

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 310 of 2005L**

**BETWEEN** : **PARWAT NAIDU** as the sole executrix and trustee of  
WARDU RAJU (deceased)

**Plaintiff**

**AND** : **SUBRAMANI** father's name Dur Sami of Tuvu, Ba, Fiji,  
Labourer

**1<sup>st</sup> Defendant**

**AND** : **DIRECTOR OF LANDS**

**2<sup>nd</sup> Defendant**

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**FINAL JUDGMENT**

**Of: Inoke J.**

**Counsel Appearing:** **Mr. D Gordon for the Plaintiff**  
**Mr. V Mishra for the 1<sup>st</sup> Defendant**  
**Mr. R Green for the 2<sup>nd</sup> Defendant**

**Solicitors:** **Messrs Gordon & Co. for the Plaintiff**  
**Messrs Mishra Prakash for the 1<sup>st</sup> Defendant**  
**Attorney General's Chambers for the 2<sup>nd</sup> Defendant**

**Date of Hearing:** **13 August 2009**  
**Date of Judgment:** **9 September 2009**

**INTRODUCTION**

[1] This is a dispute over a Crown Lease occupied by the Plaintiff's father and the First Defendant that has gone on since 2000. The Plaintiff's father died in 2003 and she is now suing as his sole executrix, trustee and beneficiary of her father's estate. It was initially settled by the Plaintiff's father agreeing to give to the First Defendant a one acre block house site carved out of the property.

According to the Plaintiff, the First Defendant took advantage of the settlement and chose his acre in such a way that it cut the Plaintiff off from accessing the rest of the land and the only well on the property.

[2] On 25 October 2005 Connors J gave an order, ex parte, in favour of the Plaintiff restraining the Director of Lands from registering any lease of that piece of land.

[3] The First Defendant now seeks to have that order set aside.

### **THE FACTUAL BACKGROUND**

[4] The land was leased to the Plaintiff's father, Wardu Raju, now deceased, for a term of 16 years 10 months and 15 days from 16 May 1986 vide Crown Lease No 11775. That term would have expired at the end of March 2004. The lease was registered on 7 December 1992. It was for an area of a little over 13 acres of sugar cane farm land.

[5] Sometime in 1993, the First Defendant issued proceedings in the Agricultural Tribunal, WD 3 of 1993, seeking a declaration of tenancy over the land. The matter was settled by "Terms of Settlement" signed on **12 April 2000** and filed in those proceedings which stated:

1. The Applicant shall have the right to occupy one acre out of the Crown Lease No 11775 as house site area and the said area shall include the Applicant's present house site area.
2. The Applicant shall be entitled to have the subject house site area subdivided and apply for issue of separate lease in respect of the same. The application for subdivision shall be made on or before the expiry of Crown Lease No 11775 and the Applicant shall be responsible for all costs of subdivision survey and issue of separate lease to him.
3. The Applicant and the First Respondent shall both have the benefit and use of water for human consumption from an existing well which is situated on the Crown Lease but which does not form part of the subject house site area.

4. The Applicant and the First Respondent or their agents shall not cause any interference or annoyance with each other nor shall they use any abusive words towards each other.
5. The Applicant shall have the existing access to the subject house site area and well and the Applicant and the Respondent shall not cause any interference with each other in the use of the subject access and/or well.
6. The Applicant shall not assign and/or sublet the subject area for the unexpired period of the lease.
7. That High Court Civil actions nos. 68/97L and 36/98L shall be discontinued with no order as to costs and all monies held in the High Court shall be divided between the Applicant and the First Respondent equally.
8. No order as to costs.

Dated this 12 April 2000

Signed "Subramani" as Applicant, "Wardu Raju" as 1<sup>st</sup> Respondent, and the legal representative for the Director of Lands.

[6] On 26 April 2000, Subramani's solicitors sent a copy of a sketch of the boundary of the proposed 1 acre house site to Wardu Raju's solicitors. On 21 July 2000, Wardu Raju's solicitors wrote back and said that Subramani had breached the Terms of Settlement by pegging his house site area to include the well and the access way. They suggested a meeting of the parties and their legal representatives on the land to demarcate and peg the area. Subramani's solicitors responded saying that no survey had been carried out and instead suggesting arbitration or re-instatement of the Tribunal application as a means of settling the matter. Wardu Raju's solicitors replied on 12 October 2000 advising that the Tribunal refused to re-instate the matter as it had been settled. The dispute did not get resolved but deteriorated into allegations and counter allegations of wrong doing, and involving the Divisional Surveyor, Western, the Lands Department, the Sugar Cane Growers Council and the Police.

[7] Eventually, on 19 September 2002, Wardu Raju's solicitors filed an application in the Agricultural Tribunal to set aside the Terms of Settlement and for Subramani to vacate the property. Wardu Raju died on 19 January 2003 before the Tribunal gave it decision. His daughter, now the Plaintiff, obtained probate of her father's estate in March 2004. She is the only beneficiary under

her father's will and inherited the land. By this time, Wardu Raju's step son had stepped into the picture, and filed an application before the Tribunal seeking a declaration of tenancy in his favour over the same land. That application was dismissed by the Tribunal on 31 May 2005. That decision has been appealed to the Central Agricultural Tribunal. The affidavits do not say what the outcome of that appeal is. On 25 October 2005, Wardu Raju's daughter, as executor and trustee of her father's estate, brought this application in the High Court. The orders that she seeks are to restrain the Director of Lands from registering a lease or sublease of the land or the Subramani's 1 acre house site and essentially to enforce the Terms of Settlement of 12 April 2000.

### **CASE HISTORY**

[8] On 25 October 2005, Connors J heard the originating summons ex parte and ordered that the Director of Lands be restrained by injunction from registering any lease or sublease of the land. It should be noted that the Crown lease had expired by this time.

[9] No less than 17 Court adjournments followed and several attempts to have the land surveyed failed. On 20 December 2007, the Plaintiff's solicitors filed an application before the Master for orders that the Director of Lands dispatch it surveyor to carry out the survey or, alternatively, that the Director fix the boundaries. The application was to be called on 15 February 2008. Five adjournments followed until the Master ordered on 23 April 2008 that the Director of Lands conduct the survey at the schedule fees and the matter adjourned to 12 June 2008 to await the Surveyor's report. The matter was called two more times before the Master. On 4 June 2009, Subramani's solicitors filed the present application now before me for determination.

### **THE CURRENT APPLICATION**

[10] Subramani's application is for the following orders:

- (a) The First Defendant be at liberty to Counter-Claim in these proceedings pursuant to Order 28 Rule 8 of the High Court Rules.

- (b) That the injunction order against the Second Defendant made on the 25<sup>th</sup> day of October, 2005 be dissolved with costs.
- (c) The Plaintiff be ordered to pay the sum of \$20,000.00 (twenty thousand dollars) into Court as security for costs and/or costs for the present case and Counter-Claim if allowed by the Court for wrongfully obtaining injunction and/or obtaining an injunction without giving proper undertaking as to damages and/or sealing an order for an injunction without the order containing an undertaking.
- (d) The Originating Summons by the Plaintiff be struck out with costs on the ground that there is no proper or adequate cause of action and/or on the ground that the claim is frivolous and/or vexatious and/or an abuse of the processes of this Court.

[11] On 12 June 2009 I set the timetable for filing of further affidavits and submissions and for hearing on 13 August 2009. Counsel filed the further affidavits and submissions and I heard oral argument on 13 August 2009 for which I was to give my judgment on notice.

[12] Mr Green for the Director of Lands submitted that his client had no active role to play in this application and sought leave to be absent which I granted.

[13] Ms Prasad for the First Defendant read the summons and the affidavits of Subramani filed on 4 June 2009 and 30 July 2009. Mr. Gordon for the Plaintiff relied on his client's affidavits filed on 13 July 2009 and 5 August 2009. Both Counsels filed written submissions.

[14] Reference is also made to the original ex-parte summons and the Plaintiff's affidavit in support filed on 25 October 2005 and Subramani's affidavit in reply filed on 22 November 2005 for the back ground facts.

[15] During oral argument, it became obvious to me that I should not have let Mr Green go as the injunction that the First Defendant was seeking to discharge was against Mr Green's client and his client's views would have been relevant. At the close of argument I adjourned the matter to 14 August 2009 for the Court to be appraised of the Director of Land's views. Mr Green wanted more time to get instructions so the matter was adjourned to 19 August 2009, on which day

he advised the Court that his view was that s 15 of the **Crown Proceedings Act** prohibited the grant of an injunction against the State such as the one in place here, but the reason the Director had not pushed the point was the parties had agreed to having the land surveyed and his client did not have a problem with the injunction remaining.

[16] Mr Mishra for the First Defendant argued more vigorously that s 15 made the injunction unlawful so it must be lifted. Mr Gordon disagreed and argued equally as vigorously that s 15 did not apply and the injunction should remain. Out of fairness to him, in that the point is now being raised at this very late stage, I allowed him a further 7 days to file submissions on whether s 15 applied and Mr Mishra and Green three days thereafter to respond. Mr Gordon has filed his submissions for which I am grateful but the other two Counsel had not filed theirs by the time I had written my judgment.

### **INJUNCTION AGAINST DIRECTOR OF LANDS**

[17] Section 15 of the Crown Proceedings Act [Cap 24] ("CPA") provides as follows:

**15.**-(1) In any civil proceedings by or against the Crown the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:

Provided that-

(a) where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and

(b) in any proceedings against the Crown for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Crown to the land or property or to the possession thereof.

(2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.

[18] Mr Gordon argued that sections 3 and 168 of the **Land Transfer Act** [Cap 131] excluded the operation of s 15 of the CPA. He argued that s 168 is directed at the Court's powers in relation to the Registrar of Titles which by implication include the Director of Lands. With respect, I fail to see the logic in this argument. In any event, s 168 does not authorise the Court to grant an injunction against the Registrar. It only allows the Court to direct the Registrar by order or decree to do those things set out in the section to give effect to a judgment.

[19] He also argued that the words "might" and "may" in proviso (a) to s 15 suggest that the prohibition of injunctive relief against the State is not a "blanket" prohibition. Again, I do not accept this interpretation. Those words are meant to show that in cases where a citizen might be able to obtain an injunction against another citizen, then in any such cases against the State no such injunction **shall** be granted against the State. Instead the Court **may** make an order declaring the parties rights. The prohibition is a "blanket" prohibition. Also, subsection 2 of s 15 makes it very clear that no injunction can be granted against the Director of Lands as he is an officer of the State, being a person in the permanent employment of the Government: **Interpretation Act** [Cap 7] s 2.

[20] He also cited **Keppel v Attorney-General of Fiji** [1998] FJHC 16; HBM0099j.1998s (13 February 1998) and **Kaisiepo v Ministry of Immigration** [1995] FHC; JR 25 of 1995; unreported decision of 8 February 1996; as supporting the proposition that a stay can be ordered against the State notwithstanding that it may amount to an injunction, and s 15 of the CPA does not negate the Court's jurisdiction. Those cases deal with judicial review of immigration decisions, a specific area of the law which has its own peculiarities and is distinguishable from the present case.

[21] With respect to Connors J, I am therefore of the view that s 15 of the **Crown Proceedings Act** prohibited the granting of an injunction against the

Director of Lands. Having come to that view, I must therefore lift the injunction granted on 25 October 2005.

### **SURVEY OF THE LAND**

[22] This is not a case where the parties are arguing about their rights to exclusive occupation of the land. Rather, it is a simple dispute about where the boundaries of an acre block are to be pegged so that the other occupier of the land is able to access a common well and to move to and from his part of the land. The Plaintiff and the Director of Lands had agreed and the Master ordered on 23 April 2008 that a surveyor from the Lands Department would conduct the survey. I am confident that the surveyor can do such a survey with the understanding that the Plaintiff cannot be landlocked. The parties have not been able to agree on the boundaries so I take the matter out of their hands and give the Surveyor General the power to decide wherever the boundary pegs are to be located bearing in mind the Terms of Settlement. I note that a survey has already been done but the Plaintiff says that she had not been consulted. The Surveyor General may need to relook at this survey to see if there is any basis for that complaint and whether a new survey needs to be done. His decision is final and binding on the parties.

[23] As for the Surveyor General's costs, they are to be paid by the First Defendant in accordance with paragraph 2 of the Terms of Settlement.

[24] The Terms of Settlement are clear enough in my view to be enforced and the Plaintiff seeks to have them enforced. I will therefore include some of its terms, with appropriate amendments, in the orders that I make.

### **LEAVE TO COUNTER CLAIM**

[25] The First Defendant wants to file a counter-claim in these proceedings pursuant to Order 28 rule 8 of the High Court Rules 1988. This application is made at a very late stage. This dispute has dragged on for too long. There is nothing to stop the First Defendant from bringing his claim in a separate action. The orders that I make in this application are intended to bring this dispute to

an end. I think that allowing the First Defendant to counter claim now in these proceedings will only delay the matter further. I therefore dismiss his application for leave to counter claim in these proceedings. He is free to bring separate proceedings if he so wishes.

### **SECURITY FOR COSTS**

[26] He also asks that the Plaintiff pays \$20,000 into Court as security for costs for wrongfully obtaining an injunction. I do not see any basis for making such an order and therefore dismiss it.

### **DISMISSAL OF CLAIM**

[27] The First Defendant also asks this Court to dismiss the Plaintiff's originating summons on the grounds that it pleads no proper cause of action, the claim is frivolous and vexatious and an abuse of process. I do not agree. The effect of the claim, though not specifically pleaded as such, is to enforce the Terms of Settlement signed by the parties on 12 April 2000. I do not think the First Defendant is disagreeing with that.

### **EXPIRY OF LEASE AND ISSUE OF NEW LEASE**

[28] As I have said above, Crown Lease No 11775 expired at the end of March 2004. The position that the Director of Lands has taken is that he would have renewed the lease had it not been for the injunction that was granted against him in these proceedings. The Plaintiff's father would have been the lessee had he not died. His daughter would have been the registered lessee following that. I do not intend to make any orders in that regard and leave it to the Director of Lands to decide bearing in mind the Terms of Settlement between the parties.

[29] I also note that paragraph 6 of the Terms of Settlement says that the First Defendant "shall not assign and/or sublet the subject area for the unexpired period of the lease." I also note that he is now seeking to have his acre block subdivided. This would go against what he had agreed in April 2000.

I will therefore include that settlement term to apply to any new lease that the Director of Lands may issue.

### **COSTS**

[30] Neither the Plaintiff nor the First Defendant has won so I make no order as to costs. However, I am of the view that the Second Defendant has been joined unnecessarily so I order that the Plaintiff pays the Second Defendant's costs of \$500 within 21 days.

### **ORDERS**

[31] Although this matter came by way of interlocutory summons, the matters to be considered in this application are the very same matters that would have been considered had this been a hearing of the originating summons. I therefore treat this application as a hearing of the originating summons and make these orders as final orders.

[32] The final Orders are:

- (a) The injunction granted on 25 October 2005 by Connors J restraining the Director of Lands is dissolved.
- (b) The First Defendant shall have the right to occupy one acre out of the land previously known as Crown Lease No 11775 as a house site area and the said area shall include his present house site area.
- (c) The First Defendant shall be entitled to have the subject one acre house site subdivided out of the said land and apply for issue of a separate lease in respect of the same. The First Defendant shall be responsible for all costs of subdivision survey and issue of a separate lease to him.

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- (d) The Plaintiff and the First Defendant shall both have the benefit and use of water for human consumption from an existing well which is situated on the said land but which does not form part of the First Defendant's house site area.
- (e) The Plaintiff, the First Defendant and their agents shall not cause any interference or annoyance with each other nor shall they use any abusive words towards each other.
- (f) The First Defendant and his agents shall have the use of the existing access to the subject house site area and well and the First Defendant, the Plaintiff and their agents shall not cause any interference with each other in the use of the subject access and/or well.
- (g) The First Defendant shall not assign and/or sublet the subject house site area for the unexpired period of the new lease to be issued.
- (h) The Surveyor General or someone authorised by him shall carry out a survey of the subject house site area and produce a survey plan that meets the above terms of this Order. His decision is final and binding on the parties.
- (i) His costs and fees shall be paid by the First Defendant.
- (j) There is no order as to the costs of this application and the action as between the Plaintiff and the First Defendant.
- (k) The Plaintiff shall pay the Second Defendant's costs of \$500 within 21 days.

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**Sosefo Inoke**  
**Judge**

