

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

**CIVIL ACTION NO.: HBC 187 of 2025**

**BETWEEN : MUKESH KUMAR**

**PLAINTIFF**

**AND : ROSHNI DEVI**

**FIRST DEFENDANT**

**AND : NILESH SHARMA**

**SECOND DEFENDANT**

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**APPEARANCES/REPRESENTATION**

**PLAINTIFF : Mr V Kumar [Sunil Kumar Esquire]**

**FIRST DEFENDANT : Ms N Ram [Nilesh Sharma Lawyers]**

**SECOND DEFENDANT : Mr S Bulu [Haniff Tuitoga]**

**RULING BY : Master Ms Vandhana Lal**

**DELIVERED ON : 10 December, 2025**

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**INTERLOCUTORY RULING**

[Striking out of the writ and claim]

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**Application**

1. The Defendants seek to have the writ and the claim against them struck out. Application is made pursuant to Order 18 Rule 18(1)(a), (b), (c) and (d) of the High Court Rules.

**Proceedings at the Family Court Division**

2. The Plaintiff and the First Defendant were in matrimonial relationship. The Second Defendant represented the First Defendant in the Family Court proceedings.

Sometimes in 2015, the Family Division of the Magistrates Court on an application by the First Defendant, granted interim injunction against the Plaintiff in respect of the following properties:

- *Certificate of Title No. 12884 being Lot 2 on DP No. 3082*
- *Certificate of Title No. 13105 being Lot 3 on DP No. 3082*
- *Certificate of Title No. 24411 being Lot 22 on DP No. 4921*
- *Certificate of Title No. 23234 being Lot 38 on DP No. 4921*
- *Certificate of Title No. 24958 being Lot 2 on DP No. 5724*
- *Toyota Hilux DV 340*
- *Nissan Sunny FA 436*
- *Tip Truck FQ 572*
- *Toyota Hilux DY 757*
- *Hyundai Elantra HS 886.*

3. The Plaintiff appealed the said decision and on 07 November 2016 the High Court after discussing with the parties the nature and purpose of the injunction it made following consent orders (amongst other orders):

- a. *That the Magistrates Court's order to issue injunction on all the properties is set aside and I order that there shall be injunction against the appellant Mukesh Kumar and/or his servants or agents from dealing with the following properties in any manner whatsoever. The term dealing includes not to sell, dispose, transfer, gift, deed and any act of similar nature whatsoever. The Order applies to the respondent as well:*
  - i. *CT 23234 being Lot 38 on DP 4921; and*
  - ii. *CT 24958 being Lot 2 DP 5724.*

b. *The appellant is entitled to conduct business with other properties including dealing with it on the condition that before sale he will inform the respondent's counsel and allow him to take a valuation on all the same.*

4. Later on, 13 December 2016 after hearing parties on the issue whether Roshni should continue to pay mortgage on the property she resides in, the Family Division of the High Court found that:

*“the uplifting of the injunctive orders has permitted the appellant man to conduct business again which gives him the liberty to sell the properties except the ones excluded by order and to derive income”.*

The Court ordered for Mukesh to continue paying the mortgage of the properties as per the consent orders (orders of 07 November 2016).

5. Roshni later filed a contempt application. On 23 February 2017, the High Court held that in preparation for the contempt proceedings and the nature of the situation it is only fair that none of the properties be sold until the Court secures and decide about the matter. Hence orders were made that *“none of the properties is to be dealt with by the party Mr. Kumar”.*

Wati J found that *the potential is that if the Magistrate Courts initial order is not reinstated then even the property which she had injuncted from sale would disappear if mortgagee exercises it's rights since Mukesh was not complying with court orders.*

Her Ladyship therefore ordered:

*“I therefore, in preparation for the hearing reinstate the Magistrate Court Orders for now and once Form 7 is dealt with the fate of the orders will be decided in due course”.*

6. On 04 July 2017 the Plaintiff’s Counsel asked the Court to remove injunctions against all the properties and that injunction be against only one property being the Valili Street property.

Her Ladyship had same sentiments that is Roshni’s *“share can be sufficiently paid off by injunction one property then might as well just injunct one”.*

Hence after discussing with the parties at length on the nature and purpose of the injunction following orders were made by consent:

- *Magistrates Court Order to issue injunction on all properties is set aside and I order that there shall be injunction against the appellant man Mukesh Kumar and/or all his servants or agents from dealing with the following properties in any manner or whatsoever. The term dealing includes not to sell, dispose, transfer, gift, deed and wany act of similar nature and whatsoever. The order applies to the respondent as well.*
- *The first property is CT 23234 being Lot 8 on DP 4921 and second property is CT 24954 being Lot 2 on DP 5724.*
- *The appellant is allowed to conduct business with other properties including dealing with it on the condition that before sale he will inform the Respondent’s counsel and allow him to take valuation on all the same.*

7. The Plaintiff was also ordered to continue paying mortgage on the two injunctioned properties.
8. I do take note that on 13 July 2023 after determining on the application for matrimonial property the Court uplifted all injunction orders placed on relevant properties.

### **The Plaintiff's Claim**

9. According to the Plaintiff the injunction on the property lasted for more than 06 years.

The First Defendant had given an undertaking as to damages in the Family Court proceedings.

The Plaintiff complains to have suffered loss since the following properties were not part of matrimonial property:

- a) Property known as CT 24411 for Lot 22 on DP 4921, property situated in Valili Street, Nakasi;
- b) Property known as CT 12884 for Lot 2 on DP 3082, property situated in Wailoku Road, Tamavua;
- c) Property known as CT 13105 for Lot 3 on DP 3082, property situated in Wailoku Road, Tamavua;
- d) Vehicle Registration No. DY 757;
- e) Vehicle Registration No. HS 886.

He is also claiming loss for household items removed by the First Defendant when she vacated the matrimonial property.

The Plaintiff also pleads that the Second Defendant owed a duty to the First Defendant and the Court to render professional legal advice and thus inform his client which property fell within the matrimonial pool of assets and which that does not.

He further pleads that the Second Defendant fell below the standard of competence and diligence owed to his client and as a result the Plaintiff suffered loss.

The Plaintiff had filed two separate applications to have the injunctive orders removed and/or set aside. The First Defendant through the Second Defendant, defended the two applications.

According to him due to the injunctive orders he suffered losses that affected his ability to derive income for himself and have the maintenance paid.

According to him, the First Defendant is also in contempt of not abiding by Court Orders.

## **Determination**

### Claim for damages pursuant to the undertaking

10. Plaintiff claims that the interim injunction lasted for 06 years.
11. I do not agree with the same as outlined earlier, the orders injunctive orders on all the properties except for CT 23234 and CT 24958 was finally set aside on 04 July 2017. Mukesh was allowed to deal with them on condition that before dealing he informs Roshni's Counsel and allow him to take valuation on all the same.
12. Interest in both the properties subject to injunction was altered via orders of 13 July 2023.

13. High court had decided that injunction should continue on the two properties in order to ensure Roshni is paid off her share even if Mukesh sells off the other properties.
14. Earlier on 23 February 2017, Wati J. had ordered that none of the properties were to be dealt with as, Her Ladyship did not want a situation where the mortgage is not paid and Roshni loses the property via mortgage sale. She held that should Roshni be successful there will be nothing for the Court to give to her benefit, hence the Court did not allow Mukesh Chand to sell any property until Her Ladyship heard the contempt application.
15. The injunction orders were granted at Magistrates Court after hearing both the parties.
16. Mukesh had in his affidavit Form 23 filed on 28 May 2015, outlined when and how he bought the properties.
17. No material facts were withheld from the Court and it had full knowledge about the properties and went ahead to grant orders.
18. It has been held that there is no tort in respect of which the Defendant (to the injunction application) can sue independently of seeking the aid of the Court to enforce the undertaking. Thus, damages for the effect of an unjustified injunction can only be obtained by an order for an inquiry, an independent action will not lie (Fletcher Sutcliffe Wild Ltd v Burch [1982 F.S.R. 64; Digital Equipment Corp v Darkcrest Ltd [1984] Ch. 512) – Supreme Court Practice (1991) Edition at paragraph 29/1/14 on page 518.

**19.** Since the injunction order on all other properties were finally discharged/set aside by the High Court Family Division on 04 July 2017, it was only proper for the Plaintiff to either ask:

- i. the High Court Family Division when dealing with the Appeal and or whilst dealing with the Contempt applications; or
- ii. the Magistrates Court Family Division whilst hearing of the application for property distribution

to make an inquiry as to damages,

**20.** I find, the filing of the claim with the High Court Civil Division for damages pursuant to the undertaking given at the Magistrates Court Family Division is an abuse of process of the court and ought to be struck out.

Claim for further losses suffered due to the removal of certain household items.

**21.** The First Defendant is said to have removed certain *moveable, electronic and other items when she left the matrimonial property.*

**22.** Magistrates Court Family Division found that parties agreed that the date of separation was 04 September 2013 (refer to the judgment delivered on 13 July 2023).

**23.** In his affidavit filed on 28 May 2015, Mukesh states that Roshni left Valili Street property on 29 April 2015.

**24.** This Claim is statute barred under the Limitation period as it should have been filed by 28 April 2021 (within 6 years after she left the matrimonial property).

25. In any event the proper forum to claim for the household items should have been in the property distribution application where the Family Court would have exercised its discretion under the Family Court Act to decide on the same.
26. I find there is no reasonable cause of action as claim is statute barred and that by initiating the claim in the High Court Civil an abuse of the process of the court.

Claim against the Second Defendant


27. Under Section 202 injunction can be granted in relation “**to the property of a party** to the marriage”. At this stage the Court is not declaring any interest in the property.
28. On an application for injunction, the court is concerned that there is likely chances of disposition of the property to defeat any existing or anticipated order and that it is just or convenient to restrain a party from dealing with his/her property.
29. In the current case there was evidence that the Plaintiff was disposing off some properties.
30. On 07 November 2016 the High Court discharged the injunction orders granted by the Magistrates Court to allow Mukesh Kumar conduct business with the other properties (except for two) including dealing with it on the condition that before sale he will inform the (Respondent’s) (Roshni Devi) counsel and allow him to take a valuation on all the same.
31. Later in February 2017 the Court reinstated the injunction orders as it found that there was risk of the properties being disposed of via mortgagee sale (since Mukesh was not paying mortgage).

32. In July 2017, only after finding that the two properties could satisfy Roshni's entitlement to the property distribution claim, did the High Court remove injunction from the remaining properties (except for two).
33. Under the Family Law Act, the First Defendant was entitled to seek orders for injunction in relation to properties of the Plaintiff since they were parties to the marriage.
34. The issue of how the relevant properties came into possession of the Plaintiff and whether it would be part of the pool of assets and if court will alter interest in any of the property was a matter for trial of the property claim.
35. The Learned Magistrate on paragraph 10 of her Ruling held that the "pool of assets ascertained to be the properties of the parties" and the pool consists of all the properties on which the initial injunction was placed.
36. Furthermore, in paragraphs 26 till 28 of the statement of claim the Plaintiff speaks of duty of care the Second Defendant owed to the First Defendant.
37. There is nothing pleaded that the Second Defendant owed any duty of care to the Plaintiff.
38. Considering the above I do not find that the Second Defendant is in breach of the Legal Practitioners Act.
39. Hence, I do not find there to be a reasonable cause of action pleaded against the Second Defendant.

### **Orders**

40. Following order are made on the Defendants application for striking out:

- i. The claim for damages pursuant to undertaking given is an abuse of process of the court and is struck out;
- ii. The claim for further loss for removal of household items is an abuse of process of the court and is statute barred, hence is struck out;
- iii. The claim against the Second Defendant shows no reasonable cause of action and is struck out
- iv. As a result of above (i-iii) the action is struck out.
- v. The Plaintiff is to pay each Defendants costs summarily assessed at \$2,500 each.

  
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**Vandhana Lal [Ms]**  
**Master of the High Court**  
**At Suva.**



**10 December, 2025.**

**TO:**

1. **Suva High Court Civil File No. HBC 187 of 2025;**
2. **Sunil Kumar Esquire, Solicitors for the Plaintiffs;**
3. **Nilesh Sharma Lawyers, Solicitors for First Defendant;**
4. **Haniff Tuitoga Lawyers, Solicitors for Second Defendant.**