

IN THE HIGH COURT OF FIJI  
AT SUVA

Action No: HBC 168 of 2016

BETWEEN : ROSELYN LATA

PLAINTIFF

AND : BEN MATI

FIRST DEFENDANT

AND : REGISTRAR OF TITLES

SECOND (NOMINAL) DEFENDANT

AND : RITESH CHAND

THIRD DEFENDANT

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr Selvyn Singh for the Plaintiff  
Mr. I. Ramanu for the First and Third Defendants,  
Ms. R Pranjivan for the Second Defendant

Date of Hearing : 1 March, 2017

Date of Decision : 3 March, 2017

## DECISION

1. This is an Amended Inter Parties Summons for an interim (sic) injunction whereby the Plaintiff seeks to restrain the First and Third Defendants from preventing her from entering her premises at Lot 1 Ratu Dovi Road, Nadera and for the status quo to remain as between the parties prior to the Plaintiff's house being destroyed by fire.
2. It is supported by the Affidavit of the Plaintiff who deposes that the first Defendant is her mother and that the substantive matter before the Court, is an action for cancellation of a transfer allegedly fraudulently done by the first and third Defendants.
3. At the hearing before the Court, the Plaintiff's counsel said there were serious issues to be tried, that damages were not an adequate remedy and that an undertaking as to damages had been provided.
4. Counsel for the first and third Defendants objected to an interlocutory injunction on the grounds that the relief sought were not pleaded in the writ of summons, the affidavit as to damages was not sufficient and that an allegation of fraud could only be decided at the full trial and not here.
5. Plaintiff's counsel in his reply said fraud is a live issue.
6. At the conclusion of arguments I said I would take time to consider my decision. Having done so I now deliver my decision.
7. The principle to be applied in an application for an interlocutory injunction was laid down by Lord Diplock in *American Cyanamid Co. v. Ethicon Ltd* [1975] A. C. 396. It is that the Plaintiff must establish that he has a good arguable claim to the right he seeks to protect – i.e. there is a serious question to be tried.

8. For our present purposes this is sufficient for the court to decide this application as it should not attempt to decide this claim on the affidavits.
9. The root of any claim that the Plaintiff may have to the property concerned is to be found in the will of Gyan Deo. Para 3 thereof states that he gives all his properties to "Ben Mati for life and upon her death to my daughter Roselyn Lata for her own use and benefit absolutely".
10. Thus it is clear as daylight that the Plaintiff has no right whatsoever to the house, not even to its use until and after the demise of Ben Mati.
11. In these circumstances there is no serious question nor an arguable case to be tried. The will clearly evinces the testator's intention that even the Plaintiff's use of the property is postponed to after the death of the first Defendant.
12. I am fortified in my decision when I note from the claims of the Plaintiff in the Statement of Claim there is no claim by her to possession or use of the property. (From a perusal of the court file in Originating Summons No. 47 of 2016, I note that it has been withdrawn and dismissed with no order as to costs).
13. In the result I have no alternative but to dismiss the Amended Inter – Partes Summons filed on 6 February 2017 but shall order the parties to bear their own costs.

Delivered at Suva this 3<sup>rd</sup> day of March, 2017.



David Alfred  
**JUDGE**  
**High Court of Fiji.**