

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**HBC No. 204 of 2013**

**BETWEEN** : **ALIZES LIMITED**, Vuda Point Marina, Lautoka. **Plaintiff**  
**AND** : **THE COMMISSIONER OF POLICE** **Defendant**  
Appearances : Ms. Khan for the Plaintiff  
N/A by the Defendant

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**R U L I N G**

(ex-parte injunction)

**INTRODUCTION**

1. Before me is an urgent ex-parte application by Alizes Limited seeking an order that the Commissioner of Police be restrained either by itself or its servants or agents from interfering with Cloud 9's quiet enjoyment of its mooring permits in any manner whatsoever including but not limited to asking Cloud 9 to move.
2. The application is supported by an affidavit of Tony Phillip, a director and shareholder of Alizes Limited.
3. Cloud 9 is a floating platform/pontoon, currently moored off Momi Bay in the inner Sandy Lagoon of Navula Reef.
4. Its business is essentially that of a lounge bar and water sport venue, restricted mostly to snorkelling, jet skiing and stand up paddling activities. The venue also engages in small scale catering for its patrons. It also hires out its venue for functions.
5. The company started its operations on 30 June 2013. At the time of operation, it had mooring permits, a business licence, company registration, Investment Fiji, Liquor License, Health License, Tobacco License, National Fire Authority clearance, Ministry of Labour, OHS compliance and marine insurance. Copies of these are annexed to the affidavit.

6. For about a week now, Alizes Limited has not been operating. This follows a decision by the Office of the Attorney-General that the Company is operating illegally in breach of the Surfing Decree.
7. I understand from Phillip's affidavit that the company will meet the Attorney-General early next week to consider the issues involved.
8. The company does not seek an order from this court now to remove the restrictions on its operations, or to be allowed to continue its normal operations. It seems to me from the affidavit that, while it maintains that it is not in breach of the Surfing Decree, the company accepts now that the responsible thing to do is to halt its operations for now and seek an audience with the Office of the Attorney-General to discuss how it may or may not be in breach of the Surfing Decree, and, if it is in breach, how that may be rectified.
9. Rather, what the company wants now is an injunction to restrain the police from removing the platform/pontoon from its current mooring, which, as stated above, is off Momi Bay in the inner Sandy Lagoon of Navula Reef.

#### **WHY THE COMPANY SEEKS THE ABOVE ORDERS?**

10. It is a matter of convenience for the company as explained by Phillip below (see paragraph 18).

#### **URGENT EX-PARTE INJUNCTIONS**

11. Interim injunctions are a powerful discretionary remedy. But they are not lightly granted. They are granted *ex parte* only if there is urgency. In other words, if to proceed normally (i.e. *inter partes* by Notice of Motion or Summons) would be a delay entailing irreparable or serious mischief, (see Order 29 Rule 1(2) as amended in 1991 in LN 61/91).
12. The applicant must show a strong enough case to justify the Court not hearing the other side's case. Usually, to show "urgency", the applicant must show that, unless the court intervenes with a restraining order, he has a legal right in the subject-matter of the case which is under an immediate threat of being violated. Apart from that, the applicant must

convince the court that the balance of convenience favours the granting of the injunction *ex-parte*.

13. The applicant must also disclose all relevant facts to the Court, including any matters favourable to the other side. The fact that the relief is 'discretionary' does not mean that the court can grant it at its leisure. Rather, the judge is under a duty to exercise that discretion judicially and judiciously.
14. Megarry J in **Bates v. Lord Hailsham [1972] 1 WLR 1373; [1972] 3 All ER 1019** resonated the principles as follows:

An injunction is a serious matter and must be treated seriously. If there is a plaintiff who has known about a proposal ... for nearly four weeks in detail and he wants an injunction to prevent effect being given to it at a meeting of which he has known for well over a fortnight, he must have a most cogent explanation if he is to obtain his injunction on an ex parte application made two and a half hours before the meeting is due to begin. (1380 A);

And:

Ex parte **injunctions** are for cases of real urgency where there has been a true impossibility of giving notice of motion .... Accordingly, unless perhaps the Plaintiff had had an overwhelming case on the merits I would have refused the injunction on the score of insufficiently explained delay alone (my emphasis).

(see also Fiji Court of Appeal in **Fiji Public Service Association v Chetty [2005] FJCA 38; ABU0061J.2003S (4 March 2005)**).

## **OBSERVATIONS**

15. I observe there is no writ filed or statement of claim. Ms. Khan however urges the court that there is a matter of urgency in this case. I have considered the argument of Ms Khan that the company will not resume any operation until the matter of its position *vis a vis* the Surfing Decree is resolved with the Office of the Attorney-General. I have also considered the prima facie evidence placed before me that the company has valid mooring permits in place to moor in the particular location in question from the Maritime Safety Authority of Fiji. It is not clear to me at this stage whether or not the fact of the platform being moored at its current location would be an issue *vis a vis* the Surfing Decree. I have not had a good opportunity to really assess whether or not the police really did make

the threats alleged to remove/tow away the platform/pontoon from its current mooring position.

16. This is a matter to be resolved later. I give the plaintiff the benefit of the doubt for now. But, considering that the company does prima facie, seem to have valid mooring rights, and is under an alleged threat from Police to remove/tow away the platform/pontoon, and considering the costs to the plaintiff if the alleged threatened Police action was to be carried through as Phillip deposes below

*...the platform is 18 meters in length, 14 meters in width and its 12 levels high and can not be move easily. We need the right kind of weather, the right boat and crew to move the platform if need be. The cost of moving the platform is too exorbitant and we also require time to arrange an alternative place it could be moved to.*

I am prepared to grant Orders to restrain the Police for now from removing the platform/pontoon from its current mooring position.

### **CONCLUSION**

17. After considering all, I Order that the Commissioner of Police be restrained either by itself or its servants or agents from interfering with Cloud 9's quiet enjoyment of its current mooring permits in any manner whatsoever until further Orders of the Court on the condition that the Company is not to operate any business or activity common namely that of a lounge bar and water sport venue and or hire its venue for functions until further orders.
18. This case is adjourned to Thursday 14 November 2013 for mention at 10.30 a.m. The plaintiff is to serve all documents to the Office of the Attorney-General by 2.00 p.m. 11 November 2013.

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Anare Tuilevuka  
**JUDGE**  
Lautoka  
08 November 2013.  
(5.50 p.m.)