

**IN THE HIGH COURT OF FIJI AT LAUTOKA**  
**EXERCISING CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 95 of 2024**

**BETWEEN** : **SATRAJI** of Meigunyah, Nadi, Retired Farmer

**1<sup>st</sup> PLAINTIFF**

**AND** : **VIJAY KRISHNA LINGAM**, of Meigunyah,  
Nadi, Farmer.

**2<sup>nd</sup> PLAINTIFF**

**AND** : **GANGAMMA**, of Meigunyah, Nadi, Domestic  
Duties.

**DEFENDANT**

**AND** : **THE DIRECTOR OF LANDS**

**1<sup>st</sup> INTERESTED PARTY**

**AND** : **FIJI SUGAR CORPORATION LTD.**

**2<sup>nd</sup> INTERESTED PARTY**

**COUNSEL** : Mr. Anand V. For the Plaintiff.

: Mr.Namata for the Defendant o/i of M/s. Pillai  
Naidu & Associates

: Mr. Kant S. for the 1<sup>st</sup> interested party  
: No appearance for the 2<sup>nd</sup> Interested Party

**HEARING** : By way of Written Submissions

**WRITTEN SUBMISSIONS:** Filed by the Plaintiff on 26<sup>th</sup> May 2025

: Filed by the Defendant on 28<sup>th</sup> May 2025

**RULING** : Pronounced on 20<sup>th</sup> June 2025

# **RULING**

**(On Application for Injunction Order)**

## **A. Introduction:**

1. The 1<sup>st</sup> and the 2<sup>nd</sup> Plaintiffs are Father and Son respectively. The Defendant is the mother of the 1<sup>st</sup> Plaintiff and the Grand Mother of the 2<sup>nd</sup> Plaintiff.
2. The Defendant was the registered Proprietor Lessee of the property comprised in State Lease No- 22270 (Crown Lease No- 7492) Land known as part of Nabuyagiyagi and part of Nakoke – Formerly Ct 2438 and CT 31/ 3000 being lots 15 and 22 (hereinafter referred to as the “property”).
3. The 1<sup>st</sup> interested party is the Lessor of all Crown Lands in the Republic of Fiji, and the 2<sup>nd</sup> Interested party is the corporate body looking after all affairs of the Sugar Industry in Fiji.
4. The affidavit in support by the 2<sup>nd</sup> Plaintiff, inter alia, states that his family has been in occupation of the subject property for more than 75 years, and in the year 2008 the Defendant gave a Power of Attorney to the 1<sup>st</sup> Plaintiff (her Son) authorizing him to deal with the subject property in all manners. The said Lease now stands expired and waiting for its renewal.
5. There are four houses sitting on the land, one constructed without the consent from the Director of Lands (the 1<sup>st</sup> interested party). This being an Agricultural Lease, has a valid registration and contract for Sugar-Cane farming and Cultivation being Registration No- 123- 02255, which still continues despite the expiry of Lease.
6. The proceeds of the Sugar-Cane farming were sent by the 2<sup>nd</sup> interested party to a joint Bank Account held by the Defendant and the 2<sup>nd</sup> Plaintiff at the Bank of Baroda. But the Defendant has now shifted the Bank Account to Westpac, where all proceeds are now being sent to by the 2<sup>nd</sup> Interested party.
7. The Affidavit states further that only both the Plaintiffs are engaged in the Sugar cane cultivation, and after changing of Bank accounts they are not being given any proceeds of the Sugar- cane harvest. The last payment was around \$8,000.00 released in Feb 2024 was sent to the new bank account and he was not given.
8. If the payment is not placed on hold, they will be highly prejudiced as the money could be used by unknown persons as the Defendant, who is 104 years old, could be influenced by other people. (As per the Defendant she is 109 years old)

**B. Statement of Claim:**

9. By pleading the above, *inter alia*, the plaintiffs in their Statement of Claim filed on 7<sup>th</sup> May 2024, have moved for the following substantive reliefs against the Defendant;
- a. *A declaration that the Plaintiffs have equitable rights on the property State Lease Number 22720 (Crown Lease No- 7429) land known as part of Nabuyagiyagi and part of Nakoke - formerly Ct 2438 and CT31/3000 being lots 15 and 22.*
  - b. *That the State Lease number 22720 be renewed in the Plaintiff's name.*
  - c. *Damages.*
  - d. *Costs.*

**C. Notice of Motion:**

10. Simultaneously, the Plaintiffs filed an Ex-parte Notice of Motion, which was made inter-parte, seeking, *inter alia*, the following orders:
1. *That the Defendants and /or its agents be restrained from interfering, dealing with, leasing, transferring, selling, alienating or otherwise disposing of the land comprised in State Lease Number 22720 (Crown Lease No- 7429) land known as part of Nabuyagiyagi and part of Nakoke - formerly Ct 2438 and CT31 3000 being lots 15 and 22.*
  2. *That all the cane proceeds pertaining to the Fiji Sugar Corporation Registration Number 123-02255 placed on hold.*
11. This Court, having heard both Counsel at the inter-parte hearing held on 23<sup>rd</sup> May 2024, granted a temporary injunction in terms of paragraph 2 of the Notice of Motion, ( sub paragraph 2 of paragraph 10 above) directing the 2<sup>nd</sup> interested party to hold half of the cane proceeds till a further order is made.

**D. Hearing:**

12. Having agreed to have the hearing disposed by way of written submissions, both the Plaintiff and the Defendant have filed their respective written submissions calling upon this court to pronounce Ruling on the matter.

**E. Law, Analysis:**

13. It is important to bear in mind that injunctive relief being a discretionary remedy the party who seeks the court to exercise its discretion in his favour must come to court with clean hands and disclosing full facts. Suppression of material facts will disentitle the party seeking an injunction for such a relief.
14. In **Hubbard & Another v Vosper & Another [ 1972] 2 Q.B. 84** Lord Denning said:

*In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also the strength of the defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the defendant but leave him free to go ahead. .... The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules.*

15. Further, an interim injunction is a relief that cannot be granted solely or independently without any final or substantive relief prayed for. A party who has not sought any substantive relief has no right in law to seek an interim injunction, as it cannot be a relief by itself but is only a mechanism to assist and protect final relief.

16. **American Cyanamid Co. v Ethicon Ltd [1975] UKHL 1; [1975] 2 W.L.R. 316, [1975] A.C. 396**

*The appellant, American Cyanamid Co., an American company, owned a patent covering certain sterile absorbable surgical sutures. The respondent, Ethicon Limited, also an American Company, manufactured in the United States and were about to launch on the British market a suture which the appellant claimed infringed their patent. The respondent contested its validity on diverse grounds and also contended that it did not cover their product. In an action for an injunction the appellant applied for an interlocutory injunction which was granted by the judge at first instance with the usual undertaking in damages by the appellant. The Court of Appeal reversed his decision on the ground that no prima facie case of infringement had been made out and the appellant appealed.*

17. In the aforesaid case Lord Diplock laid down certain guidelines for the courts to consider in deciding whether to grant or refuse an interim injunction which are still regarded as the leading source of the law on interim injunctions. They are:

- (i) *Whether there is a serious question to be tried at the hearing of the substantive matter;*
- (ii) *Whether the party seeking an injunction will suffer irreparable harm if the injunction is denied, that is whether he could be adequately compensated by an award of damages as a result of the defendant continuing to do what was sought to be enjoined; and*
- (iii) *In whose favour the balance of convenience lie if the injunction is granted or refused.*

18. **Kerr LJ in Cambridge Nutrition Ltd v BBC [1990] 3 All ER 523 at 534** said:

*“It is important to bear in mind that the American Cyanamid case contains no principle of universal application. The only such principle is the statutory power of the court to grant injunctions when it is just and convenient to do so. The American Cyanamid case is no more than a set of useful guidelines which apply in many cases. It must never be used as a rule of thumb, let alone as a straitjacket.... The American Cyanamid case provides an authoritative and most helpful approach to cases where the function of the court in relation to the grant or refusal of interim injunctions is to hold the balance as justly as possible in situations where the substantial issues between the parties can only be resolved by a trial”.*

19. In the case of ***Series 5 Software Ltd v Clerk and others [1996] 1 All ER 853*** the court after considering the decision in *American Cyanamid* and various other authorities on the subject held that;

“In deciding whether to grant interlocutory relief, the court should bear the following matters in mind:

- (1) *The grant of an interlocutory injunction is a matter of discretion and depends on all the facts of the case.*
- (2) *There are no fixed rules as to when an injunction should or should not be granted. The relief must be kept flexible.*
- (3) *Because of the practice adopted on the hearing of applications for interlocutory relief, the court should rarely attempt resolve complex issues of disputed facts or law.*
- (4) *Major factors the court can bear in mind are (a) the extent to which damages are likely to be an adequate remedy for each party and the ability of the other party to pay, (b) the balance of convenience, (c) the maintenance of the status quo, and (d) any clear view the court may reach as to the relative strength of the parties' cases.*

20. The plaintiff in paragraph 1 of the prayer to the Notice of Motion has prayed for an injunction order restraining the Defendant from leasing, interfering, selling alienating or otherwise disposing the land in question.

21. The Affidavit evidence does not show that the Defendant had any intention to sell the property to a third party. Further, there is no any material before this court to arrive at a conclusion that the defendant is in fact attempting to sell the property to a third party. The courts do not grant interim injunctions based on assumptions. It needs some evidence showing that the defendant is making arrangements to dispose of the property, which would be to the detriment of the plaintiff.

22. As per the own evidence of the Plaintiff, the Lease now stands expired and **no** new lease has been issued in favor of the Defendant. In the absence of a new lease in her favor, the Defendant cannot deal with it. However, issuing of new lease is a discretionary power of the 1<sup>st</sup> interested party. The Court cannot interfere with it.

23. As far as the second relief in the Notice of Motion is concerned, which is presently in operation on temporary basis and confined only to a half of the cane proceeds, I don't find any substantive relief in the prayers to the Statement of Claim in this regard. As alluded to in a foregoing paragraph, in the absence of a substantive relief, no interim relief could be granted and/or allowed to be in force.

24. Accordingly, I find that the Plaintiff has not satisfied this Court for the grant of interim injunctive orders as prayed for. The temporary injunction order granted in terms of paragraph 2 of the Notice of Motion should be vacated.

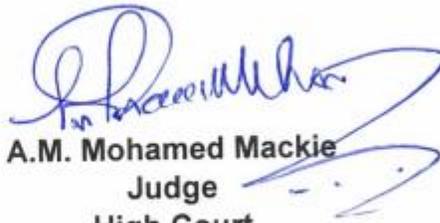
25. If such an order is made or allowed to be in force, it will be a sequestration before the Judgment, particularly when there is no prayer for such a claim.
26. Further, ordering of a reasonable sum of costs in favor of the Defendant and the 1<sup>st</sup> interested party is warranted.

**F. Orders:**

- A. The injunction orders sought in the Plaintiff's Notice of Motion filed on 7<sup>th</sup> May 2024 are declined.
- B. The temporary injunction order granted on 23<sup>rd</sup> May 2024, in terms of paragraph 2 of the Notice of Motion, is hereby discontinued.
- C. The Plaintiff shall pay the Defendant \$ 500.00 and the 1<sup>st</sup> interested party \$250.00, being the summarily assessed costs of this Application.

**On this 20<sup>th</sup> day of June 2025 at the Civil High Court of Lautoka.**



  
A.M. Mohamed Mackie  
Judge  
High Court  
Lautoka.

**SOLICITORS:**

**Messrs. Iqbal Khan & Associates – Barristers & Solicitors – For the Plaintiff.**

**Messrs. Pillai Naidu & Associates – Barristers & Solicitors – For the Defendant.  
Attorney General's Chambers – For the 1<sup>st</sup> Interested party.**

**No appearance or representation – For the 2<sup>nd</sup> Interested party.**