

IN THE HIGH COURT OF FIJI AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HRC 238 OF 2012

BETWEEN: SHAMENDRA K RAM of 31 Saru Back Road,
Lautoka, Self Employed and Farmer **PLAINTIFF**

AND : SEMISI TORA No 3 of Tore Sea Side Road, Lovu,
Lautoka. Landowner **DEFENDANT**

Appearances : Plaintiff appeared In Person
Mr Nacolawa for the Defendant

Date of Hearing: 20/02/2014

Ruling

- 1] The Plaintiff by his interparto Notice of Motion dated 27th January 2014 is seeking the following orders
 - i) That the Defendant, Defendant's families, servants and agents to stay 500 meters away from the Plaintiff, the Plaintiff's farm and produce.
 - ii) The Defendant, Defendant's families, servants and agents
 - a. *To immediately remove the dangerous fire wood kitchen in the Plaintiff's farm*
 - b. *To cut/remove the mango trees enlarging to the Plaintiff's crops*
 - c. *To remove all the cassava plants from the Plaintiff's farm and drains*
 - d. *To remove the electricity posts from the Plaintiff's boundary/driveway*
 - e. *Restrained from using the Plaintiff's driveway*
 - f. *Stop throwing and remove rubbish from the Plaintiff's farm*
 - g. *Rostrained from interfering with any AID agencies help to Plaintiff's farm*
 - iii) The Restraining Order against the Defendant, families, and servants/agents be effective until the full and final determination of the whole case including any if Police case.

- iv) Costs of this application be paid by the Defendant
 - v) Police to assist in serving, assist in execution and monitoring of this Order
- 2] The Plaintiff has filed an affidavit sworn on 24th January 2014 in support of the said interparte Notice of Motion.
 - 3] When this matter was taken up on the 30th January 2014 defendant was granted a date to file an affidavit in opposition to the Plaintiffs application.
 - 4] On 20th of February 2014 when this matter was called Counsel for the defendant made oral submissions and said that this matter had been struck out and they have appealed against the said Order. He prayed Court to strike out the Plaintiffs application with cost as this matter no more before this Court.
 - 5] The Plaintiff made submissions in reply and stated that this matter has not been struck out and that a default judgement has been entered in his favour. He stated that he is seeking the Orders in terms of the interparte Motion filed by him.
 - 6] The Court granted a date for both parties to file written submission on this issue and the submissions have been filed accordingly.
 - 7] In the submission filed on behalf of the defendant it is admitted that due to non appearance of the defendant or his Counsel a default judgement has been entered on 25th March 2013.
 - 8] It is stated on the said submissions that the case is very much alive and apologise for their mistake in informing Court that the matter is no more before the Court.
 - 9] As regard the present Application of the Plaintiff it is stated in the said submissions that very order the Plaintiff is seeking is already in place as Justice Nwanas Order was extended to 2nd April 2014 when the matter was called before the Master on 7th January 2014.
 - 10] I will now refer to the Orders of Justice Nwana dated 26th November 2012. The Orders are as follows:
 - i) **THAT** an injunction restraining Order that the Defendant, families, and/or their servants and/or their agents to stay 500 meters away from the Plaintiff, Plaintiff servants and agent and Plaintiff's farm and produce.

- ii) **THAT** The Plaintiff to pay \$8,000.00 [eight thousand dollars] to the Deputy Registrar of the High Court.
 - iii) **THAT** The Restraining order is granted only until 5th December 2012.
 - iv) **THAT** The Defendant to file the Reply and Statement of Defence of objection on or before 5th December 2012.
 - v) **THAT** The Plaintiff to file reply within 7 days thereafter.
 - vi) **THAT** the matter is adjourned to 5th December 2012 before the Master.
11. The restraining order granted until 5th December 2012 has been extended until 18th February 2013 and not extended thereafter.
 12. On 24th January 2014 the Plaintiff has filed an Exparte Notice of Motion seeking an order to extend the restraining Order made by Justice Nwana until 7th February 2014.
 13. When this Exparte Notice of Motion was forwarded to me by the registry I have made the following Order In Chamber.

"The injunction granted has lapsed. Therefore Extension cannot be granted. File fresh application and move"
 14. Consequent to my order the plaintiff has filed the above mentioned interparte Notice of Motion dated 27th January 2014 supported by an affidavit seeking restraining orders against the defendant.
 15. The 1st Restraining order sought by the Plaintiff in the present Notice of Motion is identical to the restraining order granted by Justice Nwana on 26th November 2012.
 16. When the Plaintiffs sought an order to extend it on 24th January 2014 I have refused his application stating that it has already lapsed.
 17. However when this matter was called on 7th February 2014 in the Masters Court in respect of the proceedings of the default judgement the Learned Master has extended the said restraining order till 2nd April 2014.
 18. Therefore the 1st Restraining Order sought by the Plaintiff in the new application is redundant and unnecessary as the very order is already in place.

19. The Plaintiff has not disclosed this fact when the matter came up before me and proceeded to seek orders in terms of his Notice of Motion including an Order which is already in place.
20. For the above reason this Court will not consider whether the other Orders sought by the plaintiff should be granted or not as he has already obtained one order from another Court and suppressed that fact to this Court.
21. Accordingly, I make the following orders:
 - a) The Plaintiffs interparte Notice of Motion dated 27th January 2014 is dismissed.
 - b) The parties to bear there own costs.



L.S. Abeygunaratne

Judge

20/3/2014

