

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

CIVIL ACTION NO. HBC 92 OF 2018

BETWEEN : **TOKATOKA NAMARA TRUST** on behalf of **MATAQALI NAMARA**, the landowning unit of the Native Land known as Nasou (Part of); District of Sikituru, Moala Village, Nadi.

PLAINTIFF

AND : **SK DAVEY LIMITED**, registered office located at Lot 47, Narewa Road, Nadi, Fiji Islands.

1ST DEFENDANT

AND : **KINI MOMO**, Moala Village, Nadi.

2ND DEFENDANT

Appearances : Ms A. Durutalo for the plaintiff
Non-appearance for the defendants

Date of Hearing : 4 May 2018

Date of Ruling : 4 May 2018

R U L I N G

[on *ex parte* injunction]

[01] This is an *ex-parte* notice of motion (*‘the application’*) to seek an injunction to restrain the defendants from illegally extracting gravel from the land in dispute, of which the plaintiffs are a landowning unit. The application is made pursuant to O.29 R. 1 & 2 of the High Court Rules 1988, as amended (*‘HCR’*). That rule, so far as material provides:

“(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 notice of motion or summons."

- [02] The application is supported by an affidavit sworn by the trustees of Mataqali Namara landowning unit on 3 May 2018.
- [03] The plaintiffs' complaint is that Kini Momo, the second defendant has engaged SK Davey Limited, the first defendant to extract gravel from the land without permission of the plaintiffs who are a landowning unit.
- [04] It appears that the second defendant has a *kanakana* (sit and eat) right over the land, but he has engaged in commercial activities on the land by extracting gravel from the land without licence and approval of the landowning unit, the plaintiffs.
- [05] I am satisfied, on the papers and submissions advanced by Ms Durutalo counsel for the plaintiffs that an illegal activity is going on and that if it is not stopped immediately irreparable loss may be caused to the plaintiffs. Moreover, I am also satisfied that the defendants have no permit to extract gravel from the land and that the defendants continue the illegal extraction despite the notice dated 30 April 2018 issued and served to the defendants with the consent of the Mataqali to cease work and remove their machinery from the land.
- [06] The application is made by the plaintiffs and the case is one of urgency.
- [07] The plaintiffs in their affidavit (at paras 20 & 24) give undertaking to pay damages subsequently found due to the defendants as compensation if the

injunction cannot be justified at trial. The plaintiffs' affidavit deals with the ability to honour the undertaking in damages.

- [08] I would, therefore, considering the application, the supporting affidavit and the documents attached to it and the submissions advanced by counsel for the plaintiff, grant *ex parte* injunction against the defendants as prayed for in the prayers 1, 2 and 3 of the application. This order will be valid until 24 May 2018.
- [09] The plaintiff will serve this order and all the relevant documents on the defendants forthwith.
- [10] The matter is now adjourned for *inter partes* hearing at 9.30 am on 24 May 2018.

The Result

Ex parte interim injunction granted.

M.H. Mohamed Ajmeer
4/5/18

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M.H. Mohamed Ajmeer
JUDGE



At Lautoka
4 May 2018