

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**CIVIL JURISDICTION**

**HBC NO. 54 OF 2018**

**BETWEEN** : **NAVIN NISCHAL RAI** of Johnson Road, Drasa, Lautoka,  
Shop Attendant.

**PLAINTIFF**

**AND** : **VISHAL RAM** of Field 40, Lautoka, Unemployed.

**1<sup>ST</sup> DEFENDANT**

**AND** : **SHALVINA AMBALIKA REDDY** of Field 40, Lautoka.  
Laborer.

**2<sup>ND</sup> DEFENDANT**

**Appearance** : Ms. Ravai for the Plaintiff on the instructions of Messrs. Fazilat  
Shah Legal- Barristers & Solicitors

**Both the Defendants** : Appear in Person

**Date of Hearing** : 01<sup>st</sup> May, 2018

**Date of Ruling** : 22<sup>nd</sup> June, 2018

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**RULING**

**A. Introduction:**

1. This is an application by the Plaintiff moving for injunctive relief to repossess the Motor vehicle bearing Registration No. FV- 274, which is currently in the possession of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, after getting it registered in the 2<sup>nd</sup> Defendant's name, allegedly, by fraud.
2. By an ex-parte notice of motion (which was subsequently converted into inter parties) filed on 16<sup>th</sup> March 2018 and supported by his affidavit, the plaintiff, namely, Navin Nischal Rai, sought following orders;

- a. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants be restrained whether by themselves, their servants or agents or howsoever from interfering with the Plaintiff's repossession of Motor Vehicle No. FV 274.
  - b. For a further order that the said Defendants be restrained whether by themselves, their servants or agents or howsoever from interfering with Plaintiff's peaceful and quite enjoyment of Motor Vehicle No. FV 274.
3. The application is filed under Order 29, Rule 1 of the High Court Rules.
  4. Both the Defendants, appearing in person, opposed the application. They filed their individual affidavits in opposition on 13<sup>th</sup> April 2018 and the plaintiff filed his affidavit in reply on 8<sup>th</sup> May 2018.

**B. Background**

5. The plaintiff brought the substantive action against the Defendants, by his writ of summons and the statement of claim dated and filed on 16<sup>th</sup> march 2018, praying for the following reliefs;
  - a. The Defendants do forthwith return Motor Vehicle no. FV-276 to the Plaintiff,
  - b. General damages for fraudulent conduct,
  - c. General damages for assault and pain and suffering,
  - d. Alternatively, the sum of \$ 15,000.00 (Fifteen Thousand Dollars) \$12,000.00 being for the loss of the Motor Vehicle FV- 274 and \$ 3,000.00 being the cost for the replacement of windscreen.
  - e. An order that the Land Transport Authority (LTA) do forthwith cancel the registration in favor of the 2<sup>nd</sup> Defendant.
  - f. Cost on a Solicitor/ Client indemnity basis.
  - g. Any other reliefs which in the opinion of this Honorable Court is just and expedient.
6. **The Plaintiff in his affidavit in support for injunction, *inter-alia*, states that;**
  - a. He in February 2018 purchased the Motor Car No. FV 274 for a sum of \$ 12,000.00 for him and his wife to go to work.
  - b. The Defendant, who is known to him, having impressed him that he could obtain the early release of a sum of \$1,40,000.00, which remained to the credit of the plaintiff's father, namely, Ram Chandar, with the Life Insurance Corporation of India (LICI) in its Suva office, demanded from the Plaintiff to transfer the Motor Vehicle into his (defendant's) name and to give the possession of same

as a security , for it to be re-transferred and returned upon the payment of \$ 500.00 as his fees for helping the early release of the said sum of \$1,40,000.00.

- c. He is educated up to class 3 only. He was taken to the LTA office by the Defendants on 27<sup>th</sup> February 2018, made him to sign a transfer form in favor of the 2<sup>nd</sup> Defendant for Vehicle No: - FV-274 and he did not comprehend the actual details of the transfer form, where they had inserted \$ 3000.00 as the sale price, while he was not paid such an amount.
- d. Subsequently, when he confronted the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for the re-transfer and the release of the Vehicle both the Defendants refused to do so and the 2<sup>nd</sup> Defendant assaulted him in the process.
- e. That the 1<sup>st</sup> Defendant damaged the Windscreen of the Vehicle after the above incident and threatened to wreck it, if the Plaintiff pressed for its transfer and release.

**7. The Defendants in their affidavits in opposition state, among other things, that;**

- a. They on 27<sup>th</sup> February 2018 purchased the vehicle No. FV-274 for \$ 3,500.00 from the plaintiff, who had come to meet them along with his wife in the morning hours of 27th February 2018 and had told that he (Plaintiff), is selling the Vehicle for \$4,000.00 due to certain family issues.
  - b. The 1<sup>st</sup> Defendant bargained it for \$ 3,500.00 and as the Plaintiff agreed for same, they went to the LTA office, where on being told by the LTA officer that a confirmation letter was needed from a Justice of Peace, he along with his wife (the 2<sup>nd</sup> Defendant), the Plaintiff and his wife went unto a Justice of Peace, signed a confirmation letter and thereafter transferred the Vehicle in the name of his wife, the 2<sup>nd</sup> Defendant.
  - c. After two weeks the 1<sup>st</sup> Defendant got a call from the Plaintiff's family Lawyer for him and his wife 2<sup>nd</sup> Defendants to go to Lawyer's office to discuss about the transfer and there they were informed that the Vehicle had been transferred by them forcefully and upon further discussions the Plaintiff having become aggressive towards them, used inappropriate words on his wife, the 2<sup>nd</sup> Defendant and tried to molest her and she retaliated by giving a slap on the face of the plaintiff.
8. The 1<sup>st</sup> Defendant's position is that he purchased the Motor Vehicle bearing Registration No. FV-274 in the name of his wife the 2<sup>nd</sup> Defendant from the Plaintiff, as an outright sale for a sum of \$ 3,500.00. The Plaintiff's position is that he only

transferred the motor Vehicle to be held as a security to ensure the Payment of \$500.00 unto the 1<sup>st</sup> Defendant for the service he promise to render for the early release of the Money held with the Insurance Company in the Name of Plaintiff's father.

9. The learned Counsel for the plaintiff during her oral submissions at the hearing and in the written submission moves for mandatory injunction for the repossession of the motor Vehicle bearing No:- FV 274 , which is presently in the custody of the Defendants being registered in the name of the 2<sup>nd</sup> Defendant , who is the wife of the 1<sup>st</sup> defendant.

**C. The Law**

10. Order 29, Rule 1 is relevant to the application. Rule 1 spells out that:-

“Application for injunction (O.29. Rule 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”.*

**D. The Principle**

11. The Principles to be applied in an application for interim injunctions were authoritatively outlined by Lord Diplock in American Cyanamid Co v Ethicon Ltd [1975] All ER 396: According to Lord Diplock the Applicant must establish things namely:

- a. A serious question to be tried;
- b. Inadequacy of damages;
- c. The balance of convenience.

**E. Determination**

12. The plaintiff in his Notice of motion has moved for an order restraining the Defendants from interfering with the Plaintiff's act of repossession of the motor vehicle No: - FV-274. It means, the Plaintiff wants to regain the possession of the Vehicle by way of an injunction order, which, if granted, could become the final relief the Plaintiff has moved for in his statement of claim.

13. The Plaintiff also moves for further order to restrain the Defendants from interfering with the quiet possession and enjoyment of the vehicle by the Plaintiff. The 1<sup>st</sup> order above in its essence is a mandatory in nature directing the defendants to restore plaintiff's possession of the motor vehicle until final determination of the action.
14. The Plaintiff complains that fraud has been committed by the Defendants during this process and states that he has made a complaint to the CID in this regard. The relevant letter from the CID Branch of the Lautoka Police station has been filed marked as MNR-4 annexed to his affidavit in support.
15. I now turn to the issue that whether or not the plaintiff is entitled to mandatory injunction for the repossession of the Motor Vehicle No. FV-274 pending the final determination of the action.
16. As per the orders sought, I find the Order 1 is in the nature of a mandatory order and Order 2 is a restraining order. The principles for granting a mandatory injunction were set out in *Redland Bricks Ltd –v- Morris (1969) 2 ALL ER 576* .
17. A mandatory injunction can only be granted where the plaintiff shows a very strong probability on the facts that grave damage will accrue to him in the future. It is a jurisdiction to be exercised sparingly and with caution, but in the proper case unhesitatingly.
  - A. Damages will not be a sufficient or adequate remedy if such damage does happen.
  - B. The cost to the defendants to do the work or the act must be taken into account.
  - C. The court must be careful to see that the defendant knows exactly in fact what he has to do.

However the House of Lords went onto say every case must depend essentially on its own particular circumstances. In a mandatory injunction case the principles to adhere will change on the circumstance of the case.

18. The plaintiff is seeking through Order 1 to get possession of the motor vehicle that has been taken by the Defendants on the, alleged, fraud. The response given by the Defendants in their respective affidavits, to this allegation of fraud and misrepresentation, is not convincing.
19. The Order 1 Plaintiff is seeking a Mandatory Injunction “the effect of which is to require the performance of a certain act” viz to return forthwith the Motor Car in question. The American Cyanamid decision does not apply in relation to Order 1 sought here because that relates to a “quia timet” action claiming an injunction to

restrain a threatened infringement of the plaintiff's patent. In the instant case the action had already occurred. In other words the Vehicle is already with the Defendants.

20. However, in relation to Order 2 prayed for by the Plaintiff, I would consider the application of the principles enunciated in American Cyanamid Co.

a. **Serious Issue**

21. For the Court to consider interlocutory injunction, the plaintiff must establish that the claim raises serious issues to be determined by the Court.

22. The value of the Motor Vehicle bearing No. Vf-274 is claimed to be \$12,000.00. The Defendants do not refute this, though no a formal valuation report has been obtained by either party.

23. The Plaintiff in his statement of claim and the affidavit in support makes serious allegation of fraud against the Defendants. It is not safer to decide the allegation of fraud and/or misrepresentation purely relying on the affidavits of the parties'. It is always prudent to adjudicate the issues of this nature at the proper trial, at the end of which the most justifiable decision could be arrived at in fairness to both the parties.

24. According to the Plaintiff, it is said that he agreed to transfer the Vehicle only as a security and to be, subsequently, re-transferred to the Plaintiff after payment of the quoted fees of \$ 500.00 to the 1<sup>st</sup> Defendant for the help he promised for the early release of the funds from the Insurance Company in Suva.

25. The Defendants in their respective affidavits in opposition, have not specifically denied the each and every averments in the affidavit of the plaintiff, particularly, the averments with regard to the Plaintiff's contention that there was an agreement for the 1<sup>st</sup> Defendant to assist the Plaintiff for the early release of funds from the Insurance Company in Suva, for a fee of \$500.00.

26. In the supplementary affidavit filed by the Plaintiff sworn by his wife, namely, **Sayal Devi**, she vehemently denies the signing of the writing dated 27<sup>th</sup> February 2018 under the title "TO WHOM IT MAY CONCERN" which is annexed to the both the Defendants affidavit as SAR-1 and VAR-1. Further, this document, which is claimed to have been signed before a Justice of Peace, does not bear any attestation clause, Signature or the Seal of the Justice of Peace. Further, there is no acceptable proof of payment and acknowledgment of the, purported, sale price that the Defendants claim to have paid to the Plaintiff.

27. There seems to be a serious issue to be decided as to whether the Plaintiff would have simply agreed and transferred the ownership of the vehicle, which was, undisputedly, of the value of \$12, 000.00 and handed over the possession of it to the Defendants on account of mere \$ 500.00, claimed to have agreed to be paid by the Plaintiff as the 1<sup>st</sup> Defendant's fees for the early release of insurance money.
28. The 1<sup>st</sup> Defendant in his affidavit in opposition states that the Plaintiff and his wife on 27<sup>th</sup> February 2018 approached him offering his car for sale quoting only \$4,000., owing to certain family issues. The 1<sup>st</sup> Defendant says that he offered only \$3,500.00 for which the plaintiff, purportedly, agreed. But, the Plaintiff in his affidavit and submissions says that the Defendants have inserted \$3,000.00 as the sale price, which he did not intend for. This need to be subjected to deep scrutiny at the trial.
29. Another important question that begs consideration is whether the Plaintiff, who bought the Vehicle on 2<sup>nd</sup> February 2018 for \$12,000.00 or for anything closer to it would have sold it on 27<sup>th</sup> February 2018 for a sum of \$3,000 .00 or anything closer to it.
30. Although, the Defendants claim that they on the direction of the LTA Officer went unto a Justice of Peace to have a confirmation signed, no such a documents was tendered before the Court by the defendants to establish that such a document was in fact signed before the J.P. and to prove the Plaintiff was fully aware of the details of the transactions carried out on 27<sup>th</sup> February 2018.
31. It is observed that this disagreement has cropped up within two weeks of purported transfer, which, admittedly, led the defendants to go to the Plaintiff's Family Lawyer, where after their failure to arrive at a solution, the dispute got aggravated as stated in the Defendants affidavit. This on the face of it suggests that the Plaintiff seems to have signed the transfer papers on misrepresentation and/or on a fraud being perpetrated on the Plaintiff. This requires the intervention of the Court to preserve the subject matter till the ascertainment of the truth as to what really occurred during the process.
32. Statement of claim on the face of it outlines the circumstances under which the Plaintiff signed the documents and this clearly shows that there are serious issues to be tried at the trial. Therefore, I am of the view that until a final decision is arrived at after the trial, it is unsafe to leave the vehicle in the Custody of the Defendants without a sufficient surety being furnished to compensate the plaintiff if necessity arises at the end of the trial, particularly, when a serious allegation of fraud is leveled against the defendants and while they have not demonstrated their ability to compensate the Plaintiff.

33. The fact that the 2<sup>nd</sup> Defendant has the Registration in her name does not give her the absolute right to possess the vehicle and it will not preclude the court from making necessary orders what the justice demands for the time being.
34. The 1<sup>st</sup> Defendant in his oral submissions has not submitted any sufficient grounds to negate the submissions made by the learned counsel for the Plaintiff. In essence, the defendants have not satisfied the court that the plaintiffs do not have any serious issues to be tried and that their claim is frivolous and vexatious and that the plaintiff is merely trying to vex the defendants.
35. Plain reading of the statement of claim discloses some serious issues to be tried. These issues include determination whether there was in fact an actual sale and purchase of the vehicle in question or whether there was an element of fraud during the transaction as alleged by the Plaintiff. I am therefore satisfied that there are serious issues to be tried.

**b. Inadequacy of Remedy by way of damages**

36. I now return to the issue of inadequacy of damages.

- a. Lord Diplock in American Cyanamid case (above) stated that:

*'The court should go on to consider whether ... if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of trial. If damages ... would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appear to be at that stage' (at 408B-C).*

37. The plaintiff in his statement of claim has in fact claimed against the defendants for general damages for the, alleged, fraudulent conduct on the part of the Defendants. Alternatively, the plaintiff has prayed for \$ 15,000.00 out of which \$ 12,000.00 is for loss of Motor vehicle and \$ 3,000.00 being the cost for replacement of the windscreen, which was, allegedly, smashed by the 1<sup>st</sup> defendant due to the grudge over the plaintiff's demand for the return of the vehicle. The Defendants have not in their affidavits refuted the allegation of fraud.
38. The 2<sup>nd</sup> Defendant in whose name the Vehicle is presently registered is unemployed. She does not say that she has any income or sufficient funds to compensate the Plaintiff, if the Court at the end decides that the Plaintiff is entitled for the reliefs as prayed for. The vehicle, which is the subject matter of this action being a property



generally prone to day to day depreciation and in view of the alleged damage to the windscreen by the 1<sup>st</sup> defendant, need to be protected and preserved or should be secured by suitable security or undertaking.

39. In appropriate cases the court might order mandatory injunction. In other cases the court may order sufficient security to be kept for the preservation of the subject matter. In the above circumstances of this case, I am of the view that the Court should make suitable orders to preserve the subject matter till the final determination of the matter.
40. If the plaintiff can be fully compensated by an award of damages, no injunction will be granted. In this case the Defendants have not satisfied the Court that they can preserve the subject matter or make necessary provisions to compensate the Plaintiff. This calls upon this Court to make a suitable order to avert any possible damages in order to compensate the Plaintiff, if the necessity arises at the end of the case.

**C. Balance of Convenience**

41. Lord Diplock in American Cyanamid case (above) also stated that:

*'It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises'* (at 408E).


42. In the light of what transpired above, I don't think that this Court should seriously delve in to the question of balance of convenience.
43. It is true that the Plaintiff, as he has prayed for in the Statement of claim, can obtain an order for damages. But, the question is the adequacy and materialization of it at the end of the day. For all the above reasons and in fairness to both the parties, particularly, in order to ensure the preservation of the subject matter, I make the following orders, which I hope would serve the justice for the time being and keep the parties bound till the final determination of the substantial matter.

**D. Final Outcome**

- A. The Defendants shall, within 14 days from today jointly and/or severally, make a deposit of \$ 7,000.00 in the Court's Registry to the credit of this case, being the security for any possible damages to the Plaintiff and may keep the Vehicle in their possession till the final determination of the matter.
- B. Alternatively, the Defendants shall surrender the Vehicle No. FV-274 to the Registry of this Court within 14 days from today, in the condition prevailed at the time of the, purported, transfer.

- C. In the event the Vehicle is surrendered to the Registry, the Plaintiff shall be at liberty to have it released on making a deposit of \$ 3,500.00 at the Registry to the credit of this case.
- D. In the event, the Defendants fail to comply with the above orders “A” or “B” within 14 days from today, the Registrar of this Court shall take the possession of the Vehicle with the assistance of the Plaintiff and the Police and shall have it under Court’s Custody till the Plaintiff have it released as stated in paragraph “C “above.
- E. The above orders are made subject to further orders prior to or during the trial, if needed, pending the final order after trial.
- F. No cost ordered
- G. The matter will be mentioned after 14 days to see the compliance and for further directions.



  
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**A.M. Mohamed Mackie**  
**Judge**

**At Lautoka**  
**22<sup>nd</sup> June, 2018**