

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 132 of 2013

BETWEEN : **SHAIREEN NISHA** of Sarava, Ba, Domestic Duties. **Plaintiff**

AND : **YASHMEEN NISHA** also known as **YASMEEN NISHA** also known as **YASMIN NISHA** of Sydney, Domestic Duties. **1st Defendant**

AND : **NASIR AHMED KHAN** of Vitogo, Lautoka **2nd Defendant**

AND : **REGISTRAR OF TITLES** **3rd Defendant**

AND : **I TAUKEI LAND TRUST BOARD** **4th Defendant**

R U L I N G

1. On 29 July 2013, I did grant the following Orders:
 - (1) an injunction restraining the first defendant from selling, transferring disposing and encumbering the Land fully described as Native Lease Number 12874, Lot 3 Luvudi in the Tikina of Ba having an area of 39 acres Roods 16 Perches (said Land) in any manner whatsoever until the further order of this Honourable Court.
 - (2) that there be a caveat on the said land until further Order of this Court or final determination of this action.
 - (3) that the first and second defendant and their servants and/or agents and/or employees be restrained from harassing intimidating and interfering with the plaintiff her husband and children in any manner whatsoever.
 - (4) for substituted service of the Writ of Summons. The Amended Ex-Parte Notice of Motion together with the Affidavit of Shaireen Nisha (the Plaintiff herein) and the Orders made herein be served on Messrs Iqbal Khan and Associates on behalf of the 1st defendant.
 - (5) that the 3rd defendant be restrained from registering any Transfer, encumbrance and/or any dealing with respect to the property fully described as Native Lease Number 12874, Lot 3 Luvudi in the Tikina of Ba having an area of 39 acres Roods 16 Perches (said Land).
 - (6) that the plaintiff is to serve all documents and sealed copy of Order on the other Defendants.
 - (7) that the matter has been adjourned to 27th day of August, 2013 for mention only.

2. On 12 December 2014, Qoro Legal for the first defendant filed an Expedited Summons seeking the following Orders:
 - (1) whether or not the Injunctive Orders granted against the 3rd defendant is contrary to section 15 of the Crown Proceedings Act?
 - (2) if so, whether or not the Injunctive Orders against the 3rd defendant is unlawful?

- (3) whether or not the decision of the third defendant to register the Error of Ratification could be expunged or reserved by oral application or judicial review.
- (4) that the orders made for the registration of the Error of Ratification made on the title be reversed be stayed pending until the determination of this application.
- (5) any other orders the Court deems just.
- (6) cost in the cause.

3. Section 15 of the State Proceedings Act (Cap 24) (formerly Crown Proceedings Act) states as follows:

Nature of relief

15.-(1) In any civil proceedings by or against the State the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:

Provided that-

(a) where in any proceedings against the State any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and

(b) in any proceedings against the State for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the State to the land or property or to the possession thereof.

(2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the State if the effect of granting the injunction or making the order would be to give any relief against the State which could not have been obtained in proceedings against the State.

4. But section 18 of the same Act provides as follows:

Scope of Part II

18.-(1) Subject to the provisions of this section, any reference in this Part to civil proceedings by the Crown shall be construed as a reference to the following proceedings only:-

(a) proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Act had not been passed, might have been enforced or vindicated or obtained by any such proceedings as are mentioned in paragraph 1 of the First Schedule;

(b) proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Act had not been passed, might have been enforced or vindicated or obtained by an action at the suit of any Government department or any officer of the Crown as such;

(c) all such proceedings as the Crown is entitled to bring by virtue of this Act, and the expression "civil proceedings by or against the Crown" shall be construed accordingly.

(2) Subject to the provisions of this section, any reference in this Part to civil proceedings against the Crown shall be construed as a reference to the following proceedings only:-

(a) proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Act had not been passed, might have been enforced or vindicated or obtained by any such proceedings as are mentioned in paragraph 2 of the First Schedule;

(b) proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Act had not been passed, might have been enforced or vindicated or obtained by an action against the Attorney-General, any Government department, or any officer of the Crown as such; and

(c) all such proceedings as any person is entitled to bring against the Crown by virtue of this Act, and the expression "civil proceedings by or against the Crown" shall be construed accordingly.

(3) Notwithstanding anything in the preceding provisions of this section, the provisions of this Part shall not have effect with respect to any of the following proceedings, that is to say:-

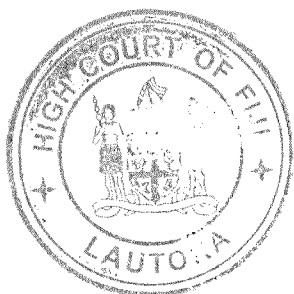
(a) proceedings brought by the Attorney-General on the relation of some other person;

(b) proceedings by or against the Public Trustee;

(c) proceedings under the law relating to charitable trusts by or against the Attorney-General;

(d) proceedings by or against the Registrar of Titles.

5. The answer to the issue before me is that the prohibition against granting injunctive Orders against the State as provided under section 15 does not apply in relation to proceedings by or against the Registrar of Titles by virtue of section 18(3)(d). I note that the application is made by the first and the second defendants. Counsel for the state, Mrs Lee however, rightly acknowledges the effect of section 18 of the State Proceedings Act.
6. In short, the application by the first and second defendant is misguided. I dismiss it with costs in favour of the Plaintiff which I summarily assess at \$500-00 (five hundred dollars) as well as a further \$500 (five hundred dollars) costs in favour of the Registrar of Titles.



Anare Tuilevuka
JUDGE
Lautoka

29 June 2015.