

**IN THE HIGH COURT OF FIJI**  
**CENTRAL DIVISION**  
**AT SUVA**

**Civil Action No HBC 196 of 2024**

**BETWEEN** : **MOHAMMED GEORZEENAL ALEEM HAKIM**  
92 Est 37, Vancouver, British Columbia, Canada,  
V5W1E2, Retired

**PLAINTIFF**

**AND** : **SHARINA SHAMSAD BEGUM** of 4819 Quebec  
Street, Vancouver, British Columbia, Canada V5V  
3M4, Retired

**1<sup>st</sup> DEFENDANT**

**AND** : **SHAMIMA SHAMSAD BEGUM** of 4782 Windsor  
Street, Vancouver, British Columbia, Canada V5V  
4R2, Retired

**2<sup>nd</sup> DEFENDANT**

**Before** : **Banuve, J**

**Counsels** : **Nazeem Lawyers for the Plaintiff**  
**Shekinah Law for the Defendants**

**Date of Hearing** : **12 December 2025**

**Date of Ruling** : **23 March 2026**

# RULING

## A. Introduction

1. A Summons was filed at the High Court , Lautoka where on 17 September 2024, interim injunctive orders were granted.
2. An Amended Summons was filed by the Plaintiff on 29 January 2025 seeking additional orders.
3. On 25 April 2025 the matter was transferred to the High Court at Suva, conditional on interim orders of 17 September 2024 being maintained with costs of \$1000.00 being summarily assessed for the Defendants,
4. The dispute between the parties, who are siblings, relate to real property described as CT 9727, Lot 2, DP 2339 in Suva, Viti Levu. The property was initially acquired by their late father Mohammed Hakim in 1960 , who passed away on 20 November 2015.
5. The property was transferred to the Plaintiff and the Defendants, as tenants-in-common, on 4 November 1998.
6. Constructed on the property is a building with rent paying tenants. Within the precinct is affixed a sign board, on which advertisements may be displayed for a fee.
7. The Plaintiff instituted this proceeding alleging that the Defendants acted in breach of a constructive trust and colluded to deprive him of his share of rental monies from the date of their father's passing.

## B. Injunctive Relief

8. The interim orders granted by the High Court at Lautoka on 17 September 2024, were;

1. *THAT an interim injunction, as prayed for in paragraph (1) or the prayer to the summons restraining the First and Second Defendants from selling, transferring, disposing, encumbering and/or dealing with land more fully described as Certificate of Title No 9727 in the City of Suva, in the island of Viti Levu and being Lot 2 on Deposited Plan No 2339, in any shape or form, whatsoever and/or howsoever is granted, to be in force for the next fourteen (14) days.*
2. *THAT all the tenants pay all rental received from flats constructed on land more fully described as Certificate of Title No 9727 in the City of Suva, in the island of Viti Levu, and being Lot 2 on Deposited Plan No 2339 at the Civil Registry of the High Court, as prayed for in paragraph (iii) of the prayer to the summons.*
3. *THAT the moneys by way of rental from advertisements placed on the land more fully described as Certificate of Title No 9727 in the City of Suva, in the island of Viti Levu and being Lot 2 on Deposited Plan No 2339 paid in the Civil Registry of the High Court, as prayed for in paragraph (iv) of the prayer to the summons.*
4. *THAT the orders herein be served on all the tenants renting in the flats in the building constructed on land more fully described as Certificate of Title No 9727 in the City of Suva, in the island of Viti Levu and being Lot 2 on Deposited Plan No 2339, by leaving it at the respective flats thereto prayed for in paragraph (v) of the prayer to the summons.*
5. *THAT the Orders 2, 3 and 4 above herein, are on temporary basis till further orders are made.*
6. *THAT the orders made today are to be served forthwith on the Defendants in the same manner.*
7. *THAT the matter is adjourned to 8 September 2024 for mention at 10.00am.*

9. An Amended Summons was filed by and on behalf of The Plaintiff on 23 January 2025, in which additional orders are sought;
- vi. For an Order that the First and the Second Defendants provide full, proper and detailed accounts to the Plaintiff of all income received and expenses (with documentary evidence) from the use and/or rental of the land more fully described as Certificate of Title No. 9727 in the City of Suva, in the island of Viti Levu and being Lot 2 on Deposited Plan No 2339 and all flats on the said land, since the demise of the father on 20 November 2015.*
- vii. For an Order that the First and Second Defendants provide all Bank Statements where all income are deposited by the tenants and/or received from the use and/or rental of the land more fully described as Certificate of Title No 9727, in the City of Suva in the island of Viti Levu and being Lot 2 on Deposited Plan No 2339, and from all flats on the said land, since the demise of the father on 20 November 2015.*
- viii. For an Order that the First and Second Defendants be restrained from operating all and/or any Bank Accounts where all income is deposited from the use and/or rental of the land more fully described as Certificate of Title No 9727 in the City of Suva, in the island of Viti Levu, and being Lot 2 on Deposited Plan No 2339, and all flats on the said land, since the demise of the father on 20 November 2015, until further order.*
10. It is necessary to set out the interlocutory orders granted on 17 September 2024, together with those being sought by way of the Amended Summons filed on 23 January 2025, pursuant to Order 29, Rule 1 and Order 32, Rule 1 of the *High Court Rules* 1988.<sup>1</sup>

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<sup>1</sup> Order 29, Rule 1 of the High Court Rules 1988 states;

- (1) An application for the grant of injunction may be made by any party to a cause or matter before or after the trial of the 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, counter claim or third party notice, as the case may be.
- (2) Where the applicant is the plaintiff and the case is one of urgency and the delay caused by proceeding in the ordinary way would entail irreparable or serious mischief such application may be made ex parte on affidavit but except as aforesaid such application must be made by notice or 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

### C. Final Relief-Writ of Summons

11. The Court notes that the Plaintiff seeks final injunctive relief also in sub-paragraphs (h)-(m) in the Writ of Summons, filed on 5 September 2024, on basically the same terms as those sought in the Amended Summons.

Are the interlocutory injunctive orders sought in the Amended Originating Summons prohibitive or mandatory?

12. The procedure applicable to interlocutory injunctions, (prohibitive in nature), are governed by Order 29 of the *High Court Rules* 1988, and the principles settled in *American Cyanamid v Ethicon Ltd* [1975] 1 All ER 594.
13. The Court is of the view however, from a review of the interim orders sought in the Amended Summons and in the Writ of Summons, that the injunctive orders sought by the Plaintiff, are not prohibitive, but rather mandatory in form, in that they require 'the taking of positive steps' as articulated by this Court in *Pacific Marine & Civil Solutions Pte Ltd v PA Group (Fiji) Pte Ltd*-Civil Action HBC 300 of 2022.
14. The principles settled in *American Cyanamid* are not relevant to mandatory injunctions as clarified in *N.W.L Ltd v Woods* [1979] 1 WLR 1294;
15. The injunctive orders sought in the Amended Summons do not just restrain or preserve the status quo pending final determination but require the persons subjected to these orders to take *active steps* or action immediately, to replace for example, the process for the payment and banking of rental monies complained about by the Plaintiff;
  - (i) *For an injunction restraining the First and Second Defendants from selling, transferring, disposing and/or dealing with land more fully described as Certificate of Title No 9727 in the City of Suva in the island of Viti Levu and being Lot 2 on*

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injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, as the Court thinks fit.

*Deposited Plan No 2339 in any shape or form or howsoever until the final determination of this action.*

- (ii) For an order that the First and Second Defendants deposit all rental received from Flats....described as Certificate of Title No 9727 in the City of Suva ... into this Honorable Court...etc;*
- (iii) For an order that all the tenants pay all rental received from flats constructed on land...described as Certificate of Title No 9727 in the City of Suva .....at the Civil Registry of the High Court until further order ..*
- (iv) For an order that moneys [paid] by way of rental from advertisements placed on the land more fully described as Certificate of Title No 9727 in the City of Suva....be paid at the Civil Registry , until further orders*
- (v) For an order that the orders herein be served on all the tenants renting in the flats in the building ...by leaving it at the respective flats thereto*
- (vi) For an order that the First and Second Defendants provide full, proper and detailed accounts to the Plaintiff of all income received and expenses (with documentary evidence from the use and/or rental of the land*
- (vii) For an order that the First and Second Defendants provide all bankstatements where all income are deposited by the tenants and/or received from the use and/or rental of the land....and all flats on the land since the demise of the father on 20 November 2015, until further order*
- (viii) For an order that the First and Second Defendants be restrained from operating all or any bank accounts where all income from the use and/or rental of the land more fully described as Certificate of Title No 9727 ...and all the flats on the said land, since the demise of the father on 20 November 2015.*

**16.** The Court notes that the injunctive orders outlined in the Amended Summons are the same, in terms, as those sought in sub-paragraphs (h),(i),(j),(k),(l) and (m) of

the Writ of Summons. This leads to a peculiar feature of mandatory injunctions granted at an *interim* phase of proceeding that Megarry, LJ alluded to in *N.W.L Ltd v Woods* [1979] 1 W.L.R 1294., that the Plaintiff is effectively getting all he wants, at the interim stage of proceeding, rather than at trial. The Court therefore needs to be satisfied to a high degree of assurance before granting them-*Shepherd Homes Ltd v Sandham* [1971] 1 Ch 348;

17. As cited in *Halsbury's Laws of England*, 4<sup>th</sup> ed. Vol 24, para 948;

*“ A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can easily be remedied... a mandatory injunction will be granted on an interlocutory application ”*

18. The rationale behind ‘high degree of assurance’ threshold for mandatory injunctions was outlined in *Evolution Fiji Ltd v Radisson Hotels (Fiji) Pte Ltd - Civil Action No 214 of 2019*;

*“First, the over-riding consideration is which course is likely to involve the least risk of injustice if it turns out to be drastic “wrong” in the sense of granting an interlocutory injunction to a party who fails to establish his right at trial (or would fail if there was a trial) or, alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial.*

*Secondly, in considering whether to grant a mandatory injunction, the Court must keep in mind that an order which requires a party to take some positive step at an interlocutory stage may well carry a greater risk of injustice if it turns out to have been wrongly made than an order which merely prohibits action thereby preserving the status quo.*

*Thirdly, it is legitimate where a mandatory injunction is sought to consider whether the Court does feels a high degree of assurance that the plaintiff will be able to establish*

*this right at a trial. This is because the greater the degree of assurance the Plaintiff will establish his right, the less will be the risk of injustice is granted.*

Has the Plaintiff disclosed a high degree of assurance of his rights being infringed to warrant the grant of mandatory injunctions as sought in the Amended Summons, rather than at trial ?

19. The Court is grateful to counsels for the copious submissions filed. Counsels take the approach that the interlocutory orders sought are prohibitory in nature and rely on the principles settled in *American Cyanamid*. These principles do not apply to mandatory injunctions, and in that regard, the submissions do not greatly assist the Court.
  
20. The Plaintiff takes a robust approach in alleging that orders (i)-(v) it seeks in the Amended Summons are not flawed, uncertain, unjust or circumvent any legislative provision or legal principle and seeks forcefully to strike out any assertions by the Defendants, otherwise. The Plaintiff seeks to argue against each and every submission made by the Defendants against the grant of the orders it seeks in the Amended Summons. The singular rationale of the submissions made by the Plaintiff is that the interim orders it had secured on 17 September 2024, (and the additional ones it seeks by way of Amended Summons), are just and appropriate, in the circumstance, without articulating, in principle, the justification for the grant of mandatory injunctive orders against the Defendants. The Court will have something to say about the intemperate language used by the Plaintiff counsel later, however, the robust approach taken by the Plaintiff's counsel in submissions before this Court was unhelpful because;
  - (i) The interim orders issued by the High Court, at Lautoka, on 17 September 2024, were granted on an urgent, temporary basis, after the Defendants were served on 10 September 2024. The Defendants had not had the opportunity to respond to the Summons filed by the Plaintiff, by way of affidavit evidence, when the Summons was heard on 17 September 2024.
  - (ii) The injunctive relief sought by the Plaintiff in the Amended Summons are mandatory in form, and he has a high threshold to meet to convince the

Court, on a *high degree of assurance* threshold, that he would, in any event, be granted the same orders also, at trial. The Plaintiff does not provide cogent submissions, *on principle*, why the mandatory injunctions ought to be granted as sought in the Amended Summons, rather, he takes the position that the initial grant of Summons on 17 September 2024, and the further orders sought by Amended Summons are justified. This position does not accord with practice in this jurisdiction, where a Court will always review an earlier *ex-parte* or *urgent* grant of interlocutory orders, on an *inter-parte* basis later, to determine whether the orders granted earlier, ought to be maintained or reviewed.

21. The primary cause of action preferred by the Plaintiff is that of breach of a constructive trust, or the breach of his right to receive a share of the rent from the Defendants, as tenants in common. The facts are outlined and particularized in the Writ of Summons;

6. *That the father transferred the said land with the flats to the Plaintiff and the Defendants and this was effected by the father during his lifetime and which said transfer was registered in the Plaintiff and in both the First and Second Defendants names on 4 November 1998.*

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10. *That in the best of the Plaintiff's knowledge and belief, the said flats and the advertisement placed on the land are in totality rented out for about \$6000.00 per month.*

11. *That to the best of the Plaintiff's knowledge and belief and information the rents from the said flats and lands was and is being deposited in an account that was already held by the father and/or also the personal accounts of the Defendants.*

12. *That after the demise of the father, the First and Second Defendants were collecting, receiving and holding the rents from the flats and advertisement and utilized the same for their own use and benefit.*

13. *The income received and utilized by the Defendants included the monies belonging to the Plaintiff when in fact they were receiving the Plaintiff's of the monies which they were holding as trustees*
  14. *The Defendants breached their duties as trustees of the Plaintiff.*
22. Particulars of the Breach of Trust and Collusion are then provided at paragraph 14;
- (i) *The First and Second Defendants have not and are not communicating, honestly and openly with the Plaintiff regarding the rental received from the said flats and land;*
  - (ii) *The First and second Defendants have a duty to pay the Plaintiff his share of all the rental moneys received from the said flats and land after the demise of the father and thus have failed and/or neglected to do so;*
  - (iii) *As co-owner of the said land the Defendants have failed/neglected protect and advance the rights and/or interest of the Plaintiff as a co-owner of the said land and flats;*
  - (iv) *As co-owner of the said land and flats, the Defendants have failed, neglected and refused to pay the Plaintiff his share of the rental monies received by them from the said flats and land and utilized for their own use and benefit.*
  - (v) *Failure to provide any accounts for the total rent received by the Defendants*
23. The Defendants oppose the grant of injunctions on 2 main grounds, the sustainability of the orders, and on merit. On the sustainability of the orders the Defendants state;
- (i) *The injunctive relief sought by the Plaintiff in the Amended Summons are flawed, uncertain, unjust and/or circumvent legislative provisions and established principle, and cannot be sustained-Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd [2004] FJJCA 29; ABU0011.2004S. In*

relation to orders (i)-(viii) sought in the Amended Summons the Defendants state that their effect respectively are;

***Order (i)***

- (a) A structure exists on CT 9727, in Suva on Lot 2, DP 2339 in which there are a series of flats with tenants living in them. The First Defendant has been maintaining and managing the property since their father's demise, without any issue raised by the Plaintiff about the rental monies received until 2024. The Defendants have further incurred considerable expense in the maintenance and upkeep and the security of the structure and tenants on CT 9727.

The maintenance and up-keep of the said property would be considered a dealing with CT 9727.

The relief sought by the Plaintiff under this order would result in a lacuna in the maintenance of CT 9727 with the tenants having no recourse to raise issues of concern to them regarding security and maintenance.

The grant of order (i) will deprive the tenants of CT9727 of a reliable and effective landlord

***Orders (ii) –(iii)***

- (b) The orders require the Defendants and tenants to pay to the Civil Registry of the High Court, Suva all rental monies received and payable on CT9727. The orders are ambiguous, as not all flats are consistently rented out. The term of the orders are not specific, so the Defendants are uncertain what is required of them. Further order (iii) would seem to cover past tenants also, and requires persons who are not parties to the action to comply. The requirement that '*all the tenants pay all rental received from flats on CT9727*' is meaningless, as no tenant has received rent from CT9727.

The orders are ambiguous and uncertain in orders (ii) and (iii) and cannot stand.

**Order (iv)**

(c) The order seeks to bind persons and/or entities not party to this proceeding and cannot be sustained.

**Order (v)**

(d) The tenants of CT9727 are not a party to this action. This order should be struck off.

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**Order (viii)**

(e) Particulars of the bank account are not specifically pleaded by the Plaintiff . The ambiguity and broad phrasing of the relief would restrain the Defendants from accessing and/or utilizing any bank account registered under their name(s) on the premise that such accounts may have rent deposited in them. The relief sought subjects the Defendants to almost having no access to their own finances and ought to be struck out.

(ii) The Plaintiff is not entitled to interlocutory relief in any event on applicable principle.

**D. ANALYSIS**

Can the Court be satisfied to a high degree of assurance at this interim stage of proceeding that it can grant the permanent injunctions sought, rather than at trial, bearing in mind what the Defendants state are the effect of the restraining orders currently in place?

24. The Plaintiff's primary cause of action is for breach of trust. It relates to the collection, and payment of rental monies from the tenants of the building owned by the Plaintiff and Defendants located on CT 9727, with the Plaintiff alleging that

the breach of a constructive trust has been caused by the non-payment of his share by the Defendants, since the demise of their father on 20 November 2015.

25. The central issue of dispute between the Parties concerns the collection and distribution of rental proceeds from the property described as CT 9727, DP 2339 located in Suva over which they have been registered as joint owners since 4 November 1998. The Court does have certain queries arising from its review of pleadings ;

(a) A constructive trust is both an institution and an equitable remedy.- *Muschinski v Dadds* [1985] HCA 78; (1985) 160 CLR 101<sup>2</sup>. How does the Plaintiff allege that a constructive trust subsists in his favor since 2015 only given that;

(i) *The Plaintiff has been registered as joint owner with the Defendants (all residents of Canada) of the subject property CT 9727, located in Suva, Fiji since 4 November 1998.*

(ii) *How were their collective duties as landlord discharged in terms of the collection and banking of rental monies from the property at CT 9727 in Fiji since 1998, given the parties all reside in Canada? How were proceeds (if any), distributed between the parties since 1998?*

(iii) *Was the Plaintiff involved in the management of the property, collection, banking and distribution of rental proceeds since 1998? If not, who was doing these work and did the Defendant exhibit any dissension about how this matter was handled between 1998 and 2024?*

(iv) *Why does the Plaintiff allege a breach of trust arose only in 2015, and why did he initiate proceeding only, in 2024 given he has been a joint owner of the subject property in Fiji since 1998? Was there a change in 2015 in the manner rental proceeds were collected, banked or distributed to the parties?*

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<sup>2</sup> see *Soulos v Korkontzilas* (1997) 212 NR 1 (SCC)

- (v) *Did the Plaintiff voice any concern about the change in the accounting of rental proceeds with the Defendants after 2015, at any time, prior to initiating proceedings in 2024?*
- (vi) *Will the equitable remedy of laches or the application of statutory limitation restrict the right of the Plaintiff to recover outstanding rental income allegedly owed to him since 2015?*
- (vii) *Given that the final ancillary remedies sought by the Plaintiff are monetary ones (reimbursement) and damages is it necessary or appropriate to grant or maintain mandatory injunctive orders at an interim stage of this proceeding?*

26. These are issues that may be determined at trial, however they are queries that the Court extracts from a bare perusal of pleadings. The Court has to make an assessment of the Plaintiff's case given the high threshold it has to meet, and it is difficult to make this assessment from a perusal of the pleadings, as they stand.
27. In addition, the Court finds the issues raised by the Defendants in their detailed submissions,<sup>3</sup> about the flawed and uncertain nature of the orders sought in the Amended Summons, and raised in paragraph 22 herein of this Ruling) as being well made and compounds the difficulty the Court in making the assessment whether the Plaintiff has met the threshold requirement for the grant of mandatory injunctions .
28. The Court considers, after a consideration of these issues, that the Plaintiff has not satisfied it on the high degree of assurance required to extend the mandatory orders of 17 September 2024, or to grant the additional orders sought in the Amended Summons filed on 29 January 2025.
29. Alternatively, the Court may also refuse the grant of the injunctive orders sought on the additional basis that;

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<sup>3</sup> Defendants Written Submissions filed on 10 December 2025

- (i) The Plaintiff seeks special, aggravated and punitive damages, an order for reimbursement and for full and proper account. This indicates that the Plaintiff considers damages to be an adequate remedy. There is no evidence that the Defendants cannot pay damages as a remedy if the Plaintiff succeeds at trial- *Evolution Fiji Ltd v Radisson Hotels (Fiji) Pte Ltd*-Civil Action No 214 of 2019.
- (ii) There is an alternative remedy also sought by the Plaintiff relief that CT 9277 be sold, and the First and Second Defendants be paid their share from the sale after the Plaintiff is paid all outstanding rental monies owed to him from the appropriate period determined at trial.
30. There are other contentious issues, on the application of the statute of limitations, laches, defective affidavits contempt, the application of the hearsay rule and potential criminal allegations. The Court does not have to make a determination on these competing issues at this stage. They will be matters for trial. The Court has made its determination on the refusal of the orders sought in the Amended Summons of 29 January 2025, on principle.
31. The last point that the Court would raise concerns the robust manner the Plaintiff's counsel makes written submissions<sup>4</sup>. Counsel is put on notice about the requirement of Chapter 6 of the *Rules of Professional Conduct and Practice* (and rule 6.1) about the need to treat other practitioners with courtesy and fairness. Counsel is put on notice that the Court will ensure that proper decorum be maintained hereon in this proceeding.

#### **FINDINGS:**

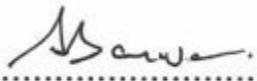
1. **The orders sought in the Plaintiff's Amended Summons filed on 23 January 2025 are refused and dismissed;**
2. **The orders sought in the Defendants Summons filed on 14 October 2024 are granted and affirmed that;**

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<sup>4</sup> Paragraph 9 Defendants Submissions in Reply filed on 5 January 2026

- (i) This cause be transferred from Lautoka High Court to the High Court at Suva;
  - (ii) The Orders made ex-parte on 17 September 2024, be set aside.
3. Costs to be paid by the Plaintiff to the First and Second Defendants, summarily assessed at \$1,000.00 each, to be payable within 21 days of this Ruling.



  
.....  
Savenaca Banuve  
Judge

Dated at Suva this 23<sup>rd</sup> day of March, 2026.