

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

**CIVIL ACTION NO. HBC 253 OF 2019**

**BETWEEN** : **SUBHAS CHAND AND SHAREEN SHARMILA CHARAN** both of  
Saweni, Lautoka, Retired and Domestic duties respectively.

**PLAINTIFFS**

**AND** : **SUSHIL PRAKASH AND SUNIL PRAKASH** both of Martintar,  
Nadi, Taxi Driver and Carpenter respectively.

**FIRST DEFENDANTS**

**AND** : **ITAUKEI LAND TRUST BOARD** a body corporate duly constituted  
under the iTaukei Land Trust Act Cap 134.

**SECOND DEFENDANT**

**Appearances** : Mr K. Patel for the plaintiffs  
No appearance for the defendants

**Date of Hearing** : 24 January 2020

**Date of Ruling** : 27 January 2020

## **R U L I N G**

[on interim injunction]

[01] This is an *inter partes* application supported with an affidavit of Subhas Chand, the first named plaintiff for an interim injunction (*"the application"*).

[02] The application seeks the following orders:

1. *Restraining first and second defendants and their servants and/or agents from dealing and/or alienating the land and dwelling built on it which forms part of the Instrument of Tenancy No. 7897 being Subdivision Lot 1 in the Tikina of Vuda in the Province of Ba having an area of 4.0468 hectares owned by Mataqali Nabasara; Tokatoka Wadigi (hereinafter "Saweni Property") until determination of proceedings.*
2. *First defendants to preserve and maintain in good condition the Saweni Property until determination of proceedings.*

3. *Stay of proceedings in Civil Action no. HBC 222 of 2018.*

[03] It is stated that the application is made under O 29, R 1 of the High Court Rules 1988, as amended ('HCR'). That rule provides:

*Application for injunction (O 29, R 1)*

*"1 (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.*

*(2) Where the applicant is the plaintiff and the case is one of urgency and the delay caused by proceeding in the ordinary way would entail irreparable or serious mischief such application may be made ex parte on affidavit but except as aforesaid such application must be made by notice of motion or summons.*

*(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit."*

[04] The applicant is the plaintiff who has made this application after the issue of the writ.

[05] The orders sought, except for prayer 3, appear to be necessary to preserve or to maintain the *status quo* of the property in dispute. They are restraining orders in nature.

[06] Mr Patel on behalf of the plaintiff informs the court that the plaintiff is not pushing for the order no. 3 as the first defendant has withdrawn his eviction proceedings initiated against the plaintiff in respect of the property (HBC 222 of 2018).

- [07] The defendants are not appearing or represented at the hearing. The court granted 28 days to the first defendant to file and serve their response when the matter was called over on 21 October 2019. However, they did not file any opposition to the application.
- [08] The second defendant had already informed the court that they will not deal with the land until final determination of the matter.
- [09] The plaintiff complaint is that a lease has been issued mistakenly in favour of the first defendant and the plaintiff has issued a writ action against the defendant to cancel that lease. The writ seeks an order cancelling the transfer and registration of the property effected in favour of the first defendant on the ground of mistake.
- [10] The affidavit evidence of the plaintiff has been unchallenged.
- [11] The principles applicable to an application for interim relief as outlined by *Lord Diplock in American Cyanamid Co v Ethicon Ltd* [1975] AC 396 are as follows:
- a) *Is there a serious question to be tried?*
  - b) *Are damages an adequate remedy?*
  - c) *Who does the balance of convenience favour?*
  - d) *Are there any special factors?*
- [12] The writ seeks to cancel the sale and purchase agreement and the transfer and registration of the property in favour of the first defendant. It raises a serious question to be tried at the trial. There has been no dispute on this point.
- [13] The plaintiff occupies the property as the owner of the same. It appears that the plaintiff had never intended to transfer the property to the first defendant. In the circumstances, damages would not be an adequate remedy to the plaintiff. Even if damages are adequate remedy, there is no undertaking by the first defendant showing his ability to pay the compensation the court would order against him.
- [14] The balance of convenience favours the plaintiff as he is in occupation of the property. There has been no dispute on this aspect as well.
- [15] I do not think any other special factors involved in this case.

[16] Upon perusing the affidavit and its annexures and having heard the submissions of the plaintiff's counsel made in court, I am satisfied that I should grant an interim injunction as in prayers 1 and 2 of the application. So I do. The interim injunction will be valid until final determination of the matter or until further order of the court as the case may be. No order as to costs.

**The result**

1. Interim injunction as in prayers 1 and 2 granted.
2. No order as to costs.

*H.M. Mohamed Ajmeer*  
27/1/20

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**M.H. Mohamed Ajmeer**  
**JUDGE**



**At Lautoka**  
**27 January 2020**

Solicitors:

Krishnil Patel Lawyers, Barristers and Solicitors for the plaintiffs