

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 203 of 2019

BETWEEN

GOODMAN FIELDER INTERNATIONAL (FIJI) PTE LIMITED a duly registered
limited liability company having its registered office at 30 Karsanji Street,
Bhindi Industrial Estate, Vatuwaqa, Suva.

PLAINTIFF

AND

JIUTASA BILAVUCU also known as JIUTASA BILA also known as BILA member of
Maraqali Vico, Vunivaivai Vilage, Nakelo.

FIRST DEFENDANT

AND

MEMBERS OF THE MATAQALI NAMARA AND THE MATAQALI VICO
whose details are unknown to the plaintiff but whose details appear in the
Register of iTaukei Lands and the Vola ni Kawabula maintained under
iTaukei Land Trust Act 1940:

SECOND DEFENDANTS

AND

iTAUKEI LAND TRUST BOARD a body corporate established under
section 3 of the iTaukei Land Trust Act 1940.

NOMINAL DEFENDANT

Counsel : Mr M. Chand for the plaintiff
Mr A. Bale with Mr A. Prasad for the 1st & 2nd Defendants
Ms Q. Vokanavanua for the Nominal Defendant

Date of Hearing : 16th September, 2019

Date of Judgment : 15th October, 2019

JUDGMENT

[1] The plaintiff filed this Originating Summons seeking the following orders:

1. The plaintiff be given leave to serve this originating Summons on the second defendants by way of advertisement in a local daily newspaper.
2. A declaration that GFIL is entitled to quiet enjoyment of all that piece of land comprised in the Agreement for Lease executed on 20 June 2005 between iTaukei Land Trust Board ("iTLTB") and GFIL, NLTB Reference number 4/14/9897 being the land named Naitalasese in the Tikina of Nakelo, Province of Tailevu having an area of 32.9837 hectares (the "Land") ("Agreement for Lease") and any subsequent lease that iTLTB and GFIL may enter into pursuant to the Agreement of Lease.

3. An injunction restraining:

- (a) the First defendant whether by himself or through any person acting on instructions of the First Defendant whether under statute or otherwise, and
- (b) any member of the Second Defendant being the members of the Mataqali Vico and Mataqali Namara whether by themselves or through any person acting on instructions of or authorised by the Second Defendants whether under statute or otherwise,

from:

- (i) unlawfully occupying the land, and or
- (ii) interfering with the Plaintiff's quiet enjoyment of the Land whether by passing or re-passing, with or without carriages, motor vehicles, machinery, arms and weapons and or implements of any kind, and or animals over and along the land,

comprised in the Agreement for Lease and any subsequent lease that iTLTB and GFIL may enter into pursuant to the Agreement of Lease.

4. An injunction restraining:

- (a) the First defendant whether by himself or through any person acting on instructions of the First Defendant, and
- (b) any member of the Second Defendant being the members of the Mataqali Vico and Mataqali Namara whether by themselves or through any person acting on instructions of or authorised by the Second Defendants whether under statute or otherwise,

from unlawfully interfering with the plaintiff's trade, business or occupation of the Land comprised in the Agreement for Lease and any subsequent lease that iTLTB and GFIL may enter into pursuant to the Agreement of Lease.

- 5. Further or other relief as may be necessary in the interest of justice.
- 6. Provisions be made for the costs of this application.

[2] On 20th June 2005 the plaintiff entered into a lease agreement in respect of the property which is the subject matter of this action with iTLTB for 75 years.

[3] Clause 3 of the said lease agreement provides:

THE LESSOR HEREBY COVENANTS WITH THE LESSEE that the lessee paying the rent here by reserved and performing and observing the covenants on the lessee's part herein contained the lessee may peaceably hold and enjoy the during the said term without any interruption by the lessor or any person or persons lawfully claiming through under or in trust for the lessor except as otherwise provided herein.

[4] In the affidavit in support of the of the plaintiff it is also averred that sometimes in 2009 Mataqalis complained that iTLTB had leased iTaukei reserve land to the plaintiff and asked for the return of the land leased under the Agreement for Lease.

[5] In 2011 two representatives of Mataqali Namara and Mataqali Vico instituted proceedings against iTaukei Land Trust Board seeking damages for the loss of use of the land from 2003 and for an order that the lease granted to the plaintiff in these proceedings is void. The court dismissed the action with costs of \$6500.00. In dismissing the action the court said it is common ground that the subject matter of the impugned lease is native land, outside the reserve area and the lease entered into between the iTLTB and the plaintiff on 20th June 2005 is valid.

[6] On 25th November 2015 the 1st defendant had entered the property with another group of 20 to 30 villages and locked the down the access and back gates to the farm.

[7] The plaintiff alleges that 09th August 2019 between 1.00 and 1.30 am at about 4.00pm on 08th February 2019, Mr. Bila (1st defendant) and other members of Mataqali Vico and Mataqali Namara blocked the access to the plaintiff's farm and the reason given by them for blocking the access to the farm was that they had not been fairly compensated and it was a reserved land.

- [8] It is also averred that on 23rd May 2019 a group of Mataqali members from Mataqali Vico and Mataqali Namara led by (the plaintiff believes) Mr Bila entered and trespassed upon the property, some of them with cane knives and intimidated the staff and contractors.
- [9] The 1st defendant does not deny entering upon the property. What he says in his affidavit in opposition is that he did not intend to harm anyone by blocking the plaintiff's access to their farm but he was enforcing his rights as a member of the second named 2nd defendant. He says he only communicated to the staff and contractors that they must clear their vehicles as their only access to the farm would be closed. He states further the farm gate that they closed is on their Mataqali's reserve land and so the agreement of lease that gives the plaintiffs right is void. He also states the farm access was blocked at about 4.00 pm when all the chicken have already been fed.
- [10] In the affidavit in opposition filed on behalf of the 2nd defendants by Josevata Naviri he confirms that Memorandum of Understanding was made between the plaintiff company and the representatives of Mataqali Vutovo, Mataqali Vico, Mataqali Namara, Mataqali Vunikavika, Mataqali Navorara and Mataqali Nabua to lease certain portions of lands belonging to Mataqalis. His position is that under the Memorandum of Understanding seven different leases were required to be granted but it has granted one lease in respect of all the lands. He states further that this lease is not valid due to the iTLTB having issued a lease to the plaintiff over reserve land. However, there is no claim against the iTLTB for acting in violation of the Memorandum of Understanding. The iTLTB is only a Nominal Defendant in these proceedings. On the other hand the plaintiff cannot be held responsible for any act of the nominal defendant.
- [11] The main issue to be determined in these proceedings is whether the land in respect of which the lease has been granted to the plaintiff is a reserved land. The position of the 1st and 2nd defendants is that it is a reserved land. As I have stated earlier in this judgment the court has already held in action No. HBC 222 of 2011 that this land is not a reserved land. Therefore, the question whether the land in question is a reserve land or not does not arise for consideration since it has already been decided by the court.

[12] Furthermore, in the report of the Reserve Commissioner, iTaukei Land Trust Board tendered in evidence by the plaintiff it is clearly stated that the land leased out to the plaintiff is not a reserved land.

[13] For these reasons the claim of the 1st and 2nd defendants that the land in question is a reserved land must necessarily fail.

[14] The learned counsel for the 1st and 2nd defendants submitted that in the originating summons it is not clearly stated the background of the case and he submitted further that the plaintiff has not satisfied the guidelines set out in the decision in *American Cyanamid Co. v Ethicon Ltd* [1975] 2 W.L.R. 316, [1975] A.C. 396.

[15] The injunctions sought by the plaintiff in this matter are permanent injunctions. It is absolutely clear from the affidavit in support and the originating summons that the plaintiff is not seeking an interim injunction against the 1st and 2nd defendants. In paragraph 44 of the affidavit in support of George Leslie Sylvester Peckham it is stated:

I pray for order in terms of GFIL's application. Permanent injunctive orders are necessary to ensure GFIL quiet possession of its leased Land and protect its legitimate business interests as well as the safety of its staff and contractors.

[16] It is also important to mention that the reliefs prayed for in the originating summons are for permanent injunctions. No interim injunctions have been prayed for by the plaintiff.

[17] It is a misconception that guidelines set out by Lord Diplock in *American Cyanamid* decision are applicable also to permanent injunctions. Permanent injunction is a final relief granted at the conclusion of the substantive hearing. The main purpose of granting an interim injunction is to maintain the status quo until the final determination of the substantive matter.

[18] In *Hubbard & Another v Vosper & Another* [1972] 2 Q.B. 84 Lord Denning said:

In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength

of the claim but also the strength of the defence, and then decide what is best to be done. **Sometimes it is best to grant an injunction so as to maintain the status quo until the trial.** At other times it is best not to impose a restraint upon the defendant but leave him free to go ahead. (Emphasis added).

- [19] Therefore, the question in whose favour the balance of convenience lie if the interim injunction is granted or refused and the undertaking in damages do not arise in applications for permanent injunctions which is a substantive relief.
- [20] The learned counsel for the 1st and 2nd defendants brought to the attention of the court the decision of the Supreme Court in **Wakaya Ltd v Chambers** [2012] FJSC 9; CBV0008.2011 (9 May 2012). In the said case the application was for an interim injunction. Since in the present action before this court what the plaintiff is seeking are permanent injunctions the authority cited by the learned counsel for the 1st and 2nd defendants is of no relevance.
- [21] It appears from the affidavit evidence and the documents attached that the plaintiff is legally entitled to occupy the land in question without any obstruction or disturbance.
- [22] For the aforementioned reasons I make the following orders:

ORDERS

1. It is declared that GFIL is entitled to quiet enjoyment of all that piece of land comprised in the Agreement for Lease executed on 20 June 2005 between iTaukei Land Trust Board ("iTLTB") and GFIL, NLTB Reference number 4/14/9897 being the land named Naitalasese in the Tikina of Nakelo, Province of Tailevu having an area of 32.9837 hectares (the "Land") ("**Agreement for Lease**") and any subsequent lease that iTLTB and GFIL may enter into pursuant to the Agreement of Lease.
2. The First defendant whether by himself or through any person acting on instructions of the First Defendant whether under statute or otherwise, and any member of the Second Defendants being the members of the Mataqali Vico and Mataqali Namara

whether by themselves or through any person acting on instructions of or authorised by the Second Defendants whether under statute or otherwise, is restrained from;

- (iii) unlawfully occupying the land, and or
- (iv) interfering with the Plaintiff's quiet enjoyment of the Land whether by passing or repassing, with or without carriages, motor vehicles, machinery, arms and weapons and or implements of any kind, and or animals over and along the land,

comprised in the Agreement for Lease and any subsequent lease that iTLTB and GFIL may enter into pursuant to the Agreement of Lease.

3. The First defendant whether by himself or through any person acting on instructions of the First Defendant, and any member of the Second Defendant being the members of the Mataqali Vico and Mataqali Namara whether by themselves or through any person acting on instructions of or authorised by the Second Defendants whether under statute or otherwise, is restrained from unlawfully interfering with the plaintiff's trade, business or occupation of the Land comprised in the Agreement for Lease.
4. The 1st and 2nd defendants are ordered to pay \$2000.00 as costs of these proceedings.




Lyone Seneviratne

JUDGE

15th October 2019