

the person summoned should not give up possession to the applicant:-

(a) the last registered proprietor of the land;

(b) a lessor with power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provision therein, when the lessee or tenant is in arrear for one month, whether there be or be not sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;

(c) a lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired.

Particulars to be stated in summons

170. *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.*

Order for possession

171. *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.*

Dismissal of summons

172. *If the person summoned appears he or she may show cause why he or she refuses to give possession of such land and, if he or she 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, mortgagee or lessor or he or she may make any order and impose any terms he or she 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 or she 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.*

5. The process outlined in section 169 of the LTA is a summary procedure designed to swiftly return possession of a property to a registered proprietor when an occupant fails to demonstrate a lawful right to possess that specific property (see ***Jamnadas v Honson Ltd*** [1985] 31 FLR 62 (at page 65)).

6. The onus lies with the plaintiff to convince the court that the requirements under sections 169 and 170 of the LTA have been met. Once this burden has been met, it shifts to the defendant to demonstrate their right to possess the land. A Court's decision to either grant possession to the plaintiff or dismiss the summons depends on how effectively each party discharges their respective burden in the proceedings.
7. In such proceedings, a defendant's obligation is not to present conclusive proof of their right to stay on the property, but rather to provide some evidence establishing a right or supporting a plausible case for their right to remain in possession of the disputed property. This principle was established by the Supreme Court in the well-known case of ***Morris Hedstrom Limited v. Liaquat Ali*** CA No: 153/87.
8. Furthermore, as outlined in ***Ali v. Jalil*** [1982] 28 FLR 31, even if a defendant fails to satisfy a Court according to the above decision, the Court has the discretion to dismiss the summons if it determines that an open court hearing is necessary.
9. In this matter, the Defendant does not dispute that the Plaintiff is the last registered proprietor of the Property. Thusly, the requirement under section 169 is met.
10. The second requirement pursuant to section 170 of the LTA is for the summons to contain a description of the land and to require the person summoned to appear in court. The Plaintiff's Summons describes the land as "*Crown lease No. 793403, Tavua Town (part of) CT 6296, Province Ba, District or Town Tavua, Area 751m², Lot 5 Plan No. DP 938 being residential property*". The certified true copy of the said lease annexed to the Plaintiff's Affidavit in Support marked as "A", describes the lease as "*Commercial Lease*". While the Property has not been correctly described as per the copy of the lease attached, the LTA does not specify what description is exactly needed for this purpose but necessitates determining whether the summoned individual was fully aware of the specifications of the land or the property they were directed to vacate, ensuring there was no confusion or misunderstanding regarding it (see ***Lal v Chand*** [2019] FJHC 538).
11. In the current matter, there is no confusion nor misunderstanding in relation to the description of the Property. Therefore, the requirement under section 170 has also been fulfilled by the Plaintiff as the description given in the Summons appears adequate for the purpose of the said section.

12. Since the Plaintiff has satisfied the requirements of sections 169 and 170 of the LTA, the burden now shifts onto the Defendant to demonstrate his right to occupy the Property.

13. The Defendant avers the following in his Affidavit in Opposition:

- a) The Plaintiff became registered lessee over the Property on 19 February 2024.
- b) The Defendant rents a shop space on the Property.
- c) There was a Tenancy Agreement between the Defendant and the previous registered proprietor of the Property namely Mohammed Aslam. The Defendant has annexed a copy of the Tenancy Agreement marked as "NP 3" which was executed on 01 October 2023 and bears the seal of consent from the Director of Lands (**DOL**) dated 20 March 2024.
- d) The Plaintiff had knowledge of the Tenancy Agreement.
- e) The Plaintiff is now bound by the terms of the Tenancy Agreement as he was assigned the same.
- f) The Tenancy Agreement is for a term of 3 years and the Defendant wishes to complete the 3-year term.
- g) The Property does not require any renovation.
- h) The Defendant is not a trespasser.

14. The Plaintiff in its Affidavit in Reply states the following:

- a) The Lease over the Property was transferred to the Plaintiff on 19 February 2024 and the consent for the transfer from the DOL was obtained on 26 January 2024 (a copy of the Transfer document is annexed to the Affidavit in Reply marked as "A"). The Plaintiff is also making mortgage payments over the said Property.
- b) The Plaintiff's previous legal counsel sent a 30-day Notice to Vacate dated 28 February 2024 to the Defendant to vacate the Property as the Plaintiff wished to renovate the same. The said Notice also stated that once the renovations were completed, the Plaintiff would offer first preference of tenancy to the Defendant.
- c) The Defendant continues to occupy the Property and the backyard, which is scattered with materials.
- d) The Property needs urgent maintenance.

15. The question before the Court now is whether the Tenancy Agreement gives any right to the Defendant to remain in possession of the Property, overriding the Plaintiff's title.

16. In this regard, the Defendant's counsel submitted that the Tenancy Agreement states the parties as "*Mohammed Aslam ...together with his executors, administrators and assigns*". As such the counsel submitted

that the Plaintiff was assigned the Tenancy Agreement and is bound by the terms therein.

17. However, Defendant's counsel was unable to show to this Court any such Deed of Assignment of the Tenancy Agreement between the Plaintiff, the Defendant and the previous proprietor i.e. Mohhamed Aslam. The Defendant's counsel also informed the Court that he was unaware whether any such deed or agreement was indeed entered into and signed between/by the Plaintiff and Mohammed Aslam.
18. Moreover, even if there indeed had been an agreement assigning the Tenancy Agreement to the Plaintiff, Clause 1 of the Tenancy Agreement unambiguously states that "*either party to the agreement may terminate the agreement by giving one month's prior notice in writing.*" This contractual right of termination would therefore extend to the Plaintiff through such assignment. The Plaintiff through his previous legal counsel had sent a Notice to Vacate to the Defendant on 28 February 2024 thereby exercising the said contractual right.
19. On the available facts I find that the Tenancy Agreement was not actually assigned to the Plaintiff and in any event, and even if it was, the Plaintiff had given the Defendant a 30-day Notice to Vacate on 28 February 2024 to terminate the Tenancy Agreement.
20. It was incumbent on the Defendant to demonstrate his right to occupy the Property and in this case, I find that the Defendant has not shown any arguable defence or a right to remain in possession of the Property. The Defendant was a tenant of the previous proprietor and after the Property was transferred to the Plaintiff, a Notice to Vacate the Property was issued to the Defendant, which he has failed to comply with.
21. There are no complicated issues to be determined in this matter hence the Plaintiff is entitled to a favourable decision.
22. It must be further noted that the Defendant has an option to pursue a separate legal action against the previous proprietor of the Property if the Defendant thinks there are issues arising out of the Tenancy Agreement. However, in the current proceeding the Defendant cannot assert a right to remain on the Property without demonstrating any legal basis for his claim.
23. Therefore, the Plaintiff is granted vacant possession of the Property forthwith.
24. Accordingly, I make the following orders:

- (a) The Defendant is ordered to immediately deliver vacant possession of all the land comprised in State Lease No. 793403 to the Plaintiff; and
- (b) Costs summarily assessed at \$1000.00 to be paid by the Defendant to the Plaintiff within one month of today.



P. Prasad
Master of the High Court

At Lautoka
29 August 2025

Solicitors:

Plaintiff: Messrs Prakash Lawyers

Defendant: Messrs Dayal Lawyers