

IN THE HIGH COURT OF FIJI AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 294 OF 2021

BETWEEN : **INOKE MOMONAKAYA SEVAKARUA as TRUSTEES OF
THE ESTATE OF WAISIKI SEVAKARUA**

FIRST PLAINTIFF

AND : **INOKE MOMONAKAYA SEVAKARUA and ASERI
NASILASILA**

SECOND PLAINTIFFS

AND : **TALICA MELI**

FIRST DEFENDANT

AND : **ITAUKEI LAND TRUST BOARD**

SECOND DEFENDANT

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

COUNSEL : **Mr. E. Maopa. – For the Plaintiffs.**

: **Ms V. Nettles – For the 1st Defendant**

: **Mr. M Rasiga. – For the 2nd Defendant.**

DATE OF HEARING : **15th April 2024.**

WRITTEN SUBMISSION : **Filed by the 2nd Defendant on 08th April 2024.**

: **No written submissions filed by the plaintiff & 1st
Defendant.**

RULING DELIVERED : **On 24th January 2025.**

RULING

A. INTRODUCTION:

1. This Ruling pertains to the hearing held before me on 15th April 2024 in relation to the following 2 Applications:

1. The **Inter-Parte Notice of Motion** by the 1st Defendant, namely **Talica Meli**, supported by her Affidavit and that of one **Scot Christopher Daku**, all filed on 05th March 2024, together with annexures marked as “**TM-1**” and “**TM-2**”, seeking for the following injunctive reliefs against the plaintiffs.

- a. *An order that the plaintiff's his family and/or his agent to stop harassing intimidating or chasing away the tenants or their surveyors from the leased lots.*
- b. *An order that the plaintiff's his family and/or his agent to cease any cultivation activities on the lots leased out to the tenants.*
- c. *An order to restrain the plaintiff's from engaging in any action that may disrupt the peaceful possession and enjoyment of the leased lots by the tenants.*
- d. *An order to prohibit the plaintiff's from engaging in any conduct that may deter or intimidate potential buyers from entering into lease agreements with the **plaintiff** or other members of the Tokatoka Vunamassei.*

2. The **Notice of Motion** by the plaintiffs, dated 9th April 2024, supported by the affidavit of the first named 2nd plaintiff **Inoke Momonakaya** and filed along with annexures marked as “**IMS-1**” to “**IMS-3**”, seeking the following reliefs against the defendants;

1. *That the interim injunction granted on 27th March 2024 be forthwith dismissed with costs.*
2. *That there be interim injunction against the 1st and 2nd Defendants restraining themselves, their agents, servants and whosoever from dealing, transferring and or selling part of the land described in;*
 - i. *Native Lease No-14042 having an area of 6 acres 2 roods and 18 perches and;*
 - ii. *Agreement to lease ITLTB Reference No- 6/10/ 42970 having an area of 0.2043 HA registered on 25th November 2021.*
3. *That the 1st and 2nd Defendants and their servants, agents and whosoever are restrained from interfering with the plaintiffs' peaceful enjoyment of the said property until further order of the Court.*

4. *That costs be paid by the defendants.*
2. The above Applications are filed pursuant to Order 29 Rule 1 of the High Court Rules 1988 and the inherent jurisdiction of this Court.
3. When the 1st Application above (1st Defendant's Application) was initially supported before me on 27th March 2024, after briefly hearing the Counsel for both parties, this Court issued **temporary Injunction Orders** in terms of the Notice of Motion, to be in force till 15th April 2024 and directed the Plaintiff to file Affidavit in opposition and the 1st Defendant to file Reply Affidavit. (Vide sealed order dated 9th April 2024).
4. Accordingly, the Plaintiffs on 9th April 2024, while filing the Affidavit in opposition, also filed their Notice of Motion (the 2nd Application above) seeking to vacate the temporary injunction Orders made on 27th March 2024 and to issue injunction orders against the 1st and 2nd Defendants as prayed for therein. However, the 1st Defendant did not file any Reply Affidavit in relation to her application for injunction or any response to the Plaintiff's Notice of Motion.
5. The hearing being taken up on 15th April 2024, only the 2nd Defendant, ITLTB, has filed their written submissions in support of the injunction Application of the 1st Defendant. No written submissions were filed by the Plaintiff and the 1st Defendant.
6. It is to be noted at the outset that the supporting Affidavit filed by the 1st Defendant, along with her **Inter-Parte Notice of Motion**, is grossly defective in paragraphs 6 and 14 to 20 thereof, wherein she has sworn the averments therein against her own interest. Apart from it, the Solicitors for the 1st Defendant have signed the Inter-Parte Notice of Motion as if they are representing and appearing for the Plaintiff. All these seem to have occurred due to the negligence of her Solicitors. Thus, for the above reason, this Affidavit cannot be accepted and acted upon. However, in the interest of justice, I decide to delve into the matter by relying on the rest of the pleadings.

B. HISTORY

7. The Plaintiffs on 17th December 2021, filed their Writ of Summons and Statement of Claim (soc) against the Defendant, moving for, inter alia, the following substantial reliefs;
 - a. *A declaration that the plaintiffs have equitable (property) interest/share in the Native Reserve Land owned by the Tokatoka Vunamasei situated at Legalega, Nadi.*
 - b. *A declaration that the plaintiffs have equitable (property) interest/share on the use of Native Reserve Land owned by the Tokatoka Vunamasei situated at Legalega, Nadi.*
 - c. *A declaration that the plaintiffs have equitable (property) interest/share on the Ref. No. 4/10/2067 being Native Lease No- 14042 Land known as Vunaniu No-1 situated at Legalega , Nadi.*

d. *An Order that the Plaintiffs and descendants of the late Mrs. Varo are entitled to live and reside at the Totkatoka Vunamasei land known as Vunaniu No-1 situated at Legalega, Nadi, as long as they wish.*

8. Accordingly, when the matter was to proceed on normal course, since the Defendants had not filed their Statements of Defense, the Plaintiff on 06th October 2022 filed an application to formally prove the matter against the Defendants, and the 1st Defendant in turn on 2nd November 2022 filed an Application to strike out the Plaintiff's action.
9. The said Striking out Application was taken up for hearing on 7th July 2023 and this Court by its Ruling dated 18th August 2023 dismissed the same.
10. After hearing the Counsel for all parties on both the injunction Applications, in order to iron out the issues between the parties and to facilitate the quick disposal of the substantive action, on a suggestion made by the Court and with the consent of the parties, the Formal Proof Application filed by the Plaintiff was withdrawn allowing the Defendants to file their Statement of Defenses, subject to the payment of \$500.00 each by both the Defendants to the Plaintiff.
11. Accordingly, the 1st Defendant filed her SOD on 04th June 2024 along with a counter-claim. The 2nd Defendant filed its Statement Defense (SOD) on 26th June 2024 and the Plaintiff has filed reply to defense thereto. But so far, the Plaintiff has not filed the reply to defense and defense to the counter-claim filed by the 1st Defendant. Thus, the substantive matter is set to proceed for PTC formalities and trial thereafter.

C. ANALYSIS:

12. The task before this Court, for the time being, is to decide whether the **temporary interim injunction** orders issued by this Court on 27th March 2024, on the aforesaid Application of the 1st Defendant, should be in force till the determination of the substantive action hereof, or those temporary orders be vacated and injunctive orders should be granted in favor of the plaintiff as per their application.
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 its favour must come to court with clean hands and full facts. Suppression of material facts will disentitle the party seeking an injunctive 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 defense, 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. 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.*

17. **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”.

18. 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".

19. Careful perusal of the case record reveals that subsequent to the filing of the writ of Summons and the SOC on 17th December 2021, the Plaintiff on 20th June 2022 had filed an **Ex-Parte Notice of Motion** supported by the Affidavit of first named 1st Plaintiff, seeking, inter alia, the following injunctive reliefs against the Defendants;
1. *"An injunction against the Defendants, their servants, agents and whomsoever from dealing, developing, assigning, transferring whatsoever the land described as Lot 94 Vunainiu No-1, containing an area of 6 acres, 2 roods and 18 perches situated at Legalega, Nadi until further order of the Court;*
 2. *An injunction against the defendants, their servants, agents and whosoever from interfering whatsoever with the plaintiffs' peaceful enjoyment and occupation of further orders of the Court "the land described as Lot 94 , Vunaniu No-1 containing an area of 6 acres 2 roods and 18 perches situated at Legalega , Nadi until further orders of the Court."*
20. The said Ex-Parte Notice of Motion being supported before my Brother Judge Hon. A. Tuilevuka on 23rd June 2022, same was fixed for Inter-parte hearing on 24th June 2022. Accordingly, when the matter came up on 24th June 2022, after hearing both parties, the Court directed the parties to file Affidavits and the matter was fixed for 22nd July 2022, without issuing any temporary interim injunctive orders on the Application.
21. Accordingly, when the matter had come up on 22nd July 2022, in the absence of any affidavits, the following had transpired in the Court. (**Vide judge's note dated 22nd July 2022**).

Appearance:

Mr. E. Maopa: - for the Plaintiff.

Mr. Joji Boseiwaqa for Turaga for the first defendant.

Mr. Cati

Counsels Submissions:

Mr. Maopa: - *for 2.30 hearing. I have spoken to Turaga, I will withdraw injunction application. Will proceed normal. Can this be placed before the Master.*

Mr. Boseiwaqa: *Confirm.*

Mr. Cati - **No issues.**

No dealings in relation to land subject to litigation. (Emphasis mine)

Order: 1. Adjourned to Master 01/08/22, before the Master

*(sgd)A. Tuilevuka.
Judge
22nd July 2022*

22. It is to be observed that the said Application by the Plaintiff for injunction orders being withdrawn by the Plaintiffs' Counsel on 22nd July 2022, Counsel for the 2nd Defendant Board had stated in Court that "No *issues*" "***No dealings in relation to land subject to litigation***" on which the matter was referred to the Master to proceed on normal course. Undoubtedly, this statement by the Counsel for the 2nd Defendant appears to be an undertaking on behalf of the 2nd Defendant Board that they will not deal with the subject matter land till the substantive matter is resolved. It is on this undertaking, the Plaintiffs' Counsel appears to have withdrawn the Application for injunction.
23. The above undertaking by the 2nd Defendant, apparently, with the knowledge/consent of the 1st Defendant, has in fact rendered the Plaintiffs' Application for injunction orders redundant and negated the need for an injunction order by the Court. If not for this undertaking, the Plaintiffs' Counsel would not have withdrawn the Application for injunctive Orders at that prime stage. Thus, I am of the view that the aforesaid undertaking by the 2nd Defendant's Counsel should remain in force, unless it is formally withdrawn by the 2nd Defendant, with notice to the Plaintiff and the 1st Defendant.
24. Further, such an undertaking / statement by the Counsel for the 2nd Defendant should, necessarily, bind the 1st Defendant as well as the 1st Defendant cannot deal with the subject land without the consent of the 2nd Defendant. Thus, while such undertaking is in force, none of the Defendants can deal with the subject land, and particularly, the 2nd Defendant cannot be heard to be supporting any move by the 1st Defendant, who is the Applicant in present Application for injunction.
25. The Plaintiffs, who are, admittedly, in possession and occupation of the respective houses constructed by them in the subject land for a longtime, cannot be restrained in any manner or ejected by way of an injunction order of this nature, unless it was a situation, where the Plaintiffs had come into the possession thereof by dispossessing the 1st Defendant in an illegal manner, immediately prior to filing of the Application for injunction.
26. The plaintiffs allege and it is also obvious from the pleadings that the 1st Defendant had been attempting to sub-divide and sell several lots of this Land to various third parties, with the blessings of the 2nd Defendant. The Plaintiffs by their Statement of Claim are moving this Court for declarations that they have beneficial interest to the subject property, where they are, admittedly, in possession and occupation for a long time with their family members.
27. This Court has already dismissed a striking out Application filed by the 1st Defendant to strike out the Plaintiffs' action. It means that the Plaintiffs have a prima-facie case and there are serious issues to be tried. Therefore, under these circumstances, if an injunction order is issued as prayed for by the 1st Defendant, undoubtedly, a serious prejudice and irreparable loss and damages would be caused to the Plaintiffs.

28. What the 1st Defendant wants is to sub-divide and sell the subject matter land to new tenants by disregarding the Plaintiffs' longstanding possession, occupation and their claim for beneficial interest under their ancestors. The 1st Defendant cannot achieve her motives instantly through an injunctive order obtained against the plaintiffs.
29. Careful perusal of the averments in the Affidavits and other pleadings clearly reveal, that the 1st Defendant, through her current Application, is in an attempt to achieve what was sought to be restrained by the initial injunction Application filed on 20th June 2022 by the Plaintiff against the Defendants, which was withdrawn as aforesaid.
30. The temporary injunction orders issued by this Court on 27th March 2024 on the Application of the 1st Defendant, seem to be threatening the Plaintiffs' peaceful possession and occupation of the subject land and, on the other hand, facilitating the 1st Defendant in her move to sub-divide and dispose the subject matter land. This cannot be done, by hiding behind an injunction order, when the substantive rights of the parties are yet to be decided at the end of the action.
31. Under these circumstances, this Court is of the view that the temporary injunction orders issued on 27th March 2024 on the Application of the 1st Defendant cannot stand and should be dissolved forthwith by facilitating the *status-quo* to remain pending the final determination of the action.
32. Further, in view of the above, the Application preferred by the 1st Defendant seeking Leave to issue Committal proceedings against the Plaintiff cannot be considered favorably and same has to be dismissed.
33. In the event the 2nd Defendant moves to withdraw the undertaking given to Court on 22nd July 2022 not to deal with the subject matter land, the Plaintiff should be at liberty to revive their initial Application for injunctive orders. The status quo should remain until the final determination of the action and the parties have to observe peace.

ORDERS

- a. The Inter-Parte Notice of Motion filed by the 1st Defendant on 5th March 2024 is hereby dismissed.
- b. The Temporary Orders issued by this Court on 27th March 2024 against the Plaintiff are hereby dissolved and set aside.
- c. The undertaking given by the Counsel for the 2nd Defendant on 22nd July 2022, not to deal with the subject land pending the litigation, shall remain in force till the final determination of the substantive action, unless the same is withdrawn with the sanction of the Court.
- d. The parties shall maintain the Status Quo of the subject matter as it is until the final determination of the action, and the Plaintiff and the 1st Defendant should maintain peace.

- e. The Application by the 1st Defendant, seeking for Leave to issue Committal proceedings against the Plaintiff, is hereby dismissed.
- f. No costs ordered and the parties shall bear their own costs.
- g. The action shall proceed under normal course before the Master.

On this 24th Day of January 2025 at the High Court of Lautoka.



A.M. Mohamed Mackie.

Judge.

High Court (Civil Division)

Lautoka.

SOLICITORS:

For the Plaintiffs- : Messrs. Babu Singh Associates- Barristers & Solicitors.

For the 1st Defendant-: Messrs. Alpha Legal - Barristers & Solicitors.

For the 2nd Defendant-: In House Counsel – ITLTB.