

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

CIVIL ACTION NO. HBC 75 OF 2024

BETWEEN : NISHAAT NISBAT HASSAN of Saweni, Lautoka
PLAINTIFF

AND : MOHAMMED ISHAQ OF Saweni, Lautoka.
1st DEFENDANT

AND : ITAUKEI LANDS TRUST BOARD corner of Valetia and Tukani Street,
Lautoka.
2nd DEFENDANT

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

COUNSEL : Mr. Nacolawa S, for the Plaintiff
Ms. Devi N, for the 1st Defendant
Mr. Ratule K, for the 2nd Defendant

HEARING : By way of Written Submissions.

W. SUBMISSIONS : Not filed by the Plaintiff and 2nd Defendant.
Filed by the 1st Defendant on 11th November 2025.

DATE OF RULING : 4th December 2025

RULING

A. INTRODUCTION:

1. Before me is a Notice of Motion (“ the Application ”) by the Plaintiff dated 29th October 2024, filed on 08th November 2024 and heard inter-parte on 29th November 2024, seeking for the following Orders;
 - i. *An Injunction to restrain the 1st Defendant by himself or his servant or agent or group otherwise howsoever from interfering with the quick possession of his land.*
 - ii. *The 2nd Defendant to continue receiving rental payment of the Plaintiffs pursuant to its Agreement for Lease.*
 - iii. *That the 1st Defendant to dismantle his building which is encroaching the Plaintiff's lease.*
 - iv. *That the cost of this Application be paid by the 1st Defendant.*
 - v. *Such further orders this Honorable Court deems just, fit and expedient.*

2. This Application states that it is made pursuant to **Order 29, Rule (1) & (2)** of the High Court Rules 1988 and under the **Inherent Jurisdiction** of this Court.
3. The Application is supported by an Affidavit sworn by the Plaintiff **NISHAAT NISBAT HASSAN** on 31st October 2024 and filed on 08th November 2024, along with annexures marked as “**NNH-1**” to “**NNH-8**”.
4. Objecting the plaintiff’s Application, the 1st defendant, **Mohamed Ishaq**, swore his Affidavit in response on 27th February 2025 and filed it on 28th February 2025, along with annexures marked as “**A**” to “**E**”.
5. Though, direction was given on 3rd September 2025 to file reply affidavit, instead of it, the plaintiff on 17th October 2025 filed a supplementary Affidavit, which stands on hold as there was no leave granted for the same.

B. HEARING:

6. When the matter came up on 3rd September 2025, both parties agreed to have the hearing in to the Application disposed by way of written submissions and accordingly, the 1st Defendant filed his written submissions on 11th November 2025. No written submission was filed by the Plaintiff. The 2nd defendant did not take part in these interlocutory proceedings.

C. SUBSTANTIVE CLAIM:

7. The plaintiff, on 16th April 2024, filed his Writ of Summons and the Statement of Claim against the 1st and 2nd defendants moving for the following reliefs;
 1. *For a declaration that the 1st Defendant is trespassing and encroaching on part of the Plaintiff’s land.*
 2. *For an Order that the 1st Defendant to immediately remove the building which sits on the Plaintiff’s land.*
 3. *For an Order that the 2nd Defendant and 1st Defendant to pay for damages to the Plaintiff resulting from the breaches and negligence.*
 4. *Costs of this action*
 5. *Any further relief this Honorable Court deem just.*
8. The 2nd and the 1st Defendants have filed their Statements of defence on 18th June 2024 and 08th July 2024 respectively moving for the dismissal of the plaintiff’s action, and the plaintiff on 17th October 2025 has filed his reply to defence to the 1st Defendant’s Statement of defence.

9. At this stage of proceedings, the task before the Court is to consider whether the Plaintiff is entitled to have the Orders sought in his Notice of Motion filed on 08th November 2024 pursuant to Order 29 Rule (1) and (2) of the High Court Rules 1988.

D. **LAW:**

10. Order 29 Rule 1 of the High Court Rule 1988, under which the Plaintiff moves for Orders as per his Notice of Motion, states as follows;

INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, INTERIM PAYMENTS, ETC

1. *INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, ETC*

Application for injunction (O.29, r.1)

1.-(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third-party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made ex-parte on affidavit but, except as aforesaid, such application must be made by motion or summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

11. 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.
12. 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 must come to court with clean hands and by revealing full facts. Suppression of material facts will disentitle the party, who seeks an injunction order.
13. 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”.

14. Interim injunction is a relief that is granted to preserve the subject matter pending the final determination of the substantive reliefs sought in the Writ or Originating Summons. It cannot be granted solely or independently without any final or substantive relief. At the same time any substantive or final relief, which is to be decided at the end of the matter, cannot be granted by way of an injunctive Order pursuant to Order 29 Rule (1) of the High Court Rules 1988.
15. A party, who does not have a serious question to be tried and/ or a prima facie winnable case at the end of the trial, has no right in law to seek an interim injunction. An injunctive relief cannot be a relief by itself, but is only a mechanism to assist and to protect final relief.
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:

- a. *Whether there is a serious question to be tried at the hearing of the substantive matter?*
- b. *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*
- c. *In whose favour the balance of convenience lies 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".*

E. RELIEFS SOUGHT & ANALYSIS:

19. By the Notice of Motion in hand, the Plaintiff seeks an injunction order to the following effect;

(i) An Injunction to restrain the 1st Defendant by himself or his servant or agent or group otherwise howsoever from interfering with the quick possession of his land.

20. On careful perusal of the above prayer, it is abundantly clear that by using an injunction order, what the plaintiff appears to be trying is to walk into and to take into his possession, an unspecified piece of land that is not well and truly in his physical possession and control right now.

This unspecified portion of land appears to be in the possession and control of the defendant for last nine (9) years.

The Plaintiff's position is that the said portion of land falls into his Agreement for Lease marked as "NNH-1".

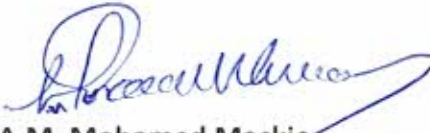
21. This shows that the Plaintiff is in an attempt to obtain a final relief, which he may or may not become entitled to at the end of the trial in his substantive action. Order 29 Rule (1) & (2) of the High Court Rules 1988 cannot be employed for this purpose. However, learned Counsel for the Plaintiff, in his supplementary affidavit, has stated that he is not pursuing for the injunction order sought in the Notice of Motion.
22. Accordingly, the Plaintiff's Application for an injunction order in terms of prayer (i) of the Notice of Motion has to be dismissed.
23. Further, on perusal of the remaining Orders sought in terms of paragraph (ii) and (iii) of the Notice of Motion, it is clear that such reliefs, being final in nature, also cannot be granted at this early stage of the action. Thus, these reliefs also have to be declined.

24. Practitioners should know that the Order 29 Rules (1) and (2) of the High Court Rules 1988, cannot be used as a “panacea” for all types of issues. Considering the circumstances, I decide to Order the Plaintiff to pay the 1st defendant a sum of \$500.00, being the summarily assessed costs of this Application.

F. ORDERS:

- a. The Injunction Order sought in terms of paragraph (i) of the Notice of Motion is declined.
- b. The Orders sought in terms of paragraphs (ii) and (iii) of the Notice of Motion are also declined, as those orders can only be considered in the final judgment.
- c. Plaintiff shall pay the 1st defendant a sum of 400.00 (Four Hundred Dollars) within 28 days from today, being the summarily assessed costs of this application.
- d. The matter be placed before the Master for PTC formalities.




A.M. Mohamed Mackie
Judge

At the High Court of Lautoka on this 4th day of December 2025.

SOLICITORS:

For the Plaintiff

For the 1st Defendant

For the 2nd Defendant

Messrs. Nacolawa & Co, Barristers & Solicitors

Messrs. Gordon & Co, Barristers & Solicitors

Legal Department- Itaukei Land Trust Board.