IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 152 of 2025

BETWEEN	**:**	**MY GROUP PTE LTD T/A WINSTONE AGGREGATES (FIJI) & MOHAMMED YASEEN INVESTMENT LTD** **Plaintiff**
AND	**:**	**MATAQALI LASELASE** **Defendant**
AND	**:**	**ITAUKEI LAND TRUST BOARD** **Nominal Defendant**
Counsel	**:**	**Ms Krishma for the Plaintiff** **Ms Lazel for the Defendant** **Mr Tuicolo for the Nominal Defendant**
Hearing	**:**	**17 June 2025**
Judgment	**:**	**19 June 2025**

EXTEMPORE JUDGMENT

(on an application for injunctive orders)

[1] The Plaintiff applies for interim injunctive orders pending trial and determination of the case. The Defendant opposes the application. The Nominal Defendant, the iTaukei Land Trust Board (**TLTB**) takes a neutral position.

Background

[2] The dispute involves iTaukei land owned by the Mataqali, Laselase - the Defendant in this proceeding. The land is that comprised in Agreement for Lease, being TLTB Reference 4/16/11268 on Lot 10 in the province of Rewa containing the area 24.2811 hectares (Subject to Survey). The Plaintiff arranged the lease with TLTB in November 2016 to quarry rock. The Plaintiff was required to survey the leased land. It took steps to do so in 2018 but the survey was not completed until 1 April 2025. In the meantime, the Plaintiff relied on a map of the property contained in the 2016 lease.

[3] Between 2016 and 2019, the Plaintiff obtained the necessary approvals and licenses to quarry the rock. It also strengthened an existing access road, which was to be used to transport the rock from the site.[1]

[4] The Plaintiff commenced quarrying operations in about January 2019 and continued extracting the rock until about May 2023. During that time, the Plaintiff paid the lease rental and royalties for the rock extracted to the landowners. However, the Plaintiff had extracted rock from the wrong site – a site not within the boundary of its lease. This is not disputed. It appears that the Plaintiff, TLTB and the Defendant were unaware of this error - the error came to the notice of TLTB in about May 2023. Upon discovering the same, TLTB issued a Stop Work Order to the Plaintiff.

[5] Thereafter, there were meetings involving TLTB, the Plaintiff and the Defendant. The Plaintiff was directed by TLTB to move its quarrying activities to the proper site. The Defendant made it plain that it was seeking compensation from the Plaintiff for extracting rock from the wrong site.

[6] At this juncture, there are several matters that require mention:

[1] It is this access road which is the subject of dispute in this proceeding.

i. After discovering the error in 2023, the Defendant asked TLTB to organise a Damage Report to assess the compensation payable to the Defendant. It appears that TLTB agreed to do this. Despite follow-ups and reminders by the Defendant, TLTB have either not yet obtained the report or, if they have, have not yet released the report to the Defendant.

ii. A commercial arm of the Defendant, sought and obtained its own quarry lease from TLTB. The lease was issued to the Defendant on 18 September 2023 for a site neighbouring the Plaintiff's lease. I note from the maps supplied by both parties that the access road, which is the subject of the dispute in this proceeding, runs along, and within, the Defendant's lease, running up to the site of the Plaintiff's lease. The access road appears to be entirely on the land owned by Laselase.

iii. The Plaintiff has obtained a lease on the neighbouring land owned by the Mataqali, Sovi. It is conducting quarrying operations on this site. It appears that the Plaintiff has been using, or wishes to use, the access road for the rock extracted from the Sovi site.

iv. In July 2023, a Deed of Settlement was executed between the Plaintiff and the Defendant. The Plaintiff agreed to pay $450,000 to the Defendant in instalments. The payment was not compensation for the rock extracted from the wrong site for the period from 2016 to 2019. The purpose of the payment was so that the Plaintiff could undertake its quarry operations on the 2016 leased site. The Plaintiff paid $130,000 in three instalments, between August and December 2023, but has not paid the remaining $320,000.

Present proceedings

[7] The Defendant refuses to permit the Plaintiff the use of the access road. As such, the Plaintiff is unable to extract rock from its leased site and unable to transport the rock from the site. The Plaintiff filed a Writ of Summons with the High Court on 24 April 2025. It claims that it is being improperly denied use of the access road and has, as a

result, suffered financial loss to its business in the amount of approximately $5.5 million. It seeks damages and a permanent injunction restraining the Defendant and its agents from denying it use of the access road.

[8] The Plaintiff has also filed a Summons for interim injunctive relief supported by an affidavit from Mohammad Imraaz, who is the Company Secretary and the Chief Financial Officer of the Plaintiff. Mr Imraaz attests to the matters pleaded in the Statement of Claim. The interim relief sought by the Plaintiff is as follows:

i. An order restraining the Defendant and or their agents from entering or dealing with the land which is the subject of the 2016 lease.

ii. An order restraining the Defendant and or their agents from interfering with the Plaintiff's use of the access road.

iii. An order that the Lami police assist the Plaintiff to obtain the use of the access road without any interference from the Defendant and or their agents.

[9] The Defendant has filed an affidavit in opposition for Mr Tuileausa Hemo – Mr Hemo is a member of the Mataqali Laselase. The Defendant has also filed a Statement of Defence. The Defendant contends that the access road is on their Mataqali land and that the Defendant is entitled to deny the Plaintiff access because the Plaintiff has not paid compensation for extracting rock from the wrong site as well as failed to abide the terms of the 2023 Deed of Settlement. The Defendant also contends that the Plaintiff is using the access road to transport rock from the Sovi site – the Defendant says that the Plaintiff should instead use an access road on the Sovi owned land.

[10] The Plaintiff has filed an affidavit in reply for Mr Imraaz dated 4 June 2025. TLTB has since filed, at the Court's direction, an affidavit for one of its officers, Mr Filipe Sekinatiqatiqa, dated 13 June 2025. Mr Sekinatiqatiqa confirms that the Plaintiff organised a survey of the 2016 lease site on 1 April 2025. Mr Sekinatiqatiqa deposes that the access road, which is the subject of the present dispute, is a public road and open for use to all the public, including the Plaintiff.

Decision

[11] The power to provide injunctive relief is contained at Order 29 Rule 1. The provision reads:

> *(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 the 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.*

[12] The law is settled on where the Court may make an order for an interim injunction. Pathik J provided a helpful summary of the principles and authorities in *Korovulavula & Anor v Fiji Development Bank* [1997] FJHC 197. The High Court was considering whether to extend or dissolve an injunction already granted. His Lordship stated:

> *The principles to be followed in considering the granting of injunctive relief are set out in the leading case of American Cyanamid Co v Ethicon Ltd (1975) A.C. 396. The House of Lords there decided that in all cases, the Court must determine the matter on a balance of convenience, there being no rule that an applicant must establish a prima facie case. The extent of the court's duty in considering an interlocutory injunction is to be satisfied*

that the claim is "not frivolous or vexatious", in other words, "that there is a serious question to be tried".

In Cyanamid (supra) at page 406 Lord Diplock stated the object of the interlocutory injunction thus:

*"**....** to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where "the balance of convenience" lies".*
(emphasis mine)

A similar view was expressed by McCarthy P in Northern Drivers Union v Kuwau Island Ferries (1974) 2 NZLR 61 when he said:

"The purpose of an interim injunction is to preserve the status quo until the dispute has been disposed of on a full hearing. That being the position, it is not necessary that the Court should have to find a case which would entitle the applicant to relief in all events: it is quite sufficient if it finds one which shows that there is a substantial question to be investigated and that matters ought to be preserved in status quo until the essential dispute can be finally resolved ... "
(ibid, 620)

"It is always a matter of discretion, and ... the Court will take into consideration the balance of convenience to the parties and the nature of the injury which the defendant, on the one hand, would suffer if the injunction

was granted ... and that which the plaintiff, on the other hand, might sustain if the injunction was refused ..." (ibid, 621).

…

As to "balance of convenience" the court should first consider whether if the Plaintiffs succeed at the trial, they would be adequately compensated by damages for any loss caused by the refusal to grant an interlocutory injunction.

…

In HUBBARD v VOSPER (1972) 2 WLR 359, LORD DENNING at p.396 gave some guidance on the principles of granting an injunction which I think is pertinent to bear in mind in this case when he said:

"In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also to the strength of the defence, and, then, decide what is best to be done. Sometimes, it is best to grant an injunction so as to maintain the status quo until the trial. At other times, it is best not to impose a restraint upon the defendant but leave him free to go ahead. For instance in Fraser v Evans [1969] 1 QB 349, although the plaintiff owned the copyright, we did not grant an injunction because the defendant might have a defence of fair dealing. The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules."

[13] These same principles have been applied up to the present time. In *Alizes Ltd v Commissioner of Police [2013] FJHC 596*, Tuilevuka J noted:

11. Interim injunctions are a powerful discretionary remedy. But they are not lightly granted. They are granted ex parte only if there is urgency. In other words, if to proceed normally (i.e. inter partes by Notice of Motion or Summons) would be a delay entailing irreparable or serious mischief, (see Order 29 Rule 1(2) as amended in 1991 in LN 61/91).

12. The applicant must show a strong enough case to justify the Court not

hearing the other side's case. Usually, to show "urgency", the applicant must show that, unless the court intervenes with a restraining order, he has a legal right in the subject-matter of the case which is under an immediate threat of being violated. Apart from that, the applicant must convince the court that the balance of convenience favours the granting of the injunction ex-parte.

[14] Balapatabendi J succinctly identified the test as follows in *Vanualevu Muslim League v Hotel North Pole & Ors* [2013] NZHC 151, at 17.4:

What could be deduced from Lord Diplock's rulings in American Cyanamide Case are in fact tests to be adopted in dealing with an application for interim injunction. The tests could be summarized as follows:-

1. *Is there a serious question to be tried?*
2. *Is damages an adequate remedy?*
3. *Where does the balance of convenience lie?*

[15] In order for the Plaintiff to be entitled to an interim injunction it must satisfy each of the three tests identified above. Even should it do so, careful consideration needs to be had to the interim orders that this Court can make in the present case. The orders must be made to preserve the status quo.

Is there a serious question to be tried?

[16] It is not necessary for the Plaintiff to demonstrate that it will succeed with its claim. It suffices, for the purposes of the present interlocutory application, that the Plaintiff's claim is not hopeless. Ajmeer J noted in *Deo v Hans* [2018] FJHC 1113 at [31]:

…the Court is required to investigate the merits to a limited extent only. All that needs to be shown is that the claimant's cause of action has substance and reality…

[17] In *Andrews v Prasad* [2019] FJHC 904, Nanayakkara J stated:

> *…there is no requirement that before an 'interlocutory injunction' is granted the plaintiff should satisfy the Court that there is a 'probability', a 'prima facie case' or a 'strong prima facie case' that if the action goes to trial he will succeed; but before any question of balance of convenience can arise the party seeking the injunction must satisfy the Court that his claim is neither frivolous nor vexatious; in other words that the evidence before the Court discloses that there is a serious question to be tried.*

[18] The Plaintiff argues that it is entitled to use the access road and that it is unlawfully being denied the same by the Defendant, causing it a significant financial loss. As a result of this ongoing financial loss, Mr. Imraaz deposes that the Plaintiff is on the brink of closing down completely. The Defendant's position is that the access road is on its land and it has a valid basis to deny the Plaintiff use of the road due to unpaid compensation and breach of the Deed of Settlement.

[19] I am satisfied that there is a serious question to be tried. The question concerns the Plaintiff's entitlement to use the access road. The evidence from TLTB is that the access road is a public road, open to all the public, including the Plaintiff. At this juncture of the proceeding, I do not need to be satisfied that the Plaintiff will succeed with its claim, only that there is substance to the Plaintiff's claim. The evidence from TLTB supports the same.

Are damages an adequate remedy?

[20] While the Defendant argues that damages are an adequate remedy, I am satisfied that it is not. The consequence of not granting an injunction at this point is that the Plaintiff is unable to operate its quarry business on the leased site. Its employees are unable to work. I note that some of the employees are members of the Mataqali Laselase and appear to support the Defendant in its dispute with the Plaintiff. However, the Plaintiff employs other staff as well. Unless the Court grants the injunction, the Plaintiff will continue to be prevented from operating its business until

the conclusion of the proceedings affecting the financial security of the Plaintiff and its employees.

Balance of convenience

[21] Having carefully considered both parties' positions, I am satisfied that the balance lies with granting the injunctive orders. As stated, the impact on the Plaintiff if the interim orders are not made is that it cannot operate its business and runs the risk of becoming insolvent. This is not in either party's interest. If the Plaintiff goes out of business then the Defendant will not be able to recover the compensation which they say they are owed.

[22] A further and final matter. The Defendant has indicated that it will be filing a counterclaim seeking damages in the amount of about $12 million for what it says is compensation for the extraction of rock from the wrong site and outstanding payment of $320,000 arising from the 2023 Deed of Settlement. I accept that there is, prima facie, some substance to the Defendant's claim based on admissions by the Plaintiff that it extracted rock from the wrong site for the period from 2019 to 2023, it signed the Deed of Settlement in July 2023 agreeing to pay $450,000 but have only paid $130,000, and that the payment of $450,000 was not for compensation for the wrong extraction of rock. In light of this, the Defendant has a legitimate basis for its concern that if the injunction is granted, the Plaintiff will be permitted to continue to extract rock, accrue profit and avoid its potential liabilities to the landowners.

[23] I am satisfied that there needs to be some protection afforded the Defendant while the Plaintiff generates income from quarrying rock from the leased site. The Plaintiff is not prepared to provide an undertaking as to damages because it says it has a weakened financial position having not been able to conduct its business for some time. As such, it is appropriate to make orders that a certain amount of the Plaintiff's gross income from the extraction of the rock is set aside until the conclusion of these proceedings.

Orders

[24] Accordingly, my orders are as follows:

i. The Defendant and or its agents are restrained from entering or dealing with the Mataqali Laselase land comprised in Agreement for Lease being, TLTB Reference 4/16/11268 on Lot 10 in the province of Rewa containing the area 24.2811 hectares (Subject to Survey).

ii. The Defendant and or its agents are restrained from intervening regarding the Plaintiff's use of the access road situated at Mataqali Laselase and Mataqali Sovi land.

iii. The Lami Police are directed to assist the Plaintiff to open the access road for its use without any intervention of the Defendant and or its agents.

iv. The Plaintiff is to set aside 15% of the gross income received for the extraction of rock from the leased site identified in i. above and deposit the same in an interest-bearing account held by the Chief Registrar of the High Court until the conclusion of these proceedings. The Plaintiff is to provide an account every three months of the gross income it has received for the 3 month period and the amount it has deposited into the interest-bearing account. The accounts to be filed and served by the Plaintiff on the 15th day of the following month. The first account is due on 15 September 2025 (for the three month period from 1 June to 31 August), then on 15 December 2025 and every three months thereafter until the monies are finally released.

v. Costs to be in the cause.

HIGH COURT OF FIJI SUVA

D. K. L. Tuiqereqere
JUDGE

Solicitors:

Krishma Lawyers for the Plaintiff

Lazel Law for the Respondent