

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**EXERCISING CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 05 of 2025**

**BETWEEN** : **HAMIT ALI -Trading as FLEET MONITORING SERVICES**  
Having its Principal Place of Business at Korovuta, Nadi,  
Director.

**PLAINTIFF**

**AND**

: **DIGICEL FIJI LIMITED**, a Limited Liability Company having its  
Registered Office at 5, Vuna Road, Nabua, Suva.

**DEFENDANT**

**BEFORE** : A.M. Mohamed Mackie- J.

**COUNSEL** : Ms. Veitokiyaki S. for the Plaintiff.

: Mr. Low T. for the Defendant.

**DATE OF HEARING** : 18<sup>th</sup> June 2025.

**WRITTEN SUBMISSIONS** : Filed by the Defendant on 18<sup>th</sup> June 2025.

: Not filed by the Plaintiff.

**DATE OF RULING** : On 14<sup>th</sup> July 2025.

**RULING**

**A. INTRODUCTION:**

1. The Plaintiff on 17<sup>th</sup> January 2025 filed his Ex-Parte Originating Summons seeking the following reliefs against the Defendant, out of which reliefs 1) and 2) are for injunctive Orders.
  - 1) *That the Defendant by itself and/ or through its servants howsoever be restrained from amending the Mobile Service Agreement dated 23<sup>rd</sup> April 2025 (the year should be 2024)*
  - 2) *That the Defendant be ordered to continue with the conditions in the Mobile Service Agreement dated 23<sup>rd</sup> April 2024.*
  - 3) *That the Defendant be Ordered to rescind their Notice of Amendment dated 17<sup>th</sup> December 2024 for being in breach of Mobile Service Agreement dated 23<sup>rd</sup> April 2024.*
  - 4) *That the Court make declaratory Order that the arbitrary decision of the Defendant was against the principal of natural justice.*
  - 5) *Costs in favor of the Plaintiff on a full Solicitor Client indemnity basis.*
  - 6) *Any other reliefs the court shall deem fit*
2. The said Originating Summons was supported by the Affidavit sworn by the Plaintiff on 17<sup>th</sup> January 2025 and filed together with annexures marked from “HA-1” to “HA-7”. The Summons states that it is made pursuant to Order 28, 29 of the High Court Rules 1988, Section 12 (2) of the Property Law Act 1971 and the inherent jurisdiction of this Court.

**B. INTERIM RELIEFS:**

3. The Ex-parte Originating Summons being supported before me on the same date seeking interim reliefs in terms of paragraph 1 and 2 of the Summons, the Court granted temporary injunctive orders in that regard to be in force for 14 days, which now stands extended till a final Ruling is made on those reliefs.

**C. SUMMONS TO SET ASIDE EX-PARTE ORDERS:**

4. When the matter came up before me on 26<sup>th</sup> February 2025 for an inter-parte hearing, a “**Summons to Set aside Ex-parte Orders**” being filed on behalf of the Defendant on the same date and it being supported by the defence Counsel, the Court after briefly hearing both counsels, fixed the matter for full hearing of it together with the Plaintiff’s Application for interim injunction, by leaving the parties at liberty to file reply Affidavits.
5. The Affidavit in support of the Defendant’s said summons, sworn by **Mr. Peter Ragkae Fatnefau Rigamoto**, the Head of Legal and Regulatory Affairs of the Defendant Company, which accompanied annexures marked from “PR-1” to “PR-9”, also serves as the Affidavit in opposition to the Plaintiff’s Application for injunctive Orders and other reliefs. Accordingly, the Plaintiff filed his Affidavit in reply on 26<sup>th</sup> March 2025 along with further annexures marked as “HM-A” & “HM-B”. Likewise, the Defendant also filed its Affidavit in reply sworn by the same officer on 11<sup>th</sup> April 2025.
6. The hearing of the Application for interim injunction and the Application for setting aside being taken up together before me on 18<sup>th</sup> June 2025, I have now been called upon to pronounce the Ruling on both

Applications. In addition to the oral submissions made, only the Defendant has filed its written submissions as stated above and the Plaintiff neither filed his written submission nor made a move for that purpose.

**D. BACKGROUND FACTS IN BRIEF:**

7. The Plaintiff, as per his Affidavit in support, averred, inter alia; **THAT**
  - a. He as a sole trader engaged in dealing with installing GPS devices in the Vehicles. (Vide "HA-1").
  - b. He and the Defendant on **23<sup>rd</sup> April 2024** entered into a Mobile Service Agreement for shared Data Plan for a price of \$211.01 monthly for 500 GB of data with unlimited SIM cards for a contract period of 36 months. (Vide "HA-2").
  - c. The Defendant in December 2024 sent him an email informing him that they will be making changes to his Agreement. He states that the reasons given are vague and insignificant. He also alleges that the decision is unilateral and drastic. (Vide "HA-3").
  - d. On 17<sup>th</sup> December 2024, the Defendant has breached the Agreement by acting arbitrarily and sending him the Notice of Amendment (vide "HA-4").
  - e. The Defendant through the said Notice of Amendment talks of certain clauses 9 and 17 in the terms and conditions, which empowers them to take such action, but he has never been shown these clauses nor has he ever signed on them. (Vide "HA-5").
  - f. This is a drastic increase in price that will be unsustainable for him as he has 842 active sim cards and this will now cost him additional sum of \$4,210.00.
  - g. If the Defendant is not stopped in their unilateral and arbitrary actions, he will lose his whole clientele and income of approximately \$9,000.00 per month. The Defendant will terminate the Agreement and as a result he will lose out the remaining 26 months income.
8. The Defendant in its Summons seeks for orders to Set aside the Ex-Parte Orders granted on 17<sup>th</sup> January 2025 and Indemnity Costs on the grounds **THAT**:
  - a) *The Plaintiff omitted to state and / or suppressed material facts, particularly that the Registrar of Companies (RB) had removed the name of the Plaintiff's Business from the Register of Business names under section 37F of the Companies Act.*
  - b) *The Plaintiff deliberately misled this court with respect to facts deposed in his affidavit.*
  - c) *The Plaintiff did not give a specific undertaking as to damages for the Defendant's losses.*
  - d) *The Plaintiff did not proffer sufficient evidence of his financial position to support an undertaking as to damages.*
  - e) *The Plaintiff did not provide any evidence to show that damages that he would otherwise suffer (if at all) cannot be adequately compensated.*

9. I find that the Defendant's Affidavit in Support for Setting Aside and Opposition for the Injunctive Orders, appropriately deals with every single averment in the Plaintiff's Affidavit in support. The averments therein are also aptly substantiated by the contents of the annexures thereto marked as "PR-1" to "PR-09". I have also considered the contents of the averments in Reply Affidavits filed by both parties and those of the Oral submissions made by both Counsels and the written submissions filed by the Defendant.

**E. THE LAW & CONSIDERATION:**

10. The task before me for the time being is to decide whether the Plaintiff's Application for interim injunction orders, as prayed for in terms of paragraphs 1 and 2 of his Originating Summons, should be granted to be in force till the final determination of this action, or whether the temporary injunctive orders initially granted should be set aside as prayed for by the Defendant.

11. It has to be born in mind that the injunctive Orders sought/ granted as per the Plaintiff's Originating Summons cannot, in any event, be extended or granted to be in force beyond the period of 36 months from the date of the entering into the said Mobile Service Agreement ("MA-2"), which admittedly, took place on 23<sup>rd</sup> April 2024.

12. The substantive relief No-3 is also subject to the said validity period of the Agreement and the Order No- 4 is merely a declaratory relief. Notably, the Plaintiff has not prayed for the relief of damages, that he is bound to incur according to him, in the even the injunctive Orders sought are not granted. Even if he had included a prayer for damages, it need not necessarily warrant the grant of injunctive orders, as those damages are easily quantifiable, as he has done in his Affidavit in support. If the Plaintiff can be compensated by way of damages, which is quantifiable, the necessity for injunctive orders will not arise.

13. Injunction is an equitable remedy granted at the discretion of the Court. The power which the court possesses to grant injunctions should be cautiously exercised only on clear and satisfactory grounds. An application for injunction is an appeal to an extraordinary power of the court and the applicant is bound to make out a case showing clearly a necessity of its exercise.

14. It is also important to bear in mind that injunctive relief being a discretionary remedy, the party who seeks the court to exercise its discretion in his/ her favour must come to court with clean hands and disclosing full facts. Suppression of material facts will disentitle the party seeking an injunction to such relief.

15. ***In Hubbard & Another v Vosper & Another [ 1972] 2 Q.B. 84*** Lord Denning 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 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. .... 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".*

16. An interim injunction is a relief that cannot be granted solely or independently without any final or substantive relief sought for. A party who has not sought any substantive relief has no right in law to seek an interim injunction, as it cannot be a relief by itself, but is only a mechanism to assist and protect the final relief.

17. ***In American Cyanamid Co. v Ethicon Ltd [1975] UKHL 1; [1975] 2 W.L.R. 316, [1975] A.C. 396*** Lord Diplock laid down certain guidelines for the courts to consider in deciding whether to grant or refuse an interim injunction, which are still regarded as the leading source of the law on interim injunctions. They are:

- (i) *Whether there is a serious question to be tried at the hearing of the substantive matter;*
- (ii) *Whether the party seeking an injunction will suffer irreparable harm if the injunction is denied, that is whether he could be adequately compensated by an award of damages as a result of the defendant continuing to do what was sought to be enjoined; and*
- (iii) *In whose favour the balance of convenience lies if the injunction is granted or refused.*

18. ***Kerr LJ in Cambridge Nutrition Ltd v BBC [1990] 3 All ER 523 at 534*** said:

*“It is important to bear in mind that the American Cyanamid case contains no principle of universal application. The only such principle is the statutory power of the court to grant injunctions when it is just and convenient to do so. The American Cyanamid case is no more than a set of useful guidelines which apply in many cases. It must never be used as a rule of thumb, let alone as a straitjacket. The American Cyanamid case provides an authoritative and most helpful approach to cases where the function of the court in relation to the grant or refusal of interim injunctions is to hold the balance as justly as possible in situations where the substantial issues between the parties can only be resolved by a trial”.*

19. In the case of ***Series 5 Software Ltd v Clerk and others [1996] 1 All ER 853***, the court after considering the decision in American Cyanamid and various other authorities on the subject held that;

In deciding whether to grant interlocutory relief, the court should bear the following matters in mind:

- (1) The grant of an interlocutory injunction is a matter of discretion and depends on all the facts of the case.
- (2) There are no fixed rules as to when an injunction should or should not be granted. The relief must be kept flexible.
- (3) Because of the practice adopted on the hearing of applications for interlocutory relief, the court should rarely attempt resolve complex issues of disputed facts or law.
- (4) Major factors the court can bear in mind are **(a)** the extent to which damages are likely to be an adequate remedy for each party and the ability of the other party to pay, **(b)** the balance of convenience, **(c)** the maintenance of the status quo, and **(d)** any clear view the court may reach as to the relative strength of the parties' cases.

20. Order 32, Rule 6 of the High Court Rules 1988 provides;

*Order made ex-parte may be set aside (O.32. r.6).*

6. *The Court may set aside the Order made ex-parte*

21. The Court of Appeal in ***ANZ Banking Corporation Ltd v Mohammed [2011] FJCA 31 Civil Appeal No; ABU 0028 of 2006*** (Lautoka High Court Action No HBC 337 of 1998) held at paragraphs 31 and 32 as follows;

*“[31] There is provision in Order 32 Rule 6 for the Court to set aside an order made ex parte. The use of this Rule was discussed by the Court of Appeal in WEA Records Ltd –v- Visions Channel 4 Ltd and Others [1983] 3 All ER 589 Donaldson MR observed at page 593:*

*"In terms of jurisdiction, there can be no doubt that this court can hear an appeal made by the High Court on an ex parte application. \_\_\_ Equally there is no doubt that the High Court has power to review and discharge or vary any order which has been made ex parte. This jurisdiction is inherent in the provisional nature of any order made ex parte and is reflected in Order 32 Rule 6 \_\_\_:*

*As I have said, ex parte orders are essentially provisional in nature. They are made by the judge on the basis of evidence and submissions emanating from one side only. Despite the fact that the applicant is under a duty to make full disclosure of all relevant information in his possession, whether or not it assists his application, this is no basis for making a definitive order and every judge knows this. He expects at a later stage to be given an opportunity to review his provisional order in the light of evidence and argument adduced by the other side, and in so doing, he is not hearing an appeal from himself and in no way feels inhibited from discharging or varying his original order.*

*This being the case it is difficult, if not impossible, to think of circumstances in which it would be proper to appeal to this court against an ex parte order without first giving the judge who made it or, if he was not available, another High Court judge an opportunity of reviewing it in the light of argument from the defendant and reaching a decision."*

*[32] The Court of Appeal concluded that the proper course for an applicant seeking to challenge an ex parte order was to apply to the judge who made the order or to another High Court judge to discharge or vary it, and to appeal to the Court of Appeal only after the application had been heard and determined".*

22. The allegation in the averments of the plaintiff's Affidavit in support sworn on 17<sup>th</sup> January 2025 that the Defendant made the decision to change prices without consulting him, and he was not given an opportunity to read the terms before he signed the Agreement appear to be incorrect. The Plaintiff has, admittedly, signed the mobile Service Agreement on 23<sup>rd</sup> April 2023. Undoubtedly, he ought to have **discussed** the terms with the Defendant prior to signing the impugned Agreement. A person entering into such an Agreement would not have proceeded to sign it in the ignorance of the terms involved.
23. Plaintiff's claim in paragraph 6 of his Affidavit in support that he has never been shown clauses 9 and 17 of the terms and conditions, which empower the Defendant to take such actions (change of prices & terms), and he did not sign on such clauses, seem to be only an afterthought. However, veracity of his averments in this regard cannot be ascertained solely through Affidavit evidence, unless some oral evidence, coupled with documentary evidence, is led as there are number of disputed facts. A further question also arises whether this action could continue by way of originating Summons for the purported substantive reliefs.
24. A Further, the email dated 11<sup>th</sup> December 2024 sent by the Defendant to the Plaintiff and marked as "HA-3" to the Affidavit in support by the Plaintiff, in paragraph 5 thereof, clearly demonstrates that the proposed changes had been discussed with the Plaintiff in a previous meeting, however, before sending the Notice of Amendment dated 17<sup>th</sup> December 2024, marked and annexed as 'HA-4" to his Affidavit in support.
25. It shows that the Plaintiff, despite being aware of the intended changes through a discussion prior to 11<sup>th</sup> December 2024, and also same being notified by the email dated 11<sup>th</sup> December 2024 with the particulars of intended New Shared Plan, decided to send a Demand **Notice dated 16<sup>th</sup> December 2024** marked as "HA-5" through his Solicitors and still maintained that he does not know of these changes and same had never been provided to him for his perusal. Vide paragraph 4 of the said Demand letter marked "HA-5". This, I see as an attempt on the part of the Plaintiff to mislead the Court.

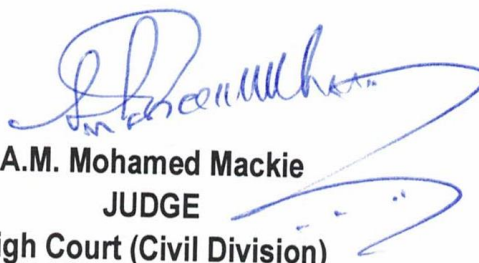
26. Further, having called upon the Defendant to send the Contract or Clauses that contained the provisions to change the terms and conditions, if any, within 7 days, through his Solicitor's Demand Letter dated 16<sup>th</sup> December 2024, the Plaintiff, without leaving any room for the Defendant to respond to that Demand letter, rushed to Court and obtained the ex-parte injunction orders. By this act of the Plaintiff, the Defendant was deprived of an opportunity of explaining of its position in making the changes. The clauses 9 and 17 of the Terms and Conditions are in the overleaf of the Agreement marked "HA-2". The plaintiff, being very well aware of the contents of those clauses 9 and 17 in the Agreement, which kept the Defendant at the liberty of changing the packages and tariffs, deliberately caused this Court to use its discretion in his favor.
27. The position taken up by the Plaintiff's Counsel in her oral submissions, that only the front page of the Application/Agreement had been sent to the Plaintiff by the Defendant via email, is not supported by evidence in the Plaintiff's Affidavit in support. Had it been divulged in the Affidavit in support, the Defendant would have responded to it. Thus, this argument will not hold water.
28. With the foregoing observation, I don't find any serious questions to be tried with an injunction order in place and that the Plaintiff has prima- facie winnable case at the end.
29. Going into the question damages, I find that the plaintiff, in his pleadings has quantified his alleged would damages. The Defendant Company, being a large mobile service operator in Fiji, obviously, should be in a sound financial position to pay any damages to the Plaintiff if he finally become victorious in this action. However, as alluded to in a foregoing paragraph, I find that the Plaintiff has not prayed for any damages as substantive relief for the same to be secured by an injunction order.
30. On the other hand, the plaintiff has not proffered sufficient undertaking for any damages that the Defendant would incur in the even it becomes victorious at the end, with an injunction order against it being issued now.
31. The Mobile Service Agreement is valid only for 36 months from 23<sup>rd</sup> April 2024, out of which period 15 months have already gone, leaving only 21 months to run. The Defendant is obviously at liberty to change the packages and tariffs in terms of the clause 9 and 17 of the Agreement. Imposing an injunction order as prayed for would, undoubtedly, cause serious inconvenience and put it in an unfavorable position in conducting its business at large.
32. In the absence of a tangible substantive reliefs sought, as alluded to above, the Court will not issue an injunctive Order. Even if the Plaintiff is entitled to any substantive relief, due to the nature of the issues that might crop up at the substantive hearing, I don't think that the mode adopted by the Plaintiff to initiate and proceed with this action is an appropriate one.
33. With all the debilities highlighted above, the Plaintiff and his Solicitors resolved to file this action, obtained the ex-parte injunctive orders, and despite being asked not to proceed with it, they decided to do so warranting the imposition of costs as prayed for by the Defendant. Hence, imposition of a higher costs on account of this Application for injunctive Order, in my view, is justifiable.

**F. FINAL ORDERS:**

- a. The injunction orders sought in the Plaintiff's Originating summons filed on **17<sup>th</sup> January 2025** are declined.
- b. The temporary injunction Orders granted on 17<sup>th</sup> January 2025 are hereby set aside and discontinued.
- c. The Plaintiff shall pay the Defendant a sum of \$4,000.00 being the summarily assessed costs of this Application, within 28 days from today.
- d. The Plaintiff shall file the Summons for direction within 28 days, if he decides **not** to proceed with this action by way of Originating Summons for the rest of the reliefs sought therein.

**On this 14<sup>th</sup> day of July 2025 at the High Court of Lautoka**



  
**A.M. Mohamed Mackie**  
**JUDGE**  
**High Court (Civil Division)**  
**Lautoka**

**SOLICITORS:**

**Messrs. CHETTY LAW & ASSOCIATES- Barristers & Solicitors – For the Plaintiff.**

**Messrs. MUNRO LEYS – Solicitors – For the Defendant.**