

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. **HBC 107 of 2025**

BETWEEN: **RATU MELI LOKI TUNISAU** of Yavusa Matanikutu, Koro Tamavua, Tikina Naitasiri,
Yasana Naitasiri.

FIRST APPLICANT

AND: **RATU SAULA COLATA NADURUCOKO TUNISAU** of Yavusa Matanikutu, Koro
Tamavua, Tikina Naitasiri, Yasana Naitasiri.

SECOND APPLICANT

AND: **MOSESE ROKOTAKALA** of Yavusa Nayavumata, Koro Suvavou, Tikina Suva, Yasana
Rewa.

THIRD APPLICANT

AND: **APENISA KALOKALO LOKI** of Yavusa Matanikutu, Koro Tamavua, Tikina Naitasiri,
Yasana Naitasiri.

FIRST RESPONDENT

AND: **EPELI RAKAI** of Yavusa Matanikutu, Koro Tamavua, Tikina Naitasiri, Yasana
Naitasiri.

SECOND RESPONDENT

AND: **RONY CHAN AKA RONALD CHAN** of Tamavua - I - Wai, Suva.

THIRD RESPONDENT

AND: **SILVERLINING INVESTMENTS PTE LIMITED** having its registered office at
Level 1, 11 Renwick Road, Suva, Fiji.

FOURTH RESPONDENT

AND: **ITAUKEI LAND TRUST BOARD** a statutory body established under the iTaukei
Affairs Act, Cap 120 whose principal place of business is at 431 Victoria Parada,
Suva, Fiji Islands.

FIFTH RESPONDENT

AND: **NATIVE LANDS COMMISSION** as a duly constituted body under the Native Land
Trust Cap 133.

SIXTH RESPONDENT

AND: **THE MINISTER FOR ITAUKEI AFFAIRS** of 87 Queen Elizabeth Drive, Nasese.

SEVENTH RESPONDENT

AND: **ATTORNEY GENERAL OF FIJI** of Level 7, Suvavou House, Victoria Parade, Suva.

EIGHTH RESPONDENT

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL : **Ms. Tivao S.** for the 1st, 2nd and 3rd Applicants.

Mr. Nandan S. for the 1st and 2nd Respondents **with Ms. Prasad A. o/i of Karunaratne Lawyers**

Mr Solanki B. for 3rd and 4th Respondents.

Mr Cati J. for the 5th Respondent.

Mr. Bauleka A. for the 6th, 7th and 8th Respondents.

DATE OF JUDGMENT: 21st August, 2025

JUDGMENT

[Inter Parte Summons for Interim Orders]

Introduction

1. The Applicants filed an Inter-Parte Summons and sought for the following orders:

- (1) The Respondents, their agents and successors to halt all new leases involving the lands of Yavusa Matanikutu and Yavusa Nayavumata.
- (2) The Respondents, their agents and successors be restrained from taking any further actions to implement, enforce, or otherwise give effect to the Agreement for Lease relating to the land known as lease No. 1034 (TLTB No 4/3/41729) described as Matanikutu (Part Of) Naitasiri, 2.6740 hectares situated near Cunningham, Suva, Fiji in order to prevent further harm and injustice to the Applicants and other landowners;
- (3) The Third and Fourth Respondents their agents, and successors be restrained from proceeding with any transfer, lease or the development of the property comprised in agreement for lease No. 1034 (TLTB No

4/3/41729) described as Matanikutu (Part Of) Naitasiri, 2.6740 hectares situated near Cunningham, Suva, Fiji;

- (4) The Third and Fourth Respondents their agents, and successors be restrained from proceeding with any eviction of landowners from the property known as lease No. 1034 (TLTB No 4/3/41729) described as Matanikutu (Part Of) Naitasiri, 2.6740 hectares situated near Cunningham, Suva, Fiji;
- (5) Costs to be in cause; and
- (6) For such further orders and relief as are deemed just by this Court (including as to any conditions to which orders 1 to 2 above are subject).

2. **Upon the Grounds** as appears in the affidavit of Ratu Saula Colata Nadurucoko Tunisau deposed on 13th March 2025.
3. The Respondents opposed the Applicant's Inter-Parte Summons. Affidavits in opposition was filed to the current application coupled with the Statement of Defences to the substantive Writ Action and the Statement of Claim for records sake.
4. The **Substantive Writ Action** coupled with the **Statement of Claim** was also filed on 17th March 2025 completing its Cause of Action and awaiting impending hearing and determination accordingly.

Factual background

5. The First Respondent holds the traditional and customary title of Roko Tui Colo and Turaga ni Yavusa Matanikutu.
6. The Second Respondent is a member of the Yavusa Matanikutu and holds the title of Turaga-ni Mataqali for one of the Mataqali's under Yavusa Matanikutu.
7. The land subject to these proceedings measures approximately 2.6740 hectares and is traditionally associated with Yavusa Matanikutu and Yavusa Nayavumata.
8. The land is jointly owned by two (2) Landowning units [Yavusa], which are further subdivided into eight (8) sub-units [Mataqali].
9. The land in question has been allegedly lawfully leased pursuant to Lease No. 1034 (TLTB No. 4/3/41729) to the Third Defendant, Rony Chan aka Ronald Chan on 24th September 2021,

following the proper processes under the iTaukei Land Trust Act 1940. This lease was subsequently upheld by the Fiji Court of Appeal in Civil Appeal No. ABU 0026 of 2022.

10. The Lease was executed with the requisite endorsement of the iTaukei Land Trust Board [iTLTB], the statutory body empowered to administer all iTaukei Land in Fiji on behalf of the Landowning units.
11. The Applicant's assertion is that the lease was improperly procured.

Consideration and determination

12. From the outset, the Respondents have vehemently opposed the Applicant's Inter-Parte Summons seeking for interim orders.
13. According to the Respondents, the Plaintiffs have misled this Honourable Court by alleging without any basis, that the Respondents fraudulently procured the signatures of the landowners and engaged in a conspiracy to that effect. However, the evidence will not support this preposition of the Applicants.
14. The task before me for the time being is to determine **whether the orders sought by the Applicant in their Interlocutory Inter-Parte Summons at paragraph 1, 2, 3, 4, 5 and 6 should be granted?** [Orders as reflected in [A] at paragraph 1 of my Judgment herein].
15. The Inter-Parte Summons for the Applicants is filed pursuant to Order 7, Rule 4 and Order 29 of the High Court Rules, 1988.
16. Order 7, Rule 4 deals with Ex-Parte Originating Summons whilst Order 29 deals with Interlocutory Injunctions.
17. Injunction is an equitable relief granted at the discretion of the Court. The power needs to be cautiously **exercised only on clean and satisfactory grounds**.
18. An application for injunction is an appeal to an extraordinary power of the Court and the Applicant is bound to make out a case showing clearly a necessity of its exercise.
19. The injunctive relief sought being a discretionary remedy, the party who seeks the court to exercise its discretion in his or her favour must come to Court with clean hands and disclose full facts of the case.
20. Suppression of material facts otherwise will disentitle the party seeking an injunctive relief/order accordingly.
21. 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 to 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."

22. The leading authority on such application is the case of **American Cyanamid v. Ethicon Ltd** [1975] AC 398, Lord Diplock laid down certain guidelines as hereunder for the Court 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:

- (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 lies if the injunction is granted or refused.

23. In Kerr LJ in **Cambridge Nutrition Ltd v. BBC** [1990] 3 ALL 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 powers 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 substantive issues between the parties can only be resolved by a trial."

24. The major factors the Court can bear in mind in deciding whether to grant an Interlocutory Relief 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' case.

25. The Plaintiffs allege fraud and conspiracy against the Defendants. In that the Plaintiff accuses the Defendants of fraudulently procuring landowners' signatures and conspiring to deprive rightful landowners of their interest.
26. There is also an allegation by the Defendant's that the Plaintiffs have acted in bad faith when it ignored this lawful processes undertaken by the iTaukei Land Trust Board.
27. The Court of Appeal in Civil Appeal No. ABU 0026 of 2022 in its determination has uphold the legality of the lease granted to Second Defendant, Rony Chan aka Ronald Chan on the subject matter of the current case on foot.
28. The Plaintiffs are challenging that the First Respondent's claim to the chiefly title asserting that he lacks the genealogical and customary basis to occupy this position, historically, held by a Roko Davu Coko lineage.
29. The Plaintiffs maintain that the NLC's 1923 decisions affirm their lineage and customary authority and any attempt to diminish their status is unlawful and contrary to established evidence.
30. The Plaintiffs' contention is that and allege that the First, Second, Third and Fourth Respondents, with knowledge of the irregularities, conspired to procure the lease unlawfully, forging signatures, manipulating processes and circumventing customary and statutory safeguards.

(i) **Serious questions to be tried.**

31. The Plaintiffs are contentious of the fact that there are serious questions to be tried by the Court at the substantive trial.
32. However, I find that the Plaintiffs have failed to establish a serious legal and/or factual issue in this matter. In fact, the allegation made at this stage of hearing is rather vague, speculative and unsupported by evidence.
33. It can only be determined after hearing of this substantive matter.
34. Further, the subject land in question, Lease No. 1034, (TLTB No. 4/3/41729), described as Matanikutu (Part Of) and situated in the province of Naitasiri, was lawfully leased to the Third Defendant on 24th September 2021. The validity of this lease was subsequently affirmed by the Court of Appeal in [**Silverlining Investments, Pte Ltd. v. Volau** Civil Appeal No. ABU 0026 of 2022].

35. Therefore, at this stage, I find that there is no serious question to be tried herein.

(ii) Whether Damages would be an Adequate Remedy?

36. The Plaintiffs submitted that the subject land holds deep meaning to the Applicants and their families. The land in question and dispute holds significant customary and cultural value, allowing the lease and associated development to proceed before the allegation of fraud have been tested, would not only prejudice the Applicants but may risk legitimising a pattern of questionable or unlawful conduct for iTaukei Land for Yavusa Matanikutu and Yavusa Nayavumata.

37. The Respondent's contention is otherwise that the Damages would not be an Adequate Remedy.

38. I find that an Interlocutory Injunction as sought for by the Applicants is not warranted to prevent further harm if there is any. The reason being that the legal entitlements of the subject land in dispute in the Interim, lies with the Third Defendant, Rony Chan aka Ronald Chan. These rights for the time being cannot be disregarded since it would constitute an unwarranted interference with the Respondent's lawful interest arising from the duly-executed Lease Agreement.

39. Therefore, in the circumstances, Damages would not be an adequate remedy herein.

(iii) Whether Balance of Convenience favours the granting of the Injunction?

40. According to the Applicants, in assessing the balance of convenience and deny the injunction would result in irreparable damages to the Plaintiffs.

41. The Balance of Convenience favours the preservation of the status quo.

42. However, if no injunction is granted, the Plaintiff's may suffer lasting harm of their traditional rights, the unity of their Community and their Cultural and Spiritual ties to the land.

43. However, it is a Fundamental Rule that the Court will grant an Injunction only to support the Legal Right, and where the Plaintiff has no Legal Rights recognisable by the Courts, there is no power to grant him an Interlocutory Injunction.

44. In the present case, the Plaintiff assert an interest on the subject land. The land is presently the subject of the valid lease issued by the iTaukei Land Trust Board with the requisite majority consent of the landowning members. The Plaintiff's unsupported allegations of the fraud and their informal interest do not give rise to legal or equitable rights enforceable by Injunction.

45. Therefore, in absence of any registered lease or recognised equitable interest, the Plaintiff's application for Interlocutory Relief is fundamentally flawed.
46. There is no serious question to be tried in relation to the Plaintiff's alleged interest, nor is there any Balance of Convenience that favours interfering with Third Defendant's established Legal Rights.

In Conclusion

47. The wordings of the Interim and/or Injunctive orders sought are clear indications of the fact that substantive permanent orders are being sought.
48. The Plaintiff's have failed to demonstrate a serious question to be tried.
49. The allegations of fraud, lack of Consultations, and improper Lease Execution are rather speculative, unsubstantiated and contradictory by the statutory procedures followed by iTaukei Land Trust Board and affirmed by the Court of Appeal in the case of **Silverlining Investments Pte Ltd v. Volau**. (Civil Appeal No. ABU-0026 of 2022).
50. The Balance of Convenience outweighs against the grant of the injunction sought.
51. The Leasehold Rights in question were lawfully granted to the Third Defendant, Rony Chan aka Ronald Chan, and form the current status quo.
52. If an order is made to restrain the Defendants, would result in undue prejudice, financial loss, and disruption of lawful development.
53. If there is any existence of any alleged harm by the Plaintiffs, upon prove, can be adequately compensated by damages.
54. The Injunctive and/or Interim Orders by the Plaintiffs, upon hearing the evidence so far does not prompt this Court to grant any of the Orders within the Plaintiffs' Inter Parte Summons.
55. The interim orders sought by the Plaintiffs at paragraph [A] (1) (1) to (6) inclusive are all refused and accordingly dismissed in its entirety.

Costs


56. The matter proceeded to full hearing with written submissions furnished to Court and orally argued. It is only just and fair that the Plaintiffs pay the Defendants [1st, 2nd, 3rd, 4th, 5th and 6th Defendants] a sum of \$1,000 each, totalling \$6,000 within 21 days' timeframe.

Orders

- (i) The Plaintiffs' Inter Parte Summons for Interim Orders filed on 17th March 2025 is refused and therefore dismissed in its entirety.
- (ii) The Plaintiffs to pay each of the Defendants [1st, 2nd, 3rd, 4th, 5th and 6th] a sum of \$1,000 each, a total of \$6,000, as summarily assessed costs within 21 days' timeframe.
- (iii) The Substantive Writ Action is adjourned to 25th September for Mention to allow the parties to complete the Cause of Action in the Substantive Matter.

Dated at **Suva** this **21st** day of **August** , **2025**.




VISHWA DATT SHARMA
PUISNE JUDGE

cc: Shirley Lavenia Susan Legal, Flagstaff, Suva
Karunaratne Lawyers, Suva
Solanki Lawyers, Suva
Attorney General's Chambers, Suva
iTLTB, Suva