IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 04 of 2016

BETWEEN : **RATU KALIOVA VUKINAMUALEVU** for an on behalf of himself and the Estate of Ratu Sairusi Sagawa Nagagavoka.

PLAINTIFF

AND : **SAIRUSI VULUMA NALIVA NO. 2** of Sorokoba Village, Ba, Farmer.

1ST DEFENDANT

AND : **SAIRUSI VULUNA NO. 1** for and on behalf of himself and Tokatoka Kavua.

2ND DEFENDANT

AND : **FILIMONI LAGIVALA NALE** of Varavu, Ba, Retired.

3RD DEFENDANT

AND : **ETUATE KAUTOKA** of Togalevu Village, Ba, Turaga ni Yavusa **LUSIANA NEISAU** of Sorokoba Village, Ba, Marama ni Yavusa **JOSESE BIAUNIKORO** of Talecake Village, Ba, Turaga ni Yavusa, **MANOA GADROKO** of Sorokoba Village, Farmer and **SAMUELA KAUTOGA** of Togalevu, Ba, respectively.

4TH DEFENDANT

Before : Hon. Mr. Justice R. S. S. Sapuvida

Counsel : Mr Kitione Vuataki for Plaintiff
Mr Romanu Vananalagi with Mr Joseph Daurewa for the Defendants

Date of Judgment : 4th October, 2016

INTERLOCUTORY JUDGMENT

[1] This is an Ex-Parte Notice of Motion later converted into Inter-Partes filed by the Plaintiff seeking injunctive reliefs against the Defendants restraining them from entering the cement bure which is claimed to have built by Ratu Sairusi Sagawa Nagagavoka on the house foundation of Suelevuiba in Sorokoba Village in Ba.

[2] Defendants filed their affidavits in opposition.

[3] They have taken few preliminary issues of law with their objection which are mainly on the following:

- That the Plaintiff does not have any locus standing to bring and/or institute this proceeding on his behalf or on behalf of the estate of Ratu Sairusi Sagawa Nagagavoka (hereinafter referred as "the deceased").

- That the proper person to institute the proceeding is the Plaintiff's mother Bulou Soweri Suguta who obtained the Letters of Administration in the Estate of the deceased.

- That to enable over this the Plaintiff obtained a letter of authority from his mother to enable him to institute the proceeding.

- That the said letter of authority is improper and not the appropriated form of authority is such situations.

- That the Power of Attorney is the proper document [Deed] that is recognized by the Courts which would have assisted the Plaintiff in his claim

[4] The Plaintiff's Application is supported by affidavit in support of Ratu Kaliova Vukinamualevu dated 18th January, 2016. The Plaintiff is seeking leave for the affidavit in reply dated 08th April, 2016 and that of Ratu Sairusi Nagagavoka Junior sworn on the same date to be considered as a part in this hearing.

[5] The Plaintiff pleads that the this Court to take judicial notice of category 5 Cyclone Winston that devastated Ba and prevented Plaintiff and his brother Ratu Sairusi Nagagavoka from swearing their Affidavits in time and likewise Cyclone Zena and its flooding of Ba town that followed.

[6] As submitted by the Counsel for Plaintiff, the Affidavit has been scanned and emailed to the Defendant's Solicitor as agreed between Parties to enable the Defendants to prepare the submission with those Affidavits in hand for them to be ready with their respective submissions.

[7] Therefore, I accept all the affidavits filed before the hearing was commenced by both the parties pertaining to the present application.

[8] Before I endeavor to discuss the law relating to the injunctions it is worthwhile to look at the background of the Plaintiff's case and the objections taken by the defendants in detailed in relating to the Plaintiff's case.

[9] The Plaintiff in his statement of claim is seeking the following reliefs:

(1) A declaration that the bure built by the Ratu Sairusi Sagawa Nagagavoka on the foundation of Suelevuiba belongs to the Estate of Ratu Sairusi Sagawa Nagagavoka.

(2) Alternatively, the Defendants pay the Plaintiff the sum of $ 245000.00 for them to own and use the bure built by Ratu Sakiusa Sagawa Nagagavoka known as Suelevuiba.

(3) An injunction that the Defendants or their invitees or agents do not enter the bure at Suelevuiba until they pay the Plaintiff the sum of $245000.00

[10] The type of injunction applied for here is a prohibitory injunction to restrain the Defendants from entering the cement house claimed to have built by Ratu Sairusi Nagagavoka on the house foundation of Suelevuiba in Sorokoba Village in Ba.

Plaintiff Submits:

[11] The Counsel for Plaintiff submits that an interim injunction provides relief that is both temporary and discretionary. Before granting such relief, the Court is required to carefully balance or weigh the needs of a Plaintiff against the needs of a Defendant.

[12] The Counsel states that starting point for the consideration as to whether the order sought should be maintained or granted are the principles expressed in American Cyanamid v Ethicon Limited *[1975]A.C. 396* at page 406 of the judgment as Lord Diplock expresses the principles as follows:

> *"The object of the interlocutory injunction is to protect the Plaintiff against the injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty will resolve in his favour 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 will resolve in the Defendant's favour at the trial. The Court must weigh one need against the other and determine where "the balance of convenience lies."*

[13] The fundamental requirements can be summarized as:-

(i) Is there a serious question to be tried?
(ii) Are damages an adequate remedy?
(iii) Where does the balance of convenience lie?

Per Connors J in *Air Pacific Limited-v-Airports Fiji Limited (Civil Action HBC 418 of 2003L).*

[14] In paragraph 1 of the Statement of Claim the Plaintiff claims that he sues the Defendants on his own behalf and on behalf of the Estate of Ratu Sairusi Nagagavoka.

[15] Plaintiff's Counsel argues that representative proceedings are allowed under Order 15 Rule 14 of the High Court Rules 1988. Such rules are to be applied as a flexible tool of convenience and on its wide and permissive scope: **John v Rees** *[1970] 1 Ch. 345 per* **Megarry** J. There is commonality of interest of Administratrix of Estate and beneficiaries as Administratrix will receive one third of the Estate and the children two third in equal shares under the Succession Act. The house in dispute is part of that Estate.

[16] In paragraph 2 of the Affidavit in Support of Ratu Kaliova Vukinamualevu he deposes that he is authorized by the Administratrix to represent the Estate. He annexes at Annexure RKV1 the copy of probate and RKV2 the authority to take representative proceedings on behalf of the Estate. At paragraph 2b of Ratu Kaliova's Affidavit in reply he states why such action was taken, as it was taken because Sairusi Vuluma Naliva swore at her and threatened her.

[17] In paragraph 3 and 5 of the Statement of Claim; the averment is made that Ratu Kaliova Vukinamualevu the great grandfather of Plaintiff was allotted land which he re-alloted to Ratu Sairusi Nagagavoka. iTaukeis can allot and deal with lands as amongst themselves according to their native custom.

[18] Plaintiff is of the view that under section 3 of the iTaukei Lands act:

> *iTaukei lands shall be held by iTaukei Fijians according to iTaukei custom as evidenced by usage and tradition. Subject to the provisions hereinafter contained such lands may be cultivated, allotted and dealt with by iTaukei Fijians as amongst themselves according to their iTaukei customs and subject to any regulations made by the Fijian Affairs Board, and in the event of any dispute arising for legal decision in which the question of the tenure of land amongst iTaukei Fijians is relevant all courts of law shall decide such disputes according to such regulation or native custom and usage which shall be ascertained as a matter of fact by the examination of witnesses capable of throwing light thereupon.*

[19] Further in paragraph 6 and 7 of the said claim it is averred that Ratu Sairusi commissioned architectural drawings, spent his own money and sought donation wherewith he built a house on land allotted to him. He then used it for himself and dignitaries but held his traditional meetings in the Village hall.

[20] Ratu Kaliova Vukinamualevu at paragraphs 11 to 13 of his Affidavit in Support attests to the commissioning of such Architect, and the obtaining of funds for the building of the house. In his Affidavit in reply at paragraph 18 he makes the point that the Defendants have not attested to building the house nor spending money or labor on it.

[21] However, the onus is on the Plaintiff to prove his own averments in his claim to establish a strong case against the Defendants which should be appeared to Court on the face of it .

[22] At paragraphs 15 to 23 Ratu Kaliova Vukinamualevu deposes to the death of his father and the break and entry of the 1st Defendant and all the Defendants. Though the 1st Defendant denies this break and entry at paragraph 10 of his Affidavit in reply Ratu Sairusi Nagagavoka Junior deposes to hearing him swearing at his family, breaking into his father's bure, throwing out a door he had broken and swearing at Ratu Sakiusa Neisau's children as well as the villagers. Ratu Sairusi Junior took him home to Varavu but the 1st Defendant could not go home due to a Domestic Violence Restraining Order by his wife.

[23] However, these are not the only substantive factors to be mainly considered in this inquiry into the interim.

[24] In the Plaintiff's Statement of Claim; he claims in paragraph 12 that the Defendant's action has caused pain and suffering damage, invasion of privacy and diminishing of rights of inheritance. Due to contumelious disregard of their rights that indemnity costs is also pleaded.

[25] The Counsel for the Plaintiff submits that there are serious issues that need to be tried as the Plaintiff's Estate and Beneficiary have a claim to a house foundation allotted to their father, which their father built on it and used it. The Defendants have unreasonably and without just cause trespassed onto the said property without being able to show by Affidavit that they paid for the architectural plans, nor paid for the contractors nor used their own labor to build the house. They have also not shown any right of usage. The Counsel further submits.

Defendants' Objections

[26] If I repeat the line of objections taken up by the Defendants, in brief they say:

- That the Plaintiff does not have any locus standi to bring and/or institute this proceeding on his behalf or on behalf of the estate of Ratu Sairusi Sagawa Nagagavoka (hereinafter referred as "the deceased").

- That the proper person to institute the proceeding is the Plaintiff's mother Bulou Soweri Suguta who obtained the Letters of Administration in the Estate of the deceased.

- That to enable over this the Plaintiff obtained a letter of authority from his mother to enable him to institute the proceeding.

- That the said letter of authority is improper and not the appropriated form of authority is such situations.

- That the Power of Attorney is the proper document [Deed] that is recognised by the Courts which would have assisted the Plaintiff in his claim.

[27] It is indeed as clear as daylight that the Plaintiff does not have any locus standing to bring and/or institute this proceeding on his behalf or on behalf of the estate of Ratu Sairusi Sagawa Nagagavoka ("the deceased"), because, the proper person to institute the proceeding is the Plaintiff's mother Bulou Soweri Suguta who obtained the Letters of Administration in the Estate of the deceased. The Plaintiff has only obtained a letter of authority from his mother to enable him to institute the proceeding. The letter of authority is improper and not the appropriated form of authority in such situations. The matter before me is a dispute relating to a land and a house in it.

[28] The proper or the best solution shoud have been to obtain a Power of Attorney which is a Deed and that is recognized by the Courts which would have assisted the Plaintiff in his claim.

[29] **Halsbury's Laws of England; Fourth Edition (Vol 1) Page 438** defines a Power of Attorney as:

> *An instrument conferring authority be deed is termed a power of attorney. The person conferring the authority is termed the donor of the power, and the recipient of the authority, the donee. A power of attorney is construed strictly by the courts, according to well recognised rules, regard first being had to any recitals which, showing the general object, control the general terms in the operative part of the deed.*
>
> *General words used in conferring the power are construed as limited by reference to the special powers conferred but incidental powers necessary for carrying out the authority will be implied.* ***Thus a power granted to the donee to manage certain property followed be general words giving him full power to do all lawful acts relating to the donor's business and***

affairs... *does not necessarily include authority to indorse bills, for the general words are construed as having reference to managing the donors property for which indorsing bills may not be incidental or necessary.*

[30] In **Ram v Lok** [2011] FJHC 798; HBC 320. 2007 (9 Dec 2011) Mr Justice P. Nawana cited the following passages from **Powers of Attorney: F Bower Alcock; London Sir Issac Pitman & Sons, ltd; 1935 Page 1 and 22 respectively:**

All attorneys are, in fact, agents, but all agents are not necessarily attorney in fact... ***but attorneys, in fact, are meant persons who are acting under special power created by a deed...***

Powers of Attorney are strictly construed. This rule applies not only to the interpretation to be placed upon each individual power conferred by the instrument, it applies with equal force to the purpose which the instrument is construed to subserve from a general reading of is as a whole (at page 22).

[31] In Fiji, Part XVIII of the Land Transfer Act [LTA] (Cap 131) deals with Power of Attorney.

PART XVIII – POWERS OF ATTORNEY

118. *The registered proprietor of any land subject to the provisions of this Act, or of any estate or interest therein, may by power of attorney in the prescribed form or such other form as my be approved by the Registrar, and either in general terms or specially, authorise and appoint any person on his behalf to execute transfers of, or other dealings with, such land, estate or interest, or to sign any consent or other document required under the provisions of this Act, or to make any application to the Registrar or to any court or judge in relation thereto.*

TO BE DEPOSITED

119. *Every power of attorney intended to be used under the provisions of this Act, or a duplicate or certified copy thereof, verifying to the satisfaction of the Registrar, shall be deposited with the Registrar who shall register the same by entering in the register to be known as the "Powers of Attorney Register" b memorandum of the particulars therein contained and of the date and hour of its deposit with him.*

[32] Section 118 of the LTA above is very precise that amongst others the Power of Attorney authorizes and appoints a person to sign any consent or other document required under the provisions of this Act or to make any application to any Court or Judge in relation thereto.

[33] Since there was no Power of Attorney authorizing the Plaintiff to make any application to Court in relation to the estate of the deceased, the Defendants very correctly submit that the Plaintiff does not have any locus standi to institute this proceeding on behalf of the estate of the deceased.

[34] The Defendants further argue that the above suffices for the Court to strike out this injunction application and the substantive action alone without having regard to other grounds set out hereunder.

[35] However, the Defendants' have taken up another preliminary objection on a ground relates to the Letters of Administration (LOA) and the value of the Estate.

[36] The value of the Estate as indicate in the LOA amounts to only $25,000.00.

[37] The LOA was prepared by a law firm based in Ba, Naseem Lawyers based on the instructions provided by the Plaintiff's mother and/or the two sureties, whoever they may be.

[38] No doubt that the LOA was issued by the Chief Registrar based on the information sworn by the Plaintiff's mother in the Oath of Administratrix and supported by the Justification of Sureties and the Bond.

[39] There is no evidence tendered by the Plaintiff to indicate that the value of the Estate provided in the LOA is incorrect and/or worth $245,000.00.

[40] To indicate otherwise would be bordering on perjury a very thin line the Plaintiff should tread carefully on.

[41] However, the Plaintiff's assertion and afterthought in the first and second Affidavit is bare without any concrete evidence provided such as:

- Receipts
- Invoices
- Letter of Agreement with Semesa the Contractor whom the Plaintiff alleged in paragraph 12 of the First Affidavit to have been paid the sum of $70,000.00,

- No bank statement and account provided by the Plaintiff to prove the $175,000.00 alleged in paragraph 13 of the first Affidavit

[42] On this issue, the Defendants rely on the rule accepted in **Jones v Dunkel (1959) 101 CLR 298** in respect of the failure of the Plaintiff to place evidence to prove the former. This rule relates to the unexplained failure of a party or witness to give evidence or to produce a document which may, in appropriate circumstances, lead to an inference that the uncalled evidence would not have assisted that party's case.

[43] Even though this is not a trial and the Court is not required to scrutinize the evidence, the Plaintiff has to satisfy the Court that he has an arguable case by producing some kind of evidence to succeed in the interim.

[44] Windeyer J, In **Jones v Dunkel** (supra) at pages 320 to 321 (paragraph 15), embraced the notion of "fear of exposure "on the part of the party who fails to call the witness or produce a document, quoting Wigmore on Evidence:

> *"The failure to bring before the tribunal some circumstance, document or witness, when either the party himself or his opponent claims that the facts would thereby elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the circumstances or document or witness, if brought, would have exposed facts unfavourable to the party. These inferences, to be sure, cannot fairly be made except upon certain conditions; and they are also open always to explanation by circumstances which made some other hypothesis a more natural one than the party's fear of exposure. But the propriety of such an inference in general is not doubted".*

[45] Failure of the Plaintiff to place some kind of evidence of the documents mentioned in paragraph 42 above, means that the Court has to draw an adverse inference against the Plaintiff that it would not have supported the Plaintiff's allegations and would have further exposed the Plaintiff's credibility.

[46] The other ground of objection taken up by the Defendants is the insufficient undertaking as to damages by the Plaintiff.

[47] I agree with the argument of the defendants' Counsel that the Plaintiff's document attached to the first Affidavit, an iTaukei Land Trust Board [TLTB] invoice dated 1st January 2014 marked as Annexure '**RKV-3**' does not in conformity with the requirement to convince the court.

[48] This document relates to a Lease Account No. 28864 between the TLTB and a company named RATU SAIRUSI GAGAVOKA & FAMILY INVESTMENT LIMITED. Hence, the plaintiff cannot have any control or authority over the money lying in that account since it belongs to a company. And moreover, the balance indicates in RKV-3 as at 1st January 2014 is $231.75 only. Either the plaintiff produced this document without knowing the gravity and applicability of it towards his claim or he willfully produced to mislead the others to make them believe that he has sufficient means to furnish security for costs but in vain.

[49] The Fiji Court of Appeal in **Natural Waters of Viti Limited v Crystal Clear Mineral Water (Fiji) Ltd** ***ABU 001 A.2004S (26Nov.2004)*** reinforced the principle that sufficient material should be placed before the Court to fortify the undertaking given. At page 12 of the judgment, their Lordships held that:

> *"Applicants for interim injunction 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."*

[50] The Plaintiff has deposed in paragraph 25 of the first affidavit that the Estate owns building which is rented by an Australian Company called Amex which pays $1,500.00 a month to the Estate.

[51] Annexure RKV – 3 falls short of proving that $1,500.00 is paid every month. It appears that the sum of $200.00 is the highest amount deposited as shown in the statement and the description is the Lease Rental Invoice. This does not indicate whether it is a payment made to TLTB or payment received by the Plaintiff or his mother. Moreover, the Lease Account is under the name of Ratu Sairusi Gagavoka and Family Investment Ltd. The plaintiff cannot have access to the funds belongs to a company or to a group. He is a separate entity who cannot claim the ownership to the funds of the former since the account is not in the name of the Plaintiff or his mother.

[52] On this basis alone, the Plaintiff's application for interim is liable to be dismissed as it was so held In ***Singh v Director of Lands & Survey [2006] FJHC 72; HBC 117. 2006,*** and Justice Phillips [as she then was] there dismissed an injunction application on the basis of insufficient undertaking as to damages.

[53] However, even if the court considers the fact that some evidence of undertaking as to damages annexed to the second affidavit could be accepted as sufficient, this ground can only be considered when the Plaintiff establishes

a prima facie case against the Defendants. Furnishing a sufficient undertaking as to damages does not pave the way forward to an unsuccessful plaintiff in the main case to succeed in the interim.

[54] The Defendants also object to the interim on the ground of hearsay evidence deposed by the Plaintiff from paragraphs 9 to 14 in the first affidavit. The purpose of the affidavit is to provide evidence, not vehicles for opinions or submissions as it appears in particularly under:

- Para 9 :– "Ratu Vukinamualevu brought up my father when he was nine months old and told him before he passed away;
- That my father became chief and built concrete house for his children and knowing ...
- Para 11 -13:– the words expressed are hearsay and submissions without evidence as if the Plaintiff was present in every step of the way.

[55] The above paragraph in the first Affidavit does not contain evidence, it is improper and cannot be accepted as evidence since all the statements are hearsay. Hearsay evidence can be accepted but here, the statements of the Plaintiff are fictitious.

The Law

[56] This injunction application is brought under Order 29 rule 1 of the High Court Rules 1988 which states as follows:

> *"An application 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."*

[57] Essentially the injunction principles in the well settled case of **American Cynamid Co. v Ethicon Ltd** [supra] are intended to avoid the Court determining disputes of fact or difficult questions of law at the interlocutory stage of an action.

[58] So long as the Plaintiff can establish that there is a serious issue to be tried, that the claim is not frivolous or vexatious or that the application discloses a reasonable chance of success, then the only remaining factor to be considered by the Court is the balance of convenience.

[59] However, in order to get down to the other facets and specially for the Court to get down to weigh the concept of balance of convenience in terms of whether the parties could be compensated for damages if the injunction is not granted, the Court must first and far most need to decide whether there is a serious question to be tried or not.

[60] The Defendants submit that there is no serious issue to be tried. They say that the crux of the Plaintiff's argument flows from his purported claim in the alleged Estate of the deceased is that, the $ 245,000.00 allegedly spent on the **Suelevu.**

[61] As argued above the Plaintiff does not have any locus standi as there is no Power of Attorney, the value of the Estate in the LOA is only $25,000.00 as opposed to the purported claim of $245,000.00 claimed by the Plaintiff in the affidavit and the Statement of Claim, and there is no evidence placed before this Court to verify the bare assertions made by the Plaintiff.

[62] Therefore, the Plaintiff's claim whether it be injunction or the substantive claim is doomed to fail in view of the foregoing.

[63] The Defendants point out that in addition to the aforementioned facts, the Court can take judicial notice of the article in the Fiji Times on 20th February 2002 marked as annexure SVN -6 in the affidavit in opposition with regard to the finance provided for the Suelevu by the people of Taiwan upon the request made by Prime Minister Mahendra Chaudhary.

[64] Even though the Plaintiff has objected to the newspaper article in his written submissions, he has has not rebutted this evidence and on the other hand failed to place evidence to prove his assertions of the substantial amount of $245,000.00 as he claims to the value of the property in dispute.

[65] I accept the argument advanced by the Defendants that the failure by the Plaintiff to respond to this significant piece of evidence must lead to the conclusion that the Plaintiff is not being truthful about his position.

[66] In **Jai Prakash Narayan v Savita Chandra, FCA, Civil Appeal No. *37/1985 (8 Nov. 1985)*** where their Lordships commented on failure to respond to an affidavit and said:

> *"Mr Ramrakha submitted that the appellant was not ordered to file further affidavit. That indeed was so. The submission was advanced as if it were an absolution of the appellant from making of a response. Of course, he did not have to respond. In our view however, the course of events had taken and the*

consequences if he did not respond, rendered it a matter or prudence that he should reply if indeed he had a reply. And in the circumstances of the case, in the absence of a reply, we hold the inference inescapable that what the Respondent has said to be true".

[67] The rule of pleadings contained in Order 18r. 12(1) of the High Court Rules is quite clear. It provides:-

> O.18, r. *12-(1):- subject to paragraph (4), any allegation of facts made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleadings or a joinder of issue under rule 13 operates as a denial of it'*

[68] The Plaintiff has not traversed the article in the Fiji Times and is deemed to be admitted. This is a factor that must operate against the Plaintiff and the injunction ought to be dissolved by this Court.

[69] The Plaintiff is seeking a declaration in his Statement of Claim that the bure allegedly built by the deceased belongs to the Estate and alternatively the Defendants to pay the Plaintiff the sum of $245,000.00. The Plaintiff is too far away from succeeding both the reliefs he prayed for by the writ and the statement of claim in view of the foregoing reasons discussed in this ruling.

[70] The Plaintiff has no locus standi for two main clear reasons. On one hand he is not entitled for the judgment against the Defendants for the reasons clearly discussed above and the other reason is that the Plaintiff is seeking alternative reliefs in lieu of the first relief. When the first relief sought by the Plaintiff is so clear that it is even out of reach of the Plaintiff, let alone the alternative relief. The Plaintiff however cannot have a judgment against anyone and it is against the Defendants in the instance asking for them to pay the Plaintiff a sum of $245000.00, because plaintiff is not the owner of the property in dispute. And furthermore, the Plaintiff has been unable to prove the value to the property as he claims which is $ 245000.00.

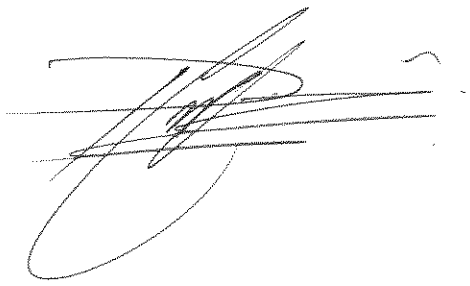
[71] The failure of the Plaintiff to establish a prima facie case against the Defendants in the interim leads to shake the substantive action particularly because the Plaintiff is well found here that he has no locus standi to bring this action and ultimately will be the same position in the trial of the substantive action, which cannot prevent this Court by striking out the Writ and the Statement of Claim.

[72] In **Fiji Bus Operators Association v Kelton Investments Limited No 2** where Justice Pathik in an injunction application said:

"Since we have gone slightly more into the 'merit' of this case, it is proper that I add at this stage that on an application for an interlocutory injunction, the authorities suggest that the court 'should not normally attempt to determine which side is more likely to win at trial, the court may, in an appropriate case, express fairly strong views about the merits, particularly where there is no significant factual issue and where to do so may save the parties time and expense by producing an early resolution of the dispute (Headnote to ***B & W CABS LIMITED (Receiver and Manager appointed) v BRISBANE CABS PTY LTD & Another*** *[(1991(30 FCR 177 – Judgment of* ***PINCUS J]***

[73] Therefore, I fail to see in the instance as to how the Plaintiff is going to succeed in his claim against the Defendants not only in the interim, but also in the substantive since the Court can clearly observe that there can be no significant change to the claim of the Plaintiff and new evidence cannot be emerged in view of the core of the Plaintiff's case is already before this Court and is failed.

[74] For all the reasons forgoing, there left no other option but I refuse the interim in favour of the Plaintiff, decline to grant the injunction, dismiss the Inter-Partes notice of motion of the Plaintiff, and dismiss the writ of summons and the statement of claim of the Plaintiff dated 19th January, 2016 with costs to be assessed unless agreed upon by the parties.



R. S. S. Sapuvida

[JUDGE]
High Court of Fiji

On the 4th day of October 2016
At Lautoka