

In the High Court of Fiji  
At Suva  
Civil Jurisdiction

Civil Action No. HBC 50 of 2020

Mukesh Chand  
Arun Chand  
Plaintiffs

v

iTaukei Land Trust Board  
Defendant

Counsel: Mr V. Maharaj for the plaintiffs  
Ms Q. Vokanavanua for the defendant  
Date of Hearing: 10<sup>th</sup> March, 2020  
Date of Ruling: 27<sup>th</sup> February, 2023

**Ruling**

1. This is an application for an interim stay of my Ruling dissolving the ex parte injunction I granted. On 25th February, 2020, I dissolved the ex parte injunction on the ground that the plaintiffs had not shown a legal right to remain in possession of the land. On 10<sup>th</sup> March, 2020, I granted an interim stay pending this determination.
2. The plaintiffs sought an interim injunction to restrain the defendant from harassing or trespassing on the iTLTB land known as “Vunidogo” No. 4/3/1715 in Naitasiri, as contained in Instrument of Tenancy, (IOT) No. 774 with an area of 7.6890 hectares, on the basis that they have statutory protection under section 4(1) of Agricultural Landlord and Tenant Act, (ALTA) as occupants of agricultural land. The defendant stated that the plaintiffs were illegally occupying the land without its consent.

*The application for stay*

3. The affidavit in support of the stay states that since the dissolution of the interim injunction, the defendant has threatened and continued to harass and interfere with his rights to the peaceful occupation and enjoyment of the land. The bulldozers have damaged his cultivation and are moving towards his residence. He may lose the right to occupation and cultivation under section 4, if forcefully evicted. His developments would be lost without any compensation and there would be irreparable damages caused. He has complied with the requirements for a declaration of tenancy of the land under ALTA.
  
4. The affidavit in opposition filed on behalf of the defendant states that Indar Prasad was the lessee of IOT No. 774 which expired on 31<sup>st</sup> December, 2011 and was not renewed. That plaintiffs have failed to show that they have any legal rights to occupy or remain in possession on the land. He forcefully started cultivating unjustly enriching himself. The plaintiffs continues to occupy and farm the land without its consent since 2012, without paying any lease rental. The land is no longer an Agriculture zone land. A development lease has been issued to Rohit Dass. He has fully paid its premium with an annual lease rental of \$5,200.00. The lessee and landowners will be adversely affected if a stay is granted, not the plaintiffs.
  
5. The plaintiff, in his affidavit in reply states that after the death of Indar Prasad on 9<sup>th</sup> August, 1991 his interest in the land passed to his estate. The plaintiffs have been cultivating the land with Indar Prasad and paying lease rental to the defendant. On 30<sup>th</sup> October,2012, the defendant entered into an agreement with Rohit Dass and granted him a Residential Development Lease over the land, in breach of their rights. The plaintiff has been fully utilizing the land for agricultural purposes for over 20 years.

***The determination***

6. The law on stay pending appeal was summarized in ***Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd***, (Civil Appeal ABU0011.04S 18<sup>th</sup> March, 2005) as follows:
- a) *Whether, if no stay is granted, the applicant's right of appeal will be rendered nugatory (this is not determinative). See Phillip Morris (NZ) Ltd v Liggett & Myers Tobacco Co (NZ) Ltd [1977] 2 NZLR 41 (CA).*
  - b) *Whether the successful party will be injuriously affected by the stay.*
  - c) *The bona fides of the applicants as to the prosecution of the appeal.*
  - d) *The effect on third parties.*
  - e) *The novelty and importance of questions involved.*
  - f) *The public interest in the proceeding.*
  - g) *The overall balance of convenience and the status quo.*
7. The first test provides that the court must consider whether the appeal will be rendered nugatory if no stay is granted, albeit this factor “*is not determinative*”.
8. The Court of Appeal in ***AG and Minister of Health v Loraine Die***, (Misc. No 13 of 2010) stated:
- The most important consideration in respect of whether a stay of execution should be granted is whether there are strong grounds of the proposed..That hurdle is higher than that of chances of success.***  
(emphasis added)
9. The proposed grounds of appeal read:
- I. *The learned Judge erred in law and fact when it summarily determined the issue on the appellant's legitimate expectation for a renewal of lease to the land when the head of Mataqali was paid a substantial sum of money as goodwill and they being beneficiaries of the land consented to issuance of lease to him.*
  - II. *The learned Judge erred in law and in fact when in on affidavit evidence accepted as a matter of fact that there was another land owning unit owned the land and the direct dealing was illegal being without knowledge of the Respondent Board.*

- III. *The learned Judge erred in law in fact when it determined the issue that the Estate Assistant had no authority and not vicariously liable to bind the Respondent and the individual members of the Mataqali or other land owning unit had no “rights” to grant a lease to Native Land.*
- IV. *The learned Judge erred in law and in fact by interpreting Section 4 of the Landlord and Tenant Act against the Appellants when they occupied and cultivated the land continuously for more than 30 years prior to 2013 and 6 years after 2013 on the land when the action for eviction was taken by landlord only once in 2013.*
- V. *The learned Judge erred in law and in fact when it fully determined the issue that the Appellants have not shown any legal rights to remain in possession when the Appellant’s substantive action against the Respondent continues in High Court.*
- VI. *The learned Judge erred in law and in fact when it determined that more damages is caused by the Plaintiff to the Respondent by pre-empting that the dispute with Respondent is causing major halt to the million dollar proposal and development in the absence of any evidence produced by the Respondent.*
- VII. *The learned Judge erred in law and in fact properly apply the principles of the American Cyanamid case in:-*
  - a. *Failing to hold that there were serious issues to be tried.*
  - b. *Failing to apply the test enunciated in the case of Allen v Jambo Holdings Ltd (1980) 2 All ER 502 in relation to undertaking of damages and not acknowledging that there were no objections taken by the Respondent in relation to inadequacy of undertaking of damages.*
  - c. *Failing to recognize the Appellants constitutional fights not to be evicted without due process and/or without our order of the court when the Respondent had non-existence of any such Court Order.*
  - d. *Failing to recognize and take into account the Appellants apprehension and fear that in absence of our extension of Court Order until the final determination of the action would tantamount to force eviction the application without Court Order.*
  - e. *Wrongly holding that the Respondent has taken steps to evict the Appellants when those steps did not culminate into a Court Order to evict the Applicants.*

10. On the contentions in the first, second and third grounds, I reiterate paragraphs 9 and 10 of my Ruling of 25<sup>th</sup> February,2020. The provisions of the iTaukei Land Trust Act are clear.

11. On the remaining proposed grounds, the IOT leased to Indar Prasad of 18<sup>th</sup> January, 1982, expired on 31<sup>st</sup> December, 2011, after the lapse of 30 years and was not renewed. The receipts produced by the plaintiff are in respect of lease rentals received by tenant Indar Prasad for 2011.
12. The first plaintiff in his reply contends that the defendant has breached his statutory right under ALTA of seeking an extension of the lease, if not a new lease besides his equitable interest.
13. In my view, the question of seeking an extension does not arise, as the lease expired. The plaintiffs have no legal rights to occupy or remain in possession on the land.
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 *Strategic Nominations Limited v Gulf Investments Fiji Ltd & Others*, (Civil Appeal No. ABU0039 of 2009) Marshall JA said that Lord Diplock in the *American Cyanamide* was concerned with a case where “*there was a threatened continuing breach of a proprietary right of the Plaintiff by the Defendant*”.
16. In my view, there is no serious issue to be tried in the present case.
17. In my view, the principle in *Allen v Jambo Holdings Ltd* (1980) 2 All ER 502 with respect to undertaking of damages is inapplicable to the present case. That case concerned a widow and children of a man who was decapitated and killed by a propeller. Lord Denning stated that “*the widow and her children have a good, arguable case for claiming damages*”.

18. Mr Maharaj, counsel for the plaintiffs relied on the following passage from the judgment in *Pratap v Lal*, [2008] FJCA 38; ABU0072.2005S (9 July 2008) at paragraph 33:

*In the opinion of the Court the only workable construction of section 4(1) is that steps to evict an occupier must be taken within any three year period of occupation and cultivation. Once the three year period is up the occupant has a statutory tenancy and subsequent steps to attempt to evict the occupier can be of no relevant effect.*

19. The excerpt referred to must be read with paragraph 34 that followed which states:

*We are reinforced in this opinion by the decision of Soma Raju v Bhajan Lal Civil App 48 of 1976 which establishes that **where an occupier of land becomes a tenant** and the land is transferred to a third party, that assignee takes subject to the statutory rights of the tenant.*  
(emphasis added)

20. In the present case, the plaintiffs did not become tenants.

21. Calanchini P in *Newworld Ltd v. Vanualevu Hardware (Fiji) Ltd* [2015] FJCA172; ABU76.2015 (17 December 2015), at paragraph 16 stated:

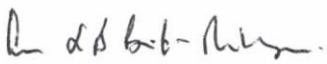
*The respondent's principal objection to the granting of a stay pending appeal was that the appeal had no merit whatsoever. This court is required to consider the bona fide of the appellant in the prosecution of the appeal and whether the appeal involves a novel question of some importance. However, at the same time the authorities suggest that the merits of the appeal will rarely be considered in any detail it is usually sufficient if an appellant has an arguable case. **If the appeal is obviously without merit and has been filed merely to delay enforcement of the judgment then the application should be refused.***  
(emphasis added)

22. I am not convinced that the proposed appeal will be rendered nugatory, if a stay is not granted.

23. In my view, the grounds of appeal do not raise novel questions nor issues of public interest.

24. In my judgment, the grounds of appeal do not have strong prospects of success. The plaintiffs do not have an arguable case.

25. I do not find any special or exceptional circumstances in this case.
26. Finally, I consider the balance of convenience test. This test requires a determination of which of the two parties will suffer greater harm from a refusal of a stay pending the determination of the appeal.
27. In *Linotype-Hell Finance Ltd v Baker*, (1992) 4 AII ER 887 at pg 888 Staughton LJ. stated:
- It seems to me that, if a defendant can say that **without a stay of execution he will be ruined and that he has an appeal which has some prospects of success, that is a legitimate ground for granting a stay of execution.*** (emphasis added)
28. In my view, the defendant will not face irretrievable loss if a stay is not granted.
29. I am satisfied having considered all the factors and circumstances that the balance of convenience favours the defendant.
30. I direct the defendant to give the plaintiffs two months time to harvest their crops from the date of this Ruling.
31. The application for a stay is declined.
32. **Orders**
- a. The application for a stay pending appeal is declined.
  - a. The plaintiffs shall pay the defendant costs summarily assessed in a sum of \$1000.00.

  
A.L.B. Brito-Mutunayagam  
JUDGE  
27<sup>th</sup> February, 2023

