



IN THE SUPREME COURT OF NAURU
AT YAREN DISTRICT
CIVIL JURISDICTION

CIVIL CASE NO. 28/2022

BETWEEN

ITURIN TIMOTHY

PLAINTIFF

AND

FABIANA KETTA

DEFENDANT

Before: Khan, ACJ
Date of Hearing: 2 March 2023
Date of Ruling: 10 March 2023

Case may be referred to as: *Timothy v Ketta*

CATCHWORDS: Application for interim injunction.

APPEARANCES:

Counsel for the plaintiff: V Detenamo
Counsels for the defendant: T Tannang

RULING

INTRODUCTION

1. On 5 December 2022 the plaintiff filed an application for interlocutory injunction seeking to restrain the defendant from interfering in the movement of vehicles, workers and for the construction of his dwelling house on Portion 168 Ataro, Menang District (Portion 168).
2. On 10 November 2022 the plaintiff obtained 89.7% of the landowners consent to build his dwelling house on Portion 168.

3. Prior to obtaining the landowners consent, the plaintiff wrote a letter to the defendant through his pleader Mr P Ekwona asking her to stop interfering in the surveying of the part of Land Portion 168.
4. The plaintiff attempted to gain access to the land which was surveyed by the Department of Land and Survey with an area of 455 square metres being allocated to him (455 square metres). Both the plaintiff's portion (455 square metres) and the defendant's land are situated next to each other and the plaintiff attempted to gain access to his land portion through the defendant's land which was objected to by the defendant, and understandably so, as the defendant was in occupation of her land.
5. When the defendant refused the plaintiff to go through his property, the plaintiff then tried to obtain access from a site coming downhill from the back, which was away from the defendant's dwelling house and her land.
6. The defendant again objected to the plaintiff acquiring access to his land through this proposed new access and she stood in front of the payloader and as a result the driver was forced to stop the machinery and was unable to complete the new access way. The defendant claimed that where the new access was being created was an area reserved for her family.
7. As a result of the defendant's action, the plaintiff filed this suit claiming injunction against her.
8. The application for interlocutory injunction was first called for inter parte hearing on 12 December 2022 when the defendant was represented by Messrs D.A. Law & Associates and an order was made for the defendant to file a statement of defence and affidavit in reply within 14 days and the plaintiff was given liberty to file a reply within 7 days thereof and the matter was adjourned to 30 January 2023 for mention.
9. On 30 January 2023 Mr Tannang the defendant's counsel had not complied with the orders made on 12 December 2022 and sought further 7 days to do so, which was objected to by Mr Detenamo. Mr Tannang stated that the defendant also lived on Land Portion 168 and she had no objection to the plaintiff building his house on Land Portion 168 (455 square metres) provided that there was no encroachment on her land.
10. Despite Mr Detenamo's objection, I granted the defendant further 7 days to comply with the orders made on 12 December 2022 and adjourned the matter to 2 March 2023 for hearing. Again, on 2 March 2023 Mr Tannang did not comply with the orders to file a statement of defence and affidavit in reply. Once again he sought further adjournment to do so. This was objected to by Mr Detenamo and I refused to grant any further adjournment and the matter proceeded to hearing.

PRINCIPLES OF INTERLOCUTORY INJUNCTION

11. In *Buramen v Dageago*¹ I stated at [2] and [3] as follows:

[2] I stated in *Kam v Scotty*² at [4] as follows:

[4] The principle to be applied in application for interlocutory injunction have been authoritatively explained by Lord Diplock in *American Cyanamid Co. v Ethicon Ltd* [1975] UKHL 1; [1975] A.C. 396; [1975] 1 All E.R. 504 H.L. They may be summarised as follows:

1. The plaintiff must establish that he has a good arguable claim to the right he seeks to protect;
2. The court must not attempt to decide this claim on affidavits; it is enough if the plaintiff shows that there is a serious question to be tried.
3. If the plaintiff satisfies these tests, the grant or refusal of an injunction is a matter for the exercise of the Court's discretion on the balance of convenience.^[1]

[3] In an article by Justice Datour² Gopal Shir Ram, Court of Appeal, Malaysia he stated at [2] as follows:

“Lord Diplock’s re-formulation of the threshold test for an injunction in *American Cyanamid* is so well known that it is pointless reproducing it here. All that need be said is that the Malaysian courts have interpreted Lord Diplock’s speech as involving three steps. In *Keet Gerald v Mohd Noor Abdullah* [1995] 1 MLJ 193, we attempted to crystallise *American Cyanamid* principles:

To summarize, a judge hearing an application for an interlocutory injunction should undertake an inquiry along the following lines:

- (1) he must ask himself whether the totality of the facts presented before him discloses a bona fide serious issue to be tried. He must, when considering this question, bear in mind that the pleadings and evidence are incomplete at that stage. Above all, he must refrain from making any determination on the merits of the claim or any defence to it. It is sufficient if he identifies with precision the issues raised on the joinder and decides whether these are serious enough to merit a trial. If he finds, upon a consideration of all the relevant material before him, including submissions of counsel, that no serious question is disclosed, that is an end of the matter and the relief is refused. On the other hand if he does find that there are serious questions to be tried, he should move on to the next step of his inquiry;
2. I am mindful of the fact that this is an application for an interim injunction and I shall refrain from making any determinations on the merits of this claim. The defendant has not filed any documents to support her claim that she is entitled to the area of 455

¹ [2022] NRSC 13; Civil Action No. 6 of 2022 (2 May 2022)

² [2021] NRSC 49; Civil Case No. 27 of 2021 (3 December 2021)

square metres, and in fact concedes that it belongs to the plaintiff, and has no objection to him building his dwelling house thereon.

3. Despite her concession, the defendant is interfering in the plaintiff's use of land portion (455 square metres) without lawful claim and I therefore issue an order that:
 - 1) The defendant, her servants and agents are restrained from interfering in the plaintiff's use of Land Portion 168 (455 square metres) until the final determination of this cause of action;
 - 2) The plaintiff is entitled to the cost of this application which is summarily assessed I the sum of \$300.00

DATED this 10th day of March 2023


Mohammed Shafiullah Khan
Acting Chief Justice

