

In the High Court of Fiji  
At Suva  
HBC 30 of 2019

In the estate of Naveen Chandra Pillay

Deobrah Anne Pillay

Plaintiff

v

Mereseini Rokosuka aka Mereseini Tamoku

Defendant

COUNSEL : Mr S. Fa for the plaintiff  
Mr M.A. Khan for the defendant  
Date of hearing : 8<sup>th</sup> March, 2019  
Date of Ruling : 5<sup>th</sup> April, 2019

### **Ruling**

1. This is an application by the plaintiff, the executrix of the estate of the late Naveen Chandra Pillay for an interim injunction to restrain the defendant from interfering with her and "*securing and preserving*" the following three properties of the estate: Lot 1 on CT 24115, Lot 2 on CT 24116 and Lot 5 on CT 11836(one third). The defendant was employed as a caretaker of the properties.
2. On hearing the matter *ex parte*, I granted the plaintiff's application. The defendant was given time to respond. The *inter partes* hearing was on 8<sup>th</sup> March, 2019. On that day, I extended the injunction until the date of this Ruling.
3. Raveen Chandra Pillay, in his affidavit in support states that he is authorized by the plaintiff to depose to the affidavit. He states that the probate granted by the Supreme Court of Western Australia was resealed in Fiji. The defendant was employed as a caretaker by Falvey Estate, a part-owner of Lot 5. She currently resides in a cottage on Lot 2. Her employment was terminated by Mrs Falvey, as provided in a letter attached to the affidavit.

4. The affidavit in support continues to state that the plaintiff's solicitors advised the defendant that she would need to find alternative accommodation. In 2014, the house on Lot 5 was renovated and rented out. In 2015, the defendant prevented him from entering the properties. In 2016, the houses on Lots 2 and 5 were taken over by the defendant. On 24<sup>th</sup> July, 2018, he was prevented from entering the house on Lot 2 by the defendant's son, who appeared to have taken residence in the property. The locks on the houses were changed. On 17<sup>th</sup> August, 2018, an altercation took place, when he was prevented from entering Lots 2 and 5 by the defendant's partner. The defendant's son entered the house on Lot 2 and threw his computer. The statements made by Raveen Chandra Pillay to the Police are attached.
  5. The defendant, in her affidavit in reply denies that the plaintiff is the sole proprietor of the three properties. She also denies receiving a letter of termination of her services as caretaker. She states that "Raveen" resided at Lot 2, as her tenant paying rent. He brought a tenant for Lot 5. Her son was residing in Lot 2.
  6. The plaintiff, in his reply states that he assisted the defendant and paid for her children's education, on the request of the Falveys.
- The determination***
7. The defendant states that the plaintiff was prevented from entering the properties for the reason that the Master, in HBC 223 of 2016 of 3<sup>rd</sup> April, 2017, held that she does not have any rights over the properties.
  8. I have perused the Ruling of the Master. The Master, in HBC 223 of 2016 held that the plaintiff, in the instant case did not have jurisdiction and locus standi to restrain the defendant, until she obtains a reseal of the probate granted by the SC of Western Australia.
  9. The plaintiff has since then, resealed the probate in Fiji. The plaintiff has now locus to make this application.
  10. The copies of the certificates of title attached to the affidavits of the two parties provide that the estate owns Lots 1 and 2 of CT 24116 and one third of Lot 5 of CT 11836. Michael Falvey owns one third of Lot 5 of CT 11836.

11. The Police Reports provide that the defendant's son and her partner threatened Raveen Chandra Pillay when he entered the houses on Lot 2 and Lot 5. Security personnel had been brought by the plaintiff. The defendant admits that her son was residing in the house on Lot 2.
12. The principles governing the grant or refusal of an interlocutory injunction are laid down in the *American Cyanamid*.
13. In my view, there is a serious issue to be tried in the present case. There is a threatened continuing breach of a proprietary right of the plaintiff by the defendant.
14. Lord Diplock in *Siskina v Distos SA*, (1979) AC 210 at page 256 stated that a right to obtain an interlocutory injunction is "*ancillary and incidental to the pre-existing cause of action. (and) dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff.*" (emphasis added)
15. In *Honeymoon Island (Fiji) Ltd v Follies International Ltd*, [2008] FJCA36; ABU0063.2007S (4 July 2008) the judgment of the Court stated:

*The Court must be satisfied that there is a serious question to be tried, in other words whether the applicant has any real prospect of succeeding in its claim for a permanent injunction at the trial. If the Court is satisfied that there is a serious question to be tried the Court must then consider whether the balance of convenience lies in favour of granting or refusing to grant the interlocutory relief sought: American Cyanamid Co v Ethicon Ltd*

*As a prelude to considering the balance of convenience the Court must consider whether or not the applicant will suffer irreparable loss, being loss for which an award of damages would not be an adequate remedy, either because of the nature of the threatened loss, or because the party sought to be restrained would not be in a position to satisfy an order for damages. "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": American Cyanamid (supra) at 408. (emphasis added)*

16. In my view, the question of the adequacy of damages does not arise in this case, because of the nature of the threat and damages cannot be ascertained.
17. In my view, the balance of convenience favours granting the injunction. The defendant has prevented the plaintiff from entering the properties and exercising her rights. There is no evidence before me that the defendant would be in a financial position to pay damages.
18. McCarthy P in *Northern Drivers Union v Kawau Island Ferries Ltd* (1974) 2 NZLR 617 at 621 stated:
- ...the issue of an interim injunction often has serious consequences. It is always a matter of discretion, and the court will take into consideration the balance of convenience to the parties and the nature of the injury which the defendant, on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right, and that which the plaintiff, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right.*
19. The plaintiff has not disclosed her assets in her undertaking as to damages.
20. The object of requiring a plaintiff to enter into an undertaking "is to attempt to ensure that a defendant will receive compensation for any loss which he suffers by reason of the grant of the injunction if it appears in the event that the plaintiff was not entitled to obtain it"-per Gibbs J in *Air Express Ltd vs Ansett*, (1979-81)146 CLR 249.
21. The defendant is admittedly a caretaker of the properties. She does not claim proprietary rights. The plaintiff does not seek to evict the defendant from her cottage in Lot 2 in these proceedings, as pointed out by Mr Fa, counsel for the plaintiff. I do not see what loss the defendant would suffer if I grant an interlocutory injunction.
22. In that circumstance, in my view, an undertaking as to damages is not required and can be dispensed with.

23. Mr Khan, counsel for the defendant submitted that the power of attorney filed with the affidavit in support has not been approved by Court, in terms of section 28 of the Succession, Probate and Administration Act.

24. In my view, that provision has no application to the present case. Section 28 requires the approval of Court, if an executor delegated his powers of administration of the estate. In the present case, the plaintiff has given her power of attorney in her personal capacity *"to manage and let (her).. property..and to make any outlay... and the upkeep thereof"*.

25. In the result, the interim injunction granted shall continue to be in force until the final determination of this matter.

26. *Orders*

- (a) The interim injunction granted shall continue until the final hearing and determination of this action
- (b) Costs in the cause.



  
A.L.B. Brito-Mutunayagam  
JUDGE  
4<sup>th</sup> April, 2019