

**IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CIVIL JURISDICTION**

**Civil Action No. HBC 81 of 2019**

**BETWEEN** : **NISHMAL PRASAD SHARMA** of Vitogo, Paipai, Lautoka as the  
**ADMINISTRATOR** of the **ESTATE OF NARENDRA SHARMA** late of Vitogo,  
Paipai, Farmer, Deceased, Intestate.

**PLAINTIFF**

**AND** : **MAHENDRA SINGH** formerly of Vitogo, Paipai, Lautoka now residing at  
58 Odelia Crescent, Plumpton NSW 2761, Australia.

**1<sup>ST</sup> DEFENDANT**

**AND** : **ITAUKEI LAND TRUST BOARD** a body incorporated under the iTaukei  
Land Trust Act Cap 134 with its registered office at 431 Victoria  
Parade, Suva.

**2<sup>ND</sup> DEFENDANT  
(NOMINAL DEFENDANT)**

**BEFORE** : A.M. Mohamed Mackie- HCJ (Civil High Court)

**COUNSEL** : Mr. R. Charan, with Ms. A. Vikash- For the Plaintiff.  
Mr. A. K. Singh- For the 1<sup>st</sup> Defendant.  
Ms. Raitamata- For the 2<sup>nd</sup> Defendant.

**DATE OF HEARING** : 4<sup>th</sup> October, 2022

**WRITTEN SUBMISSION:** By the Plaintiff on 26<sup>th</sup> October, 2022.  
By the 1<sup>st</sup> Defendant on 4<sup>th</sup> October, 2022.

**DATE OF RULING** : 15<sup>th</sup> February, 2023.

**RULING**

**A. INTRODUCTION:**

1. Before me is a Summons dated 26<sup>th</sup> May, 2022 preferred by the Solicitors for the 1<sup>st</sup> Defendant seeking the following reliefs against the plaintiff;

1. *That the ex-parte injunction granted by the Honorable Mr. Justice Tuilevuka especially Orders numbers (e) and (f) on 5<sup>th</sup> April 2019 be dissolved forthwith;*
2. *That the Plaintiff be ordered to provide vacant possession of the 1<sup>st</sup> Defendant's properties without any damages or removing any assets or chattels belonging to the 1<sup>st</sup> Defendant.*
3. *That the Plaintiff be ordered to return the 1<sup>st</sup> Defendant's Tractor registration No.BJ 612.*

4. That the Plaintiff be ordered to return the 1<sup>st</sup> Defendant's Ford 7- ton Truck registration No.AB 106.
  5. That the Plaintiff pay the costs of this application,
  6. Any other Order that the Court deems just and appropriate.
2. The Summons is supported by the Affidavit of the 1<sup>st</sup> Defendant, namely, Mahendra Singh, sworn on 13<sup>th</sup> May, 2022 and filed on 26<sup>th</sup> May, 2022, along with the annexure marked as "MS-6".
  3. The Summons states that the Application is made pursuant Order 29 of the High Court Rule 1988, Section 169 of the Land Transfer Act and the inherent jurisdiction of this Court.
  4. As the Plaintiff had passed away on 17<sup>th</sup> February, 2022, an Application for substitution being made on 12<sup>th</sup> August, 2022, this Court on 18<sup>th</sup> August, 2022, with the consent of the Defendants, substituted the deceased Plaintiff's Son **Nishmal Prasad Sharma**, as the substituted Plaintiff, who on 12<sup>th</sup> September, 2022 filed his Affidavit in opposition for the 1<sup>st</sup> Defendant's Application in hand. Accordingly, the 1<sup>st</sup> Defendant filed his Affidavit in Reply 19<sup>th</sup> September, 2022.
  5. The hearing into the 1<sup>st</sup> Defendant's, purported, 2<sup>nd</sup> Application for dissolution of Injunction was held before me on 4<sup>th</sup> October, 2022 and both the Counsel for the 1<sup>st</sup> Defendant and the Plaintiff orally addressed the Court. Counsel for the 1<sup>st</sup> Defendant also filed his written submissions. Counsel for the Plaintiff was left at liberty to file his written submissions and same was filed subsequently. The 2<sup>nd</sup> Defendant, being the nominal Defendant, no submissions were made by its Counsel.

**B. BACKGROUND HISTORY IN BRIEF.**

6. The Plaintiff on 5<sup>th</sup> April,2019 , while filing his Writ of Summons and the Statement of claim, also filed an Ex-Parte Notice of Motion seeking certain Injunctive Orders against the 1<sup>st</sup> Defendant as per paragraphs ( e) and (f) of the prayers thereto, which are reproduced bellow.  
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*e) "An injunction restraining the Defendant by his servants and agents from interfering with the Plaintiff's quite enjoyment of the property comprised in TLTB Ref No.4/7/5838 land known as Vitogo sub division (pt) Lot 18 in the Tikina of Vitogo on ND 5117 until the determination of this action".*

*f) "The 1<sup>st</sup> Defendant by himself and/or by his servants and/or his agents and/or whosoever be restrained from either physically or verbally or howsoever from interfering with the Plaintiff in cultivating and harvesting Sugar cane grown on farm No.1213 and on all that Native land known as Vakasoso Lot 1 on ND 2410 in the Tikina of Vitogo in the Province of Ba and containing an area of 15 acres and 1 rood on Native Lease No.28778 until the determination of the Agricultural Tribunal Ref W/D 03/19".*

7. After hearing the Ex-parte Notice of Motion on 5<sup>th</sup> April, 2019, my Brother Judge Anare Tuilevuka-J, granted Injunctive Orders as prayed for above against the 1<sup>st</sup> Defendant.
8. Subsequently, on 14<sup>th</sup> August, 2019, the 1<sup>st</sup> Defendant filed Summons to dissolve the said Injunction Orders and Justice. A. Tuilevuka, after, entertaining Affidavit in opposition from the Plaintiff and hearing the matter inter-parte, by his ruling dated 15<sup>th</sup> November, 2019, inter-alia, made the following Order as per paragraph 21 thereof;

***"21. For this reason, I will exercise my discretion against granting an order to dissolve the injunction or to strike out the claim".***

9. Thereafter, pre-trial formalities being attended, when the matter came up before me to fix for trial and while the substitution as aforesaid was pending, Counsel for the Plaintiff indicated that they will be filing a fresh Application for the dissolution of the above Injunction Orders and accordingly, same was filed on 26<sup>th</sup> May, 2022 with the Supporting Affidavit of the 1<sup>st</sup> Defendant, seeking the reliefs mentioned in sub paragraphs 1-6 in paragraph 1 above.

**C. ANALYSIS & DECISION.**

10. I have carefully perused the contents of the 2<sup>nd</sup> Summons for the dissolution of Injunction, filed by the 1<sup>st</sup> Defendant, and the other contents of the record with special attention to the Ruling made by Justice A. Tuilevuka, on 15<sup>th</sup> November, 2019 on the 1<sup>st</sup> Defendant's first Application for dissolution of Injunction order that had been granted by him ex-parte on 5<sup>th</sup> day of April, 2019.
11. At the outset, it has to be emphasized that the reliefs 2, 3 and 4 moved for by the 1<sup>st</sup> Defendant against the plaintiff in the current Summons, which are reproduced in paragraph (1) above, cannot be granted by way of this Summons for dissolution of Injunction, as they are reliefs that can be considered only as final reliefs, after the substantial hearing of the matter.
12. As far as the 1<sup>st</sup> relief above prayed for in the 1<sup>st</sup> Defendant's Summons is concerned, this Court has the following to say;
  - a. That the ex-parte injunction Order granted by justice Tuilevuka, on 5<sup>th</sup> of April, 2019 is no more in existence for this Court to vacate or vary as prayed for by the 1<sup>st</sup> Defendant in his 2<sup>nd</sup> Summons for dissolution, as it has become an inter-parte order by the subsequent order of Justice Tuilevuka.
  - b. Now there is a Ruling dated 15<sup>th</sup> November, 2019 pronounced by Justice A. Tuilevuka, on the same issue, which stands unassailed by way of an Appeal to a higher forum.
  - c. This Court cannot sit on a Ruling or Judgment pronounced by a parallel Court and pronounce a contrary ruling on the same issue to override the prior ruling.
  - d. If this Court makes a Ruling on this summons and if it happens to be in favour of the 1<sup>st</sup> Defendant, then there will be two conflicting rulings pronounced by the High Court on the same issue.

- e. I don't find any substantial change of circumstances arose, due to the death of the original Plaintiff, as alleged by the Counsel for the 1<sup>st</sup> Defendant and this need not necessarily cut short the proceedings by granting all the final reliefs as prayed for through a Summons of this nature. The substituted Plaintiff, whether he has sufficient evidence on his own or otherwise should have his day in Court to prove the case initiated by his deceased father.
  - f. However, the question whether his evidence is going to be a repetition of his deceased father's evidence and/or hearsay or not has to be decided at the trial and not prematurely at this stage .
  - g. There is no an ex-parte injunction order in force now, as the initial ex-parte injunction Order granted on 5<sup>th</sup> of April, 2019, has now, after an inter-partes hearing, been converted into an inter-partes injunction Order to be in force till the determination of the substantial action as per the ruling dated 15<sup>th</sup> November, 2019.
  - h. If this Court makes a Ruling contrary to the Ruling dated 15<sup>th</sup> November, 2019, the Plaintiff's current possession, whether it is legal or illegal, will be jeopardized and he may face eviction prior to the trial.
13. For the reasons adumbrated above, the second summons preferred by the 1<sup>st</sup> Defendant on 26<sup>th</sup> of May, 2022 for the dissolution of the Injunctive Orders made on 5<sup>th</sup> April, 2019 has to be dismissed, with no costs.

**D. FINAL ORDERS:**

- a. The 1<sup>st</sup> Defendant's Summons filed on 26<sup>th</sup> May, 2022 seeking to dissolve the ex-parte injunction orders granted on 5<sup>th</sup> April, 2019, is hereby dismissed.
- b. Considering the circumstances no costs ordered.
- c. The matter shall proceed for trial subject to PTC formalities.



  
A.M. Mohammed Mackie  
Judge

At High Court Lautoka this 15<sup>th</sup> day of February, 2023

**SOLICITORS:**

For the Plaintiff: Ravneet Charan Lawyers

For the Defendant: A K Singh Lawyers