

NELLY TAMBE v ROY TAMBE

**High Court of Solomon Islands
(F. O. KABUI), J)
Civil Case No. 188of 1985
Hearing: 11th February 2000
Judgment: 11th February 2000**

**A. Gray for the Plaintiff (Petitioner)
Defendant (Respondent) in person**

RULING

(Kabui, J): The Plaintiff (Petitioner) applied by Summons filed on 7th February 2000 for the following Orders:-

- 1. *Ex parte injunction against the Defendant restraining him from trespassing on the Plaintiffs land;***
- 2. *Ex parte injunction restraining the Defendant from offering any violence or threats of violence to the Plaintiff;***
- 3. *Final injunction against the Defendant restraining him from trespassing on the Plaintiff's land;***
- 4. *Final injunction against the Defendant restraining him from offering any violence or threats of violence to the Plaintiff.***

The Summons was served upon the Defendant (Respondent) only this morning. The Defendant (Respondent) asked for an adjournment on the instruction of his lawyer. Miss Gray, Counsel for the Plaintiff (Petitioner), did not object to the Defendant's request for an adjournment but pressed for the granting of interim injunction pending the determination of the issue of the ownership of the house on Parcel No. 191-039-278 at Naha. She argued that the balance of convenience lay in favour of the Plaintiff (Petitioner).

The Background

The Plaintiff (Petitioner) and the Defendant (Respondent) were once lawfully married. They were divorced in 1986. The decree absolute was dated 21st May 1986. An interim custody order and a restraining order were made by the Court against the Defendant (Respondent) on 31st December 1985. An ex parte Summons was subsequently filed by the Plaintiff (Petitioner) for leave to apply by Notice of Motion for an Order that a Writ of Attachment be issued against the Defendant (Respondent) for committal to prison for contempt of Court. I granted leave on 21st January 1999. The Notice of Motion was then set down for hearing on 5th February 1999. I adjourned that hearing and made certain Orders, one of which was that the date of hearing was to be set down by the Registrar in the usual way. In the meantime, the Plaintiff (Petitioner) engaged Miss Gray, as her solicitor, and filed a fresh application for injunctive orders as set out above. Miss Gray pointed out to the Court that there was no evidence on the file to suggest that the interim Orders made on 31st December 1986 were extended after the divorce in 1986. She pointed out that the said interim Orders seemed to have lapsed and nothing more seemed to have

happened since. The present application she said was a fresh one for fresh relief.

Interim Injunction

As stated by the Courts many times in this jurisdiction, there must be triable issues before the Court to prevent the case for the party seeking an interim injunction being treated as being frivolous or vexatious. In this case, no Summons has been filed by the Plaintiff (Petitioner) seeking the determination of the ownership of the house on Parcel No. 171-039-278 at Naha. The relief sought by the Plaintiff (Petitioner) in her Summons are all injunctive orders. The affidavit evidence filed by the Plaintiff (Petitioner) suggests that the house on Parcel No. 191-039-378 belongs exclusively to the Plaintiff (Petitioner). It says nothing about the possibility of arguing its ownership in the Court. The Defendant (Respondent) disputed exclusive ownership from the bar table. There is obviously a triable issue between the parties which is yet to come to Court at some other time. Miss Gray did correctly recognise this point but continued to press for the interim orders. I am prepared to rule that there is a triable issue at hand if this is an urgent application for an interim injunction. There is no evidence before me that this is an urgent case. Although in paragraphs 11 and 12 of the Plaintiff's (Petitioner's) affidavit filed on 7th January 2000 do speak of accommodation problem faced by the Plaintiff (Petitioner), such is not a new problem to the Plaintiff (Petitioner). It may well have been worsened by other factors which are not identified to this Court apart from there being 10 people in one room in the Plaintiff's (Petitioner's) sister's house. I do not dispute this fact. However, the Plaintiff (Petitioner) had waited for too long to come to Court to seek equitable relief. The Plaintiff (Petitioner) became the legal sole owner of the house on Parcel No. 191-039-278 at Naha on 1st July 1988, 2 years after her divorce. Why did she not act soonest? It is now 12 years since she obtained title to the land on which the house in dispute was built. The Defendant (Respondent) has been in physical possession of that property for over 10 years, claiming ownership also. The Defendant (Respondent) may not feel that he is not trespassing at all. He may think he also has a right to be on the property though he may be thoroughly wrong in his view. It is not unusual after divorce for the parties to dispute ownership of the matrimonial home. The fact that the Plaintiff (Petitioner) has title to the property is not conclusive evidence of sole ownership in view of the principles of trust in matrimonial property disputes. The law, on interlocutory injunction such as this, as stated in Equitable Remedies Injunctions and Specific Performance, by I.C.F Spry, 1971 at 446 is this, **"... in applications for interlocutory injunctions the delay or standing by of the plaintiff does not itself give rise to a bar to relief, through laches or acquiescence, unless the other material circumstances render unjust the grant of the particular remedy in question and any consequent injustice cannot be avoided by the imposing of appropriate conditions or restrictions upon the plaintiff. Further, delay may here be of importance also as an evidentiary matter, since sometimes it tends to show that the imminent injury in question is not as serious as might otherwise have been supposed; and on other occasions delay of great length may give rise to an inference of fact that the position of the defendant has meanwhile been prejudiced in such a way that the grant of the particular relief in question would be "practically unjust".**

That is to say, each case would depend upon its own facts. Delay alone would not necessarily prevent the need for an interlocutory relief if the merit of the case so warrants. In this case, there is clearly a property dispute between the parties. If the parties would not sort it out outside of Court, then any of them is entitled to come to Court for a determination of the dispute at the earliest opportunity. The Plaintiff has sat on her rights for too long. I do not think there is a need for interim injunction in this case for trespass. This is a case where the Defendant (Respondent) is saying **"I am also entitled to live in this house. You can come and live with me if you wish"**. The Plaintiff (Petitioner) then says, **"We are divorced. The house is mine. Get out from it. I will ask the Court to force you out whilst awaiting time for the Court to decide who owns it"**. I do not think I can force the Defendant (Respondent) out of the property by a restraining order on the ground of trespass. I refuse the orders sought in trespass. Even if I am wrong on this ground, this is not a case where the balance of convenience argument would apply conveniently. The Plaintiff (Petitioner) produced no evidence of damage she would suffer if she was refused the injunctive order in trespass nor made an undertaking to compensate the Defendant (Respondent) if I granted her the injunctive order in trespass. Therefore, on balance, if there is a balance of convenience at all, it would lie in favour of the Defendant (Respondent).

The Plaintiff (Petitioner) also asked for non-molestation order from this Court. The Plaintiff (Petitioner) alleged in her affidavit evidence that the Defendant (Respondent) had issued threats against her to the extent that he threatened to kill her as recently as in December 1999. These threats were general in nature but were sufficient to cause fear in the Plaintiff (Petitioner). I am prepared to make an order restraining the Defendant (Respondent) from offering any violence or threats of violence to the Plaintiff (Petitioner) until the Court decides the ownership of the house on Parcel No. 191-039-278 at Naha on condition that the main action is filed in Court within 21 days from today. This order cannot be open ended in the absence of the main action being before the Court in the first place. I am mindful that the property dispute between the parties is an ancillary matter which still remains unresolved since their divorce in 1986. I Order accordingly.

F. O. Kabui
Judge