

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 141 of 2025

BETWEEN : **NAUSORI TOWN COUNCIL**

Plaintiff

AND : **MANJULA DEVI trading As PACIFIC BAKERY
& INVESTMENT**

Defendant

Counsel : **Mr K Goundar & Ms K Chand for the Plaintiff
Ms S Kant for the Defendant**

Hearing : **9 July 2025**

Judgment : **27 August 2025**

JUDGMENT

(On an Application for Vacant Possession)

[1] Nausori Town Council (NTC)¹ is responsible for the operation and management of the Nausori Market. It is the registered proprietor of the land where the Nausori Market is situated. It sublets stalls at the market to tenants and receives rental payments by way of income. NTC enters into tenancy agreements with its tenants. It was this kind of arrangement between NTC and the Defendant which is the subject of the present proceeding.

¹ The Plaintiff.

[2] The Defendant was a tenant of NTC with a stall at the Nausori Market.² They had contracted into a tenancy agreement. NTC has brought this claim seeking orders for vacant possession on the basis that the agreement has expired and the Defendant has long overstayed her tenancy.

Background

[3] NTC is the registered proprietor of Crown lease number 12473, Lot 1 on SO.3079, Nausori Golf Course, situated in the Tikina of Bau in the province of Tailevu, having an area of 5,306 square metres (**the property**). NTC operates the Nausori Market on the property.

[4] On 2 October 2022, the Defendant began operating a bakery from one of the stalls at the Nausori Market.³ A Tenancy Agreement was executed between the parties on 31 January 2023. According to its terms, the period of the agreement was for 10 months, up to 31 August 2023, with a monthly rental of \$1,650 and a bond of the same amount. The permitted use of the stall was for a bakery.

[5] Clause 26.1 of the Tenancy Agreement provided for termination of the agreement, and read:

This Agreement may be terminated without reason by the Landlord [NTC] or Lessee [the Defendant] or by either party by giving one (1) months' notice in advance in writing to the other party. Such notice shall be expressed to expire at the end of a calendar month without prejudice to any claim against each other in respect of any antecedent breach, covenant or condition contained in this Agreement.

[6] In or about July 2023, the Defendant became embroiled in a dispute with other market users, resulting in several complaints to the NTC against the Defendant. NTC

² The Defendant argues that she is still a tenant.

³ I note that it appears the Defendant may have been operating the bakery at the market since 2019 – see *Devi v Nausori Town Council* [2024] FJHC 10 (11 January 2024) at para 6.

convened a special meeting on 8 September 2023 to consider the complaints.⁴ According to the Minutes, present at the meeting was the then Chief Executive Officer of NTC, a number of its officials, the Defendant, the Police Post Officer stationed at the Nausori Market, and the complainant. A number of complaints were raised against the Defendant, including that she had spat and sworn at the complainant, and that she had thrown white chemicals onto vehicles parked in front of her bakery. The Defendant denied the allegations, although the second incident involving the white chemicals was captured on CCTV footage. It was also raised with the Defendant that she had a number of issues with health and business permits for her bakery. Many of the concerns had been addressed, but some were still outstanding. The Defendant was directed by NTC to become compliant. It was also raised that the Defendant had been selling retail goods from her stall beyond her permitted use as a bakery. The Defendant raised the concern that NTC officials were not accepting receipt of her rental payments. NTC noted that the reason for this was that her tenancy agreement had expired and her renewal was on hold. The meeting was concluded on the basis that NTC would make a decision on the complaints and advise the Defendant in due course.

[7] A perusal of the Minutes of the meeting shows that the then Chief Executive Officer and the NTC officials conducted a fair and respectful hearing. They are to be commended on the conduct of the meeting.

[8] Four days later, on 12 September 2023, NTC and the Defendant signed a First Addendum extending the tenancy agreement for 12 months to 30 September 2024.⁵ Despite the extension, the newly Acting Chief Executive Officer of NTC wrote to the Defendant on 1 November 2023, to give her notice of the termination of the tenancy agreement. The basis for the termination by NTC being '*after careful consideration of the complaints received against you it [NTC] has come to the conclusion to terminate your existing Tenancy Agreement with the Council*'. The Defendant was directed to vacate the premises no later than 1 December 2023.

⁴ The Minutes of the meeting were produced by the Defendant's counsel, annexed to her written submissions. They have not been properly produced in affidavit evidence. Ordinarily, I would not allow this back door admission. However, as there is no dispute as to authenticity of the Minutes - and given they were authored by an NTC officer and are relevant to the issue in the proceeding - I am prepared to admit the document.

⁵ The First Addendum in fact records the expiry date as 30 September 2023 but both parties appear to agree that the year was 2024.

- [9] The Defendant was unhappy with the termination. No doubt, the extension that she received to her tenancy following the meeting on 8 September 2023, left the Defendant with an expectation that the earlier complaints had not adversely affected her tenancy. The Defendant filed judicial review proceedings against NTC in the High Court.⁶ In a judgment delivered on 11 January 2024, the High Court declined to provide leave to the Defendant to apply for judicial review and dismissed the proceedings. The High Court determined that the dispute between the parties did not pertain to a reviewable decision but arose from a commercial agreement. As such, the proper remedy for the Defendant to pursue was an action in private law. The Defendant subsequently filed an appeal to the Court of Appeal as well as an application for a stay.
- [10] On 20 January 2025, the Plaintiff filed an application in the High Court against the Defendant seeking vacant possession of the premises. This followed an earlier notice to quit, served on the Defendant on 13 August 2024. Those proceedings mirror the present proceeding. On 1 April 2025, the Plaintiff withdrew those proceedings. The Court awarded costs to the Defendant in the amount of \$650. Counsel for the Plaintiff informed the Court at the hearing that the earlier proceedings were withdrawn because NTC had continued, in error, to receive rental payments from the Defendant.
- [11] There followed, on 11 March 2025, service on the Defendant of a further notice to quit the premises within one month. The Defendant did not vacate and, accordingly, the present proceedings were filed on 16 April 2025. The order sought by NTC is vacant possession of the premises. The supporting affidavit from Rajesh Kumar, the Acting Chief Executive Officer of NTC, annexes the Crown lease for the property along with a number of relevant documents including the Tenancy Agreement and the First Addendum.
- [12] The Defendant filed an affidavit in opposition on 16 May 2025. The Defendant deposed that her appeal to the Court of Appeal in HBJ of 2023 was pending. She

⁶ HBJ 39 of 2023.

stated that she remained up to date with her monthly rental payments for her stall and had never received any notice of breach of tenancy nor any demand for unpaid rent.

[13] NTC filed an affidavit in reply for Mr Kumar on 11 June 2025. Mr Kumar noted that the Defendant's 2023 judicial review proceedings were brought from NTC's notice to terminate on 1 November 2023 and that that notice had been overtaken by the fact that the extended tenancy had expired on 30 September 2024, purportedly making the 2023 proceedings moot.

[14] As it was, the Court of Appeal heard the appeal and stay application on 16 June. On 20 June 2025, it dismissed both.⁷ The Court of Appeal noted that the Defendant had not properly sought leave to appeal and, therefore, the Court of Appeal did not have jurisdiction to consider either the appeal or the application for stay. The appeal was struck out.

Decision

[15] Pursuant to ss 169 and 170 of the Land Transfer Act 1971, NTC must show that it is the registered proprietor of the land in question and that the summons contains a description of the land. I am satisfied that both requirements are established. There is no real dispute that that is the case.

[16] The Defendant has been properly served with these proceedings. The same is evidenced by the fact that the Defendant is represented by counsel and has filed an affidavit in opposition to the claim.

[17] Accordingly, the onus shifts to the Defendant under s 172 to prove to the satisfaction of the Court a right to the possession of the land. This is the key issue for determination in this case. The requirement was considered in *Sen v Singh* [2016] FJHC 808 (2 September 2016). Then Master Nanayakkara stated:

⁷ *Devi v Nausori Town Council* [2025] FJCA 92 (20 June 2025).

*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.**”⁸*

[18] A claim for vacant possession of land under s 169 is a summary proceeding, available in clear cases only. The burden on the Defendant to show that the order for vacant possession should be refused (ie that she has a right to possession of the land) is not high. The Defendant must simply show that there is some tangible evidence supporting an arguable case.

[19] The Defendant relies on a number of arguments to support her claim to possession, including:

- i. The Defendant has been deprived of natural justice in not having an opportunity to be heard before being served with the notice to quit of 10 March 2025.
- ii. In contravention of bylaw 34 of the Nausori Town By-Laws 1966, NTC has failed to provide the Defendant with 14 days’ notice of a meeting to discuss the notice to quit.

⁸ My emphasis.

- iii. The decision of NTC is in contravention of s 11(1) of the 2013 Constitution, specifically her freedom from cruel and degrading treatment. She claims that the decision to terminate her tenancy is disproportionate to the complaints made against her. She also claims that NTC's decision breaches her constitutional rights to equality, freedom from discrimination and the right to economic participation.⁹
- iv. The Defendant argues that the First Addendum is defective as it was not signed by NTC.

[20] There is no substance to the Defendant's reliance on the rights under the Constitution. It would be an overreach to apply these rights to the present commercial dispute. Similarly, the Defendant's reliance on by-law 34 of the Nausori Town By-Laws is misconceived. The bylaw pertains to licences to use or keep **dance halls**. The Defendant has a store (not a dance hall) and a tenancy agreement (not a license).

[21] Nevertheless, bylaws 36 to 64 specifically prescribe how the Nausori Market is to be managed and operated. By-law 44 reads:

The allocation of stalls in the market shall be made by the Council or the market master in as fair and reasonable a manner as possible.

[22] I have invited both counsel to file further written submissions on the application, if any, of bylaw 44 to the present case. Both parties have filed supplementary submissions on the issue.¹⁰

[23] The Defendant contends that by-law 44 does apply to the present case. That she rents a stall in the market and that NTC have a statutory obligation to allocate the stall in a fair and reasonable manner. That 'allocation' extends to the renewal, termination and reallocation of the stall; ie the general management of the tenancy of the stall. Further, the concept of fair and reasonable imports principles of natural justice such as

⁹ Sections 26(3) & (7) and 32(1) of the Constitution.

¹⁰ Both sets of submissions were filed on 22 August 2025.

proportionality. In short, the Defendant argues that NTC has failed to discharge its obligations under by-law 44 with its attempted eviction of the Defendant.

- [24] NTC argues that the 1966 By-Laws have no application to the Defendant. Firstly, it is subsidiary legislation and the Land Transfer Act prevails in respect to the present application for vacant possession. Secondly, the Defendant was not running a ‘stall in the market’ and therefore by-law 44 does not apply to the Defendant. Thirdly, the ‘allocation’ of stalls ought to be construed narrowly to mere allocation not the regulation of terminating tenancies and repossession.
- [25] The 1966 By-Laws are not in conflict with the provisions in the Land Transfer Act dealing with vacant possession. The two pieces of legislation serve different purposes. The relevance of the by-laws is in respect to answering the question under s 172 of the Land Transfer Act, ie whether the Defendant has a right to possession of the property.
- [26] On the face of it there is some merit to NTC’s argument that the Defendant does not have a stall at the Nausori Market. Stall is defined under bylaw 2 as meaning ‘*any place within the market where produce or handicrafts are sold or offered for sale*’. A bakery is not handicrafts. ‘*Produce*’ is also defined under by-law 2. It means ‘*fish, fresh fruit and vegetables, rice, split peas, dried pulses and goods of that nature, live poultry and other edible birds and eggs and includes any agricultural or forest product being an article of food or drink in an unprepared state and also includes locally grown tobacco, locally made wares such as baskets and mats and articles of that nature*’. It is a stretch to bring a bakery within the definition of produce.
- [27] However, the other by-laws suggest a wider construction of produce. By-law 40 provides that no person ‘*shall sell or offer for sale in the market any article other than produce or handicrafts*’. It appears, however, that the sale of items in the Nausori Market extends beyond mere produce and handicrafts which raises the question whether the reality has overtaken the strict definition.
- [28] Nevertheless, NTC argues that the Defendant’s premises is outside the market. The Tenancy Agreement records that the premises is ‘*Located at Bakery No 1, outside the*

Nausori Market'. That is to be contrasted, however, with paragraph 5 of Mr Kumar's affidavit dated 14 April 2025 wherein he states:

On the said property, is the Nausori Market, which has various market stalls in and around its boundary. NTC, as the proprietor of the Property has sublet the said Nausori Market stalls and stores to its tenants. One of the tenants was the Defendant.

[29] Further the intituling page for the court documents records the Defendant's address as '*having its principal place of business at Nausori Market*'.

[30] The other question is whether 'allocation' ought to be construed narrowly? I agree with the Defendant that the intention of the provision is for the council to manage the stalls in a fair and reasonable manner. It is contrary to common sense for the Council to have an obligation to allocate the stalls in a fair and reasonable manner yet have no similar duty with respect to renewals, terminations and the general managements of the stalls. Clearly councils have a wider civic responsibility to the community it serves as reflected in by-law 44.

[31] In summary, I am satisfied that the Defendant has raised a basis for possession of the property that is at least arguable. The question is whether the obligation under by-law 44 is to be read into, or alongside, the Tenancy Agreement such that NTC cannot arbitrarily terminate the tenancy under clause 26.1 of the Tenancy Agreement. Must NTC act fairly and reasonably when deciding whether to terminate a tenancy and, if so, was it proportionate for NTC to terminate the Defendant's tenancy as opposed to a lesser penalty of a warning. There is also a factual issue whether the Defendant's premises is a stall in the market as required to come within by-law 44.


[32] Finally, it is worth pointing out that the present state of affairs emanated from the complaint in July 2023. At that point, it appears that the Defendant had been running a bakery business at the market for 3-4 years. The complaints were aired at a council meeting on 8 September 2023. The 12 month extension to the Defendant's tenancy on 12 September 2023 will have reassured the Defendant that her tenancy was not in jeopardy. However, since 1 November 2023 NTC have taken multiple steps to evict

the Defendant on the basis of the complaints. It appears that the Defendant has continued to pay her monthly rent. If there have been no further complaints against the Defendant, NTC may wish to consider providing the Defendant with a new tenancy agreement.

[33] My orders are as follows:

- i. The application by the Plaintiff for vacant possession is dismissed.
- ii. The Defendant is entitled to costs summarily assessed in the amount of \$1,500 to be paid by the Plaintiff within 1 month.




D. K. L. Tuiqereqere
JUDGE

Solicitors:

Kumar Goundar Lawyers for the Plaintiff

Crown Law for the Defendant