

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

CIVIL ACTION NO. HBC 242 OF 2018

BETWEEN : **FATIMA BI and RAZINA BIBI** of Yalalevu, Nasinu and Vesaru, Ba
respectively, Domestic Duties.

PLAINTIFFS

AND : **ITAUKEI LAND TRUST BOARD** a statutory body duly established
under the iTaukei Lands Act and having its registered head office at 431
Victoria Parade, Suva.

FIRST DEFENDANT

AND : **ROBIN FAZEEL HASSAN** of Auckland, New Zealand.

SECOND DEFENDANT

AND : **SUGAR INDUSTRY TRIBUNAL** a statutory body duly established
under the Sugar Industry Act of Fiji Cap 206.

THIRD DEFENDANT

AND : **REGISTRAR OF TITLES** having its registered office at Level 1,
Suvavou House, Suva.

FOURTH DEFENDANT

Appearances : Mr P. Nayare for the plaintiffs/applicants
Mr V. Chandra for the second defendant/respondent
Date of Hearing : 03 December 2019
Date of Ruling : 14 February 2020

R U L I N G

[on interim injunction]

Introduction

[01] This is an application by the plaintiffs supported by an affidavit and a supplementary affidavit.

[02] By their *inter partes* application filed 23 August 2019, in conjunction with the affidavit of Fatima Bi, the first named plaintiff, and a supplementary affidavit of Fatima Bi sworn on 28 August 2019, the plaintiffs seek the following injunctive orders:

- a) *An order that the Fiji Sugar Corporation Limited be joined as a defendant to these proceedings.*
- b) *An order in the interim freezing sugar cane proceeds for Cane Contract Number 24201, Vesaru 2, Koronubu, Ba belonging to the second defendant pending completion of the plaintiffs' civil action herein.*
- c) *Alternatively that the cane proceeds from the second defendant's cane contract number 24201, Vesaru 2, Koronubu, Ba be paid into court pending further orders of the court.*
- d) *An injunction restraining the second defendant by himself, his servants or agents from harassing the first named plaintiff at her residence or dwelling by any means.*
- e) *Any further orders that the honourable court deems just and necessary.*

[03] This application was initially made *ex parte* as an urgent one, and having heard the application *ex parte* at 2.00 pm on 26 August 2019, I ordered this needed to be heard *inter partes* on 2 September 2019 as it was filed after the second defendant had filed his statement of defence. On 2 September 2019, when the matter came up for hearing, Ms Ravai appearing for the second defendant on instruction sought more time to file and serve affidavit in opposition. The court then granted 21 days to the second defendant to file and serve his affidavit in opposition and at the same time granted an interim injunction against the second defendant restraining him from harassing the plaintiff at her residence or dwelling by any means whatsoever until determination of the application.

[04] The second defendant initially filed his affidavit in opposition through his attorney, Tazim Ali Muntaj, and subsequently filed the affidavit in response sworn by himself.

[05] At the *inter partes* hearing, both parties orally argued the matter.

Background

[06] The plaintiffs bring this action against the defendants seeking among other things declarations that the plaintiffs' old agriculture lease was unlawfully terminated and that the second defendant's lease is void *ab initio*. The basis of the claim is that the first and the second defendant had acted in collusion to fraudulently terminate the plaintiffs' old lease.

Legal framework

[07] In terms of the High Court Rules 1988, as amended ('HCR'), HCR, O 29, R 1(1), an application for the grant of an interim injunction may be made by any party to an action before or after the trial of the action, whether or not a claim for injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be. Order 29, R 1 provides:

"Application for injunction (O 29, R 1)

1 (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(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.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit."

The governing principles

[08] The governing principles to be applied in an application for interim injunction as explained in *American Cyanamid v Ethicon Ltd* [1975] 1 All ER are as follows:

- (a) Serious issues to be tried,
- (b) Are damages an adequate remedy in lieu of the interim relief and
- (c) Where does the balance of convenience lie.

The evidence

[09] The plaintiffs have filed three affidavits of Fatima Bi, the first named plaintiff, i.e. the affidavit in support sworn on 23 August 2019, the supplementary affidavit sworn on 28 August 2019 and affidavit in reply to the affidavit of Tazim Ali Muntaj (she has sworn affidavit in opposition as the attorney of the second defendant).

[10] The second defendant initially filed the affidavit of Tazim Ali Muntaj, his attorney sworn on 23 September 2019, and subsequently the second defendant substituted his attorney's affidavit with his own affidavit sworn in Auckland on 19 November 2019.

[11] It will be noted that the first and the fourth defendants had involved in these proceedings.

Discussion

[12] The application for interim injunction against the second defendant is made by the plaintiffs after filing the writ of summons and statement of claim, but before the trial. The claim for injunction is not included in the writ. However, such an application may be made by any party to the action before or after the trial of the action, whether or not a claim for the injunction was included in that party's writ (see: HCR, O 29, R 1 (1)).

[13] The second defendant opposes the application on the ground that: the plaintiffs did not stop the second defendant working on the land since 2015. He has been working on land since then and planted the sugarcane. The plaintiffs are not entitled to harvest the sugarcane as they had nothing on the land.

[14] The plaintiffs seek interim freezing sugarcane proceeds for cane contract No. 24201, Vesaru 2, Koronubu, Ba belonging to the second defendant pending completion of this action or alternatively that the cane proceeds from the second defendant's cane contract be paid into court pending further orders of the court. Further, they also seek interim injunction restraining the second defendant by himself, his servants or agents from harassing the first named plaintiff at her residence or dwelling by any means.

Serious issue

[15] The plaintiffs allege that their old lease was unlawfully terminated and was given to the second defendant by the first defendant (iTLTB) fraudulently. The plaintiffs basically challenge the second defendant's lease on the ground of fraud.

[16] The issue then arises whether the plaintiff's old lease was terminated lawfully and whether the new lease was issued to the second defendant lawfully.

[17] Upon reading the allegations in the statement of claim, I am satisfied that there are serious issues to be tried at the trial.

Adequacy of damages

[18] In my view, the remedy for the plaintiffs, if any, would be damages in respect of the cane crops. The plaintiffs would be adequately compensated if they were successful in their claim pertaining to the cane crops at the trial. There is no evidence suggesting that the plaintiffs or their agents worked on the land for cane cultivation since 2015.

[20] However, in respect of the house in which the first plaintiff resides the evidence of the plaintiffs is that the house was built by their deceased father and the first plaintiff has been residing in that house for more than 30 years. The second defendant does not claim that he built the house. His focus is on the land which he has cultivated with sugarcane ever since he was issued with the lease by the iTLTB in 2015.

[21] The first plaintiff has been residing in the house for 30 years. Damages would not be adequate to the first plaintiff if she were successful in her claim to the house and she is removed from the house in the meantime.

Balance of convenience

[22] It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises (see *American Cyanamid at 408E*).

[23] I have decided that the remedy in damages is available to the plaintiffs in respect of cane crops; however, remedies in damages would not be adequate in respect of the house which the first plaintiff occupies.

[24] The first plaintiff occupies the house for 30 years, which is not disputed by the second defendant. The house was built by the plaintiffs' deceased father. Her occupation of the house is based on the old lease of which she was the registered tenant along with her deceased father. The cancellation of the old lease by the iTLTB is challenged in the substantive action.

[25] If an injunction is not granted in respect of the house restraining the defendant from interfering with the first plaintiff's occupation of the house, the second defendant may interfere with her occupation of the house and may attempt to remove her from the house on the basis that he is the registered owner of the land by reason of the new lease issued to him (which now being challenged) cancelling her old lease.

[26] In the circumstances of the case, the balance of convenience is in favour of granting of an interim injunction in respect of the house the first plaintiff resides.

Conclusion

[27] For the reasons set out above, I would conclude that the plaintiffs have made out a case for interim relief in respect of the house. I would, therefore, grant an interim injunction in respect the house. However, the plaintiffs have failed to make out a case for interim relief in respect of the cane crop. I would, therefore, refuse to issue an interim injunction in respect of the cane crop. In all circumstances, I would make no order as to costs.

[28] The plaintiffs seek an interim injunction against the second defendant restraining him, his agents and/or his servants from harassing the first plaintiff at her residence or dwelling by any means. The word 'harassment' appears to be inappropriate as the second defendant is away in New Zealand. I would, therefore, grant the interim injunction with a slight modification that the second defendant, his agents and/or his servants shall not interfere with the first plaintiff's occupation of the house until final determination of the substantive action.

The result

1. There shall be an interim injunction against the second defendant until final determination of the substantive action.
2. The second defendant, his servants or his agents shall not interfere with the first plaintiff's occupation of her house or dwelling by any manner whatsoever until final determination of the substantive action.
3. Injunction respecting the cane crop refused.
4. The substantive matter will take its normal course.
5. No order as to costs.

H.M. Mohamed Ajmeer
..... 14/12/20

M.H. Mohamed Ajmeer

JUDGE

At Lautoka

14 February 2020

Solicitors:

For the applicants/plaintiffs: Brixton Law

For the second respondent/defendant: Millbrook Hills Law Partners, Barristers and Solicitors

