

Paseka v Langi & Others

¹⁰ Land Court
Case No. 12/1989

18 December 1989

Injunction - interim injunction - principles applicable

Procedure - interim injunction - principles applicable

²⁰ Langi who held a tax allotment on the estate of Hon. Kalaniuvalu agreed with Vete to allow Vete to use it for a quarry whilst he would obtain another allotment from Hon. Kalaniuvalu. Langi was allocated another allotment, but this was claimed by Paseka who brought proceedings to assert his title to that allotment. Langi then sought an interim injunction to stop Vete using the land as a quarry until the decision of the Court was given, stating that he would not accept another allotment and wanted back the allotment occupied by Vete.

HELD:

Dismissing the application.

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- (i) The applicant for an interim injunction must show that he has an arguable case and that on the balance of convenience an interim injunction should be granted.
 - (ii) In considering the balance of convenience regard should be had to whether an award of damages after the trial will be a sufficient remedy, the ability of the other party to pay such damages, and whether greater damage will be caused by granting or refusing an injunction.
 - (iii) In the circumstances of this case having regard to the above principles an interim injunction should not be granted.

⁴⁰ Case considered
American Cyanamid Ltd v Ethicon Ltd [1975]

Martin CJ

Judgment

This action arises from an agreement made between the First Defendant Vili Langi and the Fourth Defendant Semi Vete. Mr Langi held a tax allotment on the estate of Hon Kalaniuvalu. Mr Vete wanted to operate it as a quarry. They agreed the Mr Langi would exchange that land for another allotment to be allocated by Hon Kalaniuvalu. In return for that Mr Vete was to give him a truck (there is a dispute about whether it was to be new or second hand); and \$10,000. A truck has been handed over and on Mr Langi's own evidence at least \$8,000 has been paid. Mr Vete says that he has made up the balance in other ways. This is denied, but it is clear that whatever disputes remain Mr Vete has complied substantially with his part of the agreement.

Hon Kalaniuvalu allocated a tax allotment to Mr Langi which turned out to be claimed by the Plaintiff. Mr Langi accepts that the plaintiff is entitled to this land and says he wants his old allotment back. In the mean time Mr Vete has carried out substantial quarrying operations and it is not feasible to restore the land for agricultural use.

Mr Langi says that he will not accept any other allotment, even if free from any adverse claim. He asks for an injunction to stop Mr Vete continuing to quarry the land until the hearing of this action.

The only reason Mr Langi gives for refusing any other land is that he likes his old allotment better. I don't believe that. He did not even bother to look at the land he had been allocated before he gave up his former allotment. It clearly did not matter to him then where it was, so long as it was free to be used. He obviously wants his old allotment back to use as a quarry. It cannot now be used for anything else. He wants to get out of the agreement he has made with Mr Vete on the basis of a muddle for which Mr Vete is not responsible. Whether or not he can do that remains to be determined at the trial, as does the question whether the Plaintiff is in fact entitled to the land allocated to Mr Langi.

In the meantime I am asked to stop Mr Vete from carrying on his normal business activities. He has paid Mr Langi a substantial sum in cash and in kind for the right to do this.

The Law

On an application of this nature the applicant must show that he has a good arguable case to the remedy he seeks; and if he does that, the court will decide whether or not to grant an injunction on the balance of convenience (American Cyanamid Ltd v Ethicon Ltd [1975] 1 All ER 504). If damages would be a sufficient remedy, and the respondent to the application would be able to pay any damages which might be awarded, an injunction will not usually be granted. It is also relevant to consider whether greater damage will be caused by granting or by refusing an injunction.

Conclusions

I am prepared to accept that Mr Langi may have an arguable (though not strong) case for the return of his old allotment. His main claim would appear to be against Hon Kalaniuvalu, who it is alleged has failed to keep his agreement to allocate him land available for grant.

On the balance of convenience:

- (i) if an injunction is granted, Mr Vete will suffer serious disruption to his normal business activities, for which he has paid Mr Langi; the damage thus caused may well be more than Mr Langi could pay if he should lose his claim. By comparison.
- (ii) if an injunction is refused Mr Langi suffers some delay, and loses some rock which

would properly be his if he succeeds. Mr Vete is a substantial businessman and would be likely to be able to pay any damage which Mr Langi may be found to have suffered.

The grant of an injunction would cause more damage to Mr Vete than its refusal would cause to Mr Langi. The application is therefore refused with costs.