

IN THE HIGH COURT OF FIJI  
AT LABASA  
CIVIL JURISDICTION

Civil Action No. HBC 42 of 2025

**BETWEEN:**            **ARUNESH CHAND** t/a Kava & Spice Dealers

**Plaintiff**

**AND:**                    **HOME FINANCE COMPANY LIMITED** of 371 Victoria Parade,  
Suva.

**Defendant**

**Appearance:**

**Plaintiff:** Mr. K. Kumar (Kaushik Kumar Lawyers)

**Defendant:** None (Ex-Parte)

**Date of Hearing:** 28<sup>th</sup> July 2025.

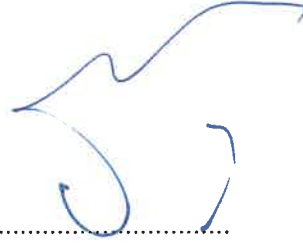
**Ruling**

- [1] The plaintiff through an ex-parte summons is seeking an injunction against the defendant from carrying out a mortgagee sale of iTaukei Lease no. 20819, being Lot 1 on Plan SO2408 until the determination of Civil Action no. 61 of 2023. That matter is between the plaintiff and Sun Insurance. The plaintiff is relying on its success in that matter to pay off the mortgage to the HFC Bank.
- [2] The hearing of an interim injunction is not a trial on merits. This application is ex-parte. It is one sided and based on oral submissions and affidavit evidence. There is no cross-examination. The function of an interim injunction is often described as a process which is designed to “*hold the ring*” (per **United States of America v Abacha [2015] 1 W.L.R 1917**) pending final determination of the merits or other disposal of the dispute.
- [3] The principle to be applied in applications for interlocutory injunctions have been authoritatively explained by Lord Diplock in **American Cyanamid Co v. Ethicon Ltd [1975] A.C 396; [1975] 1 All E.R. 504 H.L.** They are summarised as follows:
  - (i) *The Plaintiff must establish that he has a good arguable claim to the right he seeks to protect;*
  - (ii) *The Court must not attempt to decide this claim on the affidavits; it is enough if the Plaintiff shows that there is a serious question to be tried.*
  - (iii) *If the Plaintiff satisfies these tests, the grant or refusal of an injunction is a matter for the exercise of the court’s discretion on the balance of convenience.*
- [4] The defendant bank is the mortgagee of the property. The dispute in court in Civil Action no. 61 of 2023 is between the plaintiff and Sun Insurance. Relying on that

matter the plaintiff is seeking an injunction against the defendant. The defendant is within its right to exercise its powers as the mortgagee. Granting an injunction would curtail its powers. From the material that is available before me I conclude that there is no arguable case. The application is refused. The ex-parte summon is dismissed. No orders as to costs.

**Court Orders**

- (a) The application is refused.
- (b) The ex-parte summon is dismissed.
- (c) No orders as to costs.



.....  
*Chaitanya S.C. A Lakshman*  
**Puisne Judge**  
30<sup>th</sup> July 2025

