

4. The matter was first scheduled for hearing in July 2023, but the date was vacated after the Defendant's counsel sought an adjournment due to the said counsel's medical treatment overseas. When the hearing was next listed for November 2023, it was again adjourned—this time because of technical objections raised by the Defendant's counsel and the Plaintiff's request for additional time to reconsider the application. Subsequently the Plaintiff informed the Court that it will proceed with the application and parties were directed to file their submissions on the substantive matter. Thereafter, several further adjournments followed while the Court awaited the parties' written submissions. On 7 February 2025, the Plaintiff filed a Summons seeking leave to amend its Originating Summons, and the amended Summons was filed on 27 February 2025. The matter ultimately proceeded to hearing on 30 September 2025.
5. The relevant provisions of the Land Transfer Act 1971 are as follows.

169. The 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) 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.

6. 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)).
7. 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.
8. 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.
9. 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.

10. In this matter, the Defendant does not dispute that the Plaintiff is the last registered proprietors of the Property. Thusly, the requirement under section 169 is met.
11. 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 "Certificate of Title Number 40990, Lot 1 on Deposit Plan No 10361, Known as Lautoka Wharf Reclamation situated in the Island of Vitilevu and District of Vuda, having an area of Two Hectares Three Thousand Four Hundred and Sixteen Square Meters". The requirement under section 170 has also been fulfilled by the Plaintiff.
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 its right to occupy the Property.
13. The Defendant's main contention in this matter is that the Plaintiff does not have the *locus* to initiate these proceedings for the following reasons:
 - (a) The Property was initially owned by Fiji Ports Corporation Limited (FPCL);
 - (b) The Property was vested in the Plaintiff on 01 November 2016 pursuant to a Vesting Order. A copy of the vesting application is annexed to the Defendant's Affidavit in Opposition marked "RQ-02";
 - (c) The Property was then leased by the Plaintiff to FPCL. The said lease is registered on the Certificate of Title with memorial number 901896 and the lease is for a term of 50 years with effect from 13 November 2015. A copy of the same is annexed to the Defendant's Affidavit in Opposition marked "RQ-03";
 - (d) The Defendant had entered into a Tenancy Agreement with FPCL on 10 September 2015;
 - (e) The said Tenancy Agreement was effective from 01 October 2015 on a month-to-month basis. A copy of the same is annexed to the Plaintiff's Affidavit in Support marked "C".
 - (f) The Plaintiff issued a Notice to Quit dated 27 September 2021 and had no *locus* to issue the same as the Property is leased to FPCL.
14. The following are not disputed in this case: (i) the Plaintiff is the last registered proprietor of the Property; (ii) the Property has been leased to FPCL; and (iii) the Defendant had entered into a Tenancy Agreement with FPCL.
15. Pursuant to section 169 of the LTA, the Plaintiff therefore has the *locus* to issue this proceeding as the last registered proprietor of the Property.

16. The issue before this Court is not whether the Plaintiff has *locus* to issue these proceedings but whether the Tenancy Agreement gives the Defendant a right to occupy the Property.
17. The Plaintiff in its Affidavit in Reply states that the Property has been leased to FPCL to utilise the vacant land for port related operations. However, on perusal of the Lease Agreement, it is noted that it is not just the vacant land but the entire land comprised in the Property that has been leased to FPCL. The said Lease Agreement states the "*Leased Area*" to be "*described in Schedule 2*". Schedule 2 has the plan of the leased areas and Lot 1 on DP 10361 is included in the same.
18. The Defendant's counsel in her submissions stated as follows:
- (a) FPCL is the Defendant's landlord and not the Plaintiff.
 - (b) FPCL has not terminated the Tenancy Agreement and the Plaintiff has no right to terminate the said agreement.
 - (c) The Plaintiff has no right to demand payment of the monthly rental from the Defendant.
 - (d) The Plaintiff has no right to issue a Notice to Quit.
 - (e) There are triable issues which cannot be resolved in the summary proceeding.
19. This Court notes that FPCL is not a party to this proceeding and there is no substantive evidence before this Court confirming whether the Defendant has fully paid its rental to FPCL or is currently in arrears. There is also no evidence indicating whether FPCL has terminated the Tenancy Agreement with the Defendant and/or issued any Notice to Vacate. Moreover, there is no evidence whether the Tenancy Agreement was varied or FPCL has assigned any rights to the Plaintiff.
20. What is established, however, is that the Lease Agreement between the Plaintiff and FPCL over the entire Property remains valid.
21. These matters raise complex issues that cannot be resolved through a summary procedure. They require a full inquiry through a proper trial.
22. It is settled law that complicated facts and issues cannot be investigated and determined only on affidavits at a summary proceeding [*Lal v Schultz* [1972] FJLawRp 27; [1972] 18 FLR 152 (30 October 1972); *Devi v Sharma* [1985] FijiLawRp 3; [1985] 31 FLR 130 (1 January 1985); *Wati v Vinod* [2000] FijiLawRp 56; [2000] 1 FLR 263 (20 October 2000)].
23. Therefore, I find that the Defendant has shown an arguable defence. There are complicated issues to be determined in this matter and as such the Summons ought to be dismissed.

24. However, the dismissal of the Summons shall not operate as a bar to the Plaintiff and/or to FPCL to commence other proceedings against the Defendant.

25. Accordingly, I make the following orders:

- (a) The Plaintiff's Summons for vacant possession is dismissed; and
- (b) Costs summarily assessed at \$1,000.00 to be paid by the Plaintiff to the Defendant within 1 month from today.



P. Prasad
Master of the High Court

At Lautoka
05 March 2026