

IN THE HIGH COURT OF FIJI
AT LAUTOKA,
WESTERN DIVISION,

CIVIL JURISDICTION.

CIVIL ACTION NO - HBC 188 OF 2018

BETWEEN : **LALINI RANJANA DEVI SHARMA** of Navo, Nadi,
Accountant
PLAINTIFF

AND : **SASHI PREM LATA PRASAD** of Navo, Nadi, Domestic
Duties as the Administratrix of the **ESTATE OF RAJESH**
KUMAR late of Navo, Nadi, Mechanic, Deceased.
FIRST DEFENDANT

AND : **THE DIRECTOR OF LANDS** of Suva, Fiji.
SECOND DEFENDANT
(NOMINAL)

Counsel : Mr Nihar Shirish Rattan for the Plaintiff
Mr Eroni Maopa for the First Defendant

Date of hearing : Monday, 29th October, 2018
Date of ruling : Friday, 30th November, 2018

R U L I N G

(A) INTRODUCTION

1. The plaintiff filed a Writ of Summons dated 22nd August, 2018 together with Ex-Parte Notice of Motion, (subsequently made inter-partes by Court) supported by an affidavit sworn on 22nd August, 2018.

2. The reliefs prayed for in the Ex-Parte Notice of Motion dated 22nd August, 2018 are as follows:
 1. **AN INJUNCTION** *restraining the First Defendant from transferring Crown Lease No. 14136 (LD 4/10/4025) being land known as Part of Navo & Nacaqara, Lot 5 on SO 4008, in the Province of Ba in the District of Nadi and having an area of approximately 1017 square meters to a third party or further encumbering the same in any way until the final determination of this action or further order of this Honourable Court.*
 2. **AN ORDER** *that the Plaintiff continues to pay the monthly loan repayment for Investment Property Loan Account Number 9803306928 held in the name of Rajesh Kumar with Westpac Banking Corporation for preservation of property compromised in Crown Lease No. 14136 (LD 4/10/4025) being land known as Part of Navo & Nacaqara, Lot 5 on SO 4008, in the Province of Ba in the District of Nadi and having an area of approximately 1017 until the final determination of this action or further order of this Honourable Court.*
 3. *The First Defendant do pay the Plaintiff the costs of this application; and*
 4. *Such further or other relief as this Honourable Court shall deem just.*
3. The application is made pursuant to Order 29, Rule (1) and (2) of the High Court Rules, 1988 and inherent jurisdiction of the Court.

(B) THE FACTUAL BACKGROUND

4. In the **supporting affidavit** sworn on 22nd August, 2018, the plaintiff deposed;
 1. **THAT** *I am the Plaintiff in this action thus I am duly authorized to swear this Affidavit.*
 2. **THAT** *I am aware of the matters deposed to by me in these proceedings and for some matters I have referred to certain documentations.*
 3. *The Plaintiff and the Defendant had entered into a Sale and Purchase agreement (“Agreement”) dated 4th day of May 2018 for all the piece of property on Crown Lease No. 14136 (LD 4/10/4025) being land known as Part of Navo & Nacaqara,*

Lot 5 on SO 4008, in the Province of Ba in the District of Nadi and having an area of approximately 1017 square meters ("Property"). Annexed hereto and marked with letter "LRDS-1" is a copy of the said Sale & Purchase Agreement.

4. The First Defendant is the registered proprietor of Crown Lease No. 14136 and the vendor in the agreement. Annexed hereto and marked with letter "LRDS-2" is a copy of the said lease.
5. The First Defendant was facing difficulty to keep up with the loan repayment and agreed to sell the property to the Plaintiff.
6. The consideration sum as per the agreement for the sale of the property was \$70,000.00 (Seventy Thousand Dollars).
7. The First Defendant while in the process of selling the property fell behind in the loan repayment of the property. The loan repayment per month was \$516.00 (Five Hundred and Sixteen Dollars).
8. The First Defendant had requested the Plaintiff to pay the arrears and loan repayment and the said sum to be deducted from the sale price on the date of settlement.
9. The Plaintiff to-date has paid the following loan repayments into Westpac Banking Corporation loan account number 9803306928:

a)	16/04/18	\$600.00
b)	20/04/18	\$ 50.00
c)	27/04/18	\$520.00
d)	29/05/18	\$520.00
e)	28/06/18	\$520.00
f)	03/08/18	<u>\$550.00</u>
	Total	<u>\$2,760.00</u>
10. Annexed hereto and marked with letter "LRDS-3" are copies deposit slip of Westpac Banking Corporation for repayment of loan.
11. The Plaintiff was granted possession by the First Defendant after the Plaintiff agreed to carry on the loan repayments and the Plaintiff since then has spent approximately \$40,000.00 (Forty Thousand Dollars) in renovating the property.

12. *The agreement was lodged for the consent of the Second Defendant, however, the Second Defendant informed the First Defendant that since she is Administratrix of the Estate of Rajesh Kumar and there are other beneficiaries to the property the First Defendant needs to obtain their consent to the sale of the property.*
13. *The beneficiaries of the Estate of Rajesh Kumar are:*
 - (a) *Shweta Shital Lata;*
 - (b) *Shivangni Lata; and*
 - (c) *Rojesh Kumar.*
14. *The beneficiaries are minors thus the First Defendant was advised to obtain an Order by the High Court of Fiji for the sale of the property.*
15. *The First Defendant in the month of July 2018 approached the Plaintiff to pay her \$5,000.00 (Five Thousand Dollars) in order for the First Defendant to make necessary application to the High Court of Fiji for the sale of the property.*
16. *The Plaintiff upon the request of the First Defendant paid out \$5,000.00 (Five Thousand Dollars) to the First Defendant and the Plaintiff and the First Defendant agreed that the said sum to be deducted from sale price on the date of settlement. Annexed hereto and marked with letter "LRDS-4" is a copy of statement of the First Defendant to Fiji Police Force acknowledging receipt of \$5,000.00 (Five Thousand Dollars) being paid to her by the Plaintiff.*
17. *The First Defendant then filed an application in Lautoka High Court on 24th July, 2018 being case number Miscellaneous Action No. 22 of 2018 for sale of the property. Annexed hereto and marked with letter "LRDS-5" is a copy of the said application.*
18. *The Plaintiff has been informed by the First Defendant that she has withdrawn her application in Lautoka High Court regarding sale of property and has found a new buyer for the amount of \$100,000.00 (One Hundred Thousand Dollars).*
19. *The First Defendant is unjustly enriching herself by trying to sell the property to a third party after property was renovated and the loan repayments made by the Plaintiff in order to avoid mortgage sale of the property.*
20. *The First Defendant may sell property without the knowledge of the Plaintiff.*

21. *The First Defendant has caused loss to the Plaintiff by accepting part of the consideration sum and loan repayment and not taking steps to transfer the property to the Plaintiff.*
22. *The First Defendant has caused loss to the Plaintiff by accepting payment for ground rental arrears from year 2013 to-date in the sum of \$962.00 (Nine Hundred and Sixty Two Dollars). Annexed hereto and marked with letter "LRDS-6" are copies of Crown Land Rent Receipt.*
23. *The First Defendant has informed Westpac Banking Corporation not to accept loan repayment from the Plaintiff and the property is at risk for mortgagee sale should the First Defendant fail to pay the loan repayment on time.*
24. *The Plaintiff undertakes to abide by any Order this Court may make as to damages in case this Court should hereafter be of the opinion that the First Defendants shall have sustained any by reason of this Order sought by me which the Plaintiff ought to pay.*
25. *The First Defendant will not be prejudiced in any way should the injunction be granted.*
26. *I, as the Plaintiff wish to continue paying the loan repayment to Westpac Banking Corporation in relation to the property to avoid any chances of mortgagee sale should the First Defendant fail to meet the loan repayments.*
27. *The Plaintiff has lodged a Caveat on the subject property with the Registrar of Titles after obtaining the consent to Caveat however the same is yet to be endorsed by the Registrar of Titles and if an injunction is not granted the First Defendant may enter into agreement for the sale of the property with the third party. Annexed hereto and marked with letter "LRDS-7" is a copy of the Caveat with consent of the Second Defendant that has been sent for lodgment at the Registrar of Titles.*
28. *The Plaintiff by way of letter dated 14th August, 2018 has written to the Divisional Lands Manager West seeking their consent to institute legal proceeding and they have received the application and the same is in process. Annexed hereto and marked with letter "LRDS-8" is a copy of the said letter.*

5. The application for interim injunction is vigorously opposed by the First defendant. The First defendant filed an **affidavit in opposition**. The First defendant deposed;
1. *That I am the 1st named Defendant in this action.*
 2. *I depose this Affidavit to the best of my knowledge, information and belief.*
 3. *That I have read the Affidavit of Lalini Ranjana Devi Sharma (hereinafter called the said Affidavit) and I wish to respond to the same.*
 4. *As to paragraphs 3 and 4 of the said Affidavit, I admit the contents.*
 5. *As to paragraph 5 of the said Affidavit, I deny facing difficulties in repaying loan. Further, I state that I agreed to sell the land to the Plaintiff but there are reservation due to an earlier Sales and Purchase Agreement with her husband.*
 6. *As to paragraph 6 of the said Affidavit, I admit that the Sales and Purchase Agreement was made in the sum of \$70,000.00 but state that the actual price was in the sum of \$100,000.00. The Plaintiff requested to that she will pay \$30,000.00 cash towards the purchase and the agreement to be made in the sum of \$70,000.00 only to avoid tax.*
 7. *Further, this is the second agreement I executed in respect of the same property. Sometimes in 2016, the Plaintiff's husband, Karan Krishna Kumar and I executed a Sales and Purchase Agreement on the same piece of land. The sale did not go through as the Police advise my Solicitor and I verily believe that the Plaintiff was charged for Larceny and other rendered offences and she was trying to buy the property on the husband's name from the proceeds of the stolen money.*
 8. *Now the Plaintiff insisted that I enter into the third Sales and Purchase Agreement with her but I am reluctant to do so to what she had been doing to me by moving into the house without any proper documentation from the relevant authority. I annexed herein copies of first Sales and Purchase Agreement with transfer and third unsigned Sales and Purchase Agreement marked as annexures **SPLP1**.*
 9. *That the Plaintiff had removed my tenant renting on the property.*

10. *As to paragraph 7 of the said Affidavit, I deny the contents and state that my payment was up to date.*
11. *As to paragraph 8 of the said Affidavit, I deny the contents and state that the Plaintiff was the one who offered to help through the repayments. I have never asked her to do any repayments towards my loan.*
12. *As to paragraphs 9 and 10 of the said Affidavit, I neither deny nor admit the contents.*
13. *As to paragraph 11 of the said Affidavit, I deny the contents and state that the Plaintiff was in occupation of the house since November 2015. No permission were given to the Plaintiff to carry out any renovation and/or remove walls to make it one flat and instead of two flats.*
14. *As to paragraph 12 of the said Affidavit, I deny the contents and state that the 2nd Defendant never asked me such consent.*
15. *As to paragraph 13 of the said Affidavit, I admit the contents.*
16. *As to paragraph 14 of the said Affidavit, I was pressured and forced by the Plaintiff to obtain Court Orders.*
17. *As to paragraph 15 of the said Affidavit, I deny the contents.*
18. *As to paragraph 16 of the said Affidavit, I admit that the Plaintiff paid me deposit sum of \$5,000.00 towards the purchase of my house and the balance to be paid upon settlement. The said sum of \$5,000.00 was paid to me in 2016 when the Plaintiff was already moved into my property.*
19. *As to paragraph 17 of the said Affidavit, I admit the contents.*
20. *As to paragraph 18 of the said Affidavit, I state that I have not found any buyer. I do not wish to sell my property.*
21. *As to paragraph 19 of the said Affidavit, I deny the contents and state that the Plaintiff was freely enjoying on my property without settlement. That I have lost \$650.00 per month income since November 2015.*

22. *As to paragraph 20 of the said Affidavit, I deny the contents. I will not sell the property.*
23. *As to paragraph 21 of the said Affidavit, I deny causing losses to the Plaintiff.*
24. *As to paragraph 22 of the said Affidavit, I deny the Plaintiff paid arrears for the year 2013 and state that I came to know Plaintiff only in 2015. The Plaintiff on her own free will paid rentals arrears for the years 2017 and 2018. I did not force her to make any payments.*
25. *As to paragraph 23 of the said Affidavit, I admit notifying Westpac Bank for not accepting loan repayments from the Plaintiff.*
26. *As to paragraph 24 and 25 of the said Affidavit, there is no prove of the Plaintiff's undertaking should any damages sustained.*
27. *As to paragraph 26 of the said Affidavit, I do not agree with the Plaintiff. I do not wish to sell my property to the Plaintiff.*
28. *As to paragraph 27 of the said Affidavit, I have no comments.*
29. *As to paragraph 28 of the said Affidavit, I state that there is no written consent from the Director of Lands to institute legal action against me.*
30. *I urge the Court to dismiss the application with cost on indemnity basis.*

6. The plaintiff filed an **affidavit in reply**. She deposed;

1. *That I have read the Affidavit of **SASHI PREM LATA PRASAD** ("First Defendant") sworn on 14th September, 2018 (the affidavit) and I refer to the same.*
2. *As to paragraph 5 of the Affidavit, I say as follows:*
 - (a) *The First Defendant was having financial difficulties in terms of the loan repayment and therefore she approached me to assist her with the repayments;*

- (b) *The earlier Sale and Purchase Agreement (first agreement) referred to by the First Defendant was an agreement entered into by the First Defendant and my husband in the year 2016;*
 - (c) *The First agreement was not honored by both parties and subsequently a Second Sale and Purchase Agreement (second agreement) was entered into between the First Defendant and myself;*
 - (d) *The First Defendant had prior knowledge of the first agreement and had no reservations regarding the first agreement while entering the second agreement. If there were reservations, then the First Defendant should not have entered into the second agreement however she did so on her own free will.*
3. *As to paragraph 6 of the Affidavit, I say as follows:*
- (a) *The agreed purchase price for the property was \$70,000.00 and not \$100,000.00 as alleged by the First Defendant.*
 - (b) *That I had never requested nor agreed to pay an extra sum of \$30,000.00 towards the purchase price of the property as alleged by the First Defendant.*
4. *As to paragraph 7 of the Affidavit, I say as follows:*
- (a) *That the allegations which the First Defendant is referring to has no relevance to the current proceedings and therefore the alleged facts related to those allegations should not be raised during the course of the current proceedings;*
 - (b) *I am to be presumed as innocent until proven guilty.*
5. *As to paragraph 8 of the Affidavit, there was no 3rd Sale and Purchase Agreement as alleged by the First Defendant. I further state that the First Defendant was fully aware of the existence of the first agreement and the criminal allegations against me and despite having such prior knowledge, she agreed to enter into the second agreement which she has now purposefully breached.*
6. *As to paragraph 9 of the Affidavit, I deny removing the tenants of the First Defendant and state that it was the First Defendant who herself evicted the said*

tenants by way of an eviction notice dated 4th July, 2016 annexed hereto and marked with letter "LRDS-9" is the notice to vacate.

7. *As to paragraph 10 of the Affidavit, I state the First Defendant was not up to date with her repayments.*
8. *As to paragraph 11 of the Affidavit, I state that I only assisted the First Defendant with her repayments after she approached me and requested for my assistance as I had no reason to do so otherwise.*
9. *As to paragraph 13 of the Affidavit, I say as follows:*
 - (a) *That I only came into occupation of the house in 2016 and not in 2015;*
 - (b) *That the First Defendant herself allowed me to occupy the house and continue with renovations and upgrading of the house.*
10. *As to paragraph 16 of the Affidavit, I say as follows:*
 - (a) *That there was no force, pressure or duress exercised upon the First Defendant in obtaining orders from the Court;*
 - (b) *That the performance of the second agreement was subject to obtaining the consent of the Director of Lands as expressly stated within Clause 18 of the second agreement;*
 - (c) *That when the application for consent of the Director of Lands was lodged, the parties were advised by the office of the Director of Lands that since there were other beneficiaries to the property subject to the sale, a Court Order would need to be obtained for the sale of the property and consent was withheld until such time that the Orders were granted;*
 - (d) *The First Defendant being the Administratrix of the Estate of Rajesh Kumar (the proprietor of the land) was the only authorized person who could make the relevant applications to the High Court in order to obtain orders for the sale of the property;*
 - (e) *Given the circumstances mentioned above, the First Defendant proceeded to make the relevant applications to the High Court on her own free will as*

it was a mandatory step which needed to be taken by her in order to obtain the consent of the Director of Lands.

11. *As to paragraph 20 of the Affidavit, I state that the First Defendant does intend to sell the property and she has informed me herself of such intentions.*
12. *As to paragraph 21 of the Affidavit, I say as follows:*
 - (a) *I was given the right to occupy the property by the First Defendant after I paid her a sum of \$5,000.00 which was taken as the deposit sum;*
 - (b) *That I am not feely enjoying the property as claimed by the First Defendant as I have invested my own time and money in renovating and improving the property.*
 - (c) *That to date I am awaiting settlement however the First Defendant has defaulted in performing her duties and obligations under the second agreement.*
 - (d) *That I have not caused the Second Defendant any loss of monthly income as alleged.*
13. *As to paragraph 22 of the Affidavit, I say as follows:*
 - (a) *The First Defendant's actions and further inaction has caused me losses;*
 - (b) *The First Defendant has requested and accepted money from me with the promise that she will transfer the said property unto my name however she has failed to do the same;*
 - (c) *The First Defendant is refusing to take certain mandatory steps and measures for proper performance of the second agreement and now I face the threat of losing a sum of approximately \$40,000.00 being the sum which I have invested into the renovation and upgrading of the said property under the impression that the First Defendant would honor the agreement made between us.*
14. *As to paragraph 24 of the Affidavit, I state that I did make the payments on my own free will however the payment was made under the condition that the First Defendant would deduct the amount from the final settlement figure.*

15. *As to paragraph 26 of the Affidavit, I say as follows:*
- (a) *That I am in a position to abide by any Orders for damages imposed against me as a consequence of the injunctive orders I seek;*
 - (b) *That I am a qualified accountant and I earn approximately \$38,000.00 annually as salary and I am financially stable and secure.*
16. *As to paragraph 27 of the Affidavit, I say as follows:*
- (a) *That the First Defendant cannot simply refuse to perform her obligations under the second agreement as it is a legally binding document which the First Defendant is bound by;*
 - (b) *That I have invested in the property based on the representations made by the First Defendant and the first Defendant should therefore be estopped from deviating from her representations and promises.*
17. *As to paragraph 29 of the Affidavit, I state that I am not required to obtain the consent of the Director of Lands in order to institute proceedings against the First Defendant.*
18. *That I humbly seek that the Court grant Order in terms of my Motion.*

(C) THE LAW

7. This is an application for **Interim Injunction**. Lord Diplock in **American Cyanamid Co. v Ethicon Ltd (1975) A.C. 396**, laid down the following principles:
- (A) The plaintiff must establish that he has a good arguable claim to the right he seeks to protect; it is enough if he shows that there is a serious question to be tried.
 - (B) The grant or refusal of an injunction is in the Courts' discretion on the balance of convenience which entails consideration of the following factors;
 - (i) If damages are a sufficient remedy, an injunction ought not to be granted.

- (ii) Whether more harm will be done by granting or by refusing an injunction.
 - (C) An undertaking from the plaintiff to be answerable in damages if the injunction proves to have been wrongly granted is almost always required.
8. I feel compelled to add that the purpose of an interlocutory injunction is to preserve the status quo until the rights of the parties have been determined in the action.

(D) DISCUSSION AND DETERMINATION

9. Let me summarize my understanding as to the salient facts of this matter as follows;
- (*) The dispute before this Court is concerned with a leasehold property measuring 1017 square meters in extent, known as pt. of Novo & Nacaqara, being **Crown Land (Protected Lease)** under the Crown (State) Lands Act.
 - (*) The late Mr Rajesh Kumar was the registered lessee of the Crown Lease No. 14136. (Annexure marked LRDS-2 referred to in the affidavit of Lalini Ranjana Devi (the plaintiff) sworn on 22.08.2018).
 - (*) The First defendant is the administratrix of the estate of late Mr Rajesh Kumar. She became registered lessee on transmission by death as the administratrix of the estate of 'Rajesh Kumar' on 06th July 2017.
 - (*) In the year 2016, the First defendant (**as the administratrix of the estate of Rajesh Kumar**) and the husband of the plaintiff entered into an agreement for the sale and purchase of the land. (Annexure marked SPLP-1 and referred to in the affidavit of Sashi Prem Lata Prasad (the First defendant) sworn on 14th September, 2018).
 - (*) According to the agreement (annexure SPLP-1), the consideration for the sale and purchase of the land was settled at \$70,000.00, out of which \$5,000.00 were paid as earnest money (Clause 3.1 of the agreement).

- (*) Clause 26 of the agreement provides that the agreement and transfer is subject to the consent of Director of Lands.
- (*) The agreement had stipulated that the date of settlement shall be within sixty (60) days from the grant of consent to the transfer by the Director of Lands. (Clause (5) of the agreement).
- (*) The sale and purchase agreement was executed by the First defendant and the husband of the plaintiff. **I gather that the plaintiff and her husband had entered into possession of the land some months before the date of execution of the agreement (Clause (8) of the agreement). This clearly shows that the parties have begun to give effect to the contract by implementing its terms before the date of execution. The purchaser complied with his obligations by paying part of the purchase price and the vendor permitted the purchaser to enter into occupation.**
- (*) The plaintiff and her husband have been in occupation of the land since 2016.
- (*) An application to the 'Director of Lands', for consent to the sale was not drawn up.
- (*) The plaintiff has spent, it is alleged, approximately, \$40,000.00 on improvements to the dwelling-house on the land. I have not been with the quantification of that sum and I do not know how much in fact the plaintiff spent, but I do not think it is disputed that she did spend some money in improving the house. I am conscious of the fact that the plaintiff executed improvements to the dwelling-house on the land without reference to the 'Director of Lands'. Moreover, the plaintiff has spent, it is alleged, approximately, \$2,760.00 on loan repayment of the property.
- (*) The plaintiff says that the parties did not honour the agreement. Almost one and half years later, in respect of the same leasehold-property, the plaintiff and the First defendant had entered into a 'sale and purchase agreement' (**Second agreement**) on 04th May, 2018. (Annexure LRDS-1 referred to in the affidavit of 'Lalini Ranjana Devi' (the plaintiff) sworn on 22nd August, 2018).
- (*) Clause (14) of the **Second agreement** provides; *"possession of the said property shall be given to the Purchaser on settlement"*.

(*) Clause 18 of the Second agreement provides;

That performance of this Agreement is subject to the Prior Consent of the Lands Department and in the event such consent is not granted then both the parties are absolved and discharged of their obligations under this here agreement except as to costs in the preparation, advice and witness to the execution of these presents and such costs being payable to the common solicitors.

(*) The plaintiff states that the consideration for the sale of the property was settled at \$70,000.00. On this part of the case there is a conflict of evidence. The First defendant states that the purchase price was \$100,000.00.

10. The plaintiff deposed in para (2) (c) of 'affidavit in reply' sworn on 24-08-2018 that *"the first Agreement was not honoured by both parties and subsequently a second Sale and Purchase Agreement (second agreement) was entered into between the First Defendant and myself"*.
11. Both parties admit having executed the First agreement. I gather that the first agreement for sale was not terminated. The first transaction has not been cancelled. The Second agreement did not supersede the First agreement. At the cost of some repetition, I state that the plaintiff and her husband had entered into possession of the land (without reference to the Director of Lands) some months before the date of execution of the First agreement. The plaintiff and her husband have been in occupation of the land since 2016. The plaintiff has executed improvements to the dwelling-house on the land without reference to the Director of Lands. No consent of the Director of Lands as head lessor was obtained for the entry into possession and renovation of the dwelling-house on the land. Counsel for the Plaintiff frankly admitted this in the oral submission before the Court. What is the effect of this?
12. The Plaintiff went onto the land in 2016 and renovated the dwelling-house on the land. This clearly shows that she had assumed 'proprietary privileges' and had exercised the 'powers of a purchaser' without reference to the Director of Lands. The plaintiffs' occupation on the land in 2016 is illegal and it continued to be illegal although a new agreement was made. To be more precise, once the plaintiffs' occupation was illegal it continued to be illegal although a new agreement was made.

13. In para (13) of the affidavit in opposition, the First defendant deposed that;

"As to paragraph 11 of the said Affidavit, I deny the contents and state that the Plaintiff was in occupation of the house since November 2015. No permission were given to the Plaintiff to carry out any renovation and/or remove walls to make it one flat and instead of two flats".

The plaintiff pleaded her position in paragraph (9) of her affidavit in reply sworn on 24th October 2018 as follows;

As to paragraph 13 of the affidavit, I say as follows:

(a) That I only came into occupation of the house in 2016 and not in 2015;

(b) That the First Defendant herself allowed me to occupy the house and continue with renovations and upgrading of the house.

14. The guiding principle in granting an interlocutory injunction is the balance of convenience; there is no requirement that before an 'interlocutory injunction' is granted the plaintiff should satisfy the court that there is a "probability", a "prima facie case" or a "strong prima facie case" that if the action goes to trial he will succeed; but before any question of balance of convenience can arise the party seeking the injunction must satisfy the court that his claim is neither frivolous nor vexatious; in other words that the evidence before the court discloses that there is a serious question to be tried.

The plaintiff in the instant case must First satisfy the court that on the evidence presented to it her claim to an interest in the property does raise a serious question to be tried; and, having done so, she must go on to show that on the balance of convenience it would be better to maintain the status quo until the trial of the action.

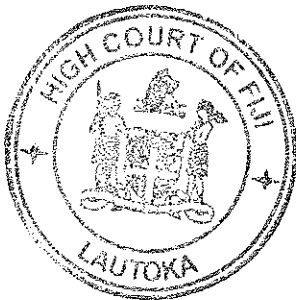
I have come to the clear conclusion that the plaintiffs' entry upon the land in 2016 and the renovation of the dwelling house on the land is illegal because she had not obtained the necessary consent of the Director of Lands which was necessary by virtue of Section 13 of the State Lands Act.

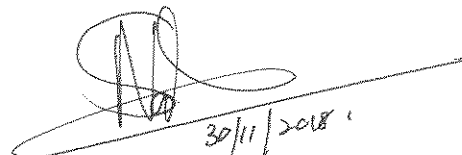
15. **Therefore, the plaintiff cannot claim an equitable charge or lien on the land and as such there is no serious question to be tried. Equity would not assist illegality. The plaintiff has not met the First requirement of satisfying the**

court that her claim does raise a serious question to be tried. I cannot grant the interlocutory injunctive orders sought.

(E) ORDERS

01. The plaintiffs' application for an interlocutory injunctive order is dismissed with costs.
02. I summarily assess costs at \$1,500.00 to be paid within seven (07) days from the date of this Ruling.




30/11/2018
Jude Nanayakkara
Judge

At Lautoka,
Friday, 30th November, 2018