

**IN THE HIGH COURT OF FIJI AT SUVA**

**CIVIL JURISDICTION**

**Civil Action No. HBC 68 of 2020**

**BETWEEN**

**ARIETA DUGUBALE** of Lot 27, Senijale Street, Waqadra,  
Nadi, Accounts Clerk.

**FIRST PLAINTIFF**

**AND**

**KOLORA KURUMALAWAI** of 29 Halloran Drive, Jerrabomberra,  
NSW 2619, Australia, Registered Nurse.

**SECOND PLAINTIFF**

**AND**

**OPETIA WAQA** of Vakabalea, Deuba,  
Navua, Farmer.

**THIRD PLAINTIFF**

**AND**

**JOSEFA TIPOU QALOTAKI** of Lausa. Tavua,  
Machine Operator.

**FOURTH PLAINTIFF**

AND

**SALANIETA DAVETA QALOTAKI SERU** of Ramlakhan Street,  
Waila, Occupation unknown.

**FIRST DEFENDANT**

AND

**ASHOK PRASAD** of Vakabalea, Navua,  
Occupation Unknown.

**SECOND DEFENDANT**

AND

**THE DIRECTOR OF LANDS** of iTaukei Trust Fund Complex,  
South Building, Nasova, Ratu Sukuna Road, Suva.

**THIRD DEFENDANT**

AND

**THE REGISTRAR OF TITLES** of Ground Floor, Civic Tower,  
Victoria Parade, Suva.

**FOURTH DEFENDANT**

**AND**

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

**FIFTH DEFENDANT**

**Counsel** : Mr. J. Vulakouwaki for the Plaintiff.  
Mr. N. Lajendra for the 1<sup>st</sup> defendant.  
Ms. S. Taukei for the 3<sup>rd</sup> & 4<sup>th</sup> Defendants

**Date of Hearing** : 23<sup>rd</sup> November 2021

**Date of Ruling** : 08<sup>th</sup> December 2021

**RULING**

*(On the Application for Injunction)*

[1] The plaintiffs file the writ of summons which was subsequently amended seeking the following reliefs:

- (a) Declaration that the 1<sup>st</sup> defendant fraudulently transferred the property to her name;

- (b) Declaration that the family deed of 09<sup>th</sup> April 2015 was procured by misleading and fraudulent means;
- (c) Declaration that the 2<sup>nd</sup> defendant is not a bona fide purchaser without notice;
- (d) Declaration that the plaintiffs have an interest and a share in the land;
- (e) An order directing the Registrar of Titles to register the plaintiff's name in the title;
- (f) An order staying any dealings of the land by the Director of Lands until finalization of this matter;
- (g) Costs of this action on a Solicitor /Client indemnity basis;
- (h) Interests; and
- (i) Any other orders that the court deems just and expedient.

[2] The plaintiffs on 27<sup>th</sup> October 2020 filed an inter-parte notice of motion seeking the following orders:

- (a) That the defendant be injunct from in any way transferring, selling and disposing of the land on Crown Lease No. 532179 comprising of CT 32511 & CT 32540 situated at Navakabalea, Navua until the finalization of the substantive matter.
- (b) That a caveat be placed on a property, Crown Lease No. 532179 comprising of CT 32511 & CT 32540 situated at Navakabalea, Navua to prevent any dealings until the final determination of this matter.
- (c) That the 1<sup>st</sup> and 2<sup>nd</sup> defendants be restrained from entering, building and / or constructing any structure on the said land until the finalization of the substantive matter.
- (d) That the costs of this action be paid by the defendants.

[3] The guide lines laid down by Lord Diplock in **American Cyanamid Co v Ethicon Ltd** [1975] AC 396 are still regarded as the leading source of the law of injunction where it was held that in granting or refusing of interim injunction following guidelines can be taken into consideration:



- (a) A serious question to be tried at the hearing of the substantive matter.
- (b) Whether the damages is an adequate remedy.
- (c) In whose favour the balance of convenience lie if the injunction is granted or refused.

In the case of **Cambridge Nutrition Ltd v BBC** [1990] 3 All ER 523 at 534j Kerr L.J. made the following observations;

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 straightjacket.... 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.

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.

- [4] The registered proprietor of the Crown Lease No. 532179 (the property) was Jone Ve'a Qalotaki who died intestate and Fiji Public Trustee Corporation was granted letters of Administration. The plaintiffs and the 1<sup>st</sup> defendant are the children of late Jone Ve'a Qalotaki.

- [5] The 1<sup>st</sup> defendant's position is that she and the plaintiffs entered into a Deed of Family Arrangement (the Deed) and the plaintiffs have agreed to renounce their rights over the property and transfer it to the 1<sup>st</sup> defendant absolutely out of love and affection. The said deed dated 09<sup>th</sup> April 2015 is annexed to the 1<sup>st</sup> defendant's affidavit in opposition. The plaintiffs deny the execution of the Deed and state that they did not give any instructions to the Fiji Public Trustee Corporation nor did they sign the Deed.
- [6] The plaintiff tendered two documents to show that two of the plaintiffs were not in Suva on the day the said deed was executed. First document is a letter dated 18<sup>th</sup> February 2021 from the Safeway Taxis Limited confirming that Ms. Arleta Qalotaki was present at work on 09<sup>th</sup> April 2015.
- [7] There is no plaintiff by the name of Arleta Qalotaki and the 4<sup>th</sup> defendant's name is Josefa Tupou Qalotaki. It is also important to note that the work sheet attached to the letter shows that this person had not been at work on 09<sup>th</sup> April 2015.
- [8] The plaintiffs tendered another document titled Movements Details according to which the second plaintiff who is an Australian citizen had departed on 04<sup>th</sup> June 2015 and arrived on 04<sup>th</sup> June 2015. This does not mean that 09<sup>th</sup> April 2015 she could not have been in Fiji. In paragraph 18 of the amended statement of claim it is stated;
- THAT the 1<sup>st</sup> defendant also procured a written agreement signed by the plaintiffs sometimes in 2015 and the said land be registered under the defendant's name in lieu of the \$6000.00 that was gifted towards the repayment of the land rent.
- [9] The cause of action of the substantive matter does not based on fraud on the part of the 1<sup>st</sup> defendant in entering into the agreement. The fraudulent transfer, as averred in the affidavit in response of the 2<sup>nd</sup> plaintiff, is the transfer of the property to the 2<sup>nd</sup> defendant by the 1<sup>st</sup> defendant. The property was transferred to the 1<sup>st</sup> defendant, by the Fiji Public Trustee Corporation as the Administrator of the estate of Jone Ve'a Qalotaki, father of the plaintiffs and the 1<sup>st</sup> defendant. The Public Trustee Corporation cannot be said to have had any interest in the property except the proper administration of the estate of Jone Ve'a Qalotaki. Therefore, the plaintiffs have no right to restrain the 1<sup>st</sup> defendant from dealing with the property.

[10] The plaintiffs' action is based on the following alleged breaches on the part of the 1<sup>st</sup> defendant:


- a) Misleading / unlawful and fraudulent dealing of the land by the 1<sup>st</sup> defendant.
- b) Unjust enrichment of the 1<sup>st</sup> defendant.
- c) 2<sup>nd</sup> defendant willfully entered into the sale process with the knowledge that the plaintiffs had an interest in the property.
- d) The 1<sup>st</sup> defendant has threatened and/or intimidated the plaintiffs that she will sell, transfer and/or dispose of the said land and pocket the proceeds.
- e) The defendant is intending to sell the land without the consent of the plaintiffs.

[11] The plaintiffs have signed the Deed of Family Arrangement consenting the transfer of the property the 1<sup>st</sup> defendant. When the property was transferred to the 1<sup>st</sup> defendant she became the registered proprietor and she was free to deal with it as she wished. Therefore, the court cannot restrain the 1<sup>st</sup> defendant from dealing with the property.

#### **ORDERS**

1. The Inter-parte notice of motion filed on 27<sup>th</sup> October 2020 is struck out and the orders sought are declined.
2. The plaintiffs are ordered pay \$1000.00 as costs of this application within 14 days.



  
Lyone Seneviratne

**JUDGE**

08<sup>th</sup> December 2021