

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 243 of 2025

BETWEEN : **UNAI SI NAWALOWALO CABENATABUA**
Plaintiff

AND : **NAI SOQOSOQO VAKAMARAMA ITAUKEI**
TRUST
BOARD (INC)
First Defendant

ADI FINAU TABAKAUCORO
Second Defendant

SALOTE LOANAKADAVU NAWALOWALO
Third Defendant

TITILIA TONAWAI
Fourth Defendant

MILIANA VULAKOUVAKI
Fifth Defendant

RO VOKILI NAGATALEVU
Sixth Defendant

MELIKI LOANAKADAVU
Seventh Defendant

SENIMILI KATONIVUALIKU

Eighth Defendant

SALASEINI DOLELE TALILI

Ninth Defendant

TIMAIMA SOROVAKI

Tenth Defendant

MEREWALESI WAVU

Eleventh Defendant

THE REGISTRAR OF CHARITABLE TRUSTS

Twelfth Defendant

THE ATTORNEY-GENERAL'S OFFICE

Thirteenth Defendant

Counsel : Mr Faktaufon & Mr Vatubua for the Plaintiff
No appearance for the 1st Defendant
No appearance for 2nd Defendant¹
Mr Ramen for 3rd & 7th Defendants
Mr Doidoi for 4th Defendant
Fifth Defendant in person
Mr Buakula for 6th & 8th Defendants
Ms Boseiwaqa for the 9th & 11th Defendants
Tenth Defendant in person
Mr Chand for the 12th & 13th Defendants

¹ Medical certificate produced.

Hearing : 2 September 2025
Judgment : 12 September 2025

EXTEMPORE JUDGMENT

- [1] The plaintiff has been granted a temporary injunction, restraining the defendants from using an ANZ bank account held by the Suva Branch of the Nai Soqosoqo Vakamarama iTaukei Trust Board² (**the Trust Board**).
- [2] The plaintiff seeks a continuation of the interim injunction over the ANZ bank account until the conclusion of this proceedings as well as an injunction over the use of a BSP bank account held by the Parent Body of the Trust Board.

Background

- [3] The Trust Board was established for the purpose ‘*to cater for and serve the needs of Kadavu based woman*’.³ It has a constitution. As stated, it has a Parent Body as well as several branches around Fiji, including the Suva Branch.
- [4] The Parent Body and each branch have their own executive committee and a president, which appear to be filled by elections. The plaintiff says that she was nominated and properly elected as the President of the Suva Branch on 2 July 2024. Her term was for three years, commencing on 1 January 2025. She says that she sought a proper handover so that she could fulfill her role as President, but this did not occur.

² The First Defendant.

³ Para 10 of Affidavit of Plaintiff dated 2 July 2025.

- [5] The plaintiff has made allegations in respect to the alleged misuse and mishandling of the Trust Board's funds and bank accounts.
- [6] The Trust Board held a Special General Meeting on 5 April 2025 and purported to remove the plaintiff as President of the Suva Branch. The plaintiff has brought these proceedings, seeking orders restoring her as President.⁴ Specifically, she seeks declarations that she is the properly elected President of the Suva Branch. She seeks orders providing her access to the two said bank accounts, so that she may fulfill her functions as President as well as investigate her allegations against the defendants in respect to the use of the Trust Board's monies.
- [7] The defendants include the Trust Board and several members and office bearers of the Trust Board, both the Parent Body and the Suva Branch.⁵ They claim that the plaintiff was not properly elected as President in July 2024, and deny the allegations of misuse and mishandling of the Trust Board's monies.

Respective positions of the parties

- [8] The plaintiff seeks an interim injunction to prevent the Trust Board and its officers from using its two bank accounts.⁶ According to the inter-parties summons for injunction, the plaintiff seeks six specific interim orders. Her counsel advised at the hearing that only the relief at VI is pursued, being '*an injunction restraining the Defendants or any other signatories unknown to the Plaintiff from accessing, withholding from or operating the SSVK Sub-Branch's [two accounts, the details of the ANZ and BSP*

⁴ The proceedings were filed on 8 July 2025 by way of an Originating Summons and supporting affidavit by the plaintiff dated 2 July 2025.

⁵ The first to eleventh defendants.

⁶ The summons was also filed on 8 July supported by an affidavit by the plaintiff dated 2 July 2025.

*accounts provided] or any other SSVK Sub-Branch investment, until the determination of this matter or until such time this Honourable Court may determine’.*⁷ The plaintiff says that the injunction is necessary to protect the financial position of the Trust Board until this proceeding is concluded.

[9] The defendants, on the other hand, argue that such orders will cripple the Trust Board and prevent it from conducting its important business.⁸ They say that the month of September is particularly important for the Trust Board as it is the period during which it conducts its fundraising activities to raise money for its operations. They say that any injunction over the use of its two bank accounts will prevent the Trust Board from being able to pay the expenses required for the fundraising activities.

Decision

[10] The power to provide injunctive relief is contained at Order 29 Rule 1 of the High Court Rules 1988. The provision reads:

- (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 the 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*

⁷ On 6 August 2025, I granted a temporary injunction over the ANZ account until the interlocutory application could be properly heard and determined.

⁸ Affidavits in opposition have been filed for the 3rd, 4th, 5th, 6th, 7th, 8th, 9th & 11th defendants. The plaintiff filed affidavits in reply on 27 August 2025.

but except as aforesaid such application must be made by notice of motion or summons.

- (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.*

[11] The law is settled on where the Court may make an order for an interim injunction. Pathik J provided a helpful summary of the principles and authorities in *Korovulavula & Anor v Fiji Development Bank* [1997] FJHC 197. The High Court was considering whether to extend or dissolve an injunction already granted. His Lordship stated:

The principles to be followed in considering the granting of injunctive relief are set out in the leading case of American Cyanamid Co v Ethicon Ltd (1975) A.C. 396. The House of Lords there decided that in all cases, the Court must determine the matter on a balance of convenience, there being no rule that an applicant must establish a prima facie case. The extent of the court's duty in considering an interlocutory injunction is to be satisfied that the claim is "not frivolous or vexatious", in other words, "that there is a serious question to be tried".

In Cyanamid (supra) at page 406 Lord Diplock stated the object of the interlocutory injunction thus:

"... to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury

resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where "the balance of convenience" lies".

(emphasis mine)

A similar view was expressed by McCarthy P in Northern Drivers Union v Kuwau Island Ferries (1974) 2 NZLR 61 when he said:

"The purpose of an interim injunction is to preserve the status quo until the dispute has been disposed of on a full hearing. That being the position, it is not necessary that the Court should have to find a case which would entitle the applicant to relief in all events: it is quite sufficient if it finds one which shows that there is a substantial question to be investigated and that matters ought to be preserved in status quo until the essential dispute can be finally resolved ... "

(ibid, 620)

"It is always a matter of discretion, and ... the Court will take into consideration the balance of convenience to the parties and the nature of the injury which the defendant, on the one hand, would suffer if the injunction was granted ... and that which the plaintiff, on the other hand, might sustain if the injunction was refused ..." (ibid, 621).

...

As to "balance of convenience" the court should first consider whether if the Plaintiffs succeed at the trial, they would be adequately compensated by damages for any loss caused by the refusal to grant an interlocutory injunction.

...

In HUBBARD v VOSPER (1972) 2 WLR 359, LORD DENNING at p.396 gave some guidance on the principles of granting an injunction which I think is pertinent to bear in mind in this case when he 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 to 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. For instance in Fraser v Evans [1969] 1 QB 349, although the plaintiff owned the copyright, we did not grant an injunction because the defendant might have a defence of fair dealing. 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."

[12] These same principles have been consistently applied up to the present time. In *Alizes Ltd v Commissioner of Police [2013] FJHC 596*, Tuilevuka J noted:

11. *Interim injunctions are a powerful discretionary remedy. But they are not lightly granted. They are granted ex parte only if there is urgency. In other words, if to proceed normally (i.e. inter partes by Notice of Motion or Summons) would be a delay entailing irreparable or serious mischief, (see Order 29 Rule 1(2) as amended in 1991 in LN 61/91).*
12. *The applicant must show a strong enough case to justify the Court not hearing the other side's case. Usually, to show "urgency", the applicant must show that, unless the court intervenes with a restraining order, he has a legal right in the subject-matter of the case which is under an immediate threat of being violated. Apart from that, the*

applicant must convince the court that the balance of convenience favours the granting of the injunction ex-parte.

[13] Balapatabendi J succinctly identified the test as follows in *Vanualevu Muslim League v Hotel North Pole & Ors* [2013] NZHC 151, at 17.4:

What could be deduced from Lord Diplock's rulings in American Cyanamide Case are in fact tests to be adopted in dealing with an application for interim injunction. The tests could be summarized as follows:-

- 1. Is there a serious question to be tried?*
- 2. Is damages an adequate remedy?*
- 3. Where does the balance of convenience lie?*

[14] In order for the plaintiff to be entitled to an interim injunction she must satisfy each of the three tests identified above. Even should she do so, careful consideration needs to be had to the interim orders that this Court can make in the present case. The plaintiff has not yet succeeded in her claim and cannot receive the fruits of her claim before establishing her entitlement to the same.

Is there a serious question to be tried?

[15] It is not necessary for the plaintiff to demonstrate that she will succeed with her claim. It suffices, for the purposes of the present interlocutory application, that the plaintiffs' claim is not hopeless. Ajmeer J noted in *Deo v Hans* [2018] FJHC 1113 (21 November 2018) at [31]:

...the Court is required to investigate the merits to a limited extent only. All that needs to be shown is that the claimant's cause of action has substance and reality...

[16] In *Andrews v Prasad* [2019] FJHC 904 (20 September 2019) Nanayakkara J stated:

...there is no requirement that before an 'interlocutory injunction' is granted the plaintiff should satisfy the Court that there is a 'probability', a 'prima facie case' or a 'strong prima facie case' that if the action goes to trial he will succeed; but before any question of balance of convenience can arise the party seeking the injunction must satisfy the Court that his claim is neither frivolous nor vexatious; in other words that the evidence before the Court discloses that there is a serious question to be tried.

[17] The substantive question for determination in the proceeding is whether the plaintiff was properly elected as President of the Suva Branch in July 2024 - and whether she was properly removed in April 2025 at the Special General Meeting. Plainly, there is a serious question to be tried requiring consideration of the Trust Board's Constitution and the facts of the case.

Is damages an adequate remedy?

[18] In my view, it is not.

[19] There is no evidence of the defendant's ability to pay any damages if such a order is made. Nevertheless, it appears that the real remedy sought in this proceeding is a determination on whether the plaintiff is the properly elected President of the Suva Branch. If she is successful then she will likely be in a position to investigate her concerns over the use of the Trust Board's monies.

Where does the balance of convenience lie?

[20] In my view, this is the key issue in respect to whether the plaintiff ought to succeed with her application for an interim injunction.

[21] I have concluded that the balance of convenience lies with declining the plaintiff's application. My reasons are as follows:

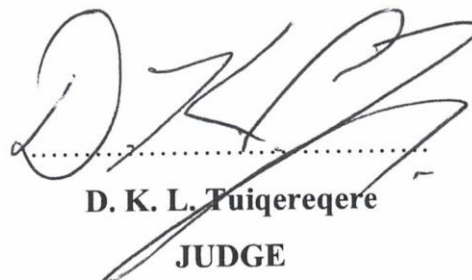
- i. In my view, the Trust Board must be allowed to operate and function whilst these proceedings are determined. If I make the orders sought by the plaintiff, this would effectively restrain the Trust Board from conducting its activities, including the important business of fundraising which occurs at this particular time of the year.
- ii. I also note that the plaintiff has not provided an undertaking as to damages and if unsuccessful, there is no evidence before this Court of the plaintiff's ability to pay any damages to the Trust Board for any losses it may suffer arising from its inability to properly fundraise.

Orders

[22] My orders are as follows:

- i. The application by the plaintiff for an interim injunction is declined.
- ii. The temporary injunction over the ANZ bank account is dissolved.
- iii. Costs to be in the cause.




D. K. L. Tuiqereqere
JUDGE

Solicitors:

Vama Law for the Plaintiff

Law Solutions for the Fourth Defendant

Attorney-General's Chambers for Twelfth & Thirteenth Defendants