

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

Civil Action No. HBC 302 of 2024

**BETWEEN** : **SANJAY KUMAR**, of Vuda, Lautoka Company Director and Businessman.  
**PLAINTIFF**

**AND** : **SAMANTHA MALA**, of 1929, South Crescent Height, Boulevard, Los Angeles, Ca 90034, United States of America.  
**1<sup>st</sup> DEFENDANT**

**AND** : **SHIMRAN MALA**, of 1929, South Crescent Height, Boulevard, Los Angeles, Ca 90034, United States of America.  
**2<sup>nd</sup> DEFENDANT**

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

**COUNSEL** : Mr. R. Singh – for the Plaintiff.  
Mr. M. Talenivesi – for the Defendants.

**HEARING** : By way of written Submissions.

**WRITTEN SUBMISSIONS:** Filed by the Plaintiff on 24<sup>th</sup> July 2025.  
Not filed by the Defendants.

**RULING** : Delivered on 11<sup>th</sup> August 2025.

**RULING**

**A. INTRODUCTION:**

1. The Plaintiff, who is the father of both the Defendants hereof, commenced this writ action against them on 28<sup>th</sup> November 2024, by filing the Statement of claim, which stands amended by the amended Statement of claim filed on 12<sup>th</sup> December 2024 seeking, *inter alia*, the following reliefs.
  1. A declaration that the Defendants hold the properties comprised in iTaukei Lease No- 31276 and iTaukei Lease Number 31256 in trust for the Plaintiff.
  2. A declaration that the **Defendants** has an equitable interest in the properties comprised in iTaukei Lease No-31276 and iTaukei Lease Number 31256.
  3. A declaration that the Plaintiff has a charge or is entitled to a charge on the properties comprised in iTaukei Lease No-31276 and iTaukei Lease Number 31256.

4. *THAT the properties comprised in iTaukei Lease Number 31276 and iTaukei Lease Number 31256 to be transferred to the Plaintiff.*
  5. *THAT the rental payments received from iTaukei Lease Number 31276 and iTaukei Lease Number 31256 to be uplifted by the Plaintiff or to be deposited in the loan account of the Plaintiff being ANZ Account No-13150418.*
  6. *THAT the Plaintiff exclusively continue to receive all rental monies from the tenants occupying the land comprised in iTaukei Lease Number 31276 and iTaukei Lease Number 31256 until further determination of the Court.*
2. While filing the writ action as above on 28<sup>th</sup> November 2024, the Plaintiff also filed an Ex-parte Notice of Motion seeking reliefs, inter alia,
    1. *AN Order that the Defendants and their agents and servants be restrained from selling, disposing, encumbering or dealing in any manner whatsoever in relation to iTaukei Lease Number 31276 and iTaukei Lease Number 31256.*
  3. After hearing the Counsel for the plaintiff on 10<sup>th</sup> December 2024 on Ex-parte basis, while granting leave to serve the Summons on the Defendants out of jurisdiction, this Court also granted temporary injunction as prayed for above to be in force until the next date.
  4. Subsequently, the Plaintiff filed another Ex-parte Summons on 11<sup>th</sup> December 2024 seeking, inter alia,
    1. *THAT the Plaintiff exclusively continue to receive all rental monies from the tenants occupying the land comprised in iTaukei Lease Number 31276 and iTaukei Lease Number 31256 until further determination of the Court.*
  5. Both the above Ex-parte Summons were supported by the Affidavit sworn by the Plaintiff, SANJAY KUMAR, on 27<sup>th</sup> November 2024 and filed along with annexures marked as "A" to "O". This 2<sup>nd</sup> Summons being supported Ex-parte on 13<sup>th</sup> December 2024, an injunction as prayed for was granted to be in force till 9<sup>th</sup> January 2025.
  6. It is to be noted that the above 2<sup>nd</sup> injunction order was granted as it had the effect of restraining the Defendants from commencing to collect the rentals from the tenants, contrary to the arrangement that was said to be in place prior to the dispute arose between the Plaintiff and the Defendants.
  7. The Summons and the above orders being, reportedly, served on the Defendants, the acknowledgement of service and Appointment of Solicitors were filed on 10<sup>th</sup> March 2025. Though, on 21<sup>st</sup> May 2025, the Defendants were granted time to file Affidavit in opposition and the Statement of Defence, no Affidavit in opposition was filed, except for filing the Statement of Defence, on 28<sup>th</sup> May 2025, together with a counter claim for which the Plaintiff filed his Reply to defence and defence to counter claim on 10<sup>th</sup> June 2025.

8. The hearing into the Application for injunction orders was agreed to be disposed by way written submissions. However, no written submission was filed by the Defendants as alluded to above. Accordingly, in the absence of the Affidavit in opposition and the written submissions on the legal aspects, the reasonable inference that can be safely arrived at is that the Defendants are not objecting the interim injunction Orders as sought by the Plaintiff.

**B. BACKGROUND IN BRIEF:**

9. The Plaintiff is the Father of both Defendants, who live in the USA at the aforesaid address, out of the jurisdiction of this Court.
10. The Plaintiff was the registered owner of the aforesaid subject matter lands, which he subsequently gifted to the Defendants. The Plaintiff had obtained Bank Loans to construct two flats on the said Leased lands by pledging his personal properties / holdings as security for the advance. While the construction of the 2 flats was in progress, on 4<sup>th</sup> June 2019, he transferred the iTaukei Lease Number 31276 to the 1<sup>st</sup> Defendant daughter and iTaukei Lease Number 31256 to the 2<sup>nd</sup> Defendant daughter in consideration of the love and affection. No monetary consideration was involved as per the plaintiff.
11. The Plaintiff had borrowed a total sum of \$514,000.00 for the construction of the flats and it is sated there had been an agreement that the Plaintiff would continue to have proprietary interest in the said leases even after the Plaintiff had transferred the properties. The Plaintiff also claims that the Defendants were well aware about obtaining the loan facility, the premises in question would be rented out and the rental income out of the said flats would be utilized to pay back the loan so obtained by the Plaintiff.
12. The Plaintiff, who was and is in the possession of the said properties, rented out the same and the rental income thereof had been utilized for the repayment of loans and the Defendants had not sought the rental income from the tenants out of the said leases and the rental income were uplifted by the Plaintiff and paid into the Loan Account.
13. The Plaintiff has been maintaining and managing the said leases and the Defendants have not contributed towards the management of the said properties at any point of time, as per the Plaintiff.
14. The Defendants, now said to have issued notice to the Plaintiff restraining him from uplifting the rental money and advising him that he has no rights on the properties, and due to the said notices, the tenants have now refused to pay the rental to the Plaintiff contrary to what they used to do in the past. As a result, the plaintiff says that he has financial difficulties and is adversely affected.

**C. THE LAW:**

15. 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.

16. 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".*

17. Interim injunction is a relief that cannot be granted solely or independently without any final or substantive relief. 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 final relief.

18. 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.*

19. 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".*

20. 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".*

#### **D. CONSIDERATION:**

21. The 1<sup>st</sup> injunctive Order issued on 10<sup>th</sup> December 2024 was to restrain the Defendants from selling, disposing, encumbering or dealing in any manner whatsoever in relation to the subject matter leases. There is no any evidence that the Defendants are making arrangements to sell or dispose the subject property. 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 property, which could be to the detriment of the plaintiff. However, I consider the fact that the defendants have not refuted the plaintiff's position in this regard.
22. However, if the Defendants are making arrangements to have the monthly rentals, that are being presently paid to the plaintiff's Bank account to cover his monthly installments for the Bank Loan obtained for the construction of those flats, shifted to their (Defendants') account/s, it will have caused a serious prejudice to the Plaintiff if the Court finds at the end that the Plaintiff was entitled to have those rental incomes for this purpose. The plaintiff said to have mortgaged his own property for these purposes.
23. The Defendants, apart from not filing any affidavit in opposition refuting the claim and allegations made by the Plaintiff against them, in their Statement of defence also have not seriously challenged the material averments in the Amended Statement of Claim. The facts that the Plaintiff transferred lease No- 31276 and 31256 unto the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively, he obtained loan by pledging his personal property as security for the said loan facilities, the rental income is presently utilized for the repayment of the said Loan facilities are not disputed by the Defendant. Instead I find those facts are tacitly admitted by them.
24. However, the question of equitable interest claimed by the Plaintiff as a substantive relief has to be gone into at the trial. The loan repayment appears to be a substantial liability that the Plaintiff is currently meeting with the rental income out of the flats that stand on both these leases.
25. Depriving the Plaintiff of an injunction order as prayed for is likely to cause irreparable loss and damages to the Plaintiff who, being the father of the Defendants, appears to have acted for the best interest and the benefit of the Defendants.
26. The Defendants have not taken up a stern position that the Plaintiff is not entitled for this rental income out of the said Leases for the purpose of repaying his Loan in order to save his personal property. There is no evidence that the Defendants had obtained the rental income prior to the eruption of the current dispute. In my view, the balance of convenience favors the Plaintiff.

27. Considering the circumstances, I decide not to award any cost and the parties should bear their own costs.

**E. ORDERS**

1. The Plaintiff's Applications for Interim Injunction Orders succeed.
2. An interim Injunction Order, as prayed for in terms of paragraph 2 of the Plaintiff's Summons Filed on 28<sup>th</sup> November 2024, is hereby granted to be in force till the final determination of this matter.
3. An interim Injunction Order, as prayed for in terms of paragraph 01 of the Plaintiff's Summons Filed on 11<sup>th</sup> December 2024, is also hereby granted to be in force till the final determination of this matter.
4. No costs granted and the parties shall bear their own costs.

  
A.M. Mohamed Maekie  
Judge



At the High Court of Lautoka on this 11<sup>th</sup> day of August, 2025.

**SOLICITORS:**

**For the Plaintiff:**

**Messrs. Patel & Sharma, Barristers & Solicitors**

**For the Defendants:**

**Messrs. Babu Singh & Associates, Barristers & Solicitors**