

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. **HBC 173** of **2023**

IN THE MATTER of an application under
Section 169 of Part XXIV of the Land
Transfer Act Cap 131 for an Order for
immediate vacant possession.

BETWEEN : **GYAN MATI** of 34 Kalokalo Crescent, Makoi, Housewife.
FIRST PLAINTIFF

AND : **ISRI PRASAD** of 34 Kalokalo Crescent, Makoi, Carpenter.
SECOND PLAINTIFF

AND : **YATRA KUMARI** of 34 Kalokalo Crescent, Makoi, Retiree.
FIRST DEFENDANT

AND : **VISHAL NAND** of 34 Kalokalo Crescent, Makoi, Self Employed.
SECOND DEFENDANT

AND : **SEEMA MAHARAJ** of 34 Kalokalo Crescent, Makoi, Housewife.
THIRD DEFENDANT

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Bukayaro V.** for the Plaintiff

Mr Prasad K and Ms Kete (LAC) for the Defendants.

[Counsels assisting Defendants at Court's Direction]

DATE OF JUDGMENT: **1st August, 2025**

JUDGMENT

(Vacant Possession - Section 169 of Part XXIV Land Transfer Act 131)

A. Introduction

1. The Plaintiff's instituted Summons pursuant to Section 169 of the Land Transfer Act 131 against the Defendants and sought for an order for immediate vacant possession of the property situated at 34 Kalokalo Crescent, Makoi
2. An Opposition Affidavit was filed by the Defendants.
3. A reply Affidavit was filed to the opposition on 1st November 2023.
4. Written submissions of the Plaintiffs was only furnished to the Court and not Defendants.

Plaintiff's Contention

5. The Plaintiffs are married and residing on the said property.
6. The First Plaintiff and the First Defendant are lawful sisters.
7. Third Defendant is married to the Second Defendant.
8. Transfer of the property was registered on 8th July 1998 from the First Defendant, Yatra Kumari to the Plaintiffs, Gyan Mati and Isri Prasad.
9. The First Defendant requested the Plaintiff's to stay for a while on the said property due to the death of the husband.
10. The Second and Third Defendant have been the cause of the upheaval at that place. They have created nuisance and havoc to the Plaintiffs in the associated Domestic Violence Restraining Order.
11. Seeks for an order for vacant possession with cost.

First Defendant's Contention

- Still residing in the said property.
- First Defendant, Yatra Kumari is blood sister of First Plaintiff, Gyan Mati.
- The property was transferred to the First Defendant, Yatra Kumari on 20th May 1980.
- Transfer was registered on 8th July 1998 to the First and Second Plaintiffs.

- The First and Second Plaintiffs deceived the First Defendant, Yatra Kumari into obtaining the said property.
 - That the First and Second Plaintiff's owed debt (personal debt) that needed agent settlement.
 - The said property went under mortgage in 1998.
 - The First Defendant needed money to clear the mortgage.
12. The Defendant's did extension of their flat in 2020. The Sai center of Fiji together with Ajay Bhai Amrit, Kamlesh Tappoo and Janil Timber removed and built a current flat that the Defendants are residing on the said property in 1998 after the transfer of the said property.
13. The said property was transferred for a total sum of \$12,000 of which \$5,000 was transferred to Housing Authority to settle the mortgage and the balance of \$7,000 was withdrawn on two different occasions by the First Defendant and given to the First and Second Plaintiffs.
14. The First Defendant was tricked into the transfer of the said property to the Plaintiffs. The First Defendant suffered financial loss.

Determination

15. The substantive issue for this Court to determine is 'whether immediate vacant possession of the property located at 34 Kalokalo Crescent, Makoi be granted to the Plaintiff's by the Defendants?'
16. This Court at the hearing was personally informed by the Second and Third Defendants that they have already vacated the said property.
17. As to the current, only the First Defendant, Yatra Kumari continues to reside in the said property premises.
18. No doubt, it is evident and can be ascertained from the First Plaintiff, Gyan Mati, affidavit at annexure Marked 'GM2' that the Lease No. 426833 on Lot 34 on DP No. 5207 having an area of 17.7 perches was on 8 July 1998 transferred from the First Defendant, Yatra Kumari to the First Plaintiff, Gyan Mati and Second Plaintiff, Isri Prasad.
19. However, according to the First Defendant Yatra Kumari, her complaint is that she was tricked by the Plaintiffs into having the transfer of the Lease from her name to the Plaintiffs.

20. The First Defendant, Yatra Kumari told Court that the Plaintiffs told her to temporarily transfer her Lease into their name, to enable them to get a loan from Fiji National Provident Fund and once this is completed, then her Lease will be returned to her. This was all verbal.
21. However, later she discovered that she was served with a Notice to Vacate from the property and she was at a shock to understand how all this transfer to the Plaintiff's took place.
22. She made allegations of being tricked and the Plaintiffs have committed fraud.
23. At the hearing, what this Court could gather from the parties and the submissions that serious allegations of fraud have been alleged against the Plaintiff's and that she had been tricked.
24. The issues of fraud once raised into Court, the Court then has a duty to hear all evidence of the parties and witnesses on *viva voce* evidence coupled with the Documentary evidence in particular, how was the transfer effected from the First Defendant, Yatra Kumari to the Plaintiff, Gyan Mati and Isri Prasad.
25. Initially, the current proceedings was issued via Summons for ejection, that is *prima facie* a summary proceedings.
26. When serious allegations of fraud arises, then the matter needs to be heard via Writ of Summons and the Statement of Claim to find out what transpired and on what basis the property in title was transferred to Gyan Mati and Isri Prasad.
27. This cannot be determined via summary proceedings since triable serious issues of fraud and allegation of trick usage have arisen in the current proceedings.
28. For the aforesaid rational, this Court at this stage of the hearing becoming aware of the serious allegation of fraud and tricked is unable to make any orders as sought by the Plaintiffs, rather will proceed to dismiss the Summons for ejection in its entirety.

Costs

29. The parties to bear their own costs at the discretion of this court, this time.

Orders

- i. The Plaintiff's Summons for ejection filed on 09th June 2023 is dismissed in its entirety.
- ii. Each party to bear their own costs of the proceedings at the Discretion of this Court.

iii. File Closed.

Dated at **SUVA** this **1st** day of **August** ,**2025**




VISHWA DATT SHARMA
PUISNE JUDGE

CC: Bukayaro Esquire, Suva
Yatra Kumari, 34 Kalokalo Crescent, Makoi.
Vishal Chand, 34 Kalokalo Crescent, Makoi.
Seema Maharaj, 34 Kalokalo Crescent, Makoi.