

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 218 OF 2018

BETWEEN : **AJAY DEO PRASAD** formerly of Naqoro, Rakiraki but now of 6
Tabletop Circuit, Horningsea Park, 2171 NSW, Australia, Retired
School Teacher.

PLAINTIFF/APPLICANT

AND : **ARUNA KUMARI** of Naqoro, Rakiraki as the Sole Executrix and
Trustee of the **ESTATE OF RAJENDRA PRASAD** late of Naqoro,
Rakiraki, Fiji, Farmer, Deceased.

FIRST DEFENDANT/FIRST RESPONDENT

AND : **THE DIRECTOR OF LANDS** of Suva, Fiji.

SECOND DEFENDANT/SECOND RESPONDENT
(NOMINAL)

Appearances : Mr R. Charan for the plaintiff/applicant
No appearance for the first and second defendants/respondents

Date of Hearing : 2 October 2018

Date of Ruling : 2 October 2018

R U L I N G

[On *ex parte* injunction]

[01] This is an *ex parte* notice of motion filed on 01 October 2018 (*the application*) by the plaintiff (*applicant*) seeking certain restraining injunctive orders against the first defendant (*respondent*). The application is supported by the affidavit of Ajay Deo Prasad (*Prasad*) (*the evidence in support*). The applicant applies for the following orders:-

1. *An injunction that the first defendant and/or her servants and/or her agents or otherwise howsoever be restrained from dealing with the Property comprised in Crown Lease No. 19332, L/D No. 4/13/1026, Lot 1, SO276 and Lot 14 RR1112 comprising a total area of 4.1393 hectares in any manner whatsoever;*
2. *An injunction that the first defendant and/or servants and/or her agents or otherwise howsoever be restrained from interfering with the plaintiff's possession of a residential house on a portion of the subject land being Crown Land Lot 1 SO 2716 having an area of 1217 square meters;*
3. *An injunction that the first defendant and/or servants and/or her agents or otherwise howsoever be restrained from charging or encumbering or transferring the Property compromised on a portion of the subject land being Crown Land Lot 1 SO 2716 having an area of 1217 square meters;*
4. *An injunction that the first defendant and/or servants and/or her agents or otherwise howsoever be restrained from any way proceeding with any act or process whereby it gives the plaintiff's area of occupation of Crown Land Lot 1 SO 2716 having an area of 1217 to any third party.*
5. *The defendant do pay the plaintiff the costs of this application.*

[02] The application is filed under Order 29, Rule 1 of the High Court Rules, as amended ('HCR') and inherent jurisdiction of the court. The HCR, O 29, R 1, provides:-

Application for injunction (O 29, R 1)

1 (1) An application for the grant of an injunction may be made by any party to a 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, counterclaim 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 of motion or summons.
(Emphasis supplied)

(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 injunction applied for may be granted on

terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

Background Facts

- [03] The background facts as gleaned from the evidence in support briefly are as follows.
- [04] One Rajendra (plaintiff's brother) became the registered proprietor of L/D No. 4/13/1026, Crown Lease No. 19332, Lot 1, SO 2716 and Lot 14 RR 1112 comprising a total area of 4.1393 hectares (*'subject land'*). The plaintiff and his wife built a residential house on a portion of the subject land being Crown Lease No. 19332, Lot 1 SO 2716 having an area of 1217 square metres (*'the property'*). Rajendra proposed that the plaintiff purchase the property for the consideration sum of \$15,000.00. The plaintiff accepted the offer and paid the consideration sum of \$15,000.00. Rajendra could not subdivide and transfer the property to the plaintiff. He (Rajendra) passed away on 26 April 2014.
- [05] As the Executrix and Trustee of the Estate of Rajendra Prasad, the first defendant executed a Sale Note on 7 January 2015, to transfer the property to the plaintiff. The first defendant sought consent from the second defendant, the Director of Lands to effect the transfer. The plaintiff paid the survey costs of \$3000.00 and a sum of \$1,900.00 for processing of Lease over Lot 1 SO 2716. The first defendant then executed the application for consent to transfer the property to the plaintiff. The second defendant prepared the lease and informed the first defendant to execute the lease and informed the first defendant to execute the lease before the same could be registered under the plaintiff's name. The first defendant refused to execute the lease documents. The first defendant now states that she executed the documents under suspicious circumstances without proper understanding.
- [06] The plaintiff has issued a writ of summons against the first defendant claiming among other things specific performance with a permanent injunction restraining the first defendant from transferring the Crown Lease No. 19332 to a third party or further encumbering the same in anyway. At the same time, the

plaintiff has also filed an *ex parte* notice of motion to seek prohibitory injunction against the first defendant on *ex parte* basis.

Considering the application

- [07] The HCR, O 29, empowers the court to grant an injunction *ex parte* on affidavit 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.
- [08] I have considered the evidence on the affidavit and the submission of counsel for the applicant. On affidavit, the applicant states that he is facing an eminent threat of suffering financial loss if the property is sold by the respondent without his knowledge, he will suffer irreparable damages in that he will not be compensated for the investments which he had made towards the building and improvement of the property and not only does the property hold financial value but it is also of great sentimental value.
- [09] The applicant undertakes to deposit a sum of FJ\$10,000.00 as undertaking as to damages and/or security for costs to cover the costs incurred by the respondent in the event his claim against the defendants is unsuccessful.
- [10] The applicant applies for a prohibitory injunction. He has given reasons for making *ex parte* application. Provisionally, the case appears to be overwhelming on the merits. The relief sought on the *ex parte* application is proportionate to the reasons for applying *ex parte*.
- [11] Having considered the evidence on affidavit and the submission made in court by counsel for the applicant, I am satisfied that the case is one of urgency and the delay caused by proceeding in the ordinary way would entail irreparable mischief to the applicant. Accordingly, I grant an *ex parte* injunction restraining the respondent from dealing with the property being the portion of the subject land being Crown Land Lot 1 SO 2716 having an area of 1217 square metres. I would grant the orders sought in 2, 3 and 4 of the application. However, the applicant must deposit a sum of FJ\$10,000.00 into court as an undertaking as to damages and/or security for costs. The injunctive orders shall be valid until the

hearing of the application *inter partes*. The applicant must serve these orders on the respondent together with all the documents forthwith. The matter is now adjourned for *inter partes* hearing at 9.30 am on 17 October 2018.

The result

1. Interim injunction as sought in prayers 2, 3 and 4 of the application dated 28 September 2018 is granted to be valid until 17 October 2018.
2. The applicant shall deposit a sum of FJ\$10,000.00 as undertaking as to damages and/security for costs within 14 days.
3. The matter is set down for *inter partes* hearing at 9.30 am on 17 October 2018.

.....^{H.M. Mohamed Ajmeer} 28.10.18

M.H. Mohamed Ajmeer

JUDGE

At Lautoka
2 October 2018

Solicitors:

For the applicant; M/s Ravneet Charan Lawyers; Barristers & Solicitors

