



## **INTERLOCUTORY RULING**

### **(APPLICATION FOR INTERIM INJUNCTION EX-PARTE)**

#### **PART A – BACKGROUND AND AFFIDAVIT**

1. The Plaintiff/Applicant has filed this application on an ex-parte basis seeking an interim injunction restraining the Defendant/Respondent and his servants or agents from disposing with the property.
2. The Plaintiff/Applicant has also filed a claim on the property seeking a permanent injunction and damages as reliefs.
3. The properties in question are registered as SL 22481 which was previously registered as CL 1089. The registered leasees on the property were Shiri Raman who passed away on 13 June 1991, Narain Sami who passed away in February 2024 and the First Defendant/Respondent.
4. By a Will dated 18 December 1975, the shares for Shiri Raman were bequeathed to Paran Sivan whilst Narain Sami had verbally indicated to the 2<sup>nd</sup> Defendant/Respondent to give his shares to the Plaintiff/Applicant.
5. Since 2015, despite follow ups with the 2<sup>nd</sup> Defendant, it was only after the death of Narain Sami in March of 2024, the solicitors found out that the 1<sup>st</sup> Defendant was the registered leasee under a new lease SL 22481 on 11 June 2019.
6. The Applicant/Plaintiff has resided on the property for the past 30 years whilst maintaining the property, paying land rentals and city rates. She and the Second Plaintiff/Applicant are the sisters of Narain Sami and daughter of Shiri Raman.
7. The Affidavit of the Plaintiff/Applicant seeks an interim injunction whilst the claim is pending given that the 1<sup>st</sup> Defendant is now inviting real estate agents to the property to place the property on the market.
8. The Plaintiff/Applicant offers undertakings as a result of the application for interim injunction.

## **PART B: LAW AND ANALYSIS**

9. In *The Supreme Court Practice 1988* (Sweet and Maxwell, London, 1988) pg 472 in paragraphs 29/1/2, it discusses the general principles of injunction:

“General Principles – The usual purpose of an interlocutory injunction is to preserve the status quo until the rights of the parties have been determined in the action. The injunction will almost always be negative in form, to restrain the defendant from doing some act. Very exceptionally it may be mandatory, requiring an act to be done; see para 29/1/5. A cross undertaking from the plaintiff to be answerable in damages if the injunction proves to have been wrongly granted is always required; see para 29/1/12.

The principle to be applied for interlocutory injunctions have been authoritatively explained by Lord Diplock in *American Cyanamid -v- Ethicon Ltd* [1975] A.C 396; [1975] 1 All E.R 504 H.L. They may be summarized as follows:

- (1) The Plaintiff must establish that he has a good arguable case to the right he seeks to protect;
- (2) The court must not attempt to decide this claim on the Affidavits, it is enough if the plaintiff can show that there is a serious question to be tried.
- (3) If the plaintiff satisfies these tests, the grant or refusal of an injunction is a matter for the exercise of the Courts discretion on the balance of conveniences.’

10. Taking into consideration the general principles, the Court considers them individually.

### ***Is there an arguable case and whether there is a serious question to be tried?***

11. The Plaintiff/Applicant, in their Statement of Claim is seeking for cancellation and renewal of the lease to the Plaintiff/Applicant, permanent injunction and general and special damages. Their claim is that the second Defendant had failed to inform them of the renewal of the crown lease after expiration and that the First Defendant applied and was given the lease without considering Narain Sami request to give the property to the 2<sup>nd</sup> Plaintiff.
12. In this instance, the First Defendant/Respondent has been registered as the leasee on the new lease No 22481 against the old lease CL 8091 by the Second Defendant/Respondent.
13. The old lease CL 8091 is the property that was owned by both Narain Sami and Shri.
14. Unless the evidences are submitted in Trial, can the Court be in a position to determine if the Defendants/Respondent to determine the breach.

15. In this application, the Plaintiff/Applicant claims equitable estoppel hence the reason they seek an interim injunction.
16. In Manubhai Industries Limited -v- Lautoka Land Development (Fiji) Ltd [2002] FJCA 96; ABU 0043.1998S (25 February 2002) Sheppard J.A, Tompkins J.A and Smellie J.A stated the principle of equitable estoppel as:

Provided the factual foundation is available, it is now clearly established both in Fiji and elsewhere in the common law world that equitable estoppel can found a cause of action. The law in this area was extensively examined by this court, in Public Trustee of Fiji v. Krishna Nair Civil Appeal No. ABU 0010 of 1996 where the judgment of the court at page 7 under the sub-heading of "Equitable estoppel" discussed the applicable law saying:

"... it is well established in the law of Fiji and, indeed, the wider scope of the doctrine as formulated in Australia and New Zealand in the last decade and a half has been accepted and applied by this Court. (See for example, Attorney General and Fiji Trade and investment Board v Pacoil; Civil appeal number 14 of 1996)

... However since the decision of the High Court of Australia in Waltons Stores (Interstate) Ltd v Maher, (1987 - 8) 164 CLR 387, the restriction of estoppel to cases in which there was a pre-existing contractual relationship (as, for example, in Legione v Hateley, (1982 -3) 152 CLR) was removed and the remedy extended. Following an extensive review of the authorities, Mason CJ and Wilson J, at 406, indicated that:

... the doctrine extends to the enforcement of voluntary promises on the footing that a voluntary departure from the basic assumptions underlying the transactions between the parties must be unconscionable. As failure to fulfil a promise does not of itself amount to unconscionable conduct, mere reliance on an executory promise to do something, resulting in the promisee changing his position or suffering detriment, does not bring promissory estoppel into play. Something more would be required. Humphreys Estate [1986] UKPC 58; (1987) 1 AC 114, suggests this may be found, if at all, in the creation or encouragement by the party estopped in the other party of an assumption that a contract will come into existence or a promise will be performed and that the other party relied on that assumption to his detriment to the knowledge of the first party." (emphasis added)

In the same case at 428 Brennan J set out the matters that must be proved.

"In my opinion, to establish an equitable estoppel, it is for the plaintiff to prove that (1) the plaintiff assumed that a particular legal relationship would exist between them and, in the latter case, that the defendant would not be free to withdraw from the expected legal relationship; (2) the defendant has induced the plaintiff to adopt that assumption or expectation; (3) the plaintiff acts or abstains from acting in reliance on the assumption or expectation; (4) the defendant knew or intended him to do so; (5) the plaintiff's action or inaction will occasion detriment if the assumption or expectation is not fulfilled; and (6) the defendant has failed to act or avoid that detriment whether by fulfilling the assumption or expectation or otherwise." (emphasis added)"

17. In Lincoln Refrigeration Ltd -v- Prasad [2018] FJCA 159; ABU 24.2017 (5 October 2018) Basnayake J.A, Guneratne J.A and Jameel J.A in application to the doctrine of equitable estoppel to the case before it stated:

"[13] It is true that the Representation was made by the Labour Officer on behalf of the Respondent when he made it, who had ostensible authority and statutory power to make it going through the procedural process envisaged under the Workmen's Compensation Act leading up to the Labour Officer accepting the monetary claim of \$9,100.00 on the Respondent's behalf in pursuance of "the Agreement" vis a vis "the Representation" referred to above in the context of Section 16 of the Workmen's Compensation Act.

[17] Perhaps, the Respondent must have realised at some later point of time after the said "Agreement and Representation" that he was not getting justice, being limited to a claim of \$9,100.00. But, the law as in the Workmen's Compensation Act is designed otherwise, the Labour Officer being the statutory authority to act on behalf of a workman in a claim for injuries suffered in the course of employment. The allegations of duress or impropriety on the part of the Labour Officer being taken out of contention for the reason I have articulated above, I am unable to subscribe to and agree with Mr. Kohli's contention that, since his client (the Respondent) had not eventually signed the agreement, (although the claim of \$9,100 had been paid, his client having not appropriated it) he was not bound by it. The legal considerations of the "Agreement and Representation" as aforesaid overrode that, (the basic theme pursued by Mr. Narayan (Jnr.) on

behalf of his client, the Appellant) and fell within the scope and content of the principle of “equitable estoppels”.

18. At this juncture, taking into consideration the principles, the Affidavit has not prescribed the basis for which the assumption of a legal relationship has arisen and whether there was an inducement for which the Plaintiff has acted upon. However the inaction of the First Defendant not to have actively worked on the land raises certain presumptions that must be considered at trial.
19. The Court will need to consider these issues by evidence at trial.
20. There is indeed a serious question to be tried.

***Damages sufficient or not?***

21. The Plaintiff/applicant argues that damages may not be sufficient to the relief sought as the property is the sole reason why they are seeking reliefs from the Court.
22. However if the Court finds that damages be awarded, however it does not replace the property which the Plaintiff/Applicant is now seeking.

***On a Balance of Convenience***

23. The Court is mindful that if it were to grant interim injunction, it would have brought the case to an end as it would fulfil the intention and purpose of the Claim to injunct the Defendant/Respondent from any dealings with the property.
24. In Digicel (Fiji) Limited -v- Fiji Rugby Union [2015] FJCA 84; ABU 21.2014 (12 June 2015) Callanchini, P, Chandra J.A and Guneratne J. A held that:

“Had the interim injunction been granted to the Appellant, the case would in effect have been virtually brought to an end since that would have compelled the 1st Respondent to renew the contract it had with the Appellant and further prevented it from acting and continuing with its contract with the 2nd Respondent. (vide: Wakaya v. Chambers [2012] FJHC 9).

[45] In Ba Town Council v Fiji Broadcasting Commission (1976) 22 FLR 91 an interlocutory injunction had been sought to prevent press and radio publishing and broadcasting any information regarding a soccer

tournament held at the Govind Park, Ba. The alleged right was not only to prevent media entering the park but also to effect a total ban on the publishing of all football information.

[46] The Court said thus:

"It is not the practice of the Court to grant interlocutory injunctions which will have the practical effect of granting the sole relief claimed" (per Kermode J)."

25. There are a number of reliefs sort before this Court, the predominant relief is the injunction.
26. The Plaintiff/Applicant argued that they request on a balance of convenience for the court to grant injunction to retain the status quo.
27. The Court will therefore grant the injunction in the interim.

**Orders of the Court:**

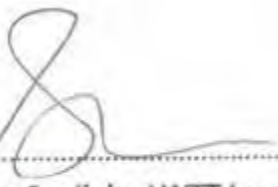
28. **The Court orders as follows:**

*(a) That Court grants Interim Injunction;*

*(b) Costs in the cause.*

*(c) Matter adjourned and the Summons and Affidavit is served on the Respondent/Defendant for another mention date.*



  
Mrs Senileba LWTT Levaci  
Puisne Judge