

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

CIVIL ACTION NO. HBC 131 OF 2025

BETWEEN : **SUNIL DEO** of Vuniyasi Road, Navo, Nadi, Businessman
PLAINTIFF

AND : **BARAS MATI KRISHNA** formerly of Vuniyasi Road, Navo, Nadi,
currently residing in Sydney, New South Wales, Australia,
Domestic Duties.
1ST DEFENDANT

AND : **GOPAL KRISHNA** formerly of Vuniyasi Road, Navo, Nadi,
currently residing in Sydney, New South Wales, Australia,
Domestic Duties.
2ND DEFENDANT

BEFORE : Hon. A.M. Mohamed Mackie- J.

COUNSEL : Mr. S. Chandra, for the Plaintiff.
Ms. R. Prasad, for the Defendant (O/I).

HEARING : By way of Written submissions.

W. SUBMISSIONS : Not filed by the Plaintiff.
Filed by the Defendants on 08th December 2025

DATE OF RULING : 3rd February 2026.

RULING

A. Plaintiff's Application for Injunctive Relief:

1. The Plaintiff filed an Ex-parte Notice of Motion ("Application") on 13th June 2025 seeking reliefs, inter-alia, an injunctive order against the 1st Defendant to the following effect;
 1. *That the 1st Defendant, her agents, servants or employees be restrained from selling, transferring, alienating or disposing of Crown Lease 17479 Being Lot 1 SO 516 parts of Nacaqara & Navo having an area of 1002m2, until the determination of this matter.*
2. The Application was supported by an Affidavit sworn by the Plaintiff, SUNIL DEO, on 12th June 2022 and filed together with annexures thereto marked from "SD-01" to "SD-08".
3. When the Application was supported before me Ex-Parte on 16th June 2025, having heard the counsel for the plaintiff and perused the papers, this Court directed the

matter to be heard inter-parte, since the Plaintiff was said to be in occupation of the premises and there was no ground for an urgent intervention of this Court.

4. Accordingly, the papers being duly served, when the matter came up on 18th August 2025 for the inter-parte hearing, as the Defendants objected to the Application for injunctive order, direction being given for Affidavit in Opposition and Reply, both parties have filed their respective Affidavits.
5. When the matter came up on 3rd November 2025 to fix a date for hearing, both parties agreed to have the same disposed by way of written submissions and accordingly, only the Defendants have filed their written submissions.

B. Plaintiff's Substantive Relief:

6. The Plaintiff on 20th filed his Statement of Claim (SOC) seeking the following substantive reliefs against the 1st Defendant.
 - (a) *An Order that the 1st Defendant allow the Plaintiff to purchase the property at the current market rate; or*
 - (b) *Refund of all the investments the Plaintiff has made into the property; and*
 - (c) *General Damages; and*
 - (d) *Interest; and*
 - (e) *Costs; and*
 - (f) *Any other relief that this Court may deem just in the circumstance.*
7. The Defendants filed their Statement of Defence (SOD) on 15th August 2025, wherein they, while admitting the averments in paragraphs 1,2,3,6,8,9,10,11 to 14, 16,17, 19 and 21 of the SOC, denied the rest of the averments therein and moved to dismiss the Plaintiff's claim with costs on indemnity basis on the ground that the cause of action advanced by the Plaintiff is frivolous and vexatious. The plaintiff has filed his reply to defence and moved for reliefs prayed for in his SOC.

C. Background Facts &History:

8. As per the Plaintiff's SOC and the corresponding paragraphs of the Affidavit in support, the following facts can be ascertained;
 - a. The 1st Defendant is the last Registered proprietor of Crown Lease 17479 being lot 1-SO 5616 parts of Naqaqara & Navo having an area of 1002m² (the property) The 2nd Defendant is the Husband of the 1st Defendant.
 - b. The Plaintiff is the tenant of the 1st Defendant since or about the year 2012.
 - c. Plaintiff was approached by the Defendants to rent their property and to look after it, as the Defendants were migrating to Australia.
 - d. The 1st Defendant informed the Plaintiff that since they are migrating, they intend to sell the property, and till then the plaintiff should rent the property. When they decide to sell it, the Plaintiff will be given priority to purchase.

- e. They entered in to a verbal tenancy agreement for the monthly rental of \$350.00.
- f. Relying on the representations made by the Defendants, the plaintiff continued to reside at the property and carry out needed maintenance works, for which the Defendants were to cover the costs for materials on major maintenance works, while the plaintiff was to bear the remaining costs such as labor and miscellaneous expenses.
- g. The Defendants obtained the valuation and Cyclone Certificate, and provided to the Plaintiff according to which the value was \$340,000.00.
- h. On or about 10th November 2024, the 2nd Defendant informed the plaintiff that he would now be considering to sell the property for \$500,000.00, which was \$160,000.00 more than the valuation of the property as per the valuation report obtained by the Defendants.
- i. Though, the Plaintiff attempted to negotiate the price, the Defendants refused to negotiate on the price.
- j. A Real Estate Agent, **Ms. Shameta Kumar**, told the Plaintiff that she would be handling the negotiations and transaction, and informed that the market rate for the property should be \$7,50,000.00.
- k. That on 12th April 2025, the plaintiff received an email from Shameta Kumar with the title "Notice to Vacate" and attached an unsigned document "Notice to Vacate the property Lot 1, Navo Road, Navo".
- l. That on receipt of above email, the Plaintiff contacted the Defendants, who then informed that, either the plaintiff had to move out or he had to purchase the property for the new price of \$7,50,000.00.
- m. That on 15th May 2025, the Plaintiff was served with an eviction Notice by Messrs. Chetty Law & Associates stating that the Plaintiff has 30 days to vacate the property.
- n. That since 2012, on the representations made by the Defendants, the plaintiff has over the years invested more than \$10,000,00 from his personal funds to carry out maintenance on the property.
- o. That the Defendants are now acting in bad faith and refusing to honor their earlier deal or to negotiate with the Plaintiff for a reasonable price.
- p. Due to the action of the Defendants, the Plaintiff has suffered damages and losses as the Plaintiff has invested his time and money into the property.

D. Affidavit in Opposition:

9. Agreeing with the contents in paragraphs 2, 3, part of 4, 7, 9, 10 and 11 of the Affidavit in support, the 1st Defendants in her Affidavit in opposition took up the position that as they were migrating to Australia in 2012, they approached the plaintiff to rent out the property to him, and did so for a monthly rental of \$300.00. Initially no representations were made regarding the sale of the property, but made a proposal subsequently in the year 2024 to sell it to him as he were the sitting tenant.
10. The 1st Defendant averred further that the plaintiff did not carry out any maintenance, except for the construction of the fence on the request made by the 2nd Defendant and to provide the receipts for reimbursement. The 1st Defendant deny the majority of the averments in the Affidavit in support.

E. Law & Discussion:

11. Injunction is an equitable remedy granted at the discretion of the Court. The power which the court possesses to grant injunctions should be cautiously exercised only on clear and satisfactory grounds. 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.
12. It is also 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 by revealing the full facts. Suppression of material facts will disentitle the party seeking an injunction order.
13. 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”.

14. Interim injunction is a relief that cannot be granted solely or independently without any final or substantive relief for which the party seeking should have a right. A party who has not sought any substantive relief or has no right for such relief, cannot in law seek an interim injunction, as it cannot be a relief by itself but is only a mechanism to assist and protect final relief.
15. In **American Cyanamid Co. v Ethicon Ltd [1975] UKHL 1; [1975] 2 W.L.R. 316, [1975] A.C. 396** 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:

1. Whether there is a serious question to be tried at the hearing of the substantive matter?
2. 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
3. In whose favour the balance of convenience lie if the injunction is granted or refused?

16. 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".

17. 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 (supra) 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.*

18. The Plaintiff does not dispute the title of the 1st Defendant for the subject property and the fact that he on the request of the Defendants came into it as a tenant at the monthly rental on a verbal agreement when the Defendants were migrating. There is no any formal agreement in writing to sell and buy between the parties, and neither have they agreed upon any firm amount as the consideration for the sale of the property unto the Plaintiff, though the Defendants concede that there was a proposal by them in the year 2024 for the Plaintiff to buy as the sitting tenant of the Defendants.

19. It is also not in dispute that on the request of the Plaintiff, the Defendants obtained a Valuation Report for the subject land and premises, together with an Engineer's Cyclone safe Certificate and provided same to the Plaintiff. However, parties so far have not arrived at any final decision on the price, which the Defendants through their Real Estate agent have finally indicated to be in a sum of \$7, 50,000.00 and undertaken to provide documentation to justify the figure.
20. However, the Defendants now said to have decided not to sell the property and intend to retain it to use as a family vacation home. However, the Plaintiff has not proffered any evidence to show that the Defendants are in the process of selling / disposing it to any third parties. Unless, the Plaintiff adduce some tangible evidence to the effect that the Defendants are in the process of disposing the property in question to a third party, while the Plaintiff has a legal right to buy and the Defendant has a legal duty to sell unto the Plaintiff, no injunction would be issued.
21. In other words, there is no any material before this court to arrive at a conclusion that the 1st 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. When the Plaintiff has admitted that the 1st Defendant is the title holder of the property in question, that he is the monthly tenant of the Defendants and particularly in the absence of any formal Agreement to sell at a specified price, I don't find any serious question exists here to be tried at the trial with an injunction order in place.
23. Further, the substantive relief sought by the Plaintiff as per the prayer to his SOC, are an order allowing the Plaintiff to purchase the property at the current market price or for an order to refund all the investments that the Plaintiff has made into the property.
24. Prima-facie I don't find that the Plaintiff has merits to obtain 1st order directing the 1st Defendant to sell the property unto him. The Plaintiff's 2nd substantive relief is an alternative relief for the refund of all the alleged investments in the property, which he says more than \$10,000.00 with no any supporting evidence thereto. However, since the Plaintiff has quantified his damages and has not averred that irreparable harm and damages would occur to him if an injunction is not issued, I don't find that the Plaintiff is entitled for any injunctive reliefs.
25. The Plaintiff is at liberty to recover the alleged investments and damages, if any, by adducing required evidence at the substantive trial, if he wishes to proceed with the action. In short, the Plaintiff can be compensated by the way of monetary damages, if he is entitled to.
26. The test of balance of convenience, in my view, also favors the Defendant in refusing the Plaintiff's Application for injunction order as prayed for.
27. For the reasons stated above, I decide to dismiss the Plaintiff's Application for injunction. Considering the circumstances, I also decide not to order any costs and direct the parties to bear their own costs.

F. Final Orders:

1. The injunction Order sought in the Plaintiff's Notice of Motion filed on 13th June 2025 is refused.
2. The said notice of Motion is hereby dismissed.
3. There will be no order for costs and the parties shall bear their own costs.




A.M. Mohamed Mackie
Judge

At the High Court of Lautoka on this 3rd day of February, 2026.

SOLICITORS:

For the Plaintiff- Messrs. Legal Lines, Barristers & Solicitors

For the Defendants- Messrs. Chetty Law & Associates, Barristers & Solicitors.