

3. The Defendants have been residing on the property ever since the death of Mary Tupou and and Mr. Fatiaki Taukave in joint tenancy until they passed away in 2016. Being the surviving wife, the property was vested on Mary Tupou including the share of Mr. Fatiaki Taukave until her demise in 2016.
4. The Plaintiff had obtained probate by way of Letters of Administration for the Estate of the late Mary Tupou Estate of Mary Tupou aka Tupou Taukave aka Mary Tupou Tavo aka Tupou Mary aka Tupou Mary Taukave aka Mary Tupou Taukave (referred hereto as “Estate of Mary Tupou”) on 14th March 2023. This was later registered as a Transmission by Death to the Plaintiff as the Administrator on 2 July 2024 by the Register of Titles.
5. The Plaintiff has filed their Affidavit in Support of their Originating Summons for which the Defendant was given time to oppose.
6. On the date of Hearing, Counsel for the Defendant had argued that certain portions of the Affidavit in Support and Affidavit in Response to Defendants opposition were contrary to the requirements under Order 41 rule (5) of the High Court Rules.
7. The court heard the parties arguments and expunged certain excerpts from the paragraphs of the Affidavits which were contrary to Order 41 Rule (5) of the High Court Rules. Below are summaries of the Affidavits that were accepted when tendered as evidences.

AFFIDAVITS

Plaintiff's Affidavit

8. The Plaintiff deposed that he applied for and was granted Letters of Administration and is the Administrator of his late mother's Estate, Mary Tupou on 14 March 2023.
9. The Plaintiff deposes that the property was purchased by his late parents Dr Fatiaki Taukave and Mary Tupou Taukave 50 years ago in 1975. Dr Fatiaki Taukave was a joint tenant to the Estate passed away on 17 October 2016. Since its purchase, no significant renovations have been made to the property and the remaining Taukave children would like the house to be renovated and upgraded.
10. The Plaintiff deposed that the property is currently occupied by the Defendants, his late older brother's son and his later older brother's wife who reside in the top flat of

the double-storey house with his nephew. His older brother, the late Joseph Taukave passed away in January 2021 and pre-deceased their late mother, the late Mary Tupou.

11. The Plaintiff deposes that despite attempts to from the Taukave siblings to meet with his older brother's wife, Margraet, she has always sent their nephew, Oscar who is disrespectful and rude towards them. Furthermore, he was never appointed as a caretaker by their late father. Their father included this in a letter which was filed as part of an Affidavit in a Domestic Violence Restraining Order application which was later dismissed by the Magistrates Court.
12. The Plaintiff deposed that his late older brother had promised to renovate the upper flat of the property once he sold his business prior to moving out of the house. This was partly undertaken when his older brother passed away. His wife continued the renovations as part of his late brothers' wishes.
13. The Plaintiff has attempted to settle the matter and intended to conduct renovations, repairs and a valuation on the property for which the Defendants have acted aggressively and refuse to communicate. Therefore, a notice of eviction was served to the Defendants on 4 December 2025.

Defendant's Affidavit

14. The Defendant has filed an Affidavit in opposition arguing that they have a beneficial interest on the property from his fathers Estate, the late Joseph Taukave, the older sibling of the Plaintiff. That the beneficial interest entitles them to reside on the premises.
15. He deposes that as beneficial interests they are entitled to renovate the property and also to reside in quiet enjoyment on the property.

Plaintiff's Affidavit in Response

16. The Affidavit in response deposed that his address had changed after the Letters of Administration had been granted and that at the time of service, his address in New Zealand suffices.
17. Affidavit also argued that the Plaintiff/ respondent had flouted the Court Rules.

Law, Submissions and Analysis

18. The Application relies upon Section 169 of the Land Transfer Act. Section 169 applications are summary proceedings.
19. In section 169 and 171 of the Land Transfer Act, the Applicant must first show that they are a registered proprietor on the property. The importance of registration of title for the title holder having an indefeasibility of title was discussed in Subramani -v- Sheela [1982] FjLawRp 10; [1982] 28 FLR 82 (2 April 1982) where the full bench of the Court of Appeal stated:

The indefeasibility of title under the Land Transfer Act is well recognised; and the principles clearly set out in a judgment of the New Zealand Court of Appeal dealing with provisions of the New Zealand Land Transfer Act which on that point is substantially the same as the Land Transfer Act of Fiji. The case is Fels v. Knowles 26 N.Z.L.R. 608. At page 620 it is said:

"The cardinal principle of the statute is that the register is everything, and that, except in case of actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against all the world."

The question of indefeasibility of title of the registered proprietor is fully examined and determined with authority by their Lordships of the Privy Council in Frazer v. Walker, [1967] N.Z.L.R. 1069. This Court most therefore hold that the title of the respondents as registered proprietors is not subject to any unregistered encumbrances such as those put forward on behalf of appellants. Accordingly, this ground fails.'

20. In the case proceedings before this Court, the Plaintiff, in his affidavit, has appended the Certificate of Title registering him as the Administrator for the Estate of Mary Tupou. As a joint tenant, the late Dr Fatiaki Taukave ceased being an owner on his demise and the late Maru Tupou, his wife, took ownership of the whole property.
21. As the Administrator of the Estate of the late Mary Tupou by virtue of the transmission by death, he is a registered proprietor.
22. Section 172 of the Land Transfer Act requires that the person served with the summons to vacate, to show cause to the Court as follows:

*“172.- If the person summoned appears he may show cause why he 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, mortgagee or lessor or he may make any order and impose any terms he may think fit;***

23. The Defendant therefore must show that he has an interest to the satisfaction of the Court, even if it is a future interest. 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.”*

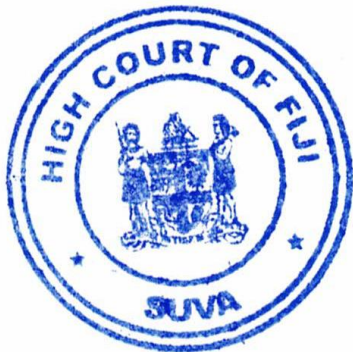
24. The Plaintiff does not deny that the Defendant is his nephew, the son of his late older brother and a beneficiary to the Estate of Mary Tupou. Plaintiff argues that the Defendant had failed to establish his interest over the said property as his father, the Plaintiff's older brother, had verbally agreed to renovate the property and then to move his family out eventually. This has not eventuated and since the demise of his older brother, the Defendant, his mother and sibling have continued to reside in the top flat, with the bottom flat given to other members of the family to reside. The Plaintiff now intends to conduct valuation on the property and renovate the premises for the benefit of the beneficiaries to the Estate.
25. The Defendant has deposed in his Affidavit that he has an entitlement to equal stirpe shares with his siblings over the shares of his late father's Estate, who, he argues, has equal shares to that of the plaintiff and his siblings, in the property owned by the Estate of the late Mary Tupou.
26. The Defendant has failed to provide any form of documentary evidence at least to satisfy the Court that he has obtained the Letters of Administration of his father in order to prove to this Court his interest through his father's Estate in the Estate of the late Mary Tupou.
27. The property is not owned by the Defendant solely. It is registered to the Plaintiff to administer the property on behalf of his siblings and to all beneficiaries.

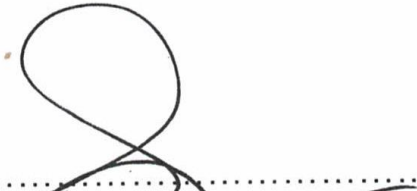
28. The Court will therefore order that the Applicant be granted vacant possession but will also give time for the Defendant to remove himself from the property.

ORDERS

29. The Court orders as follows:

- (i) **The Application is granted Vacant Possession but these orders will be suspended for 6 months to enable the Defendant to remove himself and his possessions from the property.**
- (ii) **The Applicant is entitled to enter the premises with his contractors or agents for valuation and mild construction/renovation works with immediate effect;**
- (iii) **At the end of 6 months, the Orders of Vacant Possession will take effective immediately;**
- (iv) **Costs of \$700 is awarded to the Plaintiffs.**




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Ms. Senileba LTT Waqainabete-Levaci
Puisne Judge