

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 145 of 2024

IN THE MATTER OF Land Transfer Act
1971

IN THE MATTER OF section 169 of the
Land Transfer Act 1971

BETWEEN: **ANIL PRATAP, SHANTI DEVI, LALITA SHARMA,**
SURESH PRATAP, PRADEEP KUMAR, PRASAD
CHAUDHARY and **PARWANAND** collectively known as
TRUSTEES OF SANATAN DHARM PRATINDHI SABHA
OF FIJI

PLAINTIFF

AND: **PACIFIC POLYTECHNIC LIMITED** a duly registered
company under the laws of Fiji and having its registered office in
Lautoka

DEFENDANT

For the Plaintiff: Mr. M. Ajmeer and Mr. S. Nand

For the Defendant: Ms. M. Rakai

Date of Hearing: 22 January 2025

Date of Ruling: 24 April 2026

RULING ON SECTION 169 APPLICATION

1. This is the application filed by the Plaintiff by way of Originating Summons (Expedited Form) filed on the 8th of May 2024 seeking the following orders: -

- (a) An Order that the Defendant and all other occupants do give immediate vacant possession of all the piece of property occupied by them upon Crown Lease No. 4633 being Lot 1 on Plan S. 1281, part of section 40, Samabula East, Suva.
- (b) An Order that the Police assist with the serving of the Order granted by the Honourable Court.

(c) Costs of this application to be paid by the Defendant on a solicitor/client basis.

(d) Such further or other relief as this Honourable Court may deem just.

2. The application is made pursuant to section 169 of the Land Transfer Act 1971 and is supported by the affidavit of Shanti Devi, Lalita Sharma and Suresh Sharma, deposed on the 7th of May 2024 and filed on the 8th of May 2024.
3. The Defendant filed an Acknowledgment of Service and Messrs. Sherani & Co filed Notice of Appointment as counsel for the Defendant on the 3rd of June 2024.
4. The Defendant initially objected to short service and filed a Conditional Acknowledgement of Service on the 9th of July 2024.
5. The Summons was first called on the 10th of July 2024 and directions were given for the affidavits in response to be filed and served.
6. The Defendant filed and served the affidavit in opposition of Satya Nand Shandil, Deputy Director, deposed on the 31st of July 2024 and filed on the same date.
7. The Plaintiff the filed the affidavit in reply of Shanti Devi, Lalita Sharma and Suresh Pratap deposed on the 26th of August 2024 and filed on the 28th of August 2024.
8. The Defendant then filed 2 further supplementary affidavits setting out the authority given by the Defendant Company to the deponent to depose the affidavits on behalf of the Defendant.

The grounds for the Application

9. The affidavit in support of the application was deposed by Shanti Devi, Lalita Sharma and Suresh Pratap, the trustees of the Shree Sanatan Dharm Pratinidhi Sabha,, the Plaintiff in this matter.

10. The Plaintiff is the registered owner of properties described as all areas comprising of classrooms, office and garage and the school playgrounds excluding the open space at the end of the playground on Crown Lease No. 4633 bring Lot 1 on Plan S 1281 Part of Section 40 Samabula East LD Ref 4/16/4655 in the Tikina of Suva in the Province of Rewa.
11. The Defendant is an education institution run under the name of Pacific Polytechnic Limited.
12. Sometime in 2021, the Defendant approached the Plaintiff to allow the Defendants to rent out its properties to the Defendant.
13. The Shree Sanatan Dharm Pratinidhi Sabha agreed to rent out its properties to the Defendant.
14. The Plaintiffs and the Defendant entered into a tenancy agreement on 2nd May 2022 for the Defendant to take tenancy of the property located in Suva. The key obligations of the tenancy agreement were as follows: -
 - a) Pay a monthly rental of \$2, 000 VIP from 1st January 2023
 - b) Be responsible for the bills and utilities including the safety and security from the 1st day of October 2021.
 - c) Maintain infrastructure to OHS standards.
 - d) Be responsible for all ground and property maintained of the entire property which is subject to the agreement.
15. Clause 25 of the tenancy agreement set out how the tenancy agreement could be terminated.
16. The Defendant in possession also kept the property in really bad conditions which was contrary to their obligations as lease per clause 6 of the tenancy agreement. In one

instance the Plaintiff received a notice from the Suva City Council regarding overgrown grass on the property.

17. On 17 January 2023, the Plaintiff sent a Notice of Termination to the Defendant. This notice was to give the Defendant stating that the trustees were not happy with the condition of the property and were terminating the tenancy agreement.
18. On the 15th of February 2023, solicitors for the Plaintiff sent the Defendant a 90 day Notice for the Defendants to vacate the property.
19. Solicitors for the Plaintiff and the Defendant then exchanged correspondence, the Defendants disputing the terminations of the tenancy and the Plaintiff insisting that they were within their rights to terminate the tenancy agreement.
20. The Plaintiff insists that the tenancy agreement is at an end and the Defendant has no colour of right to remain on the property.

The Objections by the Defendants

21. The Defendant opposes the application and raised the following preliminary objections that the Court needs to be determine: -
 - i. The Plaintiff has not paid costs as ordered in a related matter (Civil Action No. HBC 172 of 2023) where Justice Qica ordered the Plaintiff to pay \$750 costs to the Defendant.
 - ii. The Summons was short served without 16 clear days as required by the Rules. The second subsequent service on 25th June was also short service prior to the next date of 10th July 2024. This is fatal as eviction proceedings are required to be served 16 clear days before the Court date.
 - iii. There are disputed facts and complicated legal issues as the termination of the Tenancy agreement is illegal and will need to be determined at a proper trial.
22. The Defendant also submits that the deponents of the affidavit in support lack the authority to depose the affidavit as they are not the persons authorised to do so. Only

the National President and at least 2 of the 7 Trustees are authorised to sign. Bimal Chaudhary is no longer a Trustee as he has resigned.

23. The Defendant submits that the purported termination is a contested issue best resolved through proper pleadings not through affidavits.
24. The Defendant denies the allegations that they did not maintain the compound and in fact they made improvements to the premises, including installing CCTV security cameras. This strengthened their position that as an educational institution, they had a legitimate expectation that they would be offered a long term lease as students were being enrolled and courses were offered and taught throughout the year.
25. The Defendant therefore maintains that this is not the correct forum to address this dispute therefore the application should be refused and, either dismissed or directed to continue as if it were begun by Writ.
26. The matter was fixed for hearing on the 22nd of January 2025.
27. At the hearing both parties made oral submissions, and the matter was adjourned for written submissions and the ruling.
28. The parties have also filed their respective submissions, and the matter is now adjourned for the Ruling.
29. In preparing the ruling, the Court will first need to address the preliminary issues raised by the Defendant.

The Preliminary issue

30. The Defendant has raised the following preliminary issues that need to be addressed by this Court:

- i. The Plaintiff has not paid costs as ordered in a related matter (Civil Action No. HBC 172 of 2023) where Justice Qica ordered the Plaintiff to pay \$750 costs to the Defendant.
- ii. The Summons was short served without 16 clear days as required by the Rules. The second subsequent service on 25th June was also short service prior to the next date of 10th July 2024. This is fatal as eviction proceedings are required to be served 16 clear days before the Court date.
- iii. There are disputed facts and complicated legal issues as the termination of the Tenancy agreement is illegal and will need to be determined at a proper trial.

31. In answer to (i) – if the costs have not been paid by now then it must be paid forthwith.

32. The provisions of section 170 of the Land Transfer Act provides as follows: -

“Particulars to be stated in summon

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 16 days after the service of the summons.”

33. The Defendant’s interpretation of the above provision is that the Summons issued by the Registry should not be served less than 16 days from the returnable date of the Summons.

34. The Originating Summons and affidavit in support was filed on the 8th of May 2024 and the Registry assigned the 29th of May 2024 as the returnable date for the expedited Originating Summons.

35. The Summons was served on the Defendants on the 28th of May, one day before the returnable date. The Defendant did not appear on the date although they did file Acknowledgement of Service and Notice of Appointment of Solicitors.

36. The Court gave directions for service, and the matter was adjourned to the 10th of July. The defendant was served on the 25th of June 2024, which was under the 16 days

required by the Act. The Defendant then filed a Conditional Acknowledgement of Service.

37. The arguments for short service are somewhat undermined by the fact that the Defendant has filed the Acknowledgment of Service on the 30th of May and Notice of Appointment of Solicitors on the 3rd of June 2024.
38. They have also appeared and participated in these proceedings.
39. I find that there has been short service however I find that any prejudice is outweighed by the interest of justice and the need to hear the application. The Court will proceed to rule on this application.
40. With respect to the third preliminary objection, applications under section 169 of the Land Transfer Act are summary applications. Section 172 sets out the following: -

“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.” (emphasis added)

41. The key factor is whether the Defendant can establish a right to remain in possession of the land. In this case there is a tenancy agreement that gave the Defendant the right to be in possession. The Plaintiff submits that they have terminated this agreement therefore the Defendant no longer has any right to remain on the property.
42. The Defendant submits that the termination is disputed and there are other factual and legal issues that need to be resolved by way of viva voce evidence and this summary procedure is not appropriate and should be dismissed.

43. This will be addressed later in this ruling.

Analysis

44. This is an application for ejectment pursuant to section 169 of the Land Transfer Act 1971. The relevant section provides as follows: -

“Ejectors

169The 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.”

45. The Plaintiffs here are the Trustees of the Sanatan Dharm Pratinidhi Sabha Fiji. The Sanatan Dharm Pratinidhi Sabha is the registered owner of properties described as all areas comprising classrooms, office and garage and the school playground excluding the open space at the end of the playground on Crown Lease No. 4366 being Lot 1 on Plan S 1281 part of Section 40 Samabula East LD Ref 4/16/4655 in the Tikina of Suva and Province of Rewa.

46. The Plaintiffs have been the registered proprietors of the property since 2 March 1972. As the Plaintiff is a legal entity they are represented by Trustees in any proceeding. This was confirmed by the High Court in the case of Roderick Jepsen & others vs Dinesh Kumar Mani – Civil Action No. HBC 116 of 2024 as follows: -

“[30] Alternatively, Plaintiff can institute action as last registered proprietor of the Land. Interpretation Section of Land Transfer Act 1971, defines proprietor exclusively, as

"Proprietor" means the registered proprietor of land, or of **any estate or interest therein**;(emphasis added)

[31] From the above it is clear that any registered proprietor of the Land can institute this action by way of originating summons in terms of section 169 of Land Transfer Act 1971 and there is no need to examine the constitution of the association in order to ascertain validity of this action instituted by trustee.

[32] There is no need for all the proprietors registered to institute action. It required only a registered proprietor.

[33] Defendant is estopped from denying registered proprietor of the Land registered on the memorial as interest holder as "Appointment of Trustee" recorded in the memorials of both CT 3259 and 3260. This was the same position that remained on 1.3.2018 when the lease agreement was entered, which contained common seal of the association.

[34] Defendant in the submission had admitted at least one trustee named in this action is registered as trustee, and that is sufficient for Plaintiff to institute action for eviction in terms of Section 169 of Land Transfer Act.

[35] Plaintiff as trustee can institute an action to secure vacant possession and preliminary objections of the Defendant are overruled"

47. The Plaintiffs as trustees therefore have standing to institute this action on behalf of the Plaintiff organisation.

48. There is also no dispute that the Plaintiff organisation is the last registered proprietor of the property in question - Crown Lease No. 4366 being Lot 1 on Plan S 1281 part of Section 40 Samabula East LD Ref 4/16/4655 in the Tikina of Suva and Province of Rewa.

49. The parties to this action entered into a Tenancy agreement which contained a termination clause requiring the party intending to terminate, to give 90 days' notice of termination.

50. The Plaintiff submits that the date of the Notice to terminate the tenancy agreement was issued on the 15th of February 2023. This action for ejectment was filed on 8th May 2024. In effect the Defendant had a total of 448 days between the 15th of February 2023 and 8th May 2024.

51. The Defendant in their submissions, contends that they have continued to pay the monthly rent into the Plaintiff's bank account, and contends that they now have a tenancy at will.
52. Section 172 is very clear – once the Plaintiff has established that they are the last registered proprietor of the property in question, the Defendant now must show cause that they have a right to remain in occupation.
53. The Defendant has raised the following issues to show cause: -
- a) The termination is disputed as there are complex legal and factual issues that need to be resolved properly therefore summary proceedings are not appropriate.
 - b) The Defendant is an educational institution and had a legitimate expectation to a long-term lease, the Court needs to take this into consideration
 - c) The Defendant has been enrolling students, and any disruption will be very prejudicial for them so the Court ought to consider this issue as well.
 - d) They have been paying the monthly rental to date.

The Court's findings

54. There is no dispute that the Plaintiff is the last registered proprietor of the property in question namely Crown Lease No. 4366 being Lot 1 on Plan S 1281 part of Section 40 Samabula East LD Ref 4/16/4655 in the Tikina of Suva and Province of Rewa.
55. I also find that there was a tenancy agreement between the parties, which has effectively been repudiated by the Plaintiff as they have given the Defendant more than three times the required notice of termination under the tenancy agreement – 448 days as opposed to 90 days. That being the case, the Defendant no longer has a legal right to be on the property.
56. The issues raised by the Defendant can be addressed through other civil processes for damages and compensation. Any monies paid to the Plaintiffs are to be accounted for and returned to the Defendants.

57. This matter has been pending for nearly 15 months, and the Court takes full responsibility for the delay. There is no justification and the court can only seek forgiveness from the parties for the delay in delivering the decision.

58. The action will therefore succeed and as costs follows the cause, I will grant costs summarily assessed at \$1, 000.

This is the Ruling of the Court

1. **The Defendant will grant the Plaintiff immediate vacant possession of the property - Crown Lease No. 4366 being Lot 1 on Plan S 1281 part of Section 40 Samabula East LD Ref 4/16/4655 in the Tikina of Suva and Province of Rewa.**
2. **The order will be suspended for one month to allow the Defendant to vacate the property.**
3. **The Plaintiff will return to the Defendant all the rental monies that have been paid into their bank account since May 2024, the date this action was instituted.**
4. **The Defendant will pay costs to the Plaintiff summarily assessed at \$1, 000.**
5. **There is a right of appeal**


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Mr. Justice Usaia Ratuveli

Puisne Judge



cc: - S Nand Lawyer
- Sherani & Co.