

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

HBC NO. 148 OF 2017

BETWEEN : **SHRI YUCKT RAJENDRA PRATAP**, of 3 Norfolk Place,
Pukete, Hamilton, New Zealand, Pensioner

1st Plaintiff

AND : **RUPIKA NANDAN**, of 289 Ulster St, Hamilton, New Zealand,
Lawyer.

2nd Plaintiff

AND : **SUDHIR NANDAN**, of Legalega, Nadi, Retired.

Defendant

Counsel : Mr. Roopesh Singh for the Plaintiff.

: Ms. L. Vateitei for the Defendant.

Date of Hearing & Ruling : 15th September, 2017.

Ruling by : Justice Mr. Mohamed Mackie

R U L I N G

[On the Extension of Interim Injunction]

[A] **INTRODUCTION**

1. This ruling pertains to an Ex-parte interim injunction obtained before me by the 1st named Plaintiff on 16th August 2017.

2. The 2nd named Plaintiff, who is said to be the Daughter of the 1st named Plaintiff, got herself, subsequently, added in order to stand as a surety for any possible damages that could be caused to the Defendant on account of the interim injunction, by pledging a residential property that she claims to have got from the 1st Plaintiff father. After the addition of the 2nd named Plaintiff, the statement of claim now stands amended with no material changes, except for introducing the said residential property as security for damages.

3. In this matter the substantial reliefs prayed for by the 1st Plaintiffs in terms of his original Statement of Claim are as follows;

1. *A declaration that the Defendant, being the registered Lessee of the land known as Lot 1 on ND 2276 registered in TLTB Lease 29450, has erected an access road which is not within the building boundary line and that this was without the consent and knowledge of the Plaintiff.*
2. *A declaration that the Defendant has encroached deliberately on to part of the adjacent land known as Qualibuto No:-2 on TLTB lease No: - 11389. That the estimated dimension of encroachment is almost 2.0 meters.*
3. *An order for the defendant to have the boundary pegs corrected and to remove any encroaching structure;*
4. *An order for payment of cost in the event the defendant fails to correct the boundary pegs. (damages meant as "Cost" it appears)*

4. The Ex-Parte interim injunction prayed for and obtained by the 1st Plaintiff reads as follows;

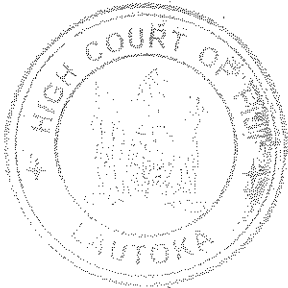
1. **AN INJUNCTION** restraining the defendant, his servants and/or agents whosoever from selling, transferring and/or dealing with Native Lease No: - 29450 at Qualibuto No: 2.
2. **AN INJUNCTION** restraining the Registrar of Titles from Registering any transfer or charge on the Native Lease No: - 29450 at Qualibuto No.2 to anyone, except the Plaintiff, until the determination of this action.

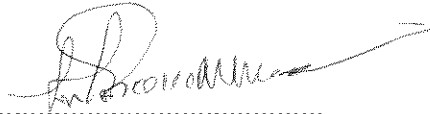
5. When closely scrutinize the averments of the Statement of Claim and the reliefs prayed for in the prayer thereto, it appears that the 1st Plaintiff is moving for certain declarations with regard to the demarcation of a road by the defendant, allegedly, encroaching in to a land adjacently located. It is also apparent that the 1st named Plaintiff has not submitted any document to vindicate his, purported, right to any land so, adjacently, located to the road demarcated by the defendant and affected by the said road demarcation.
6. Further, in this action the Court has not been called upon to decide any lease right or entitlement of the Plaintiff for the so called adjacently located land. It is said that the 1st named Plaintiff is in the process of sorting out the issue of title externally.
7. According to the Ex -Parte notice of motion for the interim injunction, what the Plaintiff wants is to stop the Defendant from selling his land in lease No:-29450 and registering it until the Plaintiff sort outs his question of title, which, in any event, is not a question before this Court for adjudication.
8. Although, the Plaintiff in his statement of claim stated that land in the Lease No: - 11389 belong to him, he has not substantiated it through any documentary proof at the time of obtaining interim injunction.
9. However, when the documents tendered by the Defendant, along with his Affidavit in reply, are scrutinized, it appears that the land in the aforesaid lease No: 11389, containing 10- A, 00-R, 10-P in extent and meant for agricultural purpose, had been a subject of the Estate of late one SHUINANDAN (Grand Father) as per the Probate and the Last Will marked -Exhibit-3. It is submitted that the 1stnamed Plaintiff, who also was a beneficiary thereto had, admittedly, allowed the Defendant to obtain the new lease for the entire land in the name of the Defendant as per an alleged verbal agreement and it is how lease No:- 29450 (Exhibit -4) in the name of the Defendant has now come in to existence. (Vide- paragraphs 6 to 10 of the statement of claim).
10. The relief obtained by the injunction should primarily be protecting and preserving any right that is to be declared and obtained through the main action at the end of the trial as a final relief.
11. The Plaintiffs admit that the Defendant is the present lease owner of the land in leases No: 29450 (Exhibit 4) which is said to have been issued in place of Native lease No:-11389 (Exhibit-2) as stated above.

12. The question that arises is, can the Defendant be restrained from selling his land in lease No: - 29450, title of which is not disputed by the Plaintiffs, just because of the allegation that the road demarcated by the Defendant includes a strip of about 2.0 meters of land from the adjacently located land while the 1st Plaintiff has not submitted any document to show his right, title or ownership.
13. Today the Learned Counsel for the Plaintiff in her submissions moves to maintain the status quo for 7 days or less to enable her to produce further documents to substantiate plaintiff's claim, mainly to show why the interim injunction should be extended. With due respect to the learned Counsel, I cannot agree with her , simply because the ex-parte interim injunction already obtained cannot, subsequently, be fortified and allowed to stand on documents and evidence to be submitted now or at a later stage. The interim injunction obtained at initial stage should stand only on the documentary evidence on which it was founded and issued. No fresh evidence can be obtained to extend it further.
14. The Plaintiffs have failed to show that they have any lease right over the land, through which the defendant is said to have demarcated a road way (encroaching about 2 meters). Also the plaintiffs are clearly admitting the lease right of the defendant as per the Agricultural Lease No: - 29450, which is for 10 Acres and 10 Perch. Plaintiffs have not satisfied the Court that they have a prima-facie case against the Defendant as far as the main reliefs prayed for in the Statement of Claim are concerned.
15. It is also noteworthy that the plaintiffs in the prayer to the Statement of claim have prayed for cost (damages) as the 4th relief, in the event the Defendant fail to correct the boundary pegs as per 3rd relief prayed for. When the damage is quantifiable, generally injunctions will not be granted since the Plaintiff can be compensated at the end of the trial, if the Court finds that any damage is caused to the Plaintiff by the alleged activity of the Defendant.
16. Further, in the event the interim injunction is extended today, the damages that can, probably, be caused to the Defendant as a result of not being able to go through the sale scheduled for today, is comparatively very high when compared to the damages, if any, the Plaintiff will have to incur as a result of the alleged encroachment of 2:00 meters in to a strip of land, for which the 1st Plaintiff has not shown any tangible ownership, interest or right.
17. Conversely, in the event the 1st Plaintiff incurs damages as a result of the refusal to extend the interim injunction, the maximum he is bound to lose is only 2 meter strip

of land, which can be conveniently compensated by adequate damages as he has prayed for in the prayer to the statement of claim, however, subject to determination of his purported right for the adjacent land, which is not a matter for determination before this Court as aforesaid. In view of the above the court is satisfied that the test of balance of convenience favours the Defendant.

18. However, the Plaintiffs are at liberty to submit any document to substantiate the main relief prayed for in the Amended Statement of claim and not to fortify their claim for the extension of the interim injunction at this stage.
19. Moreover, the allegation levelled by the learned Counsel for the Defendant with regard to the suppression of several material facts also cannot be disregarded or lightly taken. It is brought to the notice of the Court that the 1st plaintiff had caveated the subject matter twice and the Solicitors of the Defendant were able to have them removed. Further, it is highlighted that the land pledged by the 2nd Plaintiff for the possible damages is also a subject of a current Mortgage. These have not been denied by the learned Counsel for the Plaintiffs.
20. In view of the foregoing revelations, I am of the view that the interim injunction obtained on behalf of the 1st Plaintiff can no longer be in operation.
21. Accordingly, the application for the extension of the interim injunction is hereby refused. The plaintiffs will pay a summarily assessed cost of \$ 300 to the Defendant.




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A.M.Mohammed Mackie
Judge

At Lautoka
15th September, 2017

Copies to be served to

1. Messrs. Patel & Sharma - Solicitors for the Plaintiff
2. Astas Law – Solicitors for the Defendant