



*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.*

4. 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)).
5. 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.

6. 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.
7. 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.
8. In this matter, the Defendants do not dispute that the Plaintiffs are the last registered proprietors/lessees of the Property. Thusly, the requirement under section 169 is met.
9. 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. 16469 (L/D reference no. 4/1/2244) being land known as Part of Varoko & Tavei – Lot 1 on BA 2313 having an area of 9.6695 ha (whole) in the District of Ba, in the Republic of Fiji situate at Varoka, Ba*". A certified true copy of the Lease is attached to the Affidavit in Support marked as "AK-1" which reflects the same description. Thus the requirement under section 170 has also been fulfilled by the Plaintiffs.
10. Since the Plaintiffs have satisfied the requirements of sections 169 and 170 of the LTA, the burden now shifts onto the Defendants to demonstrate their right to occupy the Property.
11. To show good cause, the first named Defendant stated the following in the Affidavit in Opposition:
  - a) That he has lived on the Property since 1988, built a house and made improvements to the same.
  - b) The previous lessee of the Property was one Shazad Khan and the Plaintiffs purchased the Property from the said Shazad Khan in 2018.
  - c) Since his occupation in 1988 he was working as a labourer and engaged in share farming, and Shazad Khan had allowed the first named Defendant to occupy the Property for his lifetime.
  - d) The Plaintiffs allowed the first named Defendant and his family to occupy the said Property and gave consent and undertaking to subdivide the area occupied by the Defendants.
  - e) The first named Defendant undertook to bear all costs in respect of the subdivision.
  - f) He stopped cultivating since 2017 after undergoing a surgery.

- g) There was no agreement between the Plaintiffs and the Defendants for cultivation of the Property hence the application for the subdivision.
- h) He married the second named Defendant in 2020 and brought her onto the Property.
- i) The Plaintiffs backed out on the promise to subdivide after the first named Defendant married the second named Defendant as the Plaintiffs are related to the first named Defendant's ex-wife.
- j) Acting on the undertaking by the Plaintiffs, the first named Defendant had applied to the Director of Lands for subdivision of the Property.
- k) Thereafter, the Director of Lands issued a conditional consent to transfer the Property from Shazad Khan to the Plaintiffs, which was subject to the subdivision and regularisation of the Defendants occupation.
- l) The Plaintiffs have been paid \$100 biannually from June 2018 to February 2021 in exchange for their undertaking to facilitate the subdivision but the Plaintiffs have failed to honour the undertaking.
- m) The Defendants refuse to vacate due to the aforesaid reasons.

12. The question before this Court now is whether the afore-mentioned reasons give any right to the Defendants to remain in possession of the Property, overriding the Plaintiffs' title.

13. The Plaintiffs' counsel in her submissions has relied on the following reasons to justify why an order for vacant possession should be granted by this Court:

- a) The Defendants had a verbal agreement with the previous lessee to occupy the Property in exchange of cultivation of the land. The Defendants failed to cultivate the land and due to this breach of the said agreement, the Plaintiffs issued notices to the Defendants to vacate the Property. The Defendants have refused to vacate the Property and are illegal occupants.
- b) The Defendants occupation was without the Director of Lands' consent and therefore is in breach of Section 13 of the State Lands Act 1945.

14. The facts of this case are similar to ***Singh v Nisha*** [2011] FJHC 651; Civil Action 2 of 2011 (14 October 2011). In ***Singh v Nisha***, the defendant had also been brought onto the property with the consent of the plaintiff's predecessor in title. The predecessor and the plaintiff had given an undertaking to the Department of Lands to regularise the defendant's occupation on the property. Tuilevuka J dismissed the plaintiff's application for vacant possession and held that "*it was a triable issue as to whether or not the defendant's alleged interest is established and if so, whether the plaintiff took the transfer of the property in question subject to those interests.*" It was further held that "*the defendant deposes in her affidavit in opposition that she has made substantial improvements on the dwelling house that she occupies at her own expense. This, allegedly,*

*was encouraged by the plaintiff's predecessor in title. When considered together with the fact that the plaintiff has been residing on the land with her two sons since 1993, and the purported undertaking by the plaintiff and her mother to subdivide the land and carve out a piece for the defendant's residential use – all raise a substantive triable issue as to whether the defendant indeed has a beneficial equitable interest in the land.”*

15. Similarly, in the present case, I note that the undertaking executed by the Plaintiffs predates the transfer of the lease to them. It thus follows that the Plaintiffs took the transfer of the lease with notice of the interest alleged by the Defendants and further provided an undertaking to subdivide the Property so as to create a residential lot for the Defendants.
16. Whether or not the Defendants are able to establish their alleged interest in the Property, and whether the Plaintiffs took the transfer of the Property subject to such interest is a triable issue.
17. Furthermore, in the current proceeding, there is no evidence before this Court as to whether: (i) the Defendants' occupation of the Property was ever consented to by the Director of Lands; and (ii) the undertaking was a condition required by the Director of Lands in order to grant consent for the transfer of the lease.
18. Therefore, I find that there are triable issues in this case which cannot be determined on affidavit evidence alone. There are disputes over the right of occupancy of the Defendants and this matter is best left to a proper Writ proceeding. The Plaintiffs are at liberty to initiate such a Writ proceeding should they wish to.
19. Accordingly, I make the following orders:

(a) The Plaintiffs' Summons for vacant possession is hereby dismissed.

(b) No order as to costs.

**P. Prasad**  
**Master of the High Court**



**At Lautoka**  
**06 February 2026**

*Solicitors:*

*Plaintiff – Messrs Samuel Ram Lawyers / Defendants – Legal Aid Commission*