

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

HBC NO. 226 OF 2018

BETWEEN : **SHOBNA TRISHA** and **PUSPA WATI** both of Suriya Building,
Sigatoka Town, Domestic Duties and Retired, respectively.

PLAINTIFFS

AND : **SURIYA NARAYAN** of Sigatoka Town, Sigatoka, Businessman.

DEFENDANT

Before : A.M. Mohamed Mackie- J

Appearance : Mr. S. Koya & Ms. Chand for the Plaintiffs

: Mr. J. Singh for the Defendant

Date of Hearing : 8th February 2019

Written Submissions: Filed by the Plaintiff on 4th March 2019; and Defendant did not file
written submissions.

Date of Ruling : 8th March 2019

RULING

(On the Extension of Injunction)

A. Introduction

1. This ruling is made pursuant to the hearing held before me on 8th February 2019 in order to decide whether the temporary ex-parte injunction order made by this Court on 12th October 2018 should be extended or not, pending the determination of the substantial matter.
2. This Court on 12th October 2018, having considered the Ex-Parte Summons filed by the Plaintiffs, made the following temporary orders; one of which was mandatory in nature:
 - a. *That the Defendant forthwith provide the Plaintiffs with access to flat 11, Suriya Building, Sigatoka Town located on Native Lease No.13613 being Lot-6 Solevu Subdivision.*

- b. *Restraining the Defendant, his servants and agents or otherwise howsoever from interfering with Plaintiff's use and occupation of Flat 11 , Suriya Building, Sigatoka Town located on Native Lease No. 13613 being Lot 6 Solevu Subdivision.*

B. Background History:

3. The Plaintiffs claim that they were living at the flat No-11, Suriya Building in Sigatoka Town as the tenants of the defendant since 16th December 2010 on payment of monthly rental of \$350.00.
4. Pursuant to an eviction notice given by the defendant, as the plaintiffs felt that the eviction notice was illegal, the 1st named plaintiff complained to the Commerce Commission on the 31st August 2018.
5. After a few days on the 29th September 2018, the defendant placed an additional Pad-Lock to the door of the Flat 11, when the plaintiffs were away and thereby prevented the re-entry for the plaintiffs to the flat they were, admittedly, renting. The plaintiffs allege that they were arbitrarily evicted for 18 days, with no place to go and the first named plaintiff's Son was deprived of sitting for his intermediate examination due to this eviction.
6. The first named plaintiff is said to be the daughter of the second named plaintiff. The plaintiffs along with their Ex-parte Summons for injunctive reliefs as aforesaid had also filed their even dated Originating Summons praying for the following substantial reliefs.
 - a.
 - b.
 - c. *A declaration that the Defendant's conduct in locking the Plaintiff's flat and unlawfully evicting them without an Order of the High Court of Fiji was a breach of the Plaintiff's right under section 39 of the Constitution of the Republic of Fiji.*
 - d. *A declaration that the Defendant's conduct in locking the plaintiff's flat and unlawfully evicting them without an Order of the High Court of Fiji was a breach of Section 41 of the Constitution of the Republic of Fiji as it breached the rights of a child to education given that the Ryan Richard was prevented from sitting for his Fiji Intermediate Examination by reason of the Defendant locking up the plaintiffs' access to the flat 11 of the demised premises.*

- e. *An order that the Defendant pays the plaintiffs special, general and exemplary damages for breach of section 39 and 41 of the constitution of Republic of Fiji.*
 - f. *Such further and /or orders as this court deems just and necessary.*
 - g. *Costs on indemnity basis.*
7. The defendant took up the position and alleged that the 1st named plaintiff was not his tenant but the 2nd named plaintiff, who had voluntarily left the premises on 27th September 2018 removing all her personal belongings, but had failed to hand over the Keys. He states further that on a subsequent inquiry as the 2nd named plaintiff told him that some of her belongings were still inside the flat and if needed for safety reason, he could place another Pad-Lock, he accordingly placed another Pad-Lock in addition to the Pad-Lock that was there already.
 8. The defendant also denied the authenticity of the copy of the tenancy agreement produced by the 1st named plaintiff and claimed same to be a forged document. Accordingly, the defendant prayed for the discontinuance of the injunction orders, dismissal of the application for extension thereof and the Originating Summons.
 9. Pursuant to the ex-parte interim injunction issued by this court, the plaintiffs are back in possession of the premises in suit.

C. Legal Principles

10. An interlocutory injunction is a remedy that is both temporary and discretionary in nature. (*American Cyanamid v. Ethicon Limited*[1975] UKHL 1; [1975] 1 All ER 504 per Lord Diplock) As a temporary remedy, it is obtained before the final determination of the parties' rights in an action and so it is framed in such a way as to show it is to last only until the determination of the matter concerned.
11. The principles on the grant of interim injunctions and whether to dissolve such an injunction pending determination of the matter are settled. As stated by Lord Diplock in *Cyanamid*(supra), they are:
 - (i) Whether there is a serious question to be tried;
 - (ii) Whether damages be an adequate remedy, and;

(iii) The balance of convenience.

12. Where an interim injunction has been granted ex parte, the Plaintiff bears the onus of satisfying the Court that the injunction ought to continue. (*Westpac Banking Corporation v. Adi Mahesh Prasad Civ App ABU 27 of 1997S (FCA Reps 99/1)*)

In *Digicel (Fiji) Ltd v Fiji Rugby Union [2016] FJSC 40; CBV0004.2015 (26 August 2016)*, Marsoof J stated:

According to the procedure adopted by our courts which are called upon to decide any application for interlocutory injunction, the evidence consists entirely of admissions on record by way of pleadings and the content of affidavits that are filed by the parties.

D. Analysis:

Whether there a serious question to be tried (A Prima Facie Case)

13. The first issue for determination is whether there is a serious question to be tried. This is the threshold test or question. In *Digicel (Fiji) Ltd v Fiji Rugby Union [2016] FJSC 40; CBV0004.2015 (26 August 2016)*, Keith J, referring to the principles set out by Lord Diplock in *Cyanamid (supra)*, stated:

The court first considers whether there is a serious issue to be tried. That does not mean that the court must be satisfied that there is a strong case for granting an injunction at the trial of the action. If an interlocutory injunction is to be granted, the court only has to be satisfied that the claim is neither frivolous nor vexatious.

14. There is no dispute that the defendant had entered into a tenancy agreement with the 2nd named plaintiff on 16th December 2010 and she was living in the premises in question till it was Pad-Locked by the defendant on or about 27th September 2018. The claim of the 1st named plaintiff that she was also living there with her School going Son is disputed by the defendant. The 1st named plaintiff has submitted a copy of an agreement, purportedly, entered into with the defendant, which the defendant vehemently denies.
15. The question whether the 1st named plaintiff was also living there as a tenant, along with her School going Son, by virtue of the purported tenancy agreement she claims to have had with the defendant or whether she was living under the

tenancy agreement which the 2nd named plaintiff had with the defendant, should be decided at the trial.

16. The defendant admits placing an additional Pad-Lock on the door, which resulted the eviction of the plaintiffs and the veracity of the alleged circumstances and/or the reasons adduced by the defendant for placing an additional Pad-Lock have also to be gone into at the trial.
17. The contention of the plaintiffs that their rights under sections 39 and 41 of the constitution were violated by the defendant's act is a serious allegation, which, if proved, could be considered as a breach of the rights bestowed by the Constitution. The propriety of the alleged method adopted by the defendant in having the plaintiffs ousted from the premises in suit and the seriousness of the resulting consequences have also to be gone into at the trial, while the status-quo remains as it was prior to the eviction.
18. If the plaintiffs are forced to be out of the premises pending the determination of the above issues in the absence of an interim injunction, it could seriously affect the plaintiff's rights as tenants.
19. Conversely, the defendant is making an allegation of fraud against the 1st named plaintiff with regard to the tenancy agreement submitted by her for obtaining the injunction, which too demands serious scrutiny at the trial and the court cannot make any decision affecting the possession of the plaintiffs merely relying on the affidavit evidence placed before me.
20. It is an imprudent move to resolve these issues relying on the conflicting affidavit material before the Court. The defendant has admitted the tenancy of the 2nd named plaintiff, her occupation till September 2018 and Pad-Locking of the Flat, which prevented the plaintiffs from gaining entry thereto.
21. The question whether the 1st named plaintiff was actually resided there with no other places to go as a result of admitted Pad-Locking and whether her Son was prevented from sitting for the School examination also has to be gone into at the trial.
22. I do not think the Plaintiff's action is frivolous or vexatious. Rather, I am convinced of the existence of serious issues to be tried.

Adequacy of damages

23. If damages are a sufficient remedy, an injunction ought not to be granted. An undertaking from the Plaintiff to be answerable in damages if the injunction proves to have been wrongly granted is almost always required. The plaintiffs in this case have given undertaking for damages and keep on depositing the monthly rental in the Courts.
24. I am also mindful that the purpose of an interlocutory injunction is to preserve the status quo until the rights of the parties have been determined in the action. (See the White Book, pages 514, 515).
25. On consideration of the contents of the affidavits and that of the submission of the learned Counsel on both sides, I am satisfied that damages will be a sufficient remedy as the defendant is likely to be able to pay them. I do not think that the plaintiffs, if they succeed in their claim, can be entitled to anything more or other than monetary compensation/damages.
26. What has raised the concern in this matter is the method adopted by the defendant to evict the plaintiff, which is unknown to the Law that governs the subject.
27. However the damages claimed by the plaintiffs are unquantified and the amount payable, in the event the plaintiffs finally succeed, should be decided at the end of the trial after scrutiny of the evidence. Conversely, the damage that could, probably, be incurred by the defendant is quantifiable, minimal, and easily recoverable. Because, the plaintiffs continue to deposit the monthly rental and has given an undertaking for damages by entering into a bond.
28. Even if any appreciable damages would be caused to the defendant owing to the extension of this injunction order, he could be adequately compensated in the event he succeeds at the trial.

Balance of Convenience

29. Apparently, the method of eviction of the Plaintiff was extrajudicial. The plaintiffs are now back in possession by virtue of the ex-parte injunction order granted by this court.

30. If the injunction order is lifted, it could be perceived as that the court of Law recognizes the method adopted by the defendant in evicting the plaintiffs.
31. Further, the plaintiffs will, undoubtedly, have to face serious inconveniences, if they are forced to quit the flat in the absence of an injunction order. Finding an alternative place also could be a difficult task and could possibly cause further inconveniences to the plaintiffs, particularly, in view of the age of the 2nd named plaintiff and the possible disruption of the studies of the 1st named plaintiff's Son.
32. The balance of convenience is the course most likely to achieve justice between the parties pending resolution of the question of the Plaintiff's entitlement to ultimate relief, bearing in mind the consequences to each party of the grant, or refusal, of the injunction. The strength of the Plaintiff's case is relevant in determining where the balance of convenience lies. Where a Plaintiff has an apparently strong claim, the Court will more readily grant an injunction even when the balance of convenience is evenly matched.
33. As I said earlier, there is a strong prima facie case in favour of the Plaintiff. Therefore, it is desirable that the status quo should be preserved until the trial and that in the circumstances the balance of convenience is in favour of the Plaintiff. (Please see; *Donmar Productions, Ltd v Bart and Others*, (1967) 2 ALL.E.R. 338). If an injunction is not granted it would amount to an on-going breach of the will.
34. I am satisfied that more harm would befall on the plaintiffs, if the interim injunction is not extended. On the other hand by leaving the interim injunction intact till the final determination of the action no substantial or irreparable loss or damages or inconvenience would occur to the defendant.
35. Our courts have gone into this principle of balance of convenience in series of authorities and the law stands settled. . Vide; (1) *Professional West Realty (Fiji) Ltd v Professionals Ltd*, Civil Appeal No. ABU 0072 of 2008 (21 October 2010) at [37] – (2). *Honeymoon Island (Fiji) Ltd v Follies International Ltd*, Civil Appeal No. ABU0063 of 2007S (4 July 2008) at [13] and (3) *Chung Exports Ltd v Food Processors (Fiji) Ltd.*, Civil Appeal No. ABU0012 of 2003 (26 August 2003) at [13],
36. In *Steven Connelly and Elenoa Connelly V Hem Raj and A. K. Singh*, the Court ordered that the Defendants be restrained from selling items that was claimed to

had been wrongfully seized from premises; the Plaintiffs in this matter were tenants of the 1st Defendant; so the Defendants had wrongfully seized items from the premises, and His Lordship further ordered that the Defendants be restricted from entering or further trespassing at the Plaintiff's home which they were renting from the 1st Defendant.

And it was also ordered that the Defendants be restricted from evicting or attempting to evict the Plaintiffs and their families from their premises by any matter in that cause; and he had based his orders solely on the fact considering the Plaintiff's constitutional right, and he states that as a result of the Defendant's wrongful actions, they were deprived for a period of 17 days over their constitutional right.

37. Hence, I decide that the balance of convenience favour the plaintiffs in this action to have the injunction order in operation till the final disposal of this matter.

Any other considerations:

38. The plaintiff's main contention is that their Constitutional rights guaranteed under section 39 to be free from arbitrary eviction and the right of the 1st plaintiff's Son guaranteed under section 41 have been violated by the defendant.
39. The procedure, admittedly, adopted by the defendant in evicting the plaintiffs is not recognized in Law. This kind of eviction, if goes unnoticed, can cause wrong perception in the society, which could lead to the breakdown of the rule of law.
40. With all due respect, I must say that the submissions made by the learned counsel for the defendant are not convincing on the question before me right now and would not help the defendant in having the injunction order vacated.
41. Even the plaintiffs fail in the above 3 tests, they can well and truly rely on this ground to have the injunction extended till the final determination of this case.
42. As indicated by the learned counsel for the defendant, I see there are number of disputed facts , proof of which require leading of evidence and same cannot be decided on affidavit evidence. The disputes in this action could be better addressed and resolved , if same is converted as a writ action.

E. Final Orders:

- a. The interim injunction issued on 12th October 2018 shall remain in force till the final determination of this action.
- b. The application by the defendant to discontinue the injunction order is hereby dismissed.
- c. This action is converted as a writ action and the affidavits so far filed will be treated as pleadings under a writ action.
- d. Parties shall be at liberty to amend the pleadings, if needed, within the parameter of the rules that govern the amendment.
- e. Considering the circumstances, no costs ordered.
- f. Matter will take its normal course.
- g. The matter will be called before the Master for the rest of the proceedings till further orders (under order 34 summons) are made.
- h. Parties shall appear before the learned Master for further directions.
- i. The Deputy Registrar shall place the matter before the learned Master for the next date.



**At Lautoka
8th March, 2019**

**A. M. Mohammed Mackie
Judge**