

IN THE HIGH COURT OF FIJI AT LAUTOKA
WESTERN DIVISION

Civil Action No. HBC 167 of 2016

BETWEEN : **ABDUL AZAM ALI** of Kavuli, Tavua, Cultivator

PLAINTIFF

A N D : **NABUTA LAND PURCHASERS COOPERATIVE EXECUTIVES** namely Damodar Nair, Wajid Ali, and Yeer Gangaiya all of Tavua

DEFENDANTS

Appearances : Mr W Rosa for Plaintiff
Mr T Tuitoga for Defendant

Date of Hearing : 03 February 2017

Date of Ruling : 03 February 2017

R U L I N G

[01] This is an application by motion with notice to the other party made by the defendants to vary or dissolve an interim injunction granted *ex-parte* in favour of the plaintiff on 2 September 2016 wherein the defendants were restrained from further distribution of the proceeds from the sale of CT 17523 being Lot 1 DP No. 3402 'Nabuta' (part of) ('the property'). The application is supported by an affidavit sworn by Wazid Ali, one of the defendants and also the Secretary of Nabuta Land Purchase Co-operative Society Limited.

[02] The application is made under Order 8, Rule 2 of the High Court Rules 1988 ('HCR') and the inherent jurisdiction of the court. Rule 2 permits an application by motion to be filed with notice to the other party and in urgent matters to be filed *ex-parte*.

[03] The plaintiff has filed an affidavit in opposition.

[04] At the hearing, both the parties made oral submissions.

Background

[05] Abdul Azam Ali, the plaintiff is the title holder of CT 17316 'Nabuta' (part of) Lot 12 on DP 3401 ('the property'). His late father (Ramjan Ali) transferred the property to the plaintiff. The plaintiff is a shareholder in Nabuta Land Purchasers Cooperative Society, Tavua ('the Society'). The Society is made up 75 members. The Society purchased a land CT 17253 being Lot 1 on DP No.3402 'Nabuta' (part of). Each member contributed to the purchase of that land. The Society sold and transferred the land to Tian Tian Tian Yuan Compay (Fiji Limited) for \$2,100,000.00. Majority of the members have approved the sale. The members of the Society were informed of their entitlement to the proceeds of the sale. The plaintiff complains that his share in the proceeds was refused by the defendants. He obtained *ex-parte* an interim stay on the distribution of the sale proceeds. The defendants now apply for the dissolution of the interim order.

The Issue

[06] The issue to be decided by this court is that whether or not the interim injunction granted on 2 September 2016 by this court in favour of the plaintiff should be discharged.

Determination

[07] This is an application to vary or dissolve the injunction order granted on 2 September 2016 in favour of the plaintiff thereby the court restrained the defendants from further distributing the sale proceeds.

- [08] The court may discharge or vary injunctions on diverse grounds including (a) the facts not justifying relief without giving notice and (b) unreasonable interference with the rights of innocent third parties.
- [09] Ms Tuitoga, counsel for the defendants orally submits that the defendants are unable to distribute the money among the members because of the injunction. As a result, innocent members' rights are affected. They are unable to receive their entitlement. She adds that they are prejudiced by the injunction and that the plaintiff's share in the proceeds of the sale of the property is in dispute as he wanted whole share whereas his sister has claimed for her half share. The plaintiff's claim will be referred before the board as disputed claim. She further submits that the plaintiff rushed to court without exploring the Dispute Resolution process through the Cooperative Tribunal constituted under section 115 and 116 of the Cooperatives Act 1996.
- [10] Counsel for the plaintiff, Mr Rosa only submits that his client is not agreeing to the variation. It seems that he could not base his objection on the sound footing.
- [11] The defendants did not deny the plaintiff's entitlement in the proceeds of the sale of the property. The plaintiff made a claim to the defendants. The defendants informed the plaintiff that his claim will be referred before the board as disputed claim as his sister has also made a claim, claiming half share.
- [12] The plaintiff is claiming through his deceased father. His sister is also claiming shares. There appears that the plaintiff's claim to be a disputed one. Any dispute between persons claiming through a deceased member and co-operative, its Board or any other officer of the co-operative may be referred, after due attempts to settle the issue by

local informal mediators, to the Registrar or directly to the Co-operative Tribunal for decision (*see s.115 of the Co-operatives Act*).

[13] The plaintiff had other means to settle the dispute. The defendants have decided to refer his claim to the Registrar for decision. He should have waited for the Registrar's decision. Instead, he rushed to court and obtained *ex-parte* injunction restraining the defendants from further distributing the proceeds of the sale.

[14] The injunction has been obtained without probable ground. The injunction has put a stay on the whole account that the defendants cannot distribute the money among other members. This stay unreasonably interferes with the lawful rights of innocent members.

[15] In the circumstance, I proceed to discharge the injunction granted *ex-parte* on 2 September 2016 forthwith. I would make no order as to costs.

Final Orders

- 1) The interim injunction granted *ex-parte* is discharged with immediate effect.
- 2) No order as to cost.

H.M. Mohamed Ajmeer
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JUDGE

**At Lautoka
3 February 2017**

