

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

CIVIL ACTION NO. HBM 14 OF 2018

BETWEEN : **MOHAMMED NASIB JAMAL** of Tunalia, Nadi, Farmer.

APPLICANT

AND : **MOHAZAM NADEEM JAMAL** of Tunalia, Nadi, Businessman.

RESPONDENT

Appearances : Mr S. Raikanikoda for the applicant
Ms A. Durutalo for the respondent

Date of Hearing: 2 July 2018

Date of Ruling : 2 July 2018

Ex TEMPORE R U L I N G

Introduction

[01] This is an application seeking interim injunction without filing a substantive claim. It appears that the plaintiff seeks interim relief through notice of motion.

[02] By his *ex parte* motion supported by an affidavit of Mohammed Nasib Jamal, the plaintiff (which was subsequently converted into *inter partes* motion) dated 16 May 2018 (*the application*), the plaintiff seeks the following orders:

1. *That no further dealing to be executed on CL No. 716117.*
2. *That the Director of Lands be restricted to execute any dealings on CL No. 716117.*
3. *That the Registrar of Titles be restricted to execute any dealings on CL No. 716117.*
4. *That a family Deed of Settlement dated 22 January 2017 signed and endorsed by the family be executed first before any other dealings are entertained.*

[03] This application is made pursuant to Order 8, Rule 2(1) of the High Court Rules 1988 (*HCR*) and the inherent jurisdiction of the Court. O 8 deals with originating and other motions. R 2 of that order provides:

Notice of motion (O8, R 2)

2.-(1) Except where an application by motion may properly be made ex parte, no motion shall be made without previous notice to the parties affected thereby, but the Court, if satisfied that the delay caused by proceedings in the ordinary way would or might entail irreparable or serious mischief may make an order ex parte on such terms as to costs or otherwise, and subject to such undertaking, if any, as it thinks just; any party affected by such order may apply to the Court to set it aside.

(2) Unless the Court gives leave to the contrary, there must be at least 2 clear days between the service of notice of a motion and the day named in the notice for hearing the motion.

The background

[04] The application is based on a Deed of Settlement dated 22 January 2017, which states that the land, the subject matter will be divided into 4 equal parts between the applicant, Mohammed Nasib Jamal and his three children including the respondent, Mohazam Nadeem Jamal.

[05] It is alleged that the defendant had deviated from the terms and conditions of the Deed of Settlement and had collected the monthly rental from the tenant who operates a car-wash in the portion which is supposed to be allocated to the applicant.

[06] The applicant seeks interim order to enforce the Deed of Settlement.

Discussion

[07] The hearing of the application came up before me today, 2 July 2018. At the hearing, Mr Raikanikoda of counsel for the applicant now admits that they need to file a writ of summons, which he intends to file in the Magistrate's Court as

the value of the property is less than \$50,000.00. The Magistrates' Courts have civil jurisdiction in suits arising from contracts where value of the property is not more than \$50,000.00 (see s.16 (1) (a) (ii), Magistrates' Courts Act).

- [08] Initially, the applicant made this application by way of *ex parte* motion without any averment that the delay by proceedings in the ordinary way would or might entail irreparable or serious mischief and without any reference to the undertaking as to damages. The combined effect of O.29 rr. (1) and (2) and O.8 r.2 (2) is that a plaintiff wishing to proceed *ex parte* must satisfy the Court (a) that two days notice would result in "irreparable or serious mischief" and (b) that anything less than the total abridgement of the 2 days notice would result in "irreparable or serious mischief". Here, plaintiff made no attempt to satisfy these 2 requirements. Plaintiffs have had more than adequate opportunity to prove their claim against the defendants in the 5 ½ years since injunction imposed. They have failed to take it, thus injunction set aside: per Scott, J in *John Kobee & Club Masa Lodge Limited v Public Trustee, Christopher Work & Registrar of Tiles* [2003] HBC 268/96S Decision 19 February 2003.
- [09] The *ex parte* application failed to satisfy the court that the delay caused by proceedings in the ordinary way would entail irreparable mischief and that the applicant is capable of giving an undertaking as to damages. That was the reason the court converted the *ex parte* application into *inter partes* application.
- [10] Turning to the *inter partes* application; the interim relief is sought without a writ of summons being filed. There is no likelihood that the applicant might file a writ of summons in this court. The applicant intends to file a writ of summons in the Magistrate's Court. Mr Raikanikoda informs the court that the applicant had already lodged a caveat on the property.
- [11] Injunction is an equitable remedy. The Court has broader jurisdiction to issue injunctions by virtue of Order 29, HCR. There is one overriding requirement the applicant must have cause of action in law entitling him to substantive relief (see *North London Railway Co v Great Northern Railway Co* (1883) 11 QBD 30; *The Siskina* [1979] AC 210; *Veracruz Transportation Inc v VC Shipping Co Ltd* [1992] 1 Lloyd's

Rep 353). There are a few exceptions to this rule: they include applications under Domestic violence Act and Family Law Act.

[12] The interim orders are sought without filing a substantive claim. The applicant made no attempt to satisfy this requirement. I would, therefore, refuse the relief/orders that the applicant seeks in his motion filed 16 May 2018 and strike out the motion but without costs.

The Result

1. Relief refused.
2. Notice of Motion struck out.
3. No order as to costs.

M.H. Mohamed Ajmeer
27/7/18

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M.H. Mohamed Ajmeer
JUDGE

At Lautoka
2 July 2018

Solicitors

For the applicant: M/s Raikanikoda & Associates

For the respondent: M/s Durutalo Lawyers, Barristers & Solicitors

