

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

CASE NUMBER: HBC 206 OF 2025

BETWEEN: **WISEA KALOUMAIRA**

PLAINTIFF

AND: **DICK PENG**

1ST DEFENDANT

ASHNEEL NAND

2ND DEFENDANT

Appearances: *Plaintiff in Person.*

Ms. D. Raj for the 1st Defendant.

Ms. A. Singh for 2nd Defendant.

Date/Place of Judgment: *Friday 19 September 2025 at Suva.*

Coram: *Hon. Madam Justice Anjala Wati.*

RULING

(Application for injunction)

Cause

1. This is an application by the plaintiff against the 1st defendant seeking to restrain him from dealing with the property comprised in CL 954451 on DP 3433 Lot 17 containing an area of 1821m² situated at Raiwaqa Subdivision.
2. The property in question is owned by Fee and Jee Investments Pte Limited, a limited liability company. The company engages in fishing, agriculture and market vending. A State Lease was issued to the company on 14 February 2025. Before that, the property was held by the plaintiff under a tenancy at will.

3. In the substantive writ action, the plaintiff has sought that the transfer of the plaintiff's company shares to the 1st defendant be declared invalid, for an order for restoration of the plaintiff's shares to him, and for damages for loss of income, reputation and emotional distress.

Grounds in Support of the Application

4. The plaintiff says that in 2023, he was approached by the 1st defendant's agents for sale of a piece of land owned by his company under a tenancy at will.
5. He says that he indicated his willingness to proceed with the sale only after the lease was converted to a commercial lease.
6. The plaintiff says that the 1st defendant proposed to finance the lease conversion process, and, upon advice from the 2nd defendant, he agreed to temporarily transfer his shares in the company to the 1st defendant to avoid heavy fines by Fiji Revenue and Customs Services ("*FRCS*") for foreign ownership of land.
7. It is the plaintiff's complaint that he had no legal representation and was induced to sign documents transferring his company to Mr. Peng on the promise that it would be returned after the land transaction was finalized.
8. He therefore transferred his 45,000 ordinary shares to the 1st defendant and ceased to be the office holder of the company.
9. The plaintiff says that the agreed price for the land was FJD580, 000 which was unilaterally reduced by the 1st defendant to FJD400, 000 without his consent.
10. The plaintiff says that the 1st defendant has claimed to have paid \$25,000 to FRCS but has not provided to him any financial breakdown or records.
11. It is alleged that 1st defendant has not paid any monies to the plaintiff after the transfer of his company shares or that any company shares have been transferred back to him.
12. The plaintiff says that the defendant has since ceased communication with him. He is left with no company, no funds, and no means to proceed with his business development. The plaintiff says that he

believes that the 1st defendant will dispose off or dissipate the assets of his company thus rendering any judgment in his favour nugatory.

The 1st Defendant's Position

13. The 1st defendant says that he is a Fijian and that he engaged in a business transaction with the plaintiff.
14. According to the 1st defendant, it was the plaintiff who approached him with a proposal to sell the land.
15. The 1st defendant says that the land price was reduced by consent to \$400,000 because the plaintiff was not allowed to sell the land. The 1st defendant says that the plaintiff has already received a substantial amount of money from him for the sale of the land.
16. The 1st defendant also says that the plaintiff had transferred 90% of his shares in the company to him. The plaintiff had the original title of the property and then reported to the police that it was missing.
17. In the affidavit opposing the application, the 1st defendant has annexed some receipts showing payment of monies for sale of the land. The 1st defendant says that the payments add up to \$210,285.

2nd Defendant's Position

18. The 2nd defendant says that the company was registered with the Registrar of Companies on 25 September 2001.
19. The current shareholders are the 1st defendant and Samuela Waca. The 1st defendant is a Fiji citizen and businessman. He is able to buy and sell lands in Fiji without any prohibition.
20. The 2nd defendant says that he was the solicitor acting for the 1st defendant. It was the plaintiff who had approached the 1st defendant with a view to sell the land. Later the plaintiff decided to sell his shares to the 1st defendant. There was no inducement or duress on him to do so.
21. The 2nd defendant says that he had indicated to the plaintiff to engage an independent solicitor to act and protect the plaintiff's interest in the transaction. He then engaged the services of Messrs Raikanikoda & Associates at some stage of the transaction.

22. The plaintiff then indicated that it understood the transaction well as he was a businessman. He executed a waiver before an independent lawyer confirming that the plaintiff has waived his right to legal representation in the transaction and proceeded to carry out the transaction by himself.
23. No agreement was entered between the plaintiff and the 1st defendant for sale of land in the sum of \$680,000 as alleged by the plaintiff.
24. The 1st defendant had agreed to purchase the land under the name of his wife Jiaming Gong for a sum of \$580,000. The sale and purchase agreement was entered between the plaintiff and the 1st defendant's wife which inter-alia provided for special conditions which the plaintiff was required to meet. They were:
- (i) The plaintiff was to convert the Tenancy at Will to registered Commercial Lease on the property for a period of 99 years from the Director of Lands;
 - (ii) The parties agreed that the plaintiff shall use the deposit sum as and when required for the purposes of conversion from Tenancy at Will to registered Commercial Lease;
 - (iii) In the event the plaintiff was unable to obtain a Commercial Lease, the settlement may be affected and the parties may cancel the agreement any time prior to the settlement without any liability; and
 - (iv) Upon conversion from Tenancy at Will to Commercial Lease, if the area of the property exceeded 1234sqm, the sale price of the property was to increase to \$580,000.
25. The 2nd defendant says that the plaintiff failed to convert the Tenancy at Will to a Commercial Lease for which the 1st defendant had released partial sale proceeds. The plaintiff had managed to convert the Tenancy at Will to a registered lease however the plaintiff obtained a Civic Lease being State Lease. The new registered lease was issued under the name of Fee & Jee Investments Pte Limited
26. It is averred that the 1st defendant has paid the plaintiff full sale proceeds of the company shares owned by the plaintiff in Fee & Jee Investments Pte Limited. The plaintiff owned 45,000 shares, 5,000 shares was owned by Samuela Waca.

Law and Analysis

27. The injunction application concerns a land owned by the company Fee and Jee Investments Private Limited. This land was previously held on a Tenancy at Will. A State Lease was granted to Fee & Jee Investments Pte Limited on 14 February 2025.
28. Initially, the plaintiff had shares in this company, which he has now transferred to the 1st defendant.
29. None of the parties have provided to me a sale and purchase agreement for me to determine the sale price of the property or the conditions of the sale.
30. It appears that the transfer of company shares is a different transaction from that of the sale of land. This is evident from the 2nd defendant's statement of defence that the plaintiff was to sell his company shares to the 1st defendant and the land to the 1st defendant's wife. The parties to the sale, being the buyers, are different.
31. According to the 2nd defendant, if a commercial lease was not obtained over the property, the sale and purchase agreement could be rescinded. No one has taken the position that the sale and purchase agreement has been cancelled. If it is cancelled then the land needs to revert back to the plaintiff. If it is not cancelled then the question is how much money is due and owing to the plaintiff and who is going to pay that sum? Should it be paid by the company, 1st defendant or his wife? The agreement was entered into by the wife but the company now owns the land.
32. Since the company now owns that land, it can deal with the property in any manner it likes, and if that is done, the plaintiff will lose the legal and equitable interest in the land and only hope for the payment of the balance of the proceeds of the sale which will be difficult to recover as neither the company nor the 1st defendant or his wife has given any undertaking as to damages.
33. On the balance of convenience, I find that an order restraining the sale of the subject land ought to be granted.

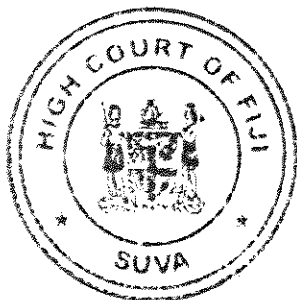
Orders

34. In the final analysis, I make the following orders:

(1) That the plaintiff or anyone else on his behalf or the company Fee and Jee Investments Pte Limited be restrained from dealing with the land contained in CL 954451 on DP 3433 Lot 17 containing an area of 1821m² situated at Raiwaqa Subdivision.

(2) *Each party shall bear their own costs of the proceedings.*

(3) *The substantive action to be listed before the Master on the Summons for Directions, when issued.*



Maal

Hon. Madam Justice Anjala Wati

Judge

19.09.2025

To:

1. *Plaintiff in Person.*
2. *Toganivalu Legal for the 1st Defendant.*
3. *Kohl & Singh for the 2nd Defendant.*
4. *File: HBC 206 of 2025.*