

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

CIVIL ACTION NO. HBC 96 OF 2019

BETWEEN : **AZMAT HUSSAIN** and **SHAINAAZ BI** both formerly of Nawaka, Nadi but currently residing in Christchurch, New Zealand, welder and Domestic Duty respectively.

PLAINTIFFS

AND : **ABDUL AIYUB HUSSAIN** of Nawaka, Nadi.

FIRST DEFENDANT

AND : **ITAUKEI LAND TRUST BOARD** a body corporate incorporated under the iTaukei Land Trust Act, Cap 134 with its registered office at 431 Victoria Parade, Suva, Fiji.

SECOND DEFENDANT

Appearances : Mr R. Charan for the plaintiffs
No appearance for the first and second defendants

Date of Hearing : 16 April 2019

Date of Ruling : 16 April 2019

R U L I N G

[on *ex parte* injunction]

[01] This is an *ex parte* application supported by an affidavit sworn by the first named plaintiff, Azmat Hussain. The affidavit annexes some 15 documents including the lease issued to the first defendant. The application is made under O 29, Rule 1 of the High Court Rules, which 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.

- [02] Under Rule 1 (2), the Court may grant an injunction on *ex parte* basis if 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.
- [03] The plaintiff seeks also a declaration as substantive relief that the agreement for lease entered between the first and second defendants was *null and void*. The plaintiff has issued a writ of summons indorsed with a settlement of claim.
- [04] It appears the first defendant has represented the second defendant and obtained a leave while the plaintiff was still in occupation in one of the houses on the land in issue of which the plaintiff had agreement with the *mataqali* land owners. The second defendant has requested the first defendant to partially surrender the lease to him as the lease has been issued for the entirety of the land including the portion the plaintiff was in occupation (see annexure AH 9 and 10).
- [05] The plaintiff also seeks damages against the first defendant in the sum of \$71,000.00 for demolishing the plaintiff's house after obtaining an eviction order under section 169 of the Land Transfer Act, through a third party.
- [06] Upon reading the summons, affidavit and upon hearing the submissions made by counsel for the plaintiff, I am satisfied that the subject matter needs to be preserved to safeguard the right of the plaintiffs and that there is urgency in the matter as the first defendant may dispose of the property to frustrate the

judgment the plaintiff would obtain if he is successful. I am also satisfied with the undertaking as to damages given by the plaintiff. I would, therefore, issue an *ex parte* injunction as sought in the summons filed on 15 April 2019. This *ex parte* order will be valid till the *inter partes* hearing of the application on 3 May 2019. This order together with all the documents must be served on the first defendant forthwith.

[07] The matter is now adjourned for *inter-partes* hearing at 9.30 am on 3 May 2019.

The result

1. *Ex parte* interim injunction issue.
2. The *ex parte* orders shall be valid till the *inter partes* hearing on 3 May 2019.
3. The plaintiff must serve the order together with all the documents on the first defendant forthwith.
4. The matter is set for *inter partes* hearing at 9.30 am on 3 May 2019.

M.H. Mohamed Ajmeer
16/4/19

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M.H. Mohamed Ajmeer
JUDGE



At Lautoka
16 April 2019

Solicitors:

For the plaintiff: M/s Ravneet Charan Lawyers, Barristers & Solicitors