

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

**HBC Civil Action No. 178 of 2025**

**BETWEEN:**                    **LINDA & COMPANY PTE LIMITED** a company incorporated in Fiji and having its registered office at Lot 2 Nukutuku Road, Baro Subdivision, Suva, Fiji.

**PLAINTIFF**

**AND:**                            **TABS INVESTMENT COMPANY PTE LIMITED** a company incorporated in Fiji and having its registered office at Lot 5, Grantham Road, Raiwaqa, Suva.

**DEFENDANT**

**Representation**            : **Ms N. Devi** (Parshotam Lawyers) for the Plaintiff.  
                                      : **Mr. S. Leweniqila** (Toganivalu Legal) for the Defendant.

**Date of Hearing**            : 25<sup>th</sup> July 2025.

**JUDGMENT**

1. The Plaintiff’s lawyers filed Originating Summons pursuant to Section 169 of the Land Transfer Act for an Order that the Defendant show cause they should not give immediate vacant possession to the plaintiff of the property located at Walu-Bay and comprised in Crown Lease No. 18013 of which the plaintiff are the registered proprietors and occupied by the defendants. The Summons is supported by an Affidavit of the Director (Linda Liang aka Li Hua Liang) of the Plaintiff. The Summons were served on the Defendant. The Defendant filed an Affidavit in Response. An Affidavit in Reply was filed for the Plaintiff.
2. Section 169 of the Land Transfer Act 1971 provides that “[t]he 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) ...
  - (c) ...”

Section 170 of the Land Transfer Act 1971 requires the particulars be stated in the summons and that “*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.*” Section 171 of the Land Transfer Act 1971 dealing with order of possession states that “*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.”*

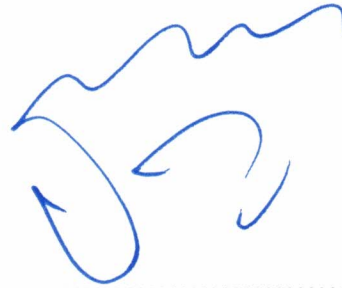
Section 172 of the Land Transfer Act 1971 provides that “*if the person summoned appears he may show cause why refuses to give possession of such land and, if he proves to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons with costs against the proprietor, mortgage or lessor or he may make any order and impose any terms he 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 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.*”

3. **Morris Hedstrom Ltd v. Liaquat Ali (SBC 153/87S) Supplementary FLR Volume 1 (Civil) 1887-2000) 141, Gurdial Singh v Shiu Raj (ABU 44/82) Supplementary FLR Volume 1 (Civil) 1887-2000, 84, Shyam Lal v Eric Martin Schultz (1972) 18 FLR 152 and Azmat Ali v. Mohammed Jalil (1982) 28 FLR 31** are some of the cases that have dealt with Section 169 Land Transfer Act 1971 applications. These and a number of other cases have set out the procedure for Section 169 Applications. The submissions of the parties have been noted. Ms. Devi’s submission was comprehensive and well set out. Her presentation in Court was such that Mr Lewenqila barely had a response. He conceded.
4. The Defendant does not dispute that the plaintiff are the registered proprietor of Crown Lease No, 18013 and that it is occupied by them. This gives Plaintiff locus in this matter. There are no disputes on the other procedural requirements under Section 170 of the Land Transfer Act 1971.
5. Is not in dispute that the Plaintiff is the owner of the property since August 2014. The defendant occupies a portion of the property. The Plaintiff served a notice to vacate upon the Defendant dated 14<sup>th</sup> April 2025. It has not been responded to. Neither has the property been vacated.
6. Section 172 of the Land Transfer Act 1971 shifts the burden upon the Defendant to establish his right to remain on the subject property. It was upon the Defendant in this application to adduce some tangible evidence establishing a right or supporting an arguable case for such a right for him to remain on the property. Final or incontrovertible proof of right to remain in possession need not be adduced (**Morris Hedstrom Ltd v. Liaquat Ali**). If the person, in this case the Defendant does show cause the Judge shall dismiss the Summons (**Azmat Ali v. Mohammed Jalil**).
7. At the hearing Mr Leweniqila stated that the main issue was ownership. That the defendants questioned the Plaintiff’s ownership and that they were on the property for 8 years. They sought 3 months to vacate. Ms. Devi’s response was that they were given more than enough time to vacate. The Defendant has not adduced tangible evidence establishing a right or supporting an arguable case for such a right for them to remain on the property. The Plaintiff is the owner of the property. The Defendant has offered no such information that leads me to consider that they have an arguable claim to possession.

8. The Defendant has failed to show cause why the order sought by the Plaintiff should not be made. The Plaintiff is entitled to an order for immediate vacant possession. The Defendant is to pay \$2000.00 as costs to the Plaintiff. The costs have been summarily assessed. The costs are to be paid within 21 days.

**Court Orders**

- (a) *The Defendant is ordered to provide immediate vacant possession to the Plaintiff of the property located at Walu-bay, Suva and comprised in Crown Lease No. 18013.*
- (b) *The Defendant is to pay \$2000.00 as costs to the Plaintiff. The costs have been summarily assessed. The costs are to be paid within 21 days.*



.....  
Chaitanya S.C.A. Lakshman  
**Puisne Judge**

**22<sup>nd</sup> August 2025**