vosarogo Lawyers for Defendant