**IN THE SUPREME COURT OF FIJI**
**[CRIMINAL APPELLATE JURISDICTION]**

**CRIMINAL PETITION: CBV0021 OF 2024**
[Court of Appeal No: ABU0015 of 2024]

**BETWEEN** : **BAADAL PRASAD SHARMA**

***Petitioner***

**AND** :
1. **AARADHYA KASHVI SHARMA**
2. **VINESHNI MANI DASS**
3. **ALPANA DARSHIKA KUMAR**
4. **THE REGISTRAR OF TITLES**
5. **THE ATTORNEY-GENERAL OF FIJI**

***Respondents***

**Coram** : The Hon. Mr Justice Anthony Gates, Judge of the Supreme Court
The Hon. Mr Justice Brian Keith, Judge of the Supreme Court
The Hon. Mr Justice Terence Arnold, Judge of the Supreme Court

**Counsel** : Petitioner in Person
Ms L Tavaiqia and Ms A Bilivalu for the 1st to 3rd Respondents
Mr V Ram for the 4th and 5th Respondents

**Date of Hearing**: 11th April, 2025

**Date of Judgment**: 30th April, 2025

# JUDGMENT

**Gates, J**

[1] I agree with the conclusions reached by Arnold J in his following judgment. I also agree with the orders proposed.

**Keith, J**

[2] I have read the judgment of Arnold J in draft. I agree with it. There is nothing I can usefully add.

**Arnold, J**

[3] This case concerns interlocutory (or interim) orders made in the context of litigation involving a dispute about the administration of an estate, in circumstances where the parties on each side allege that the other side has acted fraudulently and otherwise improperly. It provides a powerful illustration of the need in such cases for a trial to take place promptly, so that contested facts are resolved, and finality is achieved. It also illustrates the difficulties that can arise where a lawyer who is a party to, and a critical witness in, litigation acts for himself. In such circumstances, the lawyer may find it difficult to bring to bear the independent and dispassionate judgment that the effective and efficient conduct of litigation requires.

**The background**

[4] The Petitioner, Baadal Sharma, a practising lawyer, is the administrator of the estate of his brother, Akash Sharma, who died intestate in 2018. He had replaced his father as the administrator in 2022. The first to third respondents, who are represented by the Legal Aid Commission, claim to be beneficiaries in Akash Sharma's estate:

(a) the first respondent as Akash Sharma's daughter;

(b) the second respondent as his de facto partner and the mother of the first respondent; and

(c) the third respondent as his wife.

The petitioner denies that Akash Sharma is the father of the first respondent and also that he was in a de facto relationship with the second respondent. He accepts that the third respondent was Akash Sharma's wife, but says that she has signed a document in which she renounced any further entitlements under the estate having previously received a payment of F$48,000 (representing Akash Sharma's Fiji National Provident Fund balance).

[5] The trigger for the current dispute was the resolution of a claim issued by the petitioner in 2021 on behalf of the estate against the Permanent Secretary for Health and the Attorney-General for medical negligence leading to Akash Sharma's death. The claim was settled before trial. The Judge assigned to the case, Mr Justice Amaratunga, made a consent order that (among other things) required the Permanent Secretary and the Attorney-General to pay the agreed settlement sum of almost F$328,500 to the petitioner in his capacity as the administrator of the estate within 21 days of the withdrawal of the action.

[6] On 22 July 2022, shortly before the money was to be paid, the first three respondents (whom I shall refer to as the respondents) issued proceedings against Akash Sharma's father (as the former administrator of the estate) and the Petitioner (as the current administrator). In the proceedings, the respondents challenged three things in particular:

(a) the execution of the renunciation deed by the third respondent, on the ground that she had signed it under duress and in ignorance of the true facts;
(b) the transfer of some estate land to Akash Sharma's parents, who transferred it to the petitioner in his personal capacity a few weeks later, on the basis that the transfer occurred without the rights of the first two respondents having been taken into account;
(c) the petitioner's successful application in 2022 to be appointed administrator of the estate, because he failed to disclose in it that any of the respondents were beneficiaries.

Because the respondents sought orders in relation to the settlement monies and the estate land, the Registrar of Lands and the Attorney-General were included in the proceedings as the fourth and fifth defendants respectively. They were represented in this Court by Mr V Ram of the Attorney-General's Chambers.

[7] The respondents sought and obtained ex parte orders in the nature of injunctions on 29 July 2022. Relevantly, Mr Justice V D Sharma ordered that:

> 1. The Defendants whether by themselves, their servants, agents, members or otherwise howsoever be restrained from accepting, administering, dealing, distributing and handling any properties whether real or personal belonging to the Estate of Akash Shanil Sharma;
> 2. The First and Second Defendants whether by themselves, their servants, agents, members, or otherwise howsoever be restrained from receiving any settlement sum from the Office of Attorney General to be paid in Civil Action No. HBC 43 of 2021;
> 3. The Defendants whether by themselves, their servants, agents, members or otherwise howsoever be restrained from dealing with iTaukei Lease No. 33047, property belonging to the Estate of Akash Shanil Sharma until further orders of the Honourable Court.

The Judge also ordered that the documents be served on the petitioner and other defendants that day and that the matter be adjourned for mention until 3 August 2022.

[8] On 25 August 2022, the respondents applied to vary the interlocutory injunctions. The only variation relevant for present purposes is that the settlement sum held by the Attorney-General be placed "into the Judicial Trust Account pending determination of this matter" (ie, in an interest-bearing account with the Chief Registrar of the Court). In September 2022, the petitioner applied to set the interlocutory orders aside. These applications were ultimately determined in February 2024.

[9] In the intervening period, there were numerous mention hearings and delays for various reasons, albeit that some progress was made. In particular:

(a) On 28 April 2023, the petitioner filed a statement of defence to the respondents' statement of claim of 29 July 2022 and included a counterclaim.

(b) On 12 May 2023, the respondents filed a reply to the statement of defence and a defence to the counterclaim.

(c) On 16 August 2023, the petitioner filed written submissions in support of his application that the interlocutory injunctions be set aside.

(d) On 7 September 2023, the petitioner filed an affidavit in support of his application that the interlocutory injunctions be set aside.

(e) On 16 November 2023, the respondents filed their written submissions and later, filed an undated supplementary submission.

[10] Mr Justice Sharma heard these applications together on 24 January 2024, including whether the injunctions issued ex parte should be made permanent until trial. Before hearing argument, the Judge suggested that, if the petitioner agreed, he could make a consent order that the settlement funds be held by the Chief Registrar in an interest-bearing account for the time being; then, he could deal with the petitioner's application to set aside the interlocutory injunctions and after that, he could fix a timetable for an expeditious trial process. However, the petitioner refused to agree to this proposal and maintained his position that the settlement funds should be paid to him immediately, as per Mr Justice Amaratunga's consent order.

[11] Accordingly, the Judge heard the parties' submissions. In the result he left the interim orders in place without variation and made no order for costs.[1] The petitioner then filed an appeal against the Judge's decision and applied to the Judge for a stay of the extended interim orders and of any further proceedings in the cause. The Judge refused that application.[2] The Petitioner then made the same application to the Court of Appeal. By an ex tempore ruling dated 2 October 2024, the then President of the Court of Appeal, Mr Justice Jitoko, granted a stay in relation to the interlocutory orders, but subject to a requirement that the settlement sum be paid into an interest-bearing account held by the Chief Registrar.

[1] *Sharma v Prasad* [2024] FJHC 88.
[2] *Sharma v Prasad* [2024] FCHC 467.

[12] As the petitioner's appeal to the Court of Appeal was unsuccessful,[3] he now seeks leave to appeal to this Court.

**Basis for petition**

[13] The grounds that the petitioner wishes to raise on the proposed appeal are essentially the same grounds as he pursued before the High Court Judge and the Court of Appeal. In opposing the continuation of the injunctions in the High Court, the petitioner submitted that: the respondents had not disclosed to the Court that Mr Justice Amaratunga had ordered that the settlement funds be paid to the respondent; there was an abuse of process or an absence of jurisdiction because there were conflicting court orders; the order against the Attorney-General was contrary to s 15 of the State Proceedings Act 1951 (which provides that a court shall not grant an injunction against the State but may make an order declaratory of the rights of the parties); the respondents had unjustifiably delayed issuing their proceedings or were guilty of laches; there was no serious issue to be tried; the petitioner was at risk of suffering irreparable harm through the loss of the land in a mortgagee sale; and the respondents had not provided an undertaking as to damages.

**Discussion**

[14] In order to determine whether this is an appropriate case for the grant of leave to appeal, I propose to examine briefly the merits of the petitioner's contentions.

[15] In general, the purpose of interlocutory injunctions is to preserve the status quo until trial. Desirably, the trial should occur promptly, although this is not always possible. One of the features of the present case is that the High Court Judge was alert to the need for a prompt trial and attempted to facilitate that but was unsuccessful as a result of the stance adopted by the petitioner. Despite their "preserving the status quo" focus, interlocutory injunctions can sometimes effectively determine proceedings, by (in

[3] *Sharma v Sharma* [2024] FJCA 233.

effect) finally disposing of the action unfavourably to the unsuccessful party on the injunction application. Obviously, if this is likely in a particular case, it needs to be carefully considered in the court's decision-making.

[16] The approach to be adopted to applications for interlocutory injunctions is well-known and has been confirmed by this Court in several recent decisions. For example, there is a helpful overview in the judgment of Mr Justice Keith in *Digicel (Fiji) Ltd v Fiji Rugby Union*.[4] The court must first be satisfied that there is a serious question to be tried. This is not a high bar. It must simply be shown that the claim is not frivolous or vexatious. Second, the court must consider whether damages would be an adequate remedy for each side, ie, the plaintiff if successful and the defendant if successful. Third, if there is doubt about the adequacy of damages for either of the parties, the issue of the balance of convenience must be considered. Where the balance of convenience lies depends on the circumstances of individual cases, including, for example, if the grant or refusal of the interlocutory injunction will have the practical effect of bringing the action to an end.

[17] Before this Court, the petitioner complains that the High Court did not ask the three questions just noted – is there a serious question to be tried? are damages an adequate remedy? where does the balance of convenience lie? Had it done so, he submits, the Judge would have found in his favour. In addition, the petitioner argues, the order in respect of the disbursement of the settlement funds should not have been made as it was prohibited by s 15 of the State Proceedings Act. Moreover, it contradicted the order made by another court and so was unconstitutional. The petitioner also reiterates his submission that that the respondents delayed unjustifiably.

*(i) Was there a serious question to be tried?*

[18] By the time the Judge dealt with the issue of whether the interlocutory injunctions should continue or be set aside he had before him:

(a) a detailed set of pleadings;

[4] *Digicel (Fiji) Ltd v Fiji Rugby Union* [2006] FJSC 40, at [120]-[128].

(b) the affidavits of the second and third respondents setting out their versions of events and the petitioner's affidavit in opposition responding to the respondents' allegations and giving his versions of events, in each case attaching a variety of exhibits.

(c) the parties' written submissions.

In addition, the Judge was aware of the background as, apart from issuing the interlocutory injunctions ex parte, he had conducted numerous mention hearings in the latter half of 2022 and during 2023. So, the Judge was in an excellent position to assess whether there was a serious question to be tried, bearing in mind that the bar is a low one.

[19] Before this Court, the petitioner repeated an argument that he had made in support of his stay application, namely that because the respondents did not file a reply to his affidavit in opposition, they must be taken to have accepted all he said in that affidavit. This meant, he argued, that they could not show there was a serious question to be tried, because he had denied or attempted to counter all of their allegations.

[20] The petitioner's argument is without merit. The respondents' position was plain from their various pleadings, their affidavits and their written submissions, just as the petitioner's position was plain from the material he filed. The parties were clearly in dispute on a range of matters. The respondents could have filed further affidavits in reply to the petitioner's affidavit in opposition, but the fact that they did not do so does not mean they must be taken as having accepted the petitioner's position. The dispute between the parties was not one that could sensibly be determined be means of the filing of serial affidavits. Rather, the parties' positions having been articulated in the pleadings and affidavits, pre-trial steps needed to be completed, and the matter taken to trial for determination as soon as reasonably possible.

[21] In the result, given the evidence before the High Court Judge, there were plainly serious questions to be tried.

*(ii) Were damages an adequate remedy?*

[22] In one of the mentions hearings and in his written and oral submissions before the High Court, the petitioner drew attention to the fact that the respondents had not provided an undertaking as to damages, nor had they indicated in their affidavits what their financial position was. The High Court Judge did not, however, address this issue in his judgment.

[23] I consider that the Judge was wrong not to deal explicitly with this matter. Given that undertakings as to damages and evidence of financial position are typically required in interlocutory injunction cases, the petitioner was entitled to know why his argument that they were required in this case was rejected.

[24] That said, undertakings as to damages are not always required. I give two examples:

(a) In *Allen v Jambo Holdings Ltd*, Lord Denning MR said that a court would not deny a legally aided applicant an interlocutory injunction to which they would otherwise be entitled simply because their undertaking as to damages would be of limited value.[5] His Lordship said that he could not see why a poor plaintiff should be denied an injunction where a rich plaintiff would obtain one.

(b) In *Ali v Ali*, Master Nanayakkara did not require an undertaking as to damages where he was satisfied that the defendant trustee was acting in a high-handed manner and exercising his powers in a way that breached the trust.[6] The existence of a strong prima facie case justified the granting of an interlocutory injunction despite the fact that no undertaking as to damages had been given.

[25] In the present case, the respondents were represented by the Legal Aid Commission. Under the Legal Aid Act 1996, the duty of the Commission is to provide assistance to "impoverished persons", subject to its available resources.[7] A person is "impoverished" if they cannot "reasonably afford" the cost of legal services.[8] The Commission is entitled to tailor its assistance to the needs of particular litigants. It may, for example, provide legal assistance free of charge, it may require a contribution from the assisted litigant, or it may make a contribution to a person's legal costs.[9]

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[5] *Allen v Jambo Holdings Ltd* [1980] 2 All ER 502 (CA), at 505.
[6] *Ali v Ali* [2016] FJHC 379.
[7] Legal Aid Act 1996, s 6(1).
[8] Section 6(2).
[9] Section 7(2).

[26] From the court's perspective, it would have been helpful to know what it was about the respondents' circumstances that led the Commission to provide them with assistance and what the nature of that assistance was. But presumably, given the language of the Act, they were people whom the Commission considered to be unable to "reasonably afford" the costs of the legal services they would need to pursue their claim. Requiring them to give an undertaking as to damages might well have been put the proceedings out of reach financially.

[27] There are three other relevant considerations:

(a) The allegations of breach of trust made in the present case are similar to those made in *Ali v Ali*. There are aspects of the facts that raise particular concern, for example, the circumstances surrounding the making of the Deed of Renunciation and Agreement in September 2018 and the bringing of the proceedings in relation to Akash Sharma's death in 2021. The case may, then, be of a type where it is appropriate to consider whether an undertaking should in fact be required. That said, unlike the Master in *Ali*, we are unable to reach a clear view about the strength of the respondents' case against the petitioner, which tends to undermine this point.

(b) As noted earlier, the High Court Judge offered the petitioner the opportunity to have a prompt trial, but he rejected it. Further, in his submissions to this Court he criticised the Court of Appeal's observation that the parties should consider giving "utmost urgency" to this matter and facilitate an early trial. He submitted that there is no reasonable cause for this urgency, arguing that "hastened justice compromises integrity". As the petitioner envisages it, it seems that an undertaking as to damages would have hung over the respondents' heads for an extended period. The petitioner's approach undermines his complaint that the respondents delayed unreasonably in issuing their proceedings (which complaint is, in any event, without substance).

(c) Among the damage that the petitioner said he would suffer as a result of the interlocutory injunctions was the loss of the estate land that his parents transferred to him in his personal capacity. He said he had built a house on the land and that he would lose it in a mortgagee sale because he was prevented from making mortgage payments on it by order 3 of the interlocutory orders (see paragraph [7] above). For myself, I do not regard making mortgage payments as offending the prohibition on "dealing with" the property in order 3. In any event, the petitioner could have sought clarification from the court or a variation of the order to deal with this if it was in fact important to him.

[28] In the result, I do not consider that the Judge's failure to require an undertaking as to damages was problematic in the circumstances of this case.

*(iii) The balance of convenience*

[29] What is relevant to the balance of convenience will vary from case to case. As I see it, the matters referred to in paragraph [27](b) and (c) above are relevant, in particular, the petitioner's refusal to agree to the Judge's proposal to achieve an early trial, which was made before the hearing in January 2024. I also consider that the petitioner's arguments that the order in respect of the disbursement of the settlement funds should not have been made as it was prohibited by s 15 of the State Proceedings Act and was unconstitutional because it contradicted the order made by another court are relevant. This is because they are matters that could easily have been resolved if the petitioner was in fact acting in the best interests of the estate and was prepared to facilitate a prompt trial, as I now explain.

[30] Order 1 of the interlocutory orders applies to all the defendants (including the Attorney-General) and prohibits them from "… distributing … any properties whether real or personal belonging to the Estate of Akash Shanil Sharma". Order 2 prohibits the petitioner and his father "from receiving any settlement sum from the Office of Attorney General to be paid in Civil Action No. HBC 43 of 2021". In combination, these orders do appear to infringe the prohibition in s 15 of the State Proceedings Act.

[31] However, as I noted earlier, on 22 August 2022 (ie, a month after the interlocutory orders were granted ex parte), the respondents filed an application that the interlocutory orders

to be varied so that the settlement funds could be deposited in an interest-bearing account operated by the Chief Registrar. The petitioner could have consented to this variation, given that the funds belonged to the estate, and it was obviously to the estate's advantage that they earned interest while the dispute as to the identity of the beneficiaries was being resolved.

[32] Moreover, as is apparent from the record of the proceedings and Mr Ram's submissions in this Court, placing the funds in an interest-bearing account with the Chief Registrar would have met the Attorney-General's concern about the orders potentially contravening s 15 of the State Proceedings Act, for the following reason. Mr Justice Amaratunga's consent order was that the funds were to be paid to the petitioner *as the administrator of the estate*. Had the funds been placed in an interest-bearing account with the Chief Registrar, they would have been held on trust *for the estate*. Because the Attorney-General's Office would have disbursed the funds to the credit of the estate, there would have been substantial compliance with the Judge's order. That arrangement would also have dealt with the alleged "conflict" between the orders of the two High Court Judges.

[33] The petitioner did not agree to this self-evidently sensible proposal. Rather, he filed an application to set aside the interlocutory orders. Moreover, he did not agree to the High Court Judge's suggestion at the hearing of 24 January 2024 that he consent to a variation of the interlocutory injunctions so that the funds could be held in an interest-bearing account. Consequently, it was not until the ex tempore Ruling of the President of the Court of Appeal on 2 October 2024 that the funds were required to be placed in an interest-bearing account. The fact that the petitioner allowed the settlement funds to sit not earning interest for over two years suggests that he was not acting in the best interests of the estate. In addition, the effect of the petitioner's stance was to keep the arguments about non-compliance with s 15 and conflict between judicial orders on foot unnecessarily.

[34] In my view, the consequence is that the balance of convenience does not favour the petitioner.

**Decision**

[35] In the circumstances of this case, I do not see any of the points raised by the petitioner as meeting the requirements in s 7(3)(a), (b) or (c) of the Supreme Court Act 1998. Accordingly, I would decline leave to appeal. I would order the petitioner to pay the first to third respondents the sum of $7,000 by way of costs and the fourth and fifth respondents the sum of $5,000 by way of costs.

[36] The costs awarded are to be paid by the petitioner personally, not by the estate. As noted at paragraph [9](a) of this judgment, when on 28 April 2023 the petitioner filed a defence to the respondents' claim against him in his capacity as administrator of the estate, he also filed a counterclaim against the respondents. In part, the counterclaim sought damages against the respondents *in the petitioner's personal capacity*. An example is the petitioner's allegation that he personally, not the estate, held iTaukei Lease No 33047 and that he was likely to lose his interest in the lease in a mortgagee sale. He claimed that as a result of the respondents' wrongful action, he had suffered "special damages, general damages, loss of investment opportunities, inconvenience and mental anguish". In this way, the petitioner intermingled (and pursued) his personal interests with his duties to the estate as administrator. This has affected his approach to the litigation.

[37] The petitioner's approach has resulted in wasted costs. The petitioner has not conducted the proceedings with reasonable competence and expedition in the following respects:

(a) First, he refused to consent to the settlement funds being placed to the estate's credit in an interest-bearing account. The effect of this was to deprive the estate of funds that it should have earnt.

(b) Second, he has prolonged this matter unreasonably by pursuing unmeritorious points and failing to facilitate a reasonably prompt trial. As noted, he was critical of the Court of Appeal's direction that the parties facilitate the prompt hearing and disposal of the substantive action.

In these circumstances, it is appropriate that the petitioner pay the costs personally.

***Orders:***

1. *The petition for leave to appeal is refused.*
2. *The petitioner must, in his personal capacity, pay $7,000 by way of costs to the first to third respondents and $5,000 by way of costs to the fourth and fifth respondents.*

**The Hon Mr Justice Anthony Gates**
JUDGE OF THE SUPREME COURT

SUPREME COURT FIJI

**The Hon Mr Justice Brian Keith**
JUDGE OF THE SUPREME COURT

**The Hon Mr Justice Terence Arnold**
JUDGE OF THE SUPREME COURT