

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 50 of 2017

BETWEEN : **MEREULA CIRIMAITOGA** of Waimalika, Nadi Tour
Consultant.

PLAINTIFF/APPLICANT

A N D : **SARWAN KUMAR GOUNDER f/n JAGNATH GOUNDER**
formerly of Waimalika, Nadi, Cargo Officer but now of
Kulukulu, Sigatoka.

DEFENDANT/RESPONDENT

Appearances : Ms R. Lal for Plaintiff/Applicant

Non-appearance for Defendant/Respondent

Date of Hearing : 02 May 2017

Date of Ruling : 02 May 2017

R U L I N G

[01] This is an *ex-parte* application seeking an interim injunction.

[02] By the *ex-parte* notice of motion filed in conjunction with a supporting affidavit (the application), the plaintiff/applicant (the plaintiff) seeks an interim injunction against the defendant/respondent (the defendant) restraining him (the defendant) from assigning/selling or transferring the property on Native Lease Notice of Approval to Lease NLTB Ref No.4/10/4523 until the hearing of the substantive matter in this action.

[03] The application is made pursuant to Order 29, Rule 1 of the High Court Rules 1988 ('HCR') and the inherent jurisdiction of this court. Order 29 provides:

Application for injunction (O.29, r.1)

"1.-(1) 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.

*(2) Where the applicant is the plaintiff and **the case is one of urgency such application may be made ex parte on affidavit** but, except as aforesaid, such application must be made by motion or summons.*

(3) The plaintiff may not make such an application 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, 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." (Emphasis provided)

- [04] The plaintiff on affidavit states that there is a sale and purchase agreement between the plaintiff and the defendant and the plaintiff has paid a sum of \$58,582.45 towards the purchase price to date and that the defendant in breach of the agreement is attempting to sell the property with the view to defeat the plaintiff's claim.
- [05] The plaintiff has obtained consent of the iTLTB to assign the property to a third party (see 'MC6"). It is evident that the defendant is trying to assign the property to a third party.
- [06] The plaintiff states that if an interim injunction is not granted, severe hardship would be inflicted to the plaintiff.
- [07] I am satisfied that there is urgency in this application. The plaintiff has issued the writ of summons and the statement of claim against the defendant. The plaintiff is seeking, among other things, specific performance in the substantive action. Moreover, after service of the

statement of claim, the defendant has obtained consent of the iTLTB to assign the property in dispute.

[08] It is to be noted that the plaintiff has been occupying the property following the signing of the agreement.

[09] The plaintiff has given an undertaking to damages (see para 18 of her affidavit) and I am satisfied with the undertaking given by the plaintiff.

[10] I, therefore, having considered the application. The affidavit and documents annexed to it and the submissions advanced by counsel for the plaintiff, grant an interim injunction as prayed for in prayer (a) of the application to be valid until 16 May 2017.

[11] This order together with all documents is to be served on the defendant forthwith. The matter is adjourned for mention only at 9.30am on 16 May 2017.

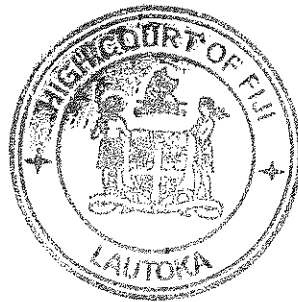
Final outcome

Limited *Ex-parte* injunction granted.

M H Mohamed Ajmeer 2/5/17

M H Mohamed Ajmeer

JUDGE



At Lautoka

2 May 2017