

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 211 OF 2013**

**BETWEEN** : **PENG YU** **Plaintiff**

**A N D** : **BAL KRISHNA** **1<sup>ST</sup> Defendant**

: **VENKAT SWAMY** **2<sup>nd</sup> Defendant**

: **REGISTRAR OF TITLES** **3<sup>rd</sup> Defendant**

**COUNSEL** : Mr. I. Fa for the Plaintiff  
Mr. S. Nandan for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant  
Mr. A. Pratap for the 3<sup>rd</sup> Defendant

**Date of Judgment:** 13<sup>th</sup> August, 2013

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**RULING**

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**Facts**

- [1]. Plaintiff filed a Writ of Summons seeking an order for the following "That Caveat No. 753090 lodged against any dealing with land known as Lot 1 DP 5099 duly registered on Certificate of Crown Lease No. 361841 to be extended until further order of this Honourable Court." The said writ was filed on 10.7.2012. As per the affidavit in support before the court, plaintiff had lodged a caveat. However on 17.6.2013 the Registrar of Title had sent a letter (Annexure A) under section 110(1) of the Land Transfer Act Cap 131. The case was mentioned on 30.7.13. There was an appearance for the 3<sup>rd</sup>

defendant. The 3<sup>rd</sup> defendant informed court that the summons should be sent to all defendants. Accordingly the court issued notice on all parties.

- [2]. The case was mentioned on 9.8.13. On this day all parties were present before court and the counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants informed that the caveat had lapsed and accordingly there was no necessity to file an affidavit in opposition and moved for the writ to be struck out. The 3<sup>rd</sup> defendant informed that they will abide by any order of court.
- [3]. At the outset the court inform the plaintiff that as the time period given to seek an extension had lapsed to satisfy the court that the court had the authority to extend the now lapsed caveat. The plaintiff failed to submit any decided cases on this aspect and inform court that they are no longer pursuing the application to extend the caveat. Accordingly I struck out the application dated 10.7.13 to extend the caveat.
- [4]. At this stage counsel for the plaintiff made an oral application to obtain an injunction against the defendants. The 1<sup>st</sup> and 2<sup>nd</sup> defendants vehemently objected to this application. First and second defendants informed court that there were no papers filed seeking an injunction. They stated that an application to extend a caveat cannot be converted in to an application for an injunction.

**Analysis of the application to convert the relief prayed in this cause to an application for an injunction.**

- [5]. The present application before this court is to determine whether the plaintiff can convert an application for extension of a caveat in to an application for an injunction. The plaintiff's oral application is for an injunction restraining the defendants' from leasing crown lease 361841 on Lot 1 of DP 5099 until further orders from the court. The second question is whether the plaintiff has satisfied court as to the necessary requirements to obtain injunctive relief.

- [6]. Plaintiff submitted that the court should consider the affidavit filed by the plaintiff in his application to get an extension for the caveat, as the affidavit in support of an injunction. Plaintiff further submitted that by the grant of the injunction the defendant was not going to be prejudiced.
- [7]. First and second defendants vehemently objected to this application and stated that the plaintiff has failed to comply with the requirement for an application for an injunction and that the application before court for the injunction is in violation of the High Court rules, and the law governing injunctions.
- [8]. First and second defendants further stated that the principle governing the application for an extension of a caveat differs from the principles governing the law of injunctions.
- [9]. Defendants also objected to the application stating that plaintiff had failed to make a proper application to the court for an injunction and further stated that the plaintiff had not provided as to any undertaking for damages .His objections were
- i. There is no affidavit evidence seeking an injunction.*
  - ii. The defendant was not informed about the case that he had.*
  - iii. As the land is a crown lease any dealing with the crown lease requires the consent of the Director of Lands.*
  - iv. There is no real urgency for interim relief and accordingly made an application to strike out.*

### **Determination**

- [10]. As per the documents filed the plaintiff had not filed any application for an injunction. There is no affidavit evidence to satisfy the court the necessity of injunctive relief. What is before court is only an oral application by the plaintiff for an injunction.

[11]. The law governing the application of seeking injunctions is set out in the High Court Rules Order 29. The said Order 29 Rule 1 states:

" 1. (1) *An applicant 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 of 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.*

[12]. Respondents submitted that as per the order it's clear that an application for an injunction should be made only with a supporting affidavit. Plaintiff should satisfy court that in fact there is an urgency in the matter and the .failure to grant the injunction would cause irreparable loss to the plaintiff. There is no such affidavit before courts.

[13]. Rule 3 of order 29 clearly states that the plaintiff should not make an application for an injunction "*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*". There was no affidavit tendered to this court seeking an injunction by the plaintiff. Instead the plaintiff wanted the affidavit sworn on

9.7.13 filed in court on 16.7.13 to be considered the affidavit seeking an injunction. The said affidavit is only seeking an order to extend the caveat no. 753090 on Lot 1 DP 5099 . No grounds of urgency have been submitted to the court and the court has not been satisfied as to the grounds of urgency to obtain an injunction.

[14]. The plaintiff also has failed to satisfy this court to his undertaking as to damages. Court is of the view that the verbal undertaking as to the damages by the counsel is not sufficient to exercise the courts discretionary power to grant an injunction. In the absence of any satisfactory evidence court will not be in a position to assess the balance of convenience and to ascertain whether damages would be a remedy.

[15]. The importance of this undertaking was discussed in **Natural Waters of Viti Ltd –v- Crystal Clear Mineral Water (Fiji) Limited, Civil Appeal No. ABU 0011 of 2004, Court of Appeal of Fiji.** Where the court held:

*"Application for interim injunctions who offer an undertaking as to damages should always proffer sufficient evidence of their financial position. The court needs this information in order to assess the balance of convenience and whether damages would be an adequate remedy."*

[16]. There is no formal application under order 29 of the High court rules before court. This application for an injunctive relief does not emanate from a writ of summons. Plaintiff informed the court that they were not proceeding with the application for the extension of the caveat. Under the circumstances there is no substantial relief claimed by the plaintiff. The only relief claimed is the injunctive relief. The court cannot grant injunctive relief in the absence of substantive relief.

[17]. Having considered all the material placed before this court it is my view that in the absence of any proper application before the court for an injunction

and in the absence of any affidavit evidence the plaintiff has failed to satisfy the required legal principles to obtain an injunctive relief.

[18]. The plaintiff has failed to submit any decided cases to this court supporting his application.

[19]. The plaintiff has also failed to satisfy court as to its non-compliance with Order 29 of the High Court Rules. For the above stated reasons I am of the view that affidavit which was sworn on 9.7.2013 and filed on 16.7.2013 to obtain an extension to a caveat cannot be considered as an affidavit to obtain an injunction. I also hold that the plaintiff has not filed a proper application to obtain an injunction.

[20]. In this matter the second and third defendants have not filed any affidavits. There was no application by the defendants as to costs and accordingly I order no costs.

[21]. Accordingly, I make the following orders:

1. *The application for the extension of the caveat is discontinued by the plaintiff and as such the application is stuck out.*
2. *The plaintiff's oral application for an interim injunction is dismissed.*
3. *No order for costs.*

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Mayadunne Corea

**JUDGE**

13.08.2013