

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 369 of 2020

Virginia Kwong

Plaintiff

v

Josateki Tagi

Theresa Elizabeth Fiona Tagi

Defendants

Counsel: Mr N. Lajendra for the plaintiff

Mr V. Filipe for the defendants

Date of hearing: 18th January,2021

Date of Ruling : 19th February,2021

Ruling

1. The plaintiff, in her notice of motion seeks an injunction against the defendants, servants and agents to compel them to remove their valuables, pile of rubbish and makeshift lovo shed from the plaintiff's property in CT no.16967, (the property); and, an interim order restraining them from interfering with the peaceful enjoyment of her property, until determination of the Court action.
2. The plaintiff, in her affidavit in support states that the defendants are the registered proprietors of CT no.16966. CT no.16966 is adjacent to the plaintiff's property, which is a vacant lot. The defendants have piled up rubbish and their valuables and constructed a makeshift lovo shed on her property without her permission. The defendant filed an

application for a vesting order in respect of the property in the High Court. The application was refused.

3. The affidavit continues to state that the plaintiff's workers fenced the property with police assistance, as they were obstructed by the defendants. She was unable to seal the fence, because of the pile of rubbish and items on her property. The defendants have failed to clear their rubbish and items. Their unlawful action is interfering with her right to peaceful enjoyment of her property and affecting her ability to lease her property to prospective tenants as a vacant lot. The plaintiff gives an undertaking as to damages. Certified copies of Certificates of Title of nine properties are attached.
4. The defendants have not filed affidavit in opposition.

The determination

5. The plaintiff states that the defendants have piled up rubbish and their valuables and constructed a makeshift lovo shed on her vacant property without her permission. The defendants are interfering with her right to peaceful enjoyment of the property and her ability to lease her property.
6. The supporting affidavit contains photographs of several items on the property. The plaintiff states that the defendants have continued to use her property, despite several notices served on them.
7. 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)

8. In *Hubbard v Vosper*, [1972] 2 QB Megaw L.J. at pg 97 stated:

If the Plaintiff does have the right, the right has been infringed. It is true that in certain special cases one can approach the matter in that way. Suppose, for example, the plaintiff's claim for an interlocutory injunction is based on his contentions that he is the owner of a piece of land and that the defendant has trespassed upon it. If the

defendant does not dispute that the piece of land belongs to the plaintiff, then it may, in some cases, require only the slightest evidence on the part of the plaintiff of the fact that the defendant has gone upon that land to entitle the plaintiff to an injunction.
(emphasis added)

9. In the present case, the plaintiff has demonstrated that there is a serious issue to be tried. There is an invasion of her proprietary and legal rights by the defendants.
10. The defendant has not presented a defence.
11. It follows that the defendants must be restrained from interfering with the plaintiff's peaceful enjoyment of her property.
12. The plaintiff seeks an order that the defendants remove their pile of rubbish, valuables and makeshift lovo shed from her property. The relief sought is in effect a mandatory injunction.
13. In my view, this is a "*proper case, unhesitatingly*" to grant the injunctive relief sought, to quote Lord Upjohn in *Redland Bricks Ltd v Morris* (1969) 2 All ER 576, at page 579 to 580.
14. **Orders**
 - i. The defendants and their agents shall remove their pile of rubbish, valuables and makeshift lovo shed from the plaintiff's property, CT no.16967 on or before 28th February,2021.
 - ii. The defendants and their agents are restrained from interfering with the peaceful enjoyment of the plaintiff's property, until final determination of this action.
 - iii. The defendants shall pay the plaintiff costs summarily assessed in a sum of \$ 750.00 within 15 days of this Ruling.



A.L.B. Brito-Mutunayagam
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JUDGE
19th February,2021