

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 130 of 2024

BETWEEN: **BALMINDAR SINGH**, of Waimaro Subdivision, Tailevu, Farmer.
PLAINTIFF

AND: **iTAUKEI LAND TRUST BOARD** a Statutory body created under the
iTaukei Land Trust Act, Cap 134 and having its registered office at 431
Victoria Prad, Suva.
DEFENDANT

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Nand S. for the Plaintiff/Applicant**
No appearance of the Defendant

DATE OF JUDGMENT: 12th November, 2025

JUDGMENT

[Injunction]

Introduction

1. The Plaintiff, Balmindar Singh filed an Inter-Parte Summons coupled with an Affidavit in Support and sought for the following orders-
 - (a) An order that the Defendants either personally, or via their servants or agents be restrained from transferring, dealing with, charging, assigning, disposing or in any way diminishing the value of Instrument of Tenancy No. 14049 being iTLTB ref No. 4/14/40397 (herein referred to as 'property') until the hearing and determination of this matter or until further orders of this Court and or;
 - (b) An order directing the Defendant to immediately take necessary steps to inform the members of the land-owning units to restrain from entering the Plaintiff's farm, damaging the fence and interfering with the Plaintiff's cattle grazing/milking and day-to-day operations until the hearing and determination of this matter or until further orders of this Court.
 - (c) An order directing the Defendants to take the necessary actions required to allow the Status Quo of the property to be remained until the hearing and determination of this matter.
 - (d) An order that the Police Officers at the nearest police station of the property be ordered to assist the Defendants in the service of the Order on the members of the land-owning units occupying the property.
 - (e) An order that the Defendants pay the costs of this application on an indemnity basis.
 - (f) Any other orders that the Honourable Court considers appropriate and just in the circumstances.
2. The Defendant opposed the application and filed an Affidavit in Opposition.
3. Subsequently, a reply affidavit was filed by the Plaintiff.
4. Both parties to the proceedings furnished Court with their written submissions.

Plaintiff's Contention

5. Relies on its Affidavit in Support deposited on 30th June 2025.

6. Filed a substantive Originating Summons seeking various Declaratory Orders as to notice of re-entry of 16th March 2018 for Termination of Instrument of Tenancy No. 14049 being TLTB ref. No. 4/14/40397 being invalid and of no legal effect.
7. Challenging the validity of the re-entry which was never served.
8. The members of the land-owning units have now taken possession but have started to interfere with the use and occupation of the property including cattle grazing, milking process and day-to-day operations.
9. That he will suffer more loss and prejudice if the Defendants and their agents are not enjoined from interfering with his use and occupation of the property until the substantive Originating Summons is heard and dealt with by the Court.
10. The Plaintiff gives an undertaking as to damages.

Defendants Contention

11. Filed their written submissions and Affidavit in Opposition to the Plaintiff's substantive Originating Summons.
12. The re-entry notice was submitted to the Plaintiff which resulted in the re-entry application being registered under the Instrument of the Tenancy No. 14049.
13. The evidence presented by the Plaintiff to the Court clearly shows that annexure 'B' '3' of its Affidavit in Support that the said land which the Plaintiff wants to injunct namely Waimaro Subdivision Lot 15 (Part of) TL 1689 TLTB Reference No. 4/14/40397 has been re-entered and application for register cancellation upon re-entry by the lessor was fully registered on 18th March 2020.
14. Damages as to undertaking by the Plaintiff does not suffice the loss that not only the Defendant would suffer, but also the collective land-owning unit members who depend on the access road within the lease to harvest the mahogany plantation on the hills at the rear end of the subject land.
15. Seek dismissal of the injunction application.

Determination

16. The substantive dispute arises from the Defendant's purported termination of the Plaintiff's lawful agricultural lease owned by Mataqali: Tuinona, Mataqali: Ravouvou (Sawakasa) and Mataqali: Veinuqa.

17. No doubt the Plaintiff held a registered Instrument of Tenancy No. 14049 for a term of 50 years period over the land known as 'Waimaro Subdivision Lot 15,' which was duly executed on 12th July 2017 and registered on 21st August 2017 [Annexure 'B2' to Plaintiff's affidavit).
18. The Plaintiff was allegedly served with the re-entry notice which the Plaintiff denies receiving and sets out his reasons on why the re-entry of the Instrument of Tenancy No. 14049 is void *ab initio*.
19. The Plaintiff is challenging the re-entry and has filed a Substantive Originating Summons which is impending hearing and determination before this Court.
20. Until the substantive Originating Summons has been heard and determined by this Court and in the midst granting the injunctive orders as sought herein by the Plaintiff will be a futile exercise. The reason being that the Mataqali had re-entered the said land and the re-entry application has been registered under the Instrument of Tenancy No. 14049.
21. The question then arises, whether the substantive issue within the Plaintiff's pending Originating Summons of notice of re-entry dated 16th March 2018 for termination of the Instrument of Tenancy No. 14049 by TLTB Ref. No. 4/14/40397 is *ab initio* invalid and of no legal effect will only determine whether the Plaintiff issued with a 50-year term lease in 2017 should rightfully be recognized and be in occupation of the said piece of land or not?
22. The task before this Court for time being is to determine whether the Plaintiff's application for interim injunctive orders should be granted and/or refused.
23. 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.
24. Injunctive relief being a discretionary remedy, the party who seek the Courts to exercise its discretion in his/her favor must come to Court with clean hands and disclosing full facts. Suppression of material facts will disentitle the party seeking an injunction to such relief.
25. In the case of **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."

26. An interim injunction is a relief that cannot be granted solely or independently without any final or substantive relief sought for. 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 the final relief.
27. Lord Diplock laid down certain guidelines for Court's consideration in deciding whether to grant or refuse an interim injunction in the case of **American Cyanamid Co. v Ethicon Limited** [1975] UKHL 1; [1975] to W.L.R 316, [1975] A.C 396:
 - (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 enjoyed; And
 - (iii) In whose favor the balance of convenience has lies if the injunction is granted or refused?

(i) **Serious Question**

28. According to the Defendant, the re-entry notice was submitted to the Plaintiff which resulted in the re-entry application being registered under the Instrument of Tenancy No. 14049.
29. Annexure B '3' of the Plaintiffs affidavit in support, that the said land which the Plaintiff wants to injunct namely Waimaro Subdivision Lot 15 (Part of) on TL 1689 Ref: 4/14/40397 has been re-entered and application for register cancellation upon re-entry by the lessor was duly registered on 18th March 2020.
30. The Plaintiff's substantive Originating Summons is impending hearing and determination on the validity of the re-entry notice, any legal rights to enter the said land, and whether the Plaintiff is entitled and can rely on the indefeasibility of title pending the trial of the substantive action.
31. This Court needs to look at the whole case [**Hubbard & Another v Vosper & Another** [1972] 2 Q.B 84] and then consider the strength of each party's case.
32. The Plaintiff continues to remain in occupation the of the said land Waimaro Subdivision Lot 15 (Part of) on TL 1689 Ref: 4/14/40397.
33. I find there are no serious questions to be tried rather it is appropriate to hear and determine the substantive issues within the substantive Originating Summons and make a final determination of the substantive issue.

(ii) Adequacy of Damages

34. In the case of **Evolution Fiji Limited v Radison Hotels (Fiji) Pte Limited (trading as Raddisson Blue Resort Limited** [2020] FJHC 5; Civil Action 214 of 2019 (24 January 2020), the Court stated that the Courts do not grant an injunction if damages are an adequate remedy. Diplock LJ in 'American Cyanamid' (supra) said at page 510:
- "If damages on the measure recoverable at common law would be an adequate remedy and the Defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the Plaintiff's claim appeared to be at that stage."*
35. No doubt, the Plaintiff has given an undertaking as to damages.
36. I find that in this case, if there are any damages to be sustained by the Plaintiff because of the re-entry by the landowners via iTaukei Land Trust Board (as the custodian of the said land), then it can be recovered at Common Law by the Plaintiff.
37. Therefore, injunctions are inappropriate in this circumstances since damages would suffice, if any, accordingly.

(iii) Balance of Convenience

38. The balance of convenience test is a legal principle used to determine if an interlocutory order should be granted by the Court.
39. The Court is required to weigh the potential harm to the Plaintiff (if any) if in case the injunction sought is refused against the potential harm of the Defendant iTaukei Land Trust Board if injunction is granted.
40. The Court assesses which party would suffer greater inconvenience or irreparable loss, and it may consider if financial compensation would adequately remedy any potential damages.
41. The balance of convenience favors the Defendant and it would be only just and fair to preserve the existing state of affairs (status quo) accordingly.
42. For the foregoing reasons, this Court is reluctant to accede to and grant any injunctive orders sought herein by the Plaintiff rather proceed to expeditiously hear and determine the substantive Originating Summons and make a final determination once and for all.

Costs


43. It is only just and fair not to order for any costs against the Plaintiff at this stage of the proceedings.

Orders

- (i) The Plaintiff's Inter-partes Summons seeking for injunctive reliefs filed on 7th July 2025 is dismissed in its entirety.
- (ii) There will be no orders as to Costs against the parties to this proceedings at the discretion of this Court.
- (iii) The substantive matter to be assigned an expeditious hearing date and a final determination to be made in due course.

Dated at **Suva** this **12th** day of **November** , 2025.




VISHWA DATT SHARMA
PUISNE JUDGE

CC: Nands Law, Suva
iTaukei Land Trust Board, Suva