

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 226 of 2019

BETWEEN

MAHENDRA KISHORE SINGH of 1589 Meadowview Road Apt.D,
Sacramento CA 95832.

PLAINTIFF

AND

iTAUKEI LAND TURST BOARD a body corporate duly constituted under the
Native Lands Act of 431 Victoria Parade, Suva.

FIRST DEFENDANT

AND

RAJ SINGH aka RAJANDAR SINGH originally of 19 Panorama Street,
Bray Park, Queensland, 4500, Australia but currently residing at
Lot 1, Nasesara No 5 Subdivision.

SECOND DEFENDANT

Counsel : Mr. Reddy J. with Ms. Conivalagi M. for the Plaintiff
Ms. Vokanavanua Q. for the 1st Defendant
2nd Defendant absent and unrepresented

Date of Hearing : 18th June 2020

Date of Ruling : 21st July 2020

RULING

(On the application for an injunction)

[1] The plaintiff instituted these proceedings against the 1st defendant claiming the following:

- a. For a declaration that the plaintiff is the registered lessee of the property comprised and described in Agreement for Lease Reference No 4/14/2303 being Nasesara No 5 Subdivision Lot 1 in the Tikina of Nausori in the province of Tailevu containing an area of 1173 Sqm.
- b. That the plaintiff is entitled to occupation and enjoyment of the property without interference from the defendant or its servants and/or agents or anyone else.
- c. An order restraining the defendant by its servants and/or agents from in anyway interfering or causing nuisance to the plaintiff in the peaceful occupation and enjoyment of the said lease.
- d. Costs of the action on a Solicitor / Client basis.

[2] The plaintiff on 07th August 2019 filed ex-parte notice of motion, which was converted to an inter parte notice of motion by the court, seeking the following orders:

- (i) An injunction restraining the first and second defendants either by themselves or their servants and / or agents from interfering with the peaceful occupation and enjoyment of the property comprised and described in Agreement for Lease Reference No 4/14/2303 being Nasesara

No 5 Subdivision Lot 1 in the Tikina of Nausori in the province of Tailevu containing an area of 1173 Sqm.

- (ii) That the second defendant by himself, his servants, agents, nominees, whomsoever and whatsoever be restrained from entering the said property belonging to and occupied by the plaintiff and his family.
- (iii) That Police from Nausori Police Station to assist the plaintiff in the removal of the second defendant and / or his servants, agents, nominees and whomsoever from the plaintiff's property.
- (iv) That the costs of this application be cost in the cause.

[3] This action was originally instituted against the 1st defendant and subsequently the writ of summons was amended to add the second defendant as a party.

[4] The plaintiff's position is that he is the registered lessee of the property which is the subject matter of these proceedings and the 1st defendant in May 2019 repossessed of the property and transferred it to the 2nd defendant.

[5] Defendants did not file their respective affidavits in opposition in time.

[6] Injunction is an equitable remedy granted at the discretion of the court. The power which the court possesses to grant injunctions should be cautiously exercised only on clear and satisfactory grounds. An application for injunction is an appeal to an extraordinary power of the court and the applicant is bound to make out a case showing clearly a necessity of its exercise.

[7] In the case of **American Cyanamid Co. v Ethicon Ltd** [1975] 2 W.L.R. 316, [1975] A.C. 396 Lord Diplock laid down certain guidelines for the courts to consider in deciding whether to grant or refuse an interim injunction which are still regarded as the leading source of the law on interim injunctions. They are:

- (i) Whether there is a **serious question to be tried** at the hearing of the substantive matter;
- (ii) Whether the party seeking an injunction will suffer irreparable harm if the injunction is denied, that is whether he could be **adequately compensated by an award of damages** as a result of the defendant continuing to do what was sought to be enjoined; and

- (iii) In whose favour the **balance of convenience** lie if the injunction is granted or refused.

In American Cyanamid Case (*supra*) Lord Diplock also said:

I would reiterate that, in addition to those to which I have referred, there may be many other special factors to be taken into consideration in the particular circumstances of individual cases.

In the case of **Hubbard & Another v Vosper & Another** [1972] 2 Q.B. 84 Lord Denning said:

In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also the strength of the defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the defendant but leave him free to go ahead. The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules.

In **Cambridge Nutrition Ltd v BBC** [1990] 3 All ER 523 at 534 Kerr LJ said:

It is important to bear in mind that the American Cyanamid case contains no principle of universal application. The only such principle is the statutory power of the court to grant injunctions when it is just and convenient to do so. The American Cyanamid case is no more than a set of useful guidelines which apply in many cases. It must never be used as a rule of thumb, let alone as a straitjacket The American Cyanamid case provides an authoritative and most helpful approach to cases where the function of the court in relation to the grant or refusal of interim injunctions is to hold the balance as justly as possible in situations where the substantial issues between the parties can only be resolved by a trial.

- [8] It is therefore clear that an injunction cannot be sought as of a right and the main purpose of granting injunctions is to maintain the *status quo* until the final determination of the substantive matter.

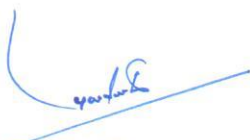
- [9] The plaintiff in this matter was evicted from the property which is the subject matter of this action and it was repossessed by the 1st defendant in May 2019. This action was instituted by the 1st defendant on 08th July 2019 which shows that at the time of bringing this action the plaintiff was not in possession and/or occupation of the property.
- [10] The injunction sought by the plaintiff is to restrain the defendants from interfering with his peaceful occupation and enjoyment of the property. To seek an injunctive order of this nature the plaintiff must be in possession and/or occupation of the property at the time the application is made.
- [11] From the orders sought in the summons it appears that the plaintiff's attempt is to obtain possession of the property of which he has already been dispossessed. In the summons filed seeking injunctive orders the plaintiff also seeks an order to remove the 2nd defendant from the property. However, no such order has been sought in the statement of claim. The plaintiff's action should have been to evict the 2nd defendant who is in possession since May 2019.
- [12] The court has no power to make an injunctive order which has the effect of a final order, evicting the 2nd defendant who is in possession of the property. The reasons set out above the application of the plaintiff must necessarily fail.

ORDERS

1. The Orders sought in the notice of motion filed on 07th July 2019 are refused.
2. There will not be an order for costs of this application.



21st July 2020


Lyone Seneviratne

JUDGE