

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

**HBC NO. 234 OF 2016**

**BETWEEN** : **NAGAMMA REDDY** **PLAINTIFF**  
**AND** : **KRISHNA SAMI** **1<sup>ST</sup> DEFENDANT**  
**AND** : **REGISTRAR OF TITLES** **2<sup>ND</sup> DEFENDANT**

**Counsel** : Mr. Nayare for the Plaintiff on the instructions of Messrs  
Qarcia Barristers & Solocitors  
: Mr. Lutumailagi for the 1<sup>st</sup> Defendant on the  
instructions of M/s. Lutumailagi & Associates.  
: Mr. Mainavolau for the 2<sup>nd</sup> Defendant on the instructions of  
AG's Chamber

**Date of Hearing** : 11<sup>th</sup> December, 2017

**Date of Ruling** : 23<sup>rd</sup> January, 2018

**Ruling by** : Justice Mr. Mohamed Mackie

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**R U L I N G**

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1. This ruling is made in relation to the hearing held before me on 11<sup>th</sup> December 2017, pertaining to an inter-parte Notice of Motion dated 28<sup>th</sup> October 2016, filed by the Solicitors for the plaintiff in this matter moving for, among other reliefs, an injunctive order against the 1<sup>st</sup> Defendant in the following manner as per paragraph 2 of the prayer thereto;

(2). *“THAT the 1st Defendant by himself, his servants, agents, nominees, whomsoever and whatsoever be stopped from conducting any further transaction in regards to the transfer of the said property”*

2. It is to be observed, that the rest of the reliefs prayed for in paragraph 1, 3 and 4 thereof are, admittedly, substantive in nature, to be considered at the end of the main trial, which stand duly prayed for in the statement of claim as well filed simultaneously. The reliefs prayed for in the statement of claim are as follows. This too includes two prayers (b and c) for interim relief.
  - a. A declaration that the transfer of Certificate of title Number 42504 and 42505 being lots 3 and lot 4 unto the 1<sup>st</sup> Defendant be declared Null and Void.
  - b. THAT the 1<sup>st</sup> Defendant by himself, his servants, agents, nominees, whomsoever and whatsoever be stopped from conducting any further transaction in regards to the transfer of the said property.
  - c. THAT the 1<sup>st</sup> Defendant by himself, his servants, agents, nominees, whomsoever and whatsoever be stopped from entering the said property.
  - d. DAMAGES for harassment, intimidation, and pain and suffering against the Defendants as a result of the fraud transfer.
  - e. Cost of this action.
  - f. Interest at the rate of 10% per centum per annum from 27<sup>th</sup> day of February 2008 till payment in full pursuant to the provisions of the Laws of Fiji on all sums awarded.
  - g. Such further and/or other relief that may seem just and proper to this Honourable Court.

### **THE FACTS**

3. The main contentions of the plaintiff, according to the averments in the Statement of claim, are as follows;
  - a. That the 1<sup>st</sup> Defendant was the registered proprietor of the land known as Waikamu and Cakova being lot 5 in deposited plan number 7587 containing in extent of five Hectares shown in the Certificate of title Number 32599.
  - b. That the plaintiff entered into sale and purchase agreement on 27<sup>th</sup> day of February 2008 for the 1<sup>st</sup> Defendant to sell unto the plaintiff half acre out of the said land for a sum of \$14,000.00, which was to be paid on the instalment basis, firstly \$ 6000.00 at the time of the agreement, secondly \$1000.00 on or before 31<sup>st</sup> March 2008 and finally the balance sum of \$7000.00 on or before 31<sup>st</sup> January 2009, according to the agreement.

- c. That despite the 1<sup>st</sup> Defendant being issued with new sub division Certificates of title bearing No: 42504 and 42505 as per the deposited plan No 10335 and the agreed amount of purchase price of \$14,000.00 also being duly paid unto the 1<sup>st</sup> Defendant by the plaintiff the 1st Defendant failed and neglected to transfer and hand over the Certificate of title unto her though request thereto was made by the plaintiff.
  - d. That the 1<sup>st</sup> Defendant having breached the agreement to sell, sold the said lots 3 and 4 described in Certificates of Title 42504 and 42505 respectively and depicted in deposited plan No: 10335 unto one **Mohammed Haroon**.
  - e. That the 1<sup>st</sup> Defendant defrauded the plaintiff and sold the land in question unto the said Mohammed Haroon, breaching and failing to honour the obligation stipulated in the aforesaid agreement.
  - f. That as a result of the negligence breaches and fraudulent conduct of the 1st Defendant, the Plaintiff has suffered emotionally and mentally and has incurred cost and expenses.
4. What needs to be adjudicated by this Court for the time being is whether an injunctive relief as prayed for by the plaintiff in the Notice of Motion should be granted or not. Counsel for the Plaintiff and 1<sup>st</sup> Defendant have made respective oral submissions before me and have opted not to file any written submissions though permission for same was granted at the end of the hearing.

#### **THE LAW GOVERNING THE INJUNCTION**

5. The jurisdiction to grant injunction derives from Order 29, rule 1 (1) of the High Court Rules 1988, as amended which provides:-
- '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.'*
6. The proper approach to the exercise this jurisdiction was outlined by Lord **Diplock** in *American Cyanamid Co v Ethicon Ltd [1975] AC 396* which set out the following test:
- (1) is there a serious question/issue to be tried?
  - (2) are damages an adequate remedy?
  - (3) if not, where does balance of convenience lie?
  - (4) Are there any special factors?
7. I will deal with the above test questions which are applicable in an application for interim injunction, as and when necessary in the discussion hereunder.

### **PLAINTIFF'S SUBMISSIONS**

8. It has been averred in the pleadings and orally submitted on behalf of the plaintiff during the hearing that 1<sup>st</sup> Defendant having agreed to transfer a half portion of land unto the plaintiff as per the said agreement and obtained the agreed price of \$14,000.00, failed and neglected to honour same has now transferred the land in question unto one Mohammed Haroon resulting humiliation, embarrassment, mental anguish, sleepless nights, anxiety, stress, pain & suffering and cost in litigation.

### **1<sup>ST</sup> DEFENDANT'S SUBMISSION**

9. Learned Counsel for the 1<sup>st</sup> Defendant while disputing the identity of the land in question, admits that a plot of the land shown as lot Number 3 in Certificate of Title bearing No: - 42504 (exhibit NR-1) containing in extent of 1048 square meters has already been sold to one Mohammed Haroon. He argues that the Plaintiff bases his claim, according to the agreement, for half acre land on Plan CT 32599 which is different from the land that has been sold. It is further submitted that the plaintiff has paid only 6000 \$ not 14,000.00 \$ as averred in the statement of claim and the affidavit in support and no proof of such payment of the balance money has been produced by the plaintiff. The Plaintiff's failure to give an undertaking for any possible damages on account of an interim injunction has also been highlighted by the 1<sup>st</sup> Defendant's Counsel.

### **DISCUSSION**

#### **IS THERE A SERIOUS QUESTION?**

10. The substantial reliefs claimed by the Plaintiff, as per paragraphs (a) and (d) of the prayer to her statement of claim, are;
  - (a) A declaration that the transfer Certificate of Title Number 42504 and 42505 for lots 3 and lot 4 unto the 1<sup>st</sup> Defendant be declared null and void,
  - (d) Damages for harassment, intimidation and pain and suffering against the Defendants as the result of the said fraudulent transfer.
11. By the Notice of Motion dated 28th October 2016, the Plaintiff seeks an injunctive order that the 1<sup>st</sup> Defendant be stopped by himself, his servants, agents, nominees, whomsoever and whatsoever from conducting any further transaction in regards to the transfer of the said property.
12. Admittedly, the land in Certificate of title bearing No: - 42504 (exhibit NR-1) containing in extent of 1048 square meters has already been sold to one Mohammed Haroon, who is not a party to this action. The land in Certificate of Title No:- 42505 containing 1000 square meters has not been disposed by the 1<sup>st</sup> Defendant as stated by the Plaintiff in the pleadings and by the Plaintiff's Counsel.

13. By the relief (a) above in the statement of claim, what the Plaintiff moves for is a declaration that the Certificates of Title bearing Nos 42504 and 42505, which have been issued in the 1<sup>st</sup> Defendant's name, be made null and void. The Plaintiff, for the reason best known to her is not moving to declare the deed in favour of said Mohamed Haroon for lot 3 to be declared null and void for which, said Mohamed Haroon should be made a party. The Plaintiff has not even taken steps to add him as a party to this action to enable her to claim any relief against Mohamed Haroon.
14. It is only the land in Certificate of title bearing No: 42504 being the lot No:-03 in the extent of 1048 square meter have been, admittedly, transferred to Mohammed Haroon. Declaring this Certificate of Title No: 42504 or both of them including Certificate of title bearing No;:42505 is not going to bring any relief to the Plaintiff . Undoubtedly, such a declaration would prejudice the rights of Mohamed Haroon, who has driven title from Certificate No: - 42504.
15. Another notable question herein emerges is that, if the Plaintiff has paid the entire purchase price of 14,000.00 \$ as averred by her , why she did not pray for the specific performance of the agreement or ask for the return of the total amount of 14,000.00 \$, allegedly, paid by her in terms of the agreement or any damages on it. What she prays as the next substantial relief is damages for humiliation, embarrassment, harassment, mental anguish, sleepless nights, anxiety, stress, pain & suffering and cost in litigation. This makes one to entertain a reasonable doubt whether the Plaintiff has in fact paid 14,000.00 \$.
16. When the 1<sup>st</sup> Defendant is presently not the owner of the land in the Certificate of Title 42504 for the lot No:-3 and while the same remains transferred to the said Mohamed Haroon, issuing an injunction against the 1<sup>st</sup> Defendant in respect of this land is not going to take the plaintiff anywhere.
17. Although, the plaintiff avers that she paid the entire purchase price of 14,000.00 \$, she has not substantiated it by any tangible evidence or at least has not stated the exact date and mode of alleged payment of the balance two instalments as per the agreement. However, the 1<sup>st</sup> Defendant in fact does not dispute the receipt of the 1<sup>st</sup> instalment of 6000.00 \$.
18. In short, it appears that the outcome of the injunction prayed for in the Notice of Motion and that of the final substantial relief prayed in paragraph (a) of the statement of claim are incompatible , inconsistent and the injunction prayed for, if granted, will not lead to a successful prosecution and conclusion of the matter in favour of the Plaintiff, particularly when the Plaintiff has not moved for specific performance of the agreement requiring the land in question to be transferred to her name or the refund of the alleged payment of 14,000.00 \$.

19. Lord Diplock in American Cyanamid said (at page 407 H):

*"It is no part of the court's function at this stage of the litigation to try neither to resolve conflicts of evidence on affidavit as to facts on which the claims of either party May ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial"*

20. However, the Plaintiff is at liberty to move the Court at the main trial to ascertain as to who is at fault and has violated the agreement and ultimately to vindicate her purported rights and entitlements in terms of the said agreement and move for damages as she has prayed for in the 4<sup>th</sup> paragraph of the prayer to the statement of claim.
21. In my assessment that there is no serious issue to be tried at the trial in relation to the land in question and it would be unlikely that the plaintiff will be able to obtain a judgment declaring the both Certificates of Title bearing Nos 42504 & 42505 to be null and void, in the light of the reasons adumbrated above. Even if such a declaration is made it will not bring any benefit to the Plaintiff.
22. In American Cyanamid (supra) Lord Diplock stated that:

*'The court should go on to consider whether ... if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of trial. If damages ... would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appear to be at that stage.'* (at 408B-C).

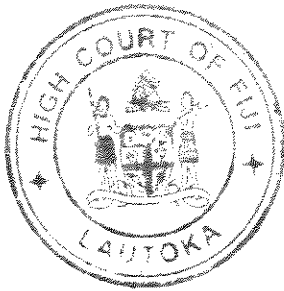
23. The Plaintiff has not prayed for the specific performance by moving for the land in question to be transferred to her or the repayment of the \$ 14,000.00 Money she claims to have paid to the 1<sup>st</sup> Defendant. What she asks for is the damages for humiliation, embarrassment, harassment, mental anguish, sleepless nights, anxiety, stress, pain & suffering etc. and cost in litigation. When the Plaintiff asks for damages and if she is entitled to be compensated by such damages, generally injunction will not lie.
24. Therefore, the consideration of questions such as, balance of convenience and any other special factors will not arise in this case as I have held that there is no serious issue to be tried at the trial.
25. The 2<sup>nd</sup> Defendant has filed the Statement of defence and moved to have the action of the Plaintiff dismissed. However, no submissions have been made on behalf of the 2<sup>nd</sup> Defendant at the hearing into this application.
26. Above all, the Counsel for the Plaintiff at the end of his oral submissions has conceded that this application by the Plaintiff cannot succeed and then he might have to withdraw this application. This admission on the part of the Counsel confirms the vulnerability of the plaintiff's case as observed by me above.

## CONCLUSION

27. There is no serious question to be tried at the trial. As per the Pleadings and submissions, I am not satisfied that the plaintiff would prosecute a successful trial and establish her right to the land in question. The grant of injunction will not support Plaintiff's claims contained in SOC. I would therefore refuse to issue injunction against the 1<sup>st</sup> Defendant. I am of the view that it is justifiable to order the plaintiff to pay summarily assessed costs of \$200.00 to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. (\$100.00 each)

## FINAL OUTCOME

- (a) Plaintiff's application for injunction is refused.
- (b) The 1<sup>st</sup> Defendant shall file his statement of defence within 21 days and the Plaintiff will reply, if needed, within 14 days thereafter.
- (c) Plaintiff will pay aforesaid cost to the defendants in 21 days.



A handwritten signature in black ink, appearing to read "A.M. Mohamed Mackie". The signature is written over a dotted horizontal line.

**A.M. Mohamed Mackie**

**JUDGE**

**At Lautoka**

**23<sup>rd</sup> January 2018**

### **Solicitors**

**For Plaintiff: Messrs. Garcia Law – Barristers & Solicitors**

**For 1<sup>st</sup> Defendant: Lutumailagi & Associates**

**For 2<sup>nd</sup> Defendant: AG's Chambers**