

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 122 of 2023

BETWEEN: **MAHENDRA PRASAD CHAUDHARY** as an Administrator, for Estate
of Vijendra Prasad of Sawani Nausori, Administrator and Landlord
PLAINTIFF

AND: **AVINESH ATISH CHAND** of Sawani Nausori, Occupation Unknown to
Plaintiff, Tenant.
DEFENDANT

Before: Mr. Justice Deepthi Amaratunga

Counsel: Mr. A. Chand for the Plaintiff
Mr. R. Singh for the Defendant

Dates of Hearing: 02.06.2023

Date of Judgment: 29.11.2024

JUDGMENT

INTRODUCTION

[1] The Plaintiff's Inter-Parte Notice of Motion was filed on 8th April, 2023 seeking the following Orders:

(a) An Order Defendant whether by itself or by its servants, and or agents in whatever manner be restrained from verbally and or physically assaulting, abusing, harassing, intimidating, threatening to physically assault, damaging or threatening to damage any of Plaintiff's property, behaving in an abusive manner, provocative and offensive manner, encouraging any persona engage in behavior to cause alarm and harm /awards the Plaintiff and restrained from making noises.

(b) An Order that Defendants whether by itself or by its servants, and or agents in whatever manner be restrained from entering within the perimeter of 5 meters from the vicinity of the Plaintiff's dwelling.

(c) An Order that the Plaintiff has full right for a peaceful enjoyment on the said particular property with his family without any hesitation, problems and disturbances caused to him by Defendants whether by itself or by its servants and or agents in whatever manner.

(d) An Order that the agreement executed between estate of Vijendra Prasad and the Defendant is deemed terminated.

(e) Defendant and any other persons residing on the Plaintiff's property should immediately vacate and leave the plaintiffs land peacefully.

(f) Defendant shall remove all his items and belongings immediately and leave the said land.

(g) Costs of this application be paid by the Defendant.

(h) Such further and or other relief that this Honourable Court may deem fit, just, expedient, necessary and equitable in the circumstances.

[2] The Plaintiff's application is supported by an Affidavit in Support sworn by Mahendra Prasad Chaudhry on 18th April, 2023.

[3] On 8th May, 2023 an Affidavit in Opposition (to the Affidavit in Support of Mahendra Prasad Chaudhary sworn on 18/04/2023) was filed by the Defendant.

[4] On 26th May, 2023, an Affidavit in Reply by the Plaintiff was filed.

FACTS

[5] The Plaintiff is one of the Administrator in the Estate of Vijendra Prasad pursuant to Letters of Administration DBN Number 64458.

[6] The Estate of Vijendra Prasad is one of the beneficiaries from the Estate of Lachman pursuant to Probate Number 7499.

[7] The Beneficiaries of the Estate of Vijendra Prasad are giving their land on informal 'lease' to the respective tenants through Agreements.

4. The Defendant has executed an Agreement on 7.9.2015 with the Plaintiff's mother who was alive at that time and was the Administrator for the Estate of Vijendra Prasad.

[8] The Defendant has been paying the rent to the Plaintiff and only for last two years the Plaintiff is not accepting rent from the Defendant due to some disputes that had arisen between the parties

[9] The land on which Defendant has erected his dwelling belongs to the Estate of Vijendra Prasad. The Plaintiff and Defendant had cordial relationship before

disputes started on allegation of bad behavior by Defendant as well as others who are frequenting his dwelling.

[10] The Plaintiff is alleging the Defendant is causing nuisance and disturbing his peaceful occupation.

[11] The Defendant denies that allegations made by the Plaintiff and says that he never disturbed the Plaintiff nor is causing any nuisance. The Defendant further states that because of his association with some third party, the Plaintiff started to dislike the Defendant.

Restraining Orders

[12] The Plaintiff in his Notice of Motion seeking orders which are also sought by the Plaintiff in the substantive action.

[14] The governing principles applicable when considering an application for interim injunction were laid down in the leading case of "American Cyanamid Co v Ethicon Ltd (1975) (1) ALL.E.R 504 as follows-

(A) Whether there is a serious question to be tried?

(B) Whether damages would be an adequate remedy?

(C) Whether balance of convenience favours granting or refusing interlocutory injunction?

[15] In that case Lord Diplock stated the object of the interlocutory injunction as follows at p. 509:-

The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial: but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favor at the trial. The court must weigh one need against another and determine where the balance of convenience lies."

[16] It is clear that there are serious questions of law to be tried at hearing regarding eviction of Defendant, which were sought as an interim order. These orders are found in order 4, 5, and 6 of interim reliefs sought in this application.

[17] So order 4,5,and 6 which deals with orders for , termination of licence given to possession by way of informal 'leases' and vacant possession including removal of permanent structures cannot be orders due to complex and disputed facts before me.

[18] Plaintiff is alleging breaches of the leases through nuisance by Defendant. This include various acts more fully stated in the affidavit in support. It is suffice to

state that Defendant had denied this behavior, hence cannot be decided on affidavits. Plaintiff is relying on the said behavior for termination of the leases, thus seeking vacant possession

[19] Despite rejection of the above mentioned reliefs it is clear that parties are not living peacefully hence there is a requirement for some restraining orders against Defendant, as there are likelihood of breach of peace between parties and damages will not be adequate remedy. There is no need to have police report, though such report may corroborate allegations.

[20] The balance of convenience favours defendant being restrained from the nuisance alleged. At this stage it is presumed that Plaintiff will prove its allegations against Defendant considering disputed affidavits.

FINAL ORDERS:

[21] Plaintiff is granted following orders;

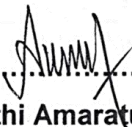
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(d) No order as to costs.




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Deepthi Amarasingha
Judge

At Suva this 29th November, 2024.

Solicitors

Amrit Chand Lawyers
Sherani & Co.