

IN THE HIGH COURT OF FIJI

AT LABASA

CIVIL JURISDICTION

Civil Action No.: HBC 76 of 2024

BETWEEN: **BASHIR KHAN** of 15 Jaduram Street, Labasa, Fiji Islands, President and Trustee of the First Plaintiff and Businessman, **FAIZAL RIYAZ KHAN** of Waidamudamu Road, Vunimoli, Labasa, Trustee and Businessman, **SHAMIMA KHAN** of 15 Jaduram Street, Labasa, Trustee and retired, and **NASIM BANO** of Nasea, Labasa, Trustee and Bank Officer, collectively suing as the registered trustees of **VANUALEVU MUSLIM LEAGUE** a religious organization duly registered pursuant to the Religious Bodies Registration Act 1881 of 27th August 1984 with a registration No. 214517 having its registered office at 15 Jaduram Street, Labasa, Fiji Islands.

PLAINTIFFS

AND: **LABASA TOWN COUNCIL** a municipal council established under the Local Government Act 1972.

FIRST DEFENDANT

AND: **ITAUKEI LAND TRUST BOARD** a statutory body established under the Local Government Act 1940.

SECOND DEFENDANT

AND: **MINISTRY OF LANDS AND MINERAL RESOURCES** of Nasova Road, Nasova, Suva.

THIRD DEFENDANT

AND: **MINISTRY OF HOUSING AND LOCAL GOVERNMENT** of Fiji FA House, Gladstone Road, Suva

FOURTH DEFENDANT

AND: **MINISTRY OF JUSTICE** of Level 1 Suvavou House, Queen Elizabeth Drive, Suva.

FIFTH DEFENDANT

AND: **ATTORNEY GENERAL OF FIJI** of Level 3-9 Suvavou House, Queen Elizabeth Drive, Suva, Fiji

SIXTH DEFENDANT

AND: **VCORP PTE LIMITED** formerly known as **CENTER POINT HOTEL MANAGEMENT LIMITED** a limited liability company having its registered office at 9 Damanu Street, Labasa.

SEVENTH DEFENDANT

Counsel: **Mr. S. Valenitabua for the Plaintiffs**
Mr. S. Tamanikaiqalikarua for the 1st Defendant
Ms. L. Turaganivalu for the 2nd Defendant
Mr. T. Cagilaba for the 3rd, 4th, 5th and 6th Defendants
Mr. A. Sen for the 7th Defendant

Hearing: **5 November 2025**

Ruling: **11 November 2025**

RULING

(Interim injunctions)

Introduction

1. These proceedings are the latest instalment in a long-running saga concerning a dispute over land in Labasa. Related proceedings in Civil Action No. 32 of 2011 were litigated all the way up to the Supreme Court. A comprehensive summary of the underlying facts is set out in the Judgment of the Supreme Court in Civil Petition No: CBV 0011 of 2020, handed down on 28 April 2023, which I gratefully adopt for present purposes.

The current proceedings

2. The plaintiffs filed a Writ of Summons and Statement of Claim on 31 December 2024 seeking damages and various declaratory and injunctive relief against the defendants. By an Amended Writ of Summons and Statement of Claim filed on 27 January 2025, the plaintiffs prayed for the following additional relief:

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(f) An Order that the Third Defendant by itself, its servants and/or agents regularise the Survey Plan for Lots 1-8 for the land known as Nairogovoce dated 17 December 2024 and revert to the original Survey Plan for Lots 1 & 2 M2605 dated 16 January 1975, the original lot size and the original land boundaries.

(g) The application for a rear service lane by the plaintiffs to be approved and granted.

3. The plaintiffs' claims are contested, but the substantive action has not proceeded beyond the filing of defences by each of the defendants.
4. On 27 January 2025, the plaintiffs filed a summons seeking interlocutory injunctions against each of the defendants ("the first summons") supported by the Affidavit of Mr. Bashir Khan ("BK1"). The plaintiffs seek an Order that:
 1. The seventh defendant, VCORP PTE LIMITED, by themselves, their agents or servants or otherwise be restrained from dealing with and specifically carrying out further land development and construction works in the property described as Lot 1 on M2605 the subject of the Plaintiffs' claim herein (hereinafter referred to as "the said property") pending determination of the Writ Action filed herein or until further order of the Court.
 2. The seventh defendant, VCORP PTE LIMITED, by themselves, their agents or servants or otherwise be restrained from dealing with and specifically carrying out further land development and construction works in the said property pending determination of the herein application.
 3. All the defendants, by themselves their agents or servants or otherwise be restrained from dealing in and issuing instructions, approvals, consents, and directives howsoever to the seventh defendant for the continuance of land development and construction works in the said property except for the issuance of Stop Work Notices by the third and fourth defendants to the seventh defendant.

4. Costs of this application be in the cause.
5. Any other such orders as the Court may deem just.
5. A Supplementary Affidavit of Mr. Bashir Khan was filed on 11 February 2025, together with an Undertaking as to Damages.
6. On 1 July 2025, after a change of solicitors, Valenitabua & Associates (“V&A”) filed a summons seeking substantially the same interim relief against the seventh defendant as already sought in the first summons, supported by a Further Supplementary Affidavit of Mr. Bashir Khan.
7. The defendants have filed affidavits in opposition to the affidavits relied on by the plaintiffs.

Submissions

8. The parties have filed written submissions which have assisted the Court to a greater or lesser extent.
9. V&A’s written submissions run to no fewer than 36 pages and address what are said to be four critical issues – *locus standi*, *res judicata*, limitation periods, and the principles governing interlocutory injunctions. Without seeking to disparage these submissions, it must be observed that they bear the hallmarks of not being exclusively the product of a human mind. The following introduction sufficiently illustrates this point:

“INTRODUCTION

2. The submissions have been prepared after thorough research into legal precedents and consideration of similar cases throughout Commonwealth jurisdictions. Each issue is analysed systematically, beginning with relevant legal principles, followed by application to the facts of the present case, and concluding with strategic recommendations.”

10. The comprehensive submissions that follow are redolent of a bookish student overly keen to impress with their encyclopedic knowledge. Whilst this may be highly informative, care must be taken not to burden the Court with learning that

is not strictly necessary for the determination of the applications at hand. To take but one example, the relevant principles governing interim injunctions are well-established in Fiji, and the Court is not much assisted by the citation of case authorities from Ghana.

11. V&A frame the current proceedings as being centred on the re-zoning, transfer, and registration of Commercial iTaukei Lease No. 30080 relating to what the plaintiffs and Vanualevu Muslim League (“VML”) claim is State foreshore or ‘*tiri*’ land. VML alleges that the defendants have illegally facilitated the conversion of State foreshore land into iTaukei land and subsequently leased it to the seventh defendant, leading to development activities that have interfered with drainage reserve and river access reserve used by VML, its members, and the general public.
12. V&A acknowledge the complex litigation history and argue that a recent redefinition survey has confirmed that the land is State foreshore land and not iTaukei land, which they argue provides new evidence that was not available during the previous litigation.
13. On the issue of *locus standi*, it is submitted that the plaintiffs have standing to bring these proceedings founded on multiple legal bases, including statutory authorisation, propriety interests as owners of adjacent land, constitutional rights related to religious freedom, and public interest considerations related to reserve protection and community access to the Labasa river resources.
14. Regarding the issue whether the plaintiffs’ claims are barred in light of previous litigation between the parties, V&A submit that the doctrine of *res judicata* is not absolute and must be applied with careful consideration of its purposes and limitations. It is argued that exceptions exist, particularly in cases involving fraud or new evidence that could not have been discovered earlier with reasonable diligence.
15. The gist of the plaintiffs’ argument is that, whilst the current proceedings involve some of the same parties and relate to the same general area of land as the previous litigation, they introduce new claims regarding the fundamental classification and legal status of the land. The plaintiffs allege that new evidence has emerged post-Supreme Court judgment, indicating that the land

is State foreshore land, not iTaukei land, which would have significant implications for the validity of Commercial iTaukei Lease No. 30080 and the seventh defendant's development activities occurring on the land.

16. V&A conclude that *res judicata* likely applies to certain aspects of the plaintiffs' claims, but may not bar the entirety of the current proceedings.
17. On the issue whether the plaintiffs' claims are time-barred, V&A conclude that the plaintiffs' claims are not time-barred under the Limitation Act, and assert that they have strong arguments to overcome any limitation challenges that the defendants might raise.
18. On the central issue of whether the interlocutory injunctions sought by the plaintiffs ought to be granted, V&A set out an expansive analysis of the uncontroversial principles applied in the courts of Fiji.
19. V&A argue that there are serious questions to be tried, damages would not be an adequate remedy, and the balance of convenience strongly favours granting the injunctions for several reasons, principally that the plaintiffs face the risk of irreparable harm through flooding, property damage, and interference with religious activities.
20. Sen Lawyers ("SL") have filed written submissions asserting, but not developing the arguments, that the plaintiffs have no *locus* or any cause of action, the claims are statute barred, the matters are *res judicata*, and the plaintiffs are challenging public or administrative decisions which can only be challenged by way of public law remedies.
21. SL argue that the plaintiffs are attempting to re-litigate the same issues decided in earlier proceedings and assert that the plaintiffs are vexatious litigants.
22. In written submissions filed by Sushil Sharma Lawyers ("SSL") on behalf of the first defendant, it is argued that the plaintiffs' claims are vexatious. It is noteworthy, however, that SSL do not engage with V&A's nuanced argument on the issue of *res judicata*. For reasons that are not immediately apparent, SSL also make extensive submissions on the principles applicable to Mareva Injunctions.

23. The Attorney General's Chambers ("AGC") have filed admirably succinct written submissions on behalf of the 3rd to 6th defendants in opposition to the plaintiffs' application for interlocutory injunctions. It is submitted that the plaintiffs' application must fail on the well-established principles governing interlocutory injunctions as the plaintiffs have no serious question to be tried, have not demonstrated irreparable harm, and the balance of convenience overwhelmingly favours allowing the seventh defendant to proceed with development lawfully undertaken on land over which it currently holds a valid lease, and for which zoning approval was granted correctly.
24. Developing these arguments, AGC submit that the plaintiffs (and VML) have no legal or equitable interest in the subject land, the substantive action amounts to an abuse of process and breaches the doctrine of *res judicata*, and the plaintiffs have not demonstrated any procedural impropriety or illegality in the granting of zoning approval. In any event, the plaintiffs' recourse is to institute a review of the rezoning decision and the grant of the lease, not to issue an action by Writ. The plaintiffs have failed to demonstrate any irreparable harm that damages cannot adequately compensate. Allegations regarding drainage and potential environmental impacts are speculative and are capable of administrative redress.
25. AGC argue forcefully that the balance of convenience weighs decisively against the grant of injunctions. The seventh defendant is exercising its lawful right to develop its leased land in accordance with approvals issued by competent authorities. To restrain the seventh defendant would not only undermine VCORP's legal rights, but would also call into question the authority of the State institutions that issued such approvals. The State has acted within its statutory function in granting zoning approval and has an interest in ensuring finality and certainty in administrative decision-making. To restrain the implementation of such approvals based on unsubstantiated objections would set "*a troubling precedent*".

Hearing

26. At the hearing of these applications, the Court indicated that it would not refuse interim relief on the basis that there is no serious question to be tried, and

invited the parties to focus on the central issues of irreparable harm and the balance of convenience.

27. In terms of irreparable harm, Mr. Valenitabua emphasised the risk to the structural integrity of his clients' building, the public interest in the protection of the environment, and "*religious integrity*". He argued that the seventh defendant could be adequately compensated in damages as the development is essentially a commercial venture.
28. For the seventh defendant, Mr. Sen argued that the public interest is not a relevant consideration, and the issue of religious integrity is a red herring. Also, he submitted that his client had encountered difficulty in recovering damages awarded in the related proceedings, which was only resolved after contempt proceedings were instituted.
29. Notwithstanding my indication that the Court would not at this stage engage with complex legal and factual issues arising from the allegations of fraud, and the new evidence provided by the recent redefinition survey, Mr. Valenitabua quite properly emphasised his clients' concerns that the seventh defendant continues to flout the stop work notice dated 8 January 2025 issued by the third defendant (Annexure 33 to BK1 – "The Stop Work Notice").
30. The Stop Work Notice is headed "*Illegal Development on Lot 1 M 2605*" and materially states that:

"It was ascertained in the recent survey, conducted by iTaukei Land and Fisheries Commission and Director of Lands, that part of the land leased to you by ITLTB, over area known as Lot 1 M 2605, is state land. This is reflected on the new registered approved plan, Lot 1 SO 11391.

In our meeting with ITLTB on 4th instant, it was decided that the mentioned portion will be surrendered by ITLTB and Director of Lands to issue lease over it.

It was also agreed in that meeting, and through which you are now advised to "CEASE" all development works on state land immediately until all leasing matters have been sorted out and finalized with ITLTB and this office. However, this should not stop you from continuing works on the iTaukei land portion,

through which you may confirm the same with your lessor the ITLTB.

By a copy of this letter Labasa Police Station has been notified to enforce the law should you fail to comply with this Notice.”

31. Counsel for the 3rd to 6th defendant was unaware of the Stop Work Notice and indicated that it may necessitate amendment of his clients’ defence.

Discussion and resolution

32. In exercising the Court’s discretion in determining these applications, I am mindful of what Lord Diplock said in ***American Cyanamid***:

“It is no part of the court’s function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend or decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.”

33. I note that V&A concede that *res judicata* likely applies to certain aspects of the plaintiffs’ claims, but the Court has not had the benefit of full argument on the difficult issues concerning whether the plaintiffs have proper standing in these proceedings, whether the current proceedings offend against the established principles of *res judicata*, and the interesting private versus public law issue.
34. Focusing on the central issues for present purposes of irreparable harm and the balance of convenience, I am not persuaded that the plaintiffs have sufficiently demonstrated that VML would suffer irreparable harm if the relief sought is not granted. I do not consider the public interest to be a relevant consideration, and the plaintiffs’ concerns about environmental damage (even if justiciable in the present proceedings) are highly speculative. I also note that it has been finally determined in the related proceedings that no drainage easement had been created over VCORP’s land. It must not be overlooked that the re-zoning of the land had been subject to a condition requiring VCORP to form a drainage easement along the boundaries of the land.

35. I further consider there to be a high degree of artificiality about the plaintiffs' constitutional arguments concerning interference with freedom of religion. It cannot be sensibly argued that the refusal of interim injunctive relief would, or may, interfere with the peaceful enjoyment of religious activities.
36. The Stop Work Notice, and the recent redefinition survey, have given me pause for thought, but the validity of the seventh defendant's lease is ultimately an issue to be determined after trial. I note also that the plaintiffs' applications are not limited to development works on State land. As far as I am aware, there is no prohibition on development works on the iTaukei portion of the seventh defendant's land. In my view, any legitimate concerns about non-compliance with the Stop Work Notice may be more appropriately raised with the relevant authorities.
37. In my considered view, the balance of convenience weighs decisively against granting the interim relief sought by the plaintiffs.
38. For the reasons given, it is ordered that:
- (i) Applications for interim relief refused.
 - (ii) Costs in the cause



Hon. Mr. Justice Burney

At Labasa

11 November 2025

Solicitors:

Valenitabua & Associates for the Plaintiffs
Sushil Sharma Lawyers for the 1st Defendant
ITLTB for the 2nd Defendant
Attorney General of Fiji for the 3rd, 4th, 5th and 6th Defendants
Sen Lawyers for the 7th Defendant