IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 276 of 2024

BETWEEN: **SIGATOKA TOWN COUNCIL**

PLAINTIFF

AND: **CATHERINE SHAYAL RAM t/a Wholesalers & Friendly Express**

DEFENDANT

BEFORE: **MASTER S SAUMATUA**

Counsel for the Plaintiff: **Mr J Singh & N Madhwan**
Counsel for the Defendant: **Mr M Yunus**

Date of Hearing : **14 July 2026**
Date of Judgment : **3 August 2026**

RULING

Introduction

This is the Plaintiff's application by way of Summons filed on 31 October 2024 for the Defendant to show cause why she should not give vacant possession to the Plaintiff of the premises situated on CT 5216, Lease No. 39283 being Lot 2 on DP No. 1564 in Sigatoka Town and costs of this application pursuant to section 169 of the Land Transfer Act 1971.

There was an Affidavit in Support sworn by Muni Anand Samy Pillay, the Acting Chief Executive Officer of the Plaintiff. The application is opposed by the Defendant who filed an Affidavit in Opposition on 12 March 2025. The Plaintiff thereafter filed an Affidavit in Reply on 7 July 2025.

I have considered the affidavits filed by both parties, including the numerous annexures thereto, the written submissions and the oral submissions made at the hearing.

Discussion

The principles governing applications under sections ***169 to 172 of the Land Transfer Act 1971*** are well settled. In ***Appiamma v Prasad CA HBC 110 of 2014*** the High Court explained that these provisions provide a summary procedure intended to restore possession promptly to a registered proprietor where an occupier is unable to demonstrate a legal right to remain in possession.

Accordingly, this Court is not concerned with determining every dispute between the parties. The question for determination is whether the Plaintiff has established its entitlement to possession and whether the Defendant has shown a legal right to continue occupying the premises.

The Plaintiff relies on its registered title and has produced a certified copy of Lease No. 39283 on CT 5216. There is no dispute that the Plaintiff is the registered proprietor of the land.

The Plaintiff has also produced tenancy agreements entered into between the parties, including the Memorandum of Agreement dated 2 January 2019 and the subsequent tenancy agreements relating to kiosks. The documents show that the Defendant occupied the premises as a tenant of the Plaintiff and paid rent pursuant to those agreements.

The Torrens system protects the rights of a registered proprietor. The registered proprietor has an indefeasible title against the entire world.

As explained in ***Jamnadas v Honson Ltd [1985] 31 FLR 62*** and adopted in ***Appiamma v Prasad [supra],*** once title is established the occupier must demonstrate a legal basis for remaining in possession. In the present case, the Plaintiff has established both its title and the tenancy relationship between the parties.

The evidence further shows that the tenancy expired and that the Plaintiff repeatedly informed the Defendant that the kiosks would be tendered and that she would be required to vacate. The Defendant was notified of the expiry of the tenancy and the requirement to vacate.

The Defendant does not deny her occupation of the premises. Her principal argument is that her late parents purchased the kiosk from one Krishna Rattan Bhan and that the kiosk forms part of her inheritance. She therefore contends that she has a right to remain in possession.

I have carefully considered that argument.

In ***Morris Hedstrom Ltd v Liaquat (Action No.* 153/87** , subsequently applied in ***Hari Narayan v Shiu Narayan*** **Civil Appeal No. ABU 0005 of 2008** and ***Deo v Mati [2005] FJHC 136***, the Courts held that once a registered proprietor establishes title, the burden shifts to the occupier under section 172 to show some right to possession. While final proof is not required, there must be tangible evidence establishing an arguable right to remain in possession. Mere assertions, beliefs or allegations are insufficient.

The Defendant says that her family purchased the kiosk. However, no document has been produced establishing ownership of the premises by the Defendant or her parents.

On the contrary, the documentary evidence produced by the Plaintiff demonstrates a continuous landlord and tenant relationship extending over many years. The documents show tenancy agreements, rental payments, requests for renewal of tenancy and correspondence concerning the transfer of tenancy arrangements.

Particular reliance was placed by the Defendant on the letter dated 26 March 2002 from Sarojini Bhan. I have considered that document carefully. It is far from establishing ownership of the premises.

The letter merely requests cancellation of an existing agreement and transfer of the tenancy arrangement to Adi Vika Ram. Thereafter, fresh tenancy arrangements were entered into with the Plaintiff.

In my view, that correspondence is more consistent with a transfer of a business operation or tenancy arrangement than ownership of the Plaintiff's property. The 2019 Fire Investigation Report further confirms the Plaintiff's ownership when it made a claim to its brokers for the damage caused by the fire.

The subsequent tenancy agreements entered into with the Plaintiff are inconsistent with the Defendant's claim of ownership and support the Plaintiff's contention that the relationship remained one of landlord and tenant.

Significantly, the tenancy agreements expressly state that the Plaintiff is the owner of the kiosks situated on the land and that the Defendant occupies them as a tenant. Those agreements were voluntarily entered into by the Defendant. In my view, this is compelling evidence of the parties' understanding of their legal relationship. It is difficult to reconcile an acknowledgment of the Plaintiff's ownership and the payment of rent with the Defendant's present claim that the kiosks were owned by her family.

I also note that the Defendant participated in the tender process after being invited to do so by the Plaintiff. While not determinative, such conduct is also difficult to reconcile with a claim of ownership of the premises.

Counsel for the Defendant also argued that the Plaintiff was required to obtain the consent of the Director of Lands before bringing this application.

I do not accept that submission. In ***Prasad v Chand* [2001] FLR 164**, subsequently applied in ***Appiamma v Prasad [supra]***, the Court held that proceedings under section 169 of the Land Transfer Act are not a dealing requiring consent under the State Lands Act. The present proceedings simply seek recovery of possession from an occupier and do not involve a transfer, assignment or other dealing with the leasehold interest.

I accept that the Defendant and her family have occupied the kiosks for many years and may genuinely believe that they have some proprietary interest in them. I also accept that vacating the premises will cause hardship and disruption to her business. However, this Court must determine the application on the evidence before it and in accordance with the law.

Applying the principles in ***Appiamma v Prasad***, ***Jamnadas v Honson Ltd***, ***Morris Hedstrom Ltd v Liaquat***, ***Hari Narayan v Shiu Narayan*** and ***Deo v Mati***, I am satisfied that the Plaintiff has established its entitlement to possession. The Defendant has not produced tangible evidence establishing a legal right to remain in possession and has therefore failed to show cause within the meaning of section 172 of the Land Transfer Act.

I am satisfied that:

(a) the Plaintiff is the registered proprietor of the premises;

(b) the Defendant entered and occupied the premises as a tenant;

(c) the tenancy has expired;

(d) notices requiring the Defendant to vacate were served; and

(e) the Defendant has failed to establish a legal right to remain in possession.

The Plaintiff is therefore entitled to the relief sought.

Orders

1. The Plaintiff's application is granted.
2. The Defendant shall give vacant possession of Kiosks 6 and 7 situated on CT 5216, Lease No. 39283, being Lot 2 on DP No. 1564 in Sigatoka Town on or before 2 September 2026.
3. In default of compliance, the Plaintiff shall be at liberty to apply for a writ of possession.
4. The Defendant shall pay the Plaintiff's costs, summarily assessed in the sum of $1,200 on or before 2 September 2026.

It is so ordered.

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Setavana Saumatua
Master of the High Court

At Lautoka
3 August 2026

HIGH COURT OF FIJI
LAUTOKA

Solicitors: *Plaintiff* — *Messrs JK Singh Lawyers*
Defendant — *MY Law*