IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
(APPELLATE JURISDICTION)

CIVIL APPEAL HBA 10 OF 2022

BETWEEN: **VETAIA NAIMILA SINALEVU** of Nawaka, Nadi.

APPELLANT

A N D: **JUANJUAN CHEN a.k.a ISABELLA** of Auckland, New Zealand.

RESPONDENT

Appearances:	Messrs Toganivalu Legal for the Appellant
	Messrs Narisia Chambers for the Respondent
Date of Hearing:	Ruling on Submissions
Date of Ruling:	20.02.23

RULING

INTRODUCTION

1. As I set out here in these introductory paragraphs the uncontroverted facts based on the pleadings and the affidavits filed.

2. The respondent/plaintiff and the appellant/defendant were in a de-facto relationship. The respondent is a New Zealand citizen. She resides in Auckland. The appellant is a Fiji citizen. He resides in Fiji.

3. At some point – while they were still in that relationship, the respondent sent money from New Zealand to the appellant in Fiji for the purpose of purchasing a vehicle. The appellant took the money, and purchased a vehicle. He did not contribute financially to the purchase.

WHERE THE PARTIES DIFFER

4. Where the parties differ, and which is the main issue in this case, is whether or not the said vehicle was gifted by the respondent to the appellant out of love and affection (defendant's version).

5. The respondent's case is that she sent money from New Zealand to the appellant to purchase a vehicle which she would use in a business partnership which she was entering into with one Aminiasi Marawa of Mulomulo in Nadi. Marawa had been operating a catering business from his house. She sent the money to the appellant because she trusted him – obviously – on account of their relationship. The understanding was that the appellant would purchase the vehicle and then await the plaintiff's instructions on when and to whom to transfer the vehicle was to.

6. The appellant of course maintains that the respondent had gifted the car to him.

WHAT THE APPELLANT DID

7. As it turned out, upon receiving the money from New Zealand, the appellant went ahead and purchased a vehicle using money sent by the respondent. He then had the vehicle transferred and registered to/in his name.

8. The respondent pleads *inter alia* that the appellant actually acted fraudulently when he registered the vehicle in his own name.

PROCEEDINGS AT THE NADI MAGISTRATES COURT

9. On 03 February 2022, the respondent filed a Writ of Summons and Statement of Claim in the Nadi Magistrates Court setting out her claim and the relief sought.

10. On the same day, the respondent obtained an interim injunction on the interlocutory Motion filed by his lawyer restraining the appellant from transferring the vehicle in question to any their person till the determination of this case and also that the said vehicle be seized from the custody of the appellant and be parked at the Police Station in Nadi.

11. Almost a week later, on **09 February 2022**, the respondent obtained another Order *ex-parte* which directed the Land Transport Authority to transfer the said vehicle to the respondent's name.

12. On 25 February, the appellant filed a Notice of Motion seeking to suspend or revoke all previous *ex-parte* Orders of the Court. Later, on 23 March 2022, the appellant also filed another Motion for Security for Costs under Order XXXIII of the Magistrates Court Rules.

MAGISTRATES RULING & NOTICE/GROUNDS TO/OF APPEAL

13. On 20 June 2022, the Learned Magistrate in the Nadi Magistrates Court delivered an interlocutory ruling on all these applications. Four days later, on 24 June 2022, the Defendant filed a Notice of Intention to Appeal the said interlocutory decision.

14. There are altogether eight grounds of appeal set out in the Notice And Grounds of Appeal filed on 1 July 2022.

15. I reproduce below verbatim the grounds of appeal:

    (1) The Learned Magistrate erred in law and in fact and gaining judgment on the substantive prayers in the Statement of Claim by way of an ex-parte application and on affidavit from one side only.

    (2) That the Learned Magistrate erred in law and in fact in delivering judgment on claims based on allegations of fraud on affidavit material from party only.

    (3) The Learned Magistrate erred in law and in fact in relying on and delivering judgment on an affidavit from a third party.

    (4) The Learned Magistrate erred in law and in fact in granting a mandatory injunction on an ex-parte basis.

    (5) The Learned Magistrate erred in law and in fact in granting a mandatory injunction in the absence of an undertaking as to damages by the Respondent/Plaintiff.

    (6) The Learned Magistrate erred in law and in fact in not reversing the injunctive orders upon being provided with evidence of material non-disclosure by the Respondent/Plaintiff through the affidavit of the Appellant/Defendant.

    (7) That there has been a substantial miscarriage of justice in that the Appellant/Defendant has been denied an opportunity to defend the Respondent's claim by the fact of the permanent orders of the Learned Magistrate.

    (8) The Appellant reserves the right to amend, revise and add to the grounds of appeal upon receipt of the Court Record.

NO SUBMISSIONS FILED

16. I did direct on 29 November 2022 that both Counsel file and serve their written submissions on the day and gave them an additional twenty eight (28) days thereafter to file and serve their response to the other. The parties have not bothered to file any submissions.

COMMENTS

17. I have read the learned Magistrates Ruling. I do find that there are instances where the Learned Magistrate appears to have made substantive final findings in the interlocutory applications before him. The following are some examples:

Paragraph	Finding
[23]	"Since the context of the said annexures is the vehicle, it is safe to say that **the vehicle was intended for business and the Defendant's family**"
[24]	"The **evidence tendered by the Defendant falls short of establishing it as a gift**, even if the Plaintiff said for it to be transferred under his name"
[28]	"The Court is satisfied that it was the Plaintiff who funded the purchase of the vehicle **with the intention of having it registered under her name**"
[39]	"…the Court is **not satisfied that the Defendant has raised a bona fide defence nor is there any chance of success**. The Court reaches this view because there is overwhelming evidence that the Defendant never contributed to the purchase of the vehicle. The Defendant concedes to that truth"
[40]	"The issue for determination at trial is…..**whether or not the Defendant fraudulently registered the vehicle under his name**"

18. The Learned Magistrates direction on 09 February 2022 was a mandatory injunctive order. It had a ring of finality to it.

19. It is well settled that mandatory injunctions are rarely entertained at interlocutory stage is the effect of the Order is the granting of a final relief.

20. The sentiments which the Learned Magistrate expressed in the Interlocutory Ruling dated 20 June 2022 also had a ring of finality to them. The overall effect of these was that the Learned Magistrate was non-suiting the appellant at that interlocutory stage.

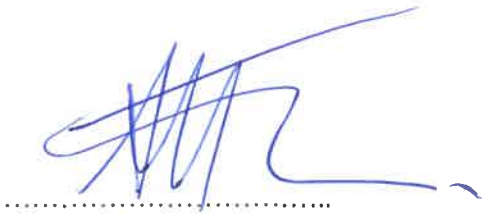
21. While the Magistrates Court has power to non-suit a party (see **Chandra v Ali** [2008] FJCA 32; ABU0077.2007S (11 July 2008)), I do not see anything in the Magistrates Court Rules which gives power to the Magistrates Court to non-suit a party at an interlocutory stage and grant final relief to the other party accordingly.

22. In this case, I think the best option is to allow the appeal only to the extent that all the seemingly final orders made by the Learned Magistrate are, henceforth, to be read as interim orders which are to stand until the final determination of the case and to remit the file back to the Magistrates Court to proceed to trial. This means that the Plaintiff, if she has not already done so, is to be restrained from transferring the vehicle in question to a third person until the case before the Magistrates Court is finally determined.

23. This of course means that the issue remains as to whether the vehicle was in fact gifted to the appellant, or whether it was given with the condition stated above.

ORDERS

1. Case remitted to the Magistrates Court for trial
2. The Respondent is Ordered not to transfer the vehicle to a third party until the issues are finally determined by the Magistrates Court.
3. Parties to bear their own costs



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Anare Tuilevuka
JUDGE
Lautoka

20 February 2023