

**N THE HIGH COURT OF FIJI**  
**CENTRAL DIVISION**  
**CIVIL JURISDICTION**

**Civil Action HBC No. 364 of 2025**

**BETWEEN:** **TUILEA USA** suing in his personal capacity as a member of the Mataqali Laselase of Nabaka village and in a representative capacity for and on behalf of the members of the Mataqali Laselase of Nabaka Village, Suva, Self-Employed.

**1<sup>st</sup> PLAINTIFF**

**AND:** **SULIASI BATINIVATU** suing in a representative capacity for and on behalf of the members of the Mataqali Laselase of Nabaka Village, Suva, Self-Employed.

**2<sup>nd</sup> PLAINTIFF**

**AND:** **WAISILIURA DEVELOPMENT TRUST PTE LIMITED** a registered limited liability company whose registered office is at Lot 31, Latui Road

**FIRST DEFENDANT**

**AND:** **TUIMAVELA EMO and TUILEUSA HEMO** both of Lot 31, Latui Road, Wailada, Lami, Directors and Trustees of the Mataqali Laselase Trust and Mataqali Laselase Investment Trust respectively

**SECOND DEFENDANT**

**AND:** **ITAUKEI LAND TRUST BOARD** a body corporate established under s 3 (1) of the Itaukei Land Trust Act 1940

**THIRD DEFENDANT**

**Date of Hearing** : **21 November 2025**  
**For the Plaintiff/Applicant** : **Mr Vulaono A.**  
**Before** : **Waqainabete-Levaci, SLTT, Puisne Judge**  
**Date of Ruling** : **21 November 2025**

## **R U L I N G**

### *(APPLICATION FOR INTERIM INJUNCTION)*

#### **PART A – BACKGROUND**

1. The substantive application is a Claim against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for fraud, dishonesty and misrepresentation when the 1<sup>st</sup> Defendant obtained an Agreement for Lease falsely representing the members of the Mataqali that 1<sup>st</sup> Defendant was a landowning unit company and sole shareholder for the Mataqali; allegations of misrepresentation over the development of the lands, allegations of dishonestly misrepresenting the generation of income and returns and inducing the members of the Mataqali to consent to the granting of a Development Lease to the First Defendant.
2. The Plaintiffs now seeks a declaration that the grant of the Agreement to lease was void and unlawful, that the Second and Third Defendants had breached their duties as trustees and permanent injunctive reliefs against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, Agreement for lease be cancelled and general, compensatory and punitive damages as well as exemplary damages with costs.
3. The Applicant/Plaintiffs have filed an Ex-parte Application seeking for the following Orders:
  - (a) An interim injunction against the First and Second Defendant restraining the First and Second Defendant by themselves and or through their servants and or agents or whosoever from offering for sale or selling or entering into any contract for sale of any land described in the Agreement for Lease (For Development Purposes);
  - (b) An Interim Injunction the Second Defendants from using any funds belonging to the Mataqali Laselase in the development of the land described in the Agreement for Lease (For Development) purposes No 4/16/40850 until the determination of the matter.

#### **PART B: AFFIDAVITS**

4. The 2<sup>nd</sup> Plaintiff has been authorized to depose of the Affidavit on behalf of the two Plaintiffs and on behalf of the Mataqali.

5. He deposes that they are registered members of the Mataqali Laselase of Nabaka Village in Suva. They own the land which is described as Agreement to Lease (For Development Purposes) No 4/16/40850 as 'Naimataga (part of)' in the tikina of Suva in the province of Rewa containing 93.6041 Ha.
6. The First Defendants is a limited liability company privately owned by 3 shareholders, 2 of which are the 2<sup>nd</sup> Defendants both owning a total of 4900 shares collectively on behalf of Mataqali Laselase Trust and Mataqali Laselase Investment Trust.
7. The Applicant/Plaintiff deposes the said land was part of the native land described in the Native Land commission as Lot 10 M 2/4 containing 434.228 Ha (1073 acres) owned by the mataqali Laselase. It earlier was owned by the extinct Mataqali Maqarakira and thereafter it was later assigned to Mataqali Laselase by a Native Land Reserve Committee meeting.
8. The Applicant/Plaintiff deposes that despite the letters of the Head of Mataqali to 3<sup>rd</sup> Defendant by the late father of the 2<sup>nd</sup> Plaintiff as Head of Mataqali, and being aware of the development aspirations of the Mataqali, that 2 mataqali Deed of Trusts were developed being the Mataqali Laselase Investment Trust and Mataqali Laselase Trust. Part of the agreed development was the creation of a landowning unit company owned by the Mataqali obtained by the 2<sup>nd</sup> Defendants as Trustees. This was agreed by the Mataqali through various meetings.
9. The Plaintiffs/Applicant deposes that the Second Defendants then used the consent of the Mataqali to obtain its own lease for the First Defendant Company in which they collectively owned 4900 shares and used mataqali funds for the developments. There are no shares of the Mataqali directly owning the said company, the shares are owned by the 2<sup>nd</sup> Defendants themselves.
10. The Plaintiff/Applicant deposed that if the 1<sup>st</sup> Defendants begins excavation works on the land and cause damage to the natural landscape and original status of the land, habitat destruction and eco system disruption thereby would cause irreparable harm for which damages are not adequate remedy.
11. The Applicant/plaintiff seeks restraining orders from selling the lots in the open market and to cease and preserve the land.

## **PART C: LAW AND ANALYSIS**

### ***Restraining Orders***

12. Order 29 Rule (1) of the High Court Rules allows for parties to apply for the grant of an injunctive relief made before or after the trial of a cause or matter whether or not it was a claim in the Writ for injunction.
13. The principles to grant an interim injunction is provided for in the case of American Cynamid Co -v- Ethicon Ltd (1975) AC 396 where it was held that:

“So long as the plaintiff can establish that there is a serious question to be tried, that the claim is not frivolous or vexatious or that the application discloses reasonable chance of success, then the remaining factor to be considered by the Court is the balance of convenience. Balance of convenience is measured in terms of whether the parties could be compensated for damages if the injunction were or were no to be granted.”
14. In WR Carpenter (S.P) Limited -v- Fijian Holdings Limited & Taubmans Paints [2003] HBC 113R/03S delivered on 3 August 2003 held that the serious dispute among parties as to the interpretation of the sale and purchase agreement for sale of shares, the injunction granted would restrain the Defendants from selling or disposing shares in 2<sup>nd</sup> Defendant which was owned by the Plaintiff until final determination of the matter.
15. Considering these principles the Court turns to the matter before it.
16. The claim is for misleading, deceptive, fraud and dishonest misrepresentations against the Mataqali owners over the grant of an Agreement of Lease to the 1<sup>st</sup> Defendant privately owned by the 2<sup>nd</sup> Defendants.
17. These allegations are serious allegations which require a proper trial to determine and hence requires that the matters remain in status quo.
18. The second issue is whether the application is frivolous or discloses no reasonable chance of success. The Claim stems from allegations of fraud and dishonesty in the creation of a sham company for which the alleged Agreement for Lease was issued.
19. There are risks that the 2<sup>nd</sup> Defendants will exercise their rights under the 1<sup>st</sup> Defendant to sell or develop the lots contrary to the intentions of the Mataqali.

20. The Court finds this is a serious application with prospects of evidences being heard at trial.
21. Thirdly, the court finds that damages may be an equitable remedy, however in this instance there would be irreparable harm which the Defendants are unable to be able to pay damages for if the restraining orders are not granted.
22. Finally given the current proceedings, it would be in the balance of convenience, for the benefit of the parties that there be restraining orders against the 2<sup>nd</sup> Defendants or 1<sup>st</sup> Defendants from selling, sub-dividing or developing the said lands until the final determination of the matter.
23. The court will grant Order in terms of the interim application.

### ***Mareva injunctions***

24. The Applicant is also seeking the Court to freeze all accounts and funds owned by the Mataqali Laselase which are accessed to by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the power as Trustees.
25. In Silver Beach Properties -v- Jawan [2011] FJCA 48; ABU0042.2009 (29 September 2011) Chitrasiri JA, Marshall JA and Siskandarajah JA held that:

'18. The law recognizes two pre-conditions when issuing ***Mareva Injunctions*** . First being the applicant proves its case to the required minimum standard and the second being that there is a danger by reason of the defendant absconding, removing its assets from the jurisdiction or dissipating them in order to negate the judgment being executed, in the event the plaintiff succeeds at the end.

19. The requirement referred to in the said first limb was explained by Mustill, J in Ninemia Maritime Corporation v. Trave Schiffartsgesellschaft GmbH [1983]2 Lloyd's Rep 600 at 603; [1984] 1 All ER 398 at 402-3:

*"The strength of the plaintiff's case is relevant in two distinct respects – (i) the plaintiff must have a case of certain strength, before the question of granting Mareva relief can arise at all. I will call this the 'threshold'. (ii) even where the plaintiff shows that he has a case which reaches the threshold, the balance of his*

case is to be weighed in the balance with other factors relevant to the exercise of the discretion."

20. The High Court of Australia in the case of **Patrick Stevedores Operations No.2 Pty Ltd v. Maritime Union of Australia** (1998) 195 CLR 1 at 46, it was held that the plaintiff should establish that there is a serious question to be tried in order to obtain ***mareva injunction*** .

21. In **Chiou v. Wang** (1984) FJHC 160 his Lordship Byrne J. summarized the law as follows:

*"Since the case which gave its name to ***Mareva injunctions*** was decided namely **Mareva Compania Naviera SA v. International Bulk Carriers SA**" 1 All ER the rules relating to the granting of such injunctions have become reasonably well defined although I have little doubt that in the course of time they may be further enlarged. I will discuss some of these rules when dealing with particular parts of the evidence in this case but two basis propositions are clear:*

*- Any application for ***Mareva Injunction*** must show that so far as the merits of his proposed actions are concerned he has a good arguable case.*  
*- The defendant has assets within the jurisdiction and there is a real risk if not restrained he will remove the assets from the jurisdiction or dissipate them within it."*

22. Upon a careful examination of the said authorities, it is clear that the presence of a mere arguable case is not sufficient to issue a ***Mareva Injunction*** . It should be remembered that the standard of proof in establishing the presence of a *prima facie* case is always higher than the standard required in cases where the interlocutory injunctions are issued with the view of maintaining the *status quo* until a final determination is made.

26. Having considered the first test of the mareva application, the court finds there are serious question for which there is an arguable case but whether there is a higher threshold met for the purposes of such an interim injunction, the court finds has not been met by the Applicant/Plaintiff as they have not shown any evidences of usage

of monies from bank statements, from the company registered or from Mataqali proceeds.

27. The Court therefore finds that it would be difficult to impose mareva injunction in the interim at this stage.

**PART D: ORDERS OF COURT**

28. The Court will impose orders as follows:

- (a) An interim injunction against the First and Second Defendant restraining the First and Second Defendant by themselves and or through their servants and or agents or whosoever from offering for sale or selling or entering into any contract for sale of any land described in the Agreement for Lease (For Development Purposes) 4/16/40850 as Naimataga (part of) in the Tikina of Suva in the province of Rewa containing 93.6041 Ha;
- (b) An Interim Injunction the Second Defendants from using any funds belonging to the Mataqali Laselase in the development of the land described in the Agreement for Lease (For Development) purposes No 4/16/40850 as Naimataga (part of) in the Tikina of Suva in the province of Rewa containing 93.6041 Ha;
- (c) Until the determination of the matter;
- (d) Costs in the cause.
- (e) The ex parte Motion to be made interparte and returnable on a date affixed by Court.



.....  
Ms Senileba LTT Waqainabete-Levaci  
Puisne Judge