

IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. 96 of 2024

BETWEEN: : **MOHAMMED FERROJ KHAN** of Tuva, Sigatoka in the Republic of Fiji Islands, Businessman.
PLAINTIFF

AND: : **ABDUL FERROZ KHAN** of Tunalia, Nadi in the Republic of Fiji Islands, Businessman.
DEFENDANT

AND : **LAND TRANSPORT AUTHORITY** a statutory body located at Lot 1 Daniva Road, Valelevu, Nasinu.
NOMINAL DEFENDANT

BEFORE : A.M. Mohamed Mackie-J

COUNSEL : Ms. Veitokiyaki O/I J.K. Singh, for the plaintiff.
Mr. A. Ram, for the defendant.

HEARING : Partied agreed to dispose by way of Written submissions.

WRITTEN SUBMISSIONS: Not filed by both parties.

DATE OF RULING : 25th July 2025.

RULING

A. Introduction:

1. The Plaintiff, while filing his writ of summons and the Statement of Claim against the Defendant on 8th May 2024, also filed an Ex-parte Notice of Motion seeking the following Orders;
 1. *The Defendant by himself and/or through his servants and/or agents and/or its solicitors and/or representatives, and/or howsoever be restrained from transferring, mortgaging, assigning, disposing and tempering with Skidder registration number JV 786 being body type 578c, engine number 3304807728885, chassis number 1CL00160 and Caterpillar Skidder registration number E 9538 being model number N/V, engine number 33040107710505, chassis number 500850 without the leave of this Honorable Court and/or until the final determination of this matter.*

2. *A joint inspection of Skidder registration number JV 786 being body type 578c, engine number 3304807728885, chassis number 1CL00160 and Caterpillar Skidder registration number E 9538 being model number N/V, engine number 33040107710505, chassis number 500850 be carried by the Plaintiff and the Defendant and photographs and documentations in respect of the inspection to be submitted and/or filed in Court for record purposes and this record shall be for the damages to the skidder.*
 3. *The Defendant be forthwith ordered to provide any or all inform in respect of works undertaken by the Defendant with the use of Skidder registration number JV 786 being body type 578c, engine number 3304807728885, chassis number 1CL00160 and Caterpillar Skidder registration number E 9538 being model number N/V, engine number 33040107710505, chassis number 500850 until the final determination of this matter.*
 4. *The Nominal Defendant be forthwith restrained from processing any transaction in respect of Skidder registration number JV 786 being body type 578c, engine number 3304807728885, chassis number 1CL00160 and Caterpillar Skidder registration number E 9538 being model number N/V, engine number 33040107710505, chassis number 500850 until the final determination of this matter.*
 5. *The Police to assist in execution of this Order.*
 6. *Costs of this application be costs in the cause.*
2. The said Notice of Motion is supported by an Affidavit sworn by the Plaintiff, MOHAMMED FERROJ KHAN, on 25th April 2024 and filed on 8th May 2024, along with annexures marked as "MFK-1" to "MFK 12". The Notice of Motion States the it is filed pursuant to Order 29 rule 1 of the High court Rule 1988.
 3. When the Notice of Motion was supported Ex-parte before me on 10th May 2024 seeking injunctive Orders, after considering the submissions made in support of the Application, the Court granted a temporary injunction order in terms of paragraph 1 of the Notice of Motion against the Defendant.
 4. No orders were made against the Nominal Defendant (LTA), though moved for by the Plaintiff, as no final relief had been prayed for against the said Nominal Defendant.
 5. Subsequently, the matter being mentioned before me on 27th September 2024, the Court made directions for filing of Affidavits in opposition and reply in relation to the Notice of Motion. However, parties having attempted to arrive at a settlement, when the matter was mentioned on 12th February 2025, as it was intimated that parties have failed to arrive at a settlement, further time was granted to file pleadings as directed on 27th September 2024.

B. Hearing

6. Accordingly, the Statement of defence and the Affidavit in opposition were filed on 17th March 2025 and 08th April 2025 respectively. The Plaintiff did not file his Reply Affidavit. Thereafter, when the matter was mentioned on 25th April 2025, both parties agreed to have the hearing into the injunction application disposed by way of written submissions. Though, the parties were directed to file their written submissions simultaneously in 28 days, none of them have filed their written submissions till this morning. Hence, I proceeded to prepare this ruling.

C. Law & Analysis:

7. It is important to bear in mind that injunctive relief being a discretionary remedy, the party who seeks the court to exercise its discretion in his favour must come to court with clean hands and disclosing full facts. Suppression of material facts will disentitle the party for such a relief.
8. In ***Hubbard & Another v Vosper & Another [1972] 2 Q.B. 84*** Lord Denning said:

“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.”

9. 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 lie if the injunction is granted or refused.*

10. 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".

11. 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.*

12. The plaintiff in paragraph 1 of the prayer to the Notice of Motion has prayed for an Order restraining the Defendant , his servants and/ or agents , Solicitors and/ or representative from transferring , mortgaging , assigning , disposing and tampering with **skidder** registration No- JV 786 being body type 578c , engine No- 3304807728885, Chassis No- iCL00160 and **Caterpillar** Skidder Registration number E 9538 being model number N/V , engine number 33040107710505 , chassis Number 500850 (all hereinafter referred to as "equipment") without the leave of this Court and / or until the final determination of this matter.
13. The Affidavit evidence does not show that the Defendant had any intention to sell the equipment to a third party. Further, there is no any material before this court to arrive at a conclusion that the Defendant is in fact attempting to sell the property to a third party. The courts do not grant interim injunctions based on assumptions. It needs some evidence showing that the Defendant is making arrangements to dispose of the equipment, which would be to the detriment of the plaintiff.
14. The actual transaction between the parties, as averred in paragraphs from 8 onward of the Affidavit in support, was in relation to obtaining of a loan facility of \$100,000.00 by

the Defendant from the Plaintiff, for the Defendant to pay off his loan arrears at the Merchant Finance Limited, in order to avoid the repossession of the equipment.

15. The Plaintiff claims to have loaned the Defendant a sum \$100,000.00, for the same to be repaid within the period **from 1st December 2021 to 1st December 2022** in monthly instalments of \$10,000.00. This means that the repayment is in 12 instalments. At the same breath, the plaintiff in paragraph 27 of his Affidavit in support states that the loan given is **interest free** as agreed between them.
16. If the monthly instalment, as agreed, was \$10,000.00 and the Defendant was to pay it in 12 instalments, at the end of the period, the Defendant would have paid \$120,000.00. Then, the question arises, if the parties had agreed for interest free loan, as to why the Plaintiff was to receive in return a total sum of \$120,000.00? Even the, purported, undated "Partnership Agreement" marked as MFK-6" does not make any provision in this regard. This raises the doubt as to whether the plaintiff is before this Court with clean hands.
17. What the Plaintiff primarily moves for in his prayers to the Statement of Claim is a monetary judgment for a sum of \$85,000.00 and/or an order for the equipment mentioned in paragraph 12 above to be transferred to the Plaintiff's name. It means, that the 2nd relief is an alternative one. The primary relief being a monetary judgment, if granted in his favour at the end of the substantive matter, it can be enforced against the Defendant on any property owned by him.
18. The loan is said to have been granted on or about November 2021. Further, obtaining the loan by the Defendant is not disputed. The disputation is mainly with regard to the purported BILL OF SALE marked as "MFR-5" and the PARTNERSHIP AGREEMENT marked as "MFR-6". The Bill of Sale is dated 1st December 2021 and the, purported, partnership Agreement is undated. It is observed that both these Instruments are not registered by payment of relevant stamp duty. These instruments seem to have been executed for the purpose of ensuring the loan repayment, and not to be put into practice as per the terms therein. These instruments appear to be sham. This Court is not inclined to accept and act up on these two instruments as they are not duly stamped and registered. These instruments may be adduced and admitted as evidence at the substantive trial as and when they are duly stamped and presented, however, subject to any other valid objection/s.
19. When considering an application for injunctive orders, if this kind of instruments are disregarded due to inadmissibility, then in the absence of any collateral instrument, the Plaintiff's action becomes a normal money recovery action. An order granting injunction as prayed for by the Plaintiff in such an action, could mean it as an order for the sequestration of the property prior to the judgment, which is generally ordered in the process of execution of the judgment.

20. Further, the Plaintiff has not proffered proper undertaking for damages. Mere tendering of a Bank Statement showing the balance existed in the past, will not satisfy this requirement.
21. The Plaintiff's claim is for a liquidated sum of money. If he become victorious at the end of the substantive matter, he can have that judgment executed against any of the Defendant's assets. Since the Defendant has admitted the receipt of the loan from the Plaintiff, I don't find any serious questions to be tried with an injunction order in place.
22. Accordingly, I find that the Plaintiff has not satisfied this Court for the grant of interim injunction orders as prayed for. The temporary injunction order granted in terms of paragraph 01 of the Notice of Motion should be vacated.
23. Considering the circumstances, I decide not to order costs in regard to this Application.

FINAL ORDERS:

- a. The injunction orders sought in the Plaintiff's Notice of Motion filed on 8th May 2024 are declined.
- b. The temporary injunction order granted on 10th May 2024, in terms of paragraph 1 of the Notice of Motion, is hereby set aside and discontinued.
- c. No costs ordered.




A.M. Mohamed Mackie
Judge

At the High Court of Lautoka on this 25th day of July, 2025.

SOLICITORS:

For the Plaintiff: Messrs: J.K. Singh Lawyers- Barristers & Solicitors
For the Defendant: Messrs: Prikans Law- Barristers & Solicitors