

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC No 231 of 2016

BETWEEN : **ADI LIKUVONO KUTA KOROI YAGOMATE**

PLAINTIFF

AND : **SIKELI TALE**

DEFENDANT

EXTEMPORE RULING

INTRODUCTION

1. Before me is an urgent *ex-parte* injunction application by Adi Likuvono Kuta Koroi Yagomate (“**Adi**”). Adi is a stay-at-home mother. She seeks three Orders, the main one of which is an Order to restrain the defendant from selling or disposing a certain property which is described as Housing Authority Sub-Lease Ref No. 179868 on Lot 12 on DP 4637 in the Province of Ba in the district of Vuda being 26.3 square meters (“**property**”).
2. The said property is registered in the name of the defendant, Sikeli Tale (“**Tale**”).

NATURE OF RELATIONSHIP BETWEEN ADI & TALE

3. Tale and Adi were in a *de facto* relationship for three years. They resided on the said property. Adi still resides on the said property with her parents and, I gather, some other members of her family.
4. Sometime early this year, they became estranged from each other.

THE PROPERTY

5. The property used to be registered under the name of one Ropate Voreqe Yagomate (“**Ropate**”). I have ascertained this from the copy of the Housing Authority Sublease over the said property annexed to Adi’s affidavit sworn on 25 October 2016 in support of her application. Ropate is Adi’s father. As I have said, Ropate too still resides on the property to this day.
6. I see from the notations in the memorials on the title that Ropate did transfer the said property to Adi on 26 August 2015 at 2.27 p.m. According

to Adi, the said transfer was made out of natural love and affection. On the same day, 26 August 2015, Adi would transfer the said property to Tale. This transaction happened also at 2.27 p.m. as memorialised.

7. Adi deposes in her affidavit that the transfer document from her to Tale was made in consideration for the sum of \$80,000. However, in actual fact, Tale did not pay a single cent. This was part of an arrangement orchestrated by Tale which I explain below.

WHY THE TRANSACTIONS WHICH SAW EVENTUAL TRANSFER OF THE PROPERTY TO TALE?

8. Adi explains the above transactions in her affidavit. According to her, she and Tale started living together in a *de-facto* relationship in January 2013. They had two children together. The younger of the two children passed away a nearly three months ago on 09 August 2016.

9. Tale was the treasurer of the funds of his *mataqali* in Yasawa. He had misused some \$80,000 of *mataqali* funds. Sometime in 2015, Tale told Adi about this. He also said that the members of the *mataqali* were after him and asking him to account for the monies. It was then that Ropate came up with the arrangement for Adi to approach her father, Ropate, and to ask Ropate to transfer the property to her and she, to then transfer the property to Tale. Adi describes the arrangement as:

...on a temporary basis ...and then I have transferred the said property to the Defendant simultaneously”

10. Adi explains that the reason why she would then transfer the property to Tale was so that Tale could then show the title to his *mataqali* with his name on it. The title, with Tale’s name on it, together with a copy of the transfer document from Adi to Tale which would purport to show that Tale had paid a consideration of \$80,000 for the said property, would then become the basis of Tale’s tale to his *mataqali* that he had used the \$80,000 of *mataqali* funds to purchase the said property. Below is the relevant extract from Adi’s affidavit:

7. That sometimes in June or July of 2015, my father Ropate Voreqe Yagomate who was the registered proprietor of Housing Authority Sublease No. 179868 in Lot 12 on DP 4637 in the province of Ba, in the District of Vuda being Area of 26.3 square meters (hereinafter referred to as ‘the property’) transferred the said property to

- me by way of natural love and affection and not by way of sale. Annexed hereto and marked as annexure "ALKKY1" is a copy of the said transfer document.
8. That given the above and the fact that the Defendant was in debt to the Mataqali who are owners of the said Mataqali Funds, the Defendant then requested me to assist him in transferring the property to his name to provide evidence to the Mataqali that he had invested the misused funds to purchase the said residential property. Annexed hereto and marked as annexure "ALKKY2" is a copy of the said transfer document.
 9. That there was a mutual understanding and agreement between the Defendant and I that after providing the said title to the Mataqali to prove that he had invested the said monies in purchasing the said residential property and after showing evidence to the Mataqali, the Defendant promised to reverse the transfer back to me.
 10. That after the property was transferred to the Defendant, the Defendant breached the mutual agreement and proceeded further to capitalise the property into his personal capacity and use.
 11. That after several and numerous requests, the Defendant refused to transfer the said property back to me and commenced in issuing legal proceedings to evict me from the property.
 12. That the Defendant is very well aware that the said property is owned by my parents and is our family home and he has completely denied all this by initiating legal proceedings against me.
 13. That the transfer from myself to the Defendant was for the consideration of \$80,000 (Eighty Thousand Dollars) subject to the valuation report, however, these said monies were never exchanged hands as per our mutual agreement in paragraph 9 above. Further to this, the mutual agreement with regards to the transfer of the property to the Defendant and then back to me was solely done for the sake of preventing the Defendant from being prosecuted by the relevant authorities.
 14. That the said transfer was done on the same day and was registered with the Registrar of Titles simultaneously.
 15. That the Defendant thereafter obtained the said property by way of deception and fraud, thus, breaching our mutual agreement and betrayed my trust.
 16. That I only consented to the said transfer as I only wanted to assist the Defendant so as to not being prosecuted by the relevant authorities.
 17. That the Defendant thereafter personally went to the Registrar of Titles to pick up the said lease and since then started ignoring me and my calls.
 18. That I have also made an application by way of Writ in the Lautoka High Court seeking that the said property be transferred back to me by the Defendant.
 19. That I therefore am seeking that an injunction Order be granted by the honourable Court against the said property as per the prayers in the notice of motion filed herein until the final determination of this matter by a court of law.
 20. That in the circumstances above, I seek Orders as prayed in my Notice of Motion.

SECTION 169 APPLICATION

11. I am told from the bar table that there is a section 169 application pending before the Master instituted by Tale against Adi and her parents to evict them from the said property. The said application is scheduled to be heard later this morning.

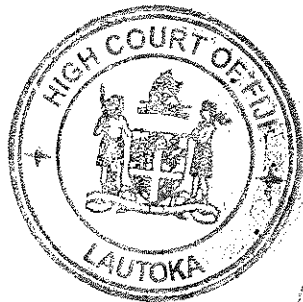
OBSERVATIONS

12. The principles applicable in an application for injunction are those stated by Lord Diplock in **American Cyanamid Co. v Ethicon Ltd** [1975] AC 396, and accordingly, the matters to be considered are:-
 - (i) whether there is a serious question to be tried;
 - (ii) whether damages would be adequate remedy; and
 - (iii) whether balance of convenience favour granting or refusing Interlocutory Injunction.
13. After considering all, I am convinced that there are some serious issues to be tried. There are a lot of parties who have a stake in the property. Adi's father, arguably, still has an interest in the property. By Adi's own account, the transfer of the property to her from her father was a "temporary" one. By that, one could read that the intention was always that the property would be transferred back to him eventually once Tale has completed his (alleged) ill-advised, "deceitful" purpose. Hence, arguably, although I reserve this question for trial, both Adi (and arguably also Tale) would have held the title on trust for Ropate, who, could be said to still have a beneficial interest in the property.
14. I say "arguably" for Tale considering there was, strictly, no privity in dealing between Ropate and Tale. At best, Tale could be said to be holding the property on trust for Adi – at least from Adi's point of view.
15. Ropate's wife (Adi's mother) would also appear to have an interest in the property, if in fact the property was her matrimonial property with Ropate. It would be interesting to see if she was aware at all of the said transaction that saw the transfer of the property to Adi and then to Tale. If she was so, it is arguable also that Adi and Tale would have held the property also on trust for her, and that she retained an equitable beneficial interest over half of the estate.
16. The *mataqali* (*vide* the trust created for the *mataqali* if any) obviously has a stake in the property if the money in question was in fact used towards purchasing the property (this would have to be one of the issues of fact to be determined at trial). As I have said, that depends on whether its monies were actually applied so by Tale.

17. Certainly, from what is before me now, it might be said that the mataqali has been explained by Tale that the \$80,000 that Tale allegedly misappropriated from the mataqali account was used to purchase the property. In equity, the mataqali, arguably, might retain some beneficial interest in the property, in which case, it is arguable that Tale would be holding the property on trust for the mataqali. If so, then the potential equitable claim of the mataqali will have to fared against the other potential equities of Ropate and his wife, and also Adi.
18. All these are serious questions to be tried in this case.
19. I am also of the view that the balance of convenience favours the granting of the injunctions sought. The injunction is to last only until the next date which is **10 November 2016 at 4.30 p.m.** Adi deposes that Tale intends to sell the property urgently so he can repay the mataqali the proceeds of sale. I am of the view that damages would not be an adequate compensation in the particular circumstances of this case. I say that because, if the injunction were not granted now, and Tale were to proceed to sell the property to a *bona fide* purchaser for value, there is potential that Adi and Ropate and family would lose the property forever. I doubt from where I sit if Ropate would be in a position to even pay them damages.

ORDERS

20. Order in Terms. Injunction granted until **4.30 p.m. on 10 November 2016**. Costs in the cause. Plaintiff to serve all documents to the defendant in three days.
21. At some point in time, I will have to consider whether to join Ropate and his spouse and also the *mataqali* trustees (if any) as parties in this case.



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Anare Tuilevuka
JUDGE
27 October 2016