

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

Civil Action No. **HBC 87 of 2009L**

**BETWEEN** : **CIVIL AVIATION AUTHORITY OF FIJI ISLANDS** a body  
corporate duly incorporated under the Civil Aviation Act, Caps 174 A

**Plaintiff**

**AND** : **MOSES O' CONNOR** of Quarters No. 7, New Town, CAAFI  
Compound, Nadi Airport

**Defendant**

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**FINAL JUDGMENT**

**Of: Inoke J.**

**Counsel Appearing: Mr. R. P. Singh for the Plaintiff**  
**No Appearance for the Defendant**

**Solicitors: Messrs Patel & Sharma for the Plaintiff**  
**No Appearance for the Defendant**

**Date of Hearing: 28 August 2009**

**Date of Judgment: 28 August 2009**

**INTRODUCTION**

[1] This is an application by the Civil Aviation Authority of the Fiji Islands (**CAAFI**) to evict one of its former tenants.

[2] The application is made under **s 169** of the **Land Transfer Act**.

## **THE SUMMONS AND AFFIDAVIT**

[3] The Originating Summons was filed on **18 June 2009** supported by an affidavit sworn by Acting Assistant Manager Administration of CAAFI.

[3] The affidavit says that CAAFI is the registered lessee of the subject property on which residential quarters have been built. The Defendant leased the quarters from CAAFI in 2003 under a tenancy agreement which expired in February 2006. The Defendant has remained on the property since and has not paid any rent since March 2008. The Defendant was served with an eviction notice on **20 February 2009** requiring him to vacate the property within a month. The Defendant did not obey the eviction notice so these proceedings were subsequently issued on **18 June 2009** and served on him personally on 23 July 2009 and again on 1 August 2009. The Defendant failed to appear at any time so the hearing proceeded in his absence on **28 August 2009**.

## **THE LAW**

[4] The following provisions of the **Land Transfer Act** [Cap 131] are relevant:

### ***Ejectors***

**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.*

[5] CAAFI is a person within s 169 (b) or (c) of the Act and is entitled to bring these proceedings. More than 16 days have gone past since service of the application. The Defendant did not appear at the hearing to show cause. Counsel for the applicant read the affidavit in support as proof of the matters required by s 171 of the Act. I accept such proof of the applicant's entitlement to an order for vacant possession. However, I shall give the Defendant 28 days for him to move out.

### **COSTS**

[6] The applicant asks for costs. I think an award of costs is justified in these circumstances where the Defendant has not bothered to appear or to provide any explanation. I award costs of \$500 to the applicant.

### **ORDERS**

[7] I therefore ORDER that:

1. The Defendant vacate the premises occupied by him at Crown Lease 3469 within 28 days.
2. The Defendant pays the Plaintiff's costs of \$500 within 2 months.

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**Sosefo Inoke**  
**Judge**