

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

CIVIL ACTION NO. HBC 123 OF 2023

**BETWEEN** : **CHANDRA KUMAR NAIDU** of Vaqia, Ba, Businessman  
**PLAINTIFF**

**AND** : **GOPAL NAIDU** of Vaqia, Ba, and Businessman  
**DEFENDANT**

**BEFORE** : Hon. Justice Mohamed Mackie.

**APPEARANCES** : Ms. A. Ravono for the Plaintiff.  
: Mr. K. Tudravu for the Defendant O/ I

**HEARING** : By way of written submissions

**WRITTEN SUBMISSION:** Filed on 11<sup>th</sup> March, 2024 by the Plaintiff (Belatedly).  
: No written submissions filed by the Defendant.

**DATE OF RULING** : 23<sup>rd</sup> April, 2024

**RULING**

**A. APPLICATION FOR INJUNCTION:**

1. The plaintiff by his Ex-Parte Notice of Motion filed on 5<sup>th</sup> June 2023 moved for the following injunctive reliefs;
  - a) **A MANDATORY INJUNCTION** restraining the Defendant by himself, his servants, agents and/or whosoever from preventing, interfering and/or restraining the Plaintiff and/or his servants, agents, invitees, customers and whosoever from entering or having unrestricted access to all that piece and parcel of land comprised in Crown lease 8593 part of Rarawai & Vunisamaloa being Lot 12 on BA 2386 more particularly being the place where Vaqia Shopping Centre until the final determination of this action or further order of this Honourable Court.
  - b) **A MANDATORY INJUNCTION** permitting the Plaintiff and/or his servants, agents, invitees, customers and whosoever to enter and/or to have unrestricted access to all that piece and parcel of land comprised in Crown lease 8593 part of Rarawai & Vunisamaloa being Lot 12 on BA 2386 more particularly being the place where Vaqia Shopping Centre until the final determination of this action or further order of this Honourable Court.
  - c) **A PERMANENT INJUNCTION** restraining the Defendant, his servants, agents and/or whosoever from directing the bailiff, from proceeding with the levying the distress of rent under Distress of Rents Act (Cap 36) on the property more particularly described as Crown lease 8593 part of Rarawai & Vunisamaloa being Lot 12 on BA 2386 more particularly being the place where Vaqia Shopping Centre until the final determination of this action or further order of this Honourable Court.

- d) ***AN ORDER*** that the plaintiffs be allowed to enter and reside on the said property until the final determination of this action or further order of this Honourable Court.
- e) Any other orders that this Court deems just and expedient.

2. The said Notice of Motion was supported by an Affidavit sworn by the Plaintiff, **Chandra Kumar Naidu** on 1<sup>st</sup> June 2023 and filed on 5<sup>th</sup> June 2023, along with the annexures marked as “CKN-1” to “CKN-11”. This Court made the Ex-parte Notice of Motion Inter-partes. The Notice of Motion states that it is made pursuant to Order 29 Rules 1, 2 and 6 of the High Court Rules 1988.

**B. ACTION FOR SUBSTANTIVE RELIEF:**

3. Along with the above Notice of Motion, the Plaintiff, on 5<sup>th</sup> June 2023, also filed his writ of summons and the Statement of claim against the Defendant seeking the following reliefs, inter alia,

- a) ***AN ORDER*** for the defendant to take necessary steps to carry out the subdivision of the said lot 12 on Crown Lease 8593 on Plan No- BA 2385.
- b) ***AN ORDER*** for the Defendant to take necessary steps to have a separate lease issued for lot number 12 on Crown Lease number 8593 on Plan No-BA 2385;
- c) ***AN ORDER*** for the defendant to take necessary steps to have the lot 12 on Crown Lease 8593 be transferred to the Plaintiff upon the issuance of the new state lease by the Director of Lands;
- d) ***AN ORDER*** for the general damages for breach of contract and legitimate expectation against the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
- e) ***AND IN THE ALTERNATIVE AN ORDER*** for the defendant to compensate on the current market value of the improvements that has been made on lot No- 12 Crown Lease 8593 on BA 2385 by the plaintiff.
- f) ***A MANDATORY INJUNCTION...*** (as in paragraph 1(a) above)
- g) ***A MANDATORY INJUNCTION ...*** (as in paragraph 1 (b) above)
- h) ***A PERMANENT INJUNCTION ...*** (as in paragraph 1 (c) above)
- i) ***AN ORDER*** for general damages against the defendant.
- j) ***Costs*** of this action on the strict solicitor client indemnity basis.
- k) Any other orders that the court deems fit and just.

**C. Background:**

4. THAT Crown Lease No 8593 was issued to Mr. SANYASI aka SANYASI NAIUDU for a period of 30 years, which expired in 2012 and thereafter was extended till 2023. This lease 8593 is comprised of three separate lots as lot 12, 14 & 18 on Plan No-BA 2385.

5. The said lessee SANYASI aka SANYASI NAIUDU had died in the year 1996, having appointed his Son GOPAL NAIUDU, the Defendant, as the sole executor and trustee by his last Will, on which Probate number 33575 was obtained.
6. The said deceased SANYASI by his said Will granted the lot 18 on the said Crown Lease 8593 LD 4/1/1977 BA 2385 unto the Defendant, while giving the lots 12 & 14 thereof unto his wife JANAKI.
7. The Plaintiff and the Defendant are real brothers, being the Sons of SANYASI and JANAKI. The Plaintiff claims to have been, at all the times material, the occupier of the lot o-12 in Crown Lease No- 8593 by operating a commercial shop therein from the year 1995. He also claims that through the said time period, he constructed buildings and made improvements thereto.
8. The Plaintiff claims that his mother JANAKI, who had become entitled to lot No-12 & 14 by his Father SANYASI's Last Will, had allowed the Plaintiff to build a shop on lot 12 as there was some issues with opening and closing of the shop while the Plaintiff was operating his shop at Defendant's residence (lot 18). The Plaintiff says that his mother and Brother, who is the Defendant hereof, had suggested him to build on lot 12 and to start the business therefrom and told further that when the subdivision takes place the land will be transferred to him.
9. His Mother Ms. JANAKI died on 10<sup>th</sup> October 1997 leaving a will by giving all the properties unto the Defendant, including lots 12 & 14 that she had become entitled to under the Estate of SANYASI.
10. That, although, the Plaintiff had made numerous requests from the Defendant to subdivide and transfer the lot 12 unto him, the Defendant had always neglected his requests, however, in July 2022 the Defendant offered the Plaintiff to purchase the lot 12 for \$7,000.00 for which the Plaintiff agreed.
11. That the Plaintiff was surprised when he received a notice from the Defendant's lawyers stating that, if after 10 years the Defendant wishes to sell the property, it will be sold to him for the correct value and until such time the Defendant will be giving the shop on lot 12 for rent for a sum of \$300.00 commencing from 01.10.2022.
12. The Plaintiff states further that he was and is on the understanding that there was an Agreement between him and his mother with the consultation of the Defendant to subdivide and transfer lot 12 unto him.

**Plaintiff's Cause of Action:**

13. The Plaintiff relies on 3, purported, causes of action, namely;
  - a. **Fraudulent Misrepresentation:**
  - b. **Breach of Promise:**
  - c. **Breach of legitimate expectation.**
14. The Defendant by his Affidavit in opposition sworn and filed on 1<sup>st</sup> August 2023 along with annexures marked as "GN-1" to "GN-4", inter alia, states ;

- a. **That** the lot no 12 on Crown Lease No- 8593 is an agricultural lease, where the Plaintiff is conducting a Commercial activity, which is a breach of lease condition and therefore requires a rezoning to commercial lease.
- b. **That** the plaintiff refuses his (Defendant's) reasonable terms and conditions given to him for the use of his land, and he will be left with no choice but to evict him and dismantle all improvements therein.
- c. **That** he has borne all costs pertaining to the rental payment and rezoning of lot 12 on Crown lease No- 8593 to a commercial lease to prevent further breach of his lease, while the plaintiff generates income and enjoys the free use of the property for over 25 years.
- d. **That** the plaintiff is fully aware that the property does not belong to him and any investment made by him on the property are done so on his own risk and he can remove his building when vacating the property, if he does not agree to the Plaintiff's conditions.

**D. THE HEARING:**

15. When the matter was mentioned on 9<sup>th</sup> February 2024, junior counsel appearing for both the parties moved to have the hearing on the application for injunction to be disposed by way of written submissions, which this court allowed by granting 14 days to each party to file and serve their written submissions. Accordingly, I find that only the written submission on behalf of the Plaintiff has been filed belatedly on 11<sup>th</sup> March 2024, which should have been filed and served within 14 days on or before 23<sup>rd</sup> February 2024. No proof of service filed. As a result, it appears that no written submission has been filed by or on behalf of the Defendant. The learned counsel for the plaintiff in his written submissions, has discussed the principles that govern the injunction by citing number of decided authorities.

**E. PRINCIPLES ON INJUNCTION:**

16. 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.
17. In **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.*

*Interim injunction is a relief that cannot be granted solely or independently without any final or substantive relief. A party who has not sought any substantive relief has no right in law to seek an interim injunction, as it cannot be a relief by itself but is only a mechanism to assist and protect final relief".*

18. In **American Cyanamid Co. v Ethicon Ltd [1975] UKHL 1; [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 lies if the injunction is granted or refused.

19. **Kerr LJ in Cambridge Nutrition Ltd v BBC [1990] 3 All ER 523 at 534 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.*

20. In the case of **Series 5 Software Ltd v Clerk and others [1996] 1 All ER 853** the court after considering the decision in American Cyanamid and various other authorities on the subject held that;

In deciding whether to grant interlocutory relief, the court should bear the following matters in mind:

- 1) The grant of an interlocutory injunction is a matter of discretion and depends on all the facts of the case.
- 2) There are no fixed rules as to when an injunction should or should not be granted. The relief must be kept flexible.
- 3) Because of the practice adopted on the hearing of applications for interlocutory relief, the court should rarely attempt resolve complex issues of disputed facts or law.
- 4) Major factors the court can bear in mind are (a) the extent to which damages are likely to be an adequate remedy for each party and the ability of the other party to pay, (b) the balance of convenience, (c) the maintenance of the status quo, and (d) any clear view the court may reach as to the relative strength of the parties' cases.

**F. DISCUSSION:**

21. As per the paragraphs (a) of the prayers to the Notice of Motion hereof, what the Plaintiff moves for is "**A Mandatory Injunction**" *restraining the Defendant by himself,*

his servants, agents and/or whomsoever from preventing , interfering and/or restraining the Plaintiff and/or his servants , agents, invitees , customers and whosoever from entering or having unrestricted access to all that piece and parcel of land comprised in Crown Lease No 8593 part of Rarawai & Vunisamaloa being lot 12 on BA 2386 more particularly being the place where Vaqia Shopping Centre is located until the final determination of this action or further order of this Honourable Court.

22. Generally, mandatory injunctions are issued directing the opponent party to do something positively. A mandatory injunction is issued when a court directs a person to perform certain acts, as opposed to a prohibitory injunction, which seeks to preserve the status quo. The defendant named in a mandatory injunction must undo the wrong or injury that he has caused.
23. For instance, if a roadway, which only provides access to a person to his property is suddenly blocked or closed by another person, or a person is suddenly dispossessed of a property or premises without any legal process being followed , the court will , if the situation demands and appropriate, order the opponent for the removal of such block for the usage of the road, or order the person who was dispossessed to be restored into the possession of such premises until a further order or the final order / judgment is pronounced in the action. It can be for the delivery of any other property or document as well.
24. In this case in hand there is no evidence to show or suggest that the Plaintiff was or has been dispossessed by the Defendant or his servants or agents for this court to act swiftly and order the Defendant to restore the Plaintiff into the possession thereof by issuing a **mandatory** injunction order against him. Thus, a necessity to issue a Mandatory Injunction has not arisen in this matter.
25. The relief (b) sought in the Plaintiff's Notice of Motion is "A MANDATORY INJUNCTION permitting the Plaintiff and/or his servants, agents, invitees, customers and whosoever to enter and/or to have unrestricted access to all that piece and parcel of land comprised in Crown lease 8593 part of Rarawai & Vunisamaloa being Lot 12 on BA 2386 more particularly being the place where Vaqia Shopping Centre functions until the final determination of this action or further order of this Honourable Court.
26. The purported mandatory injunctive relief sought in paragraph (a) of the Notice of Motions depicts a picture as if the Plaintiff is not currently in possession of the premises in suit and moving the Defendants to be restrained from preventing the plaintiff from entering the premises. The prayer (b) to the Notice of Motion also depicts a picture as if the Plaintiff is not in the possession of the premises in suit and he wants to enter and/or have access to the premises by having a mandatory injunction order in hand.
27. While there is overwhelming evidence and admission of the part of the Defendant that the Plaintiff is in possession of the property and engaged in commercial activities nearly for last 25 years, why the Plaintiff should have orders of this nature when there is no evidence whatsoever to the effect that he has been dispossessed, evicted or his business activities has been curtailed or stopped by the Defendant or at least there was or is an imminent danger for such an event/s.

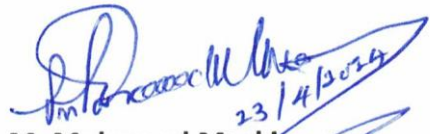
28. Further, the relief prayed for as per paragraph (C) of the Notice of Motion is for a permanent injunction order. This is not supposed to be considered at this juncture.
29. The relief sought as per paragraph (d) of the Notice of Motion is for “AN ORDER that the plaintiffs be allowed to enter and reside on the said property until the final determination of this action or further order of this Honourable Court”.
30. The above interim relief sought by the Plaintiff again paints a picture as if he is not in the possession of the premises right now and he wants to walk into the premises with an injunction order in hand. As alluded to above, for the Plaintiff to have this relief of entering the premises in suit, he has to prove by evidence that he was or has been already evicted in the recent past. On the other hand, if he is in an imminent danger of being evicted by the Defendant during the time material, he could have just moved for a prohibitory injunction with sufficient evidence. There is no evidence whatsoever to show that the Plaintiff was dispossessed or evicted in the recent past or there is an imminent danger of being evicted or dispossessed.
31. In the written submissions filed on behalf of the Plaintiff, learned Counsel moves for;
- a) *an injunction restraining the Defendant from evicting the Plaintiff and his family from the premises in suit,*
  - b) *an injunction restraining the Defendant his servants/ from selling and/or transferring the said Crown Lease No- 8593 lot 12 BA in Plan No-2386.*
  - c) *an injunction restraining the Defendant and/or his servants and agents from entering the Plaintiff's house and interfering with the Plaintiff and his family's peaceful and quiet enjoyment of the house situated at the Lease No-8593 Lot 12 on BA 2386.*
32. The above reliefs are contrary to the reliefs sought in the Notice of Motion. However, the contents in the written submissions are not pleadings or prayers. The Defendant's Counsel have had no opportunity of responding to these reliefs sought in the written submissions for the first time. In any event, there is no evidence of an imminent danger of the plaintiff being evicted or the land in question is to be sold by the Defendant in the near future.
33. Moreover, the Plaintiff in paragraph (e) of his prayer to the Statement of Claim has moved for damages as an alternative substantial relief. **Nowhere** in his Affidavit in support, has the Plaintiff averred that the damages are inadequate and irreparable. Thus, when the Plaintiff can be compensated by award of damages, no need would arise to issue injunctive orders
34. Accordingly, for the reasons stated above, this Court decides to dismiss the Application preferred by the Plaintiff for the mandatory injunction orders by way of his Notice of Motion filed on 5<sup>th</sup> June 2023.

**G. FINAL ORDERS:**

- a. The Application by the Plaintiff for Mandatory injunctive orders fail.
- b. The Plaintiff's Notice of Motion filed on 5<sup>th</sup> June 2023 is hereby dismissed.

- c. No costs ordered and the parties are to bear their own costs.
- d. The matter shall take the normal course



  
A.M. Mohamed Mackie  
Judge

At the High Court of Lautoka on this 23<sup>rd</sup> day of April, 2024

**SOLICITORS:**

For the Plaintiff: Messrs. S Nand Lawyers, Barristers & Solicitors  
For the Defendant Messrs. Howell & Associates, Barristers & Solicitors