

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

CIVIL ACTION NO. HBC 51 OF 2018

BETWEEN : **MAKERETA SAUKILAGI** of Nawamagi Village, Sigatoka,
Businessperson.

PLAINTIFF

AND : **SEAN GRIFFITHS** of Beach House Backpackers
Accommodation, Colova, Sigatoka.

DEFENDANT

Appearances : Mr J. Sharma for the plaintiff
: Mr J. Mudunaivalu for the defendant
Date of Hearing : 16 March 2018
Date of Ruling : 16 March 2018

R U L I N G

[On interim injunction]

Introduction

[01] This ruling concerns an application for interim injunction.

[02] By an *ex parte* notice of motion filed on 13 March 2018, together with the statement of claim attached to the writ of summons (the *application*), the plaintiff seeks the following orders:

1. *An injunction be granted restraining the defendant whether by himself, his servants and/or agents from interfering with or obstructing or stopping the plaintiff or her servants and/or agents and/or bailiffs from taking possession and custody of the Marine Vessel/Boat known as ADI LISA Official Number 003300, No. 115 in year 2016 and Port of Registry – Suva together with the Yamaha Outboard Engine and all other parts/tools and/or accessories.*
2. *An injunction be granted requiring the defendant whether by himself, his servants and/or agents to immediately release the custody and possession of Marine Vessel/Boat known*

as ADI LISA Official Number 003300, No. 115 in Year 2016 and Port of Registry – Suva together with the Yamaha Outboard Engine and all other parts/tools and/or accessories to the plaintiff or her servants and/or agents or bailiff forthwith, and in any event within 24 hours of service of an Order of this Court.

3. An injunction be granted restraining the defendant whether by himself, his servants and/or agents from interfering with the plaintiff or her servants and/or agents possession and custody of the *Marine Vessel/Boat* known as ADI LISA Official Number 003300, No. 115 in year 2016 and Port of Registry – Suva together with the Yamaha Outboard Engine and all other parts/tools and/or accessories.
4. An injunction be granted restraining the defendant whether by himself, his servants and/or agents from harassing, or in any manner contacting, approaching or coming or remaining within a radius of 50 meters of the plaintiff, the plaintiff's husband – Mosese Sewe, plaintiff's parents Sireli Bogileka and Lereani Bakabaka plaintiff's in laws – Mitieli Butoi and Unaisi Naudu.
5. An Order that the Police assist the plaintiff in enforcing the above Order and to maintain peace.
6. Or that such other order may be made as to the court shall deem fit.
7. That the costs of this application be paid by the defendants to the plaintiff on an indemnity basis.

[03] The application is supported by an affidavit sworn by Makereta Saukilagi, the plaintiff. It is made pursuant to O.29, O.32 and other rules of the HCR 1988 and the inherent jurisdiction of the court.

[05] Initially, the plaintiff made this application *ex parte*. However, I, having considered the nature of the relief the plaintiff seeks, ordered to convert it to an *inter partes* application and directed the plaintiff to serve the application on the defendant at his last known address and also by affixing the application on the vessel in dispute. I made that order on 13 March 2018 returnable today (16 March 2018). The defendant has been given two clear days between service and the hearing date.

[06] The plaintiff has duly served the application on the defendant as directed by the court and filed an affidavit of Reeaz Ali sworn on 14 March 2018. I am satisfied with the service.

Background

[07] The background facts as deposed in the affidavit in support filed 13 March 2018 by the plaintiff are as follows:-

“ ...

4. I own a **Marine Vessel/Boat** known as “**ADI LISA**” Official Number 003300, No. 115 in Year 2016 and Port of Registry – Suva together with the Yamaha Outboard Engine and all other parts/tools and/or accessories (hereinafter called the “**Boat**”).
5. The vessel was worth \$75,000.00 (approximate) when new.
6. I have known the defendant, Sean Griffiths (hereinafter referred to as “Sean”) for around 25 years now. He is originally from Australia and was my parents’ friend and he also became my friend.
7. Previously when Sean came to Fiji alone, he would stay at our place in Sigatoka. We would give him accommodation. We would also provide free transport for him from and to the Nadi Airport. When Sean would come to Fiji with his wife they would then stay in a Resort.
8. When in Fiji, Sean would use our vehicle for free. Sometimes he would drive himself, sometimes my husband would drive him around. Sean would pay for the fuel though. When we pick/drop Sean at the airport, we pay for fuel.
9. Sean like fishing as well so he used to use my father’s boat to go out fishing whenever he was in Fiji.
10. When he was in Fiji we would wash Sean and his family’s clothes (even when he and his wife stayed in a Resort). We would cook 3 meals a day for him, provide early morning coffee and we provided his groceries when he stayed with us. He would stay almost 2 weeks at a time and he would visit frequently. He sometimes would bring coffee or some groceries but on a rare occasion.
11. In June 2015, to repay us for our kindness and help, Sean brought the boat and gifted it to me. The boat was registered in my name. I was told boat was mine and was for my family use and was for our help and kindness over the years.
12. Sean still continued coming and staying with us. We would still feed him and wash his clothes. We would continue to provide transport for Sean. He would pay for fuel when he used the vehicle. He would sometimes keep our vehicle for 2-3 weeks at a time. When we pick/drop Sean at the Airport, we pay for fuel.
13. In 2015, Sean sent me and my husband \$5,000.00 to pay deposit for a car. We used this \$5,000.00 and we took loan from Credit Corporation (Fiji) Limited of \$22,000.00 and bought a Motor Vehicle Toyota Voxy. This vehicle is under my mom’s name and we are making loan repayments.
14. When he stayed with me, I used to wash Sean’s clothes by hand in the river. So, in October 2017, he sent me \$450.00 (FJD) approximate to buy a washing machine.
15. Sometime in February 2017, Sean had brought 7 (12ft) roofing iron for us when we were renovating our house. He also bought us 2 boxes of wall tiles (90 pieces).
16. Last year around August – September Sean started a Dive Shop with an Indo-Fijian man, Ashwin. It was operated from Hideaway Resort – Coral Coast, Sigatoka.
17. Sean then asked me to give the boat to him, I refused.

18. *The boat was moored in the lagoon in front of my parent's home in Korolevu, Sigatoka. Sometime in November 2017, Sean came and took the vessel away from the Lagoon in front of my parents' home in Korolevu, Sigatoka.*
19. *When Sean took the boat, it was without my permission. My boat captain had the keys for the boat but Sean hotwired the boat and took it.*
20. *My mother, Lereani Bakabaka, was standing on the bench where Sean came, he told my mother that he wanted to see the boat. But instead he jumped into the boat, hotwired it and took off with the boat.*
21. *When Sean took the boat. He took it to Navola beach, Sigatoka. There is another iTaukei village and Sean left the boat there.*
22. *I called Sean on his phone when my mom told me that Sean had taken my boat. However, he did not receive my call.*
23. *I tried to go and meet Sean but found out he had gone back overseas.*
24. *I have lodged a report with Sigatoka Police about Sean taking my boat but they have not assisted.*
25. *I have not taken the boat back because he has some villagers looking after the boat and I do not want trouble. If we try to take the boat away without a court order there will be trouble and unnecessary tension between our village and the other village.*
26. *I also request that the court grants an order requiring the police to assist and to preserve peace when I take possession of my boat and while the boat is in my possession.*
27. *A week before Christmas last year (2017) at about 10.30 pm, Sean called me on the phone and accused me of burning the boat. I was surprised. I told him that I did not burn the Boat. He then said my family burnt it. I said they did not. I spoke to my parents and they also denied any knowledge of the fire. Sean sent me photo of damage.*
28. *We have been running to the Sigatoka Police for assistance. Last week a Police Officer, Nilesh, told me Police cannot do anything and it is Civil Case. I went to Sigatoka Police last week and saw a Police Officer who checked and told me my report has been classified as Civil and that Police is unable to take any action to assist me in getting my boat back.*
29. *The boat is lying in Navola, Sigatoka and its condition is getting worse and it is diminishing in value annexed hereto marked "M-2" are copies of the photographs showing the current condition of the Boat after it was burnt.*
30. *When the boat was with me we looked after the boat and maintained it. We also used the boat to earn income.*
..."

[08] The laws relevant to this application are Order 29 and O.32 of the HCR.

[09] Order 29, r.1 and r.2 states:

"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 and the delay caused by proceeding in the ordinary way would entail irreparable or serious mischief 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.*

Detention, preservation, etc of subject matter of cause or matter (O.29, r.2)

2.-(1) *On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.*

(2) *For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.*

(3) *Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured.*

(4) *An order under this rule may be made on such terms, if any, as the Court thinks just.*

(5) *An application for an order under this rule must be made by summons or by notice under Order 25, rule 7.*

(6) *Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he acknowledges service of the writ or originating summons by which the cause or matter was begun."*

[10] Order 32, r.3 provides:-

Service of summons (O.32, r.3)

3. A summons asking only for the extension or abridgment of any period of time may be served on the day before the day specified in the summons for the hearing thereof but, except as aforesaid and unless the Court otherwise orders or any of these Rules otherwise provides, a summons must be served on every other party not less than two clear days before the day so specified.

(Order 32 deals with applications and proceedings in chambers)

Discussion

- [11] The plaintiff is seeking custody of the vessel which is the subject matter of this action. The plaintiff says the defendant gifted the vessel and she had possession of the same and was earning a livelihood from it. The boat was moored in the Lagoon in front of the plaintiff's parents' home in Korolevu, Sigatoka. Sometime in November 2017, the plaintiff came and took the Vessel from the Lagoon. The Vessel has been registered in the plaintiff's name. The document M-1 shows that the plaintiff is the registered owner of the Vessel.
- [12] The defendant has refused the return of the Vessel despite the request by the plaintiff.
- [13] On the evidence, it appears to me that the plaintiff had been deprived of possession of the Vessel without due process.
- [14] At the hearing, the defendant did not object the release of the vessel to the plaintiff. Instead, counsel appearing for the defendant sought 21 days to file their objection and/or response. He also stated that there is another case instituted in Suva in respect of the same matter. He did not provide particulars and explain the nature of that action.
- [15] The Vessel, according to the plaintiff, is lying on the beach unattended. The case is one of urgency and brought *ex parte*. The court made it *inter partes* in order to give a hearing to the defendant. Without making use of the opportunity, the defendant seeks 21 days to file their response.
- [16] I think, I should make an interim order in the meantime for the preservation of the subject matter. I am empowered to make such an order by O.29, r.2. Rule 2 says

that the Court may make an order for the detention, custody or preservation of the subject matter of the cause in the possession of a party to the cause.

[17] The vessel has been gifted to the plaintiff. It has been registered under the plaintiff's name. She is the current registered owner. The vessel lies on the beach unattended. In the circumstances, I make an interim order granting the custody of the vessel to the plaintiff for the purpose of preservation of the vessel, the subject matter of this action. This order will be valid until the determination of this application. I make this order acting under O.29, r.2 of the HCR. Further, for the purpose of enabling this order to be carried out, I authorise the plaintiff to enter upon any land or building in the possession of the defendant. I accordingly grant interim orders as prayed for in (1) (with modification to match with O.29, r. 2) (3) and (5) of the notice of motion dated 13 March 2018.

[18] I grant 21 days to the defendant to file and serve a response and 21 days to the plaintiff to file and serve a reply thereafter, if need be. I fix the matter for hearing at 9.30am on 17 May 2018.

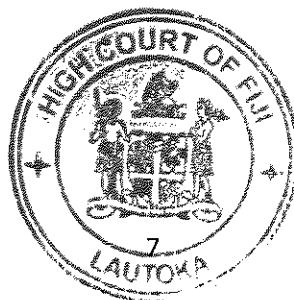
The Result

1. Interim order granted.
2. The defendant will file and serve a response within 21 days.
3. The plaintiff will file and serve a reply within 21 days thereafter.
4. The matter is listed for hearing at 9.30am on 17 May 2018.

M. H. Mohamed Ajmeer
16/3/18

M. H. Mohamed Ajmeer

JUDGE



At Lautoka
16 March 2018