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**IN THE LAND COURT OF TONGA  
NUKU'ALOFA REGISTRY**

**LA 1 of 2017**

**BETWEEN: MOSESE SENITULI MANU**

**Plaintiff**

**AND: LUNA'EVA ENTERPRISES LTD**

**Defendant**

**BEFORE THE PRESIDENT PAULSEN**

**Counsel : Mr. S. Tu'utafaiva for plaintiff  
Mr. H. Tatila for defendant**

**Hearing : 9 February 2017**

**Date of Ruling: 9 February 2017**

**REASONS FOR RULING**

**The applications**

[1] There are before the Court the following applications:

- a. An application to set aside interim orders made on an *ex parte* application on 26 January 2017 restraining the defendant from evicting 'Akuila Ngauamo and his family from a dwelling house; and
- b. An application by the defendant for security for costs.

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**Security for costs**

- [2] Counsel are agreed that by consent I may order that the plaintiff is to provide security for costs in an amount of TOP\$5,000. Such sum is to be deposited with the Registrar within 21 days, failing which this action will be stayed.

**Application to set aside restraining orders**

- [3] The plaintiff says that he is the holder of land under registered lease no's 4565, 5771 and 6539. On that land there is a supermarket, a warehouse and two dwelling houses. The defendant is occupying the supermarket and warehouse. The dwelling houses are occupied by 'Akuila Ngauamo and family (with the plaintiff's consent) and from time to time by the plaintiff.
- [4] The plaintiff commenced this action to evict the defendant from the land. He says that he is entitled to the land by virtue of his ownership of the registered leases. It appears the immediate catalyst for the litigation was action taken by the defendant to remove Mr. Ngauamo from the land. As a consequence, upon commencing the proceeding the plaintiff applied for and obtained *ex parte* orders restraining the defendant from evicting Mr. Ngauamo or his family.
- [5] The defendant says that the plaintiff sold the registered leases to a company called Moapa Enterprises Limited (Moapa). It further argues that it is occupying the land lawfully pursuant to a tenancy agreement between it and a company called Food4Less (Tonga) Limited. Food4Less (Tonga) Limited is owned by one Rudra Prasad and his wife. Rudra Prasad is also a director of Moapa.

[6] To complicate matters, Moapa was put into liquidation in or around May 2016 and there is presently separate proceedings between Moapa and the defendant over who in fact owns the registered leases.

**The principles**

[7] The plaintiff has the burden of satisfying the Court that the *ex parte* orders were appropriately obtained and should be continued.

[8] The principles upon which the Court will act in deciding whether to grant an interim injunction are well known (*Tu'uhetoka v Tu'uhetoka* (Unreported Land Court, LA 21 of 2016, 8 August 2016, Paulsen LCJ)) and can be summarised as:

- a. Whether there is a serious issue to be tried.
- b. Whether the balance of convenience favours granting the injunction. In assessing the balance of convenience, regard may be had to the adequacy of damages should relief not be granted, the relative strength of each party's case and the impact of a decision on the rights of third parties.
- c. Whether the overall justice of the case favours granting the injunction.

[9] As to the first issue, I am satisfied that the plaintiff has an arguable case. It is not disputed that he was granted and owned the registered leases. Whilst the defendant argues the leases were sold to Moapa the plaintiff denies this and says that the sale was cancelled due to Moapa's breach. On an application of this sort I cannot make any final determination of that issue.

- [10] As to the balance of convenience, it appears to me that this firmly favours the plaintiff. There is no evidence before me that the defendant is suffering any hardship as a result of the occupation by the plaintiff and Mr. Ngauamo (and family) of the dwelling houses. To the contrary, there is evidence that Mr. Ngauamo and family will be substantially inconvenienced if evicted.
- [11] The defendant objected that the plaintiff's evidence failed to establish that Mr. Ngauamo was occupying the dwelling houses with the plaintiff's authority and that the undertaking as to damages was inadequate. Both matters have been addressed in the plaintiff's latest affidavit.
- [12] In considering the balance of convenience I am also struck by what appears to be a flaw in the defendant's position. It argues that Moapa owns the leases. There is however nothing to show that prior to liquidation Moapa granted Food4Less (Tonga) Limited (from whom the defendant has taken a tenancy) the right to occupy the land.
- [13] Looking at the overall justice, it is clear to me that this favours maintaining the interim orders. I have mentioned the proceedings between Moapa and the plaintiff. That action is set down for hearing on 1 May 2017 and it is likely that the Court's finding will be determinative of this action also.
- [14] I am satisfied that the interim orders should not be set aside. I am going to vary the orders in one respect. There is evidence that the defendant has put a security guard on the verandah of the dwelling houses. The plaintiff wants him removed. I can fully understand that the presence of the security guard would appear threatening and am

told his presence is unnecessary as there are other guards protecting the property. The security guard is to be removed.

[15] For the avoidance of doubt the Court's orders are as follows:

- a. Pending further order of the Court the defendant, by its officers, employees, agents or servants is restrained from evicting 'Akuila Ngauamo and any members of his family from the dwelling houses they presently occupy on any of the land contained in registered leases 4565, 5771 and 6539.
- b. The defendant is to remove its security guard from the said dwelling houses forthwith.

**Future conduct of this case**

[16] Whether the plaintiff or Moapa owns the leases will be determined in the proceedings under LA 32 of 2016. As I have said, that action will be heard on 1 May 2017. Mr. Tu'utafaiva agrees that this action should be adjourned to 1 May 2017 to await the outcome of LA 32 of 2016. Mr. Tatila should take instructions and confirm his client agrees. If the defendant does not agree I will convene a timetabling conference.

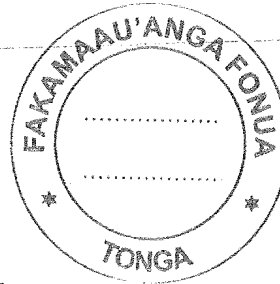
**Result**

[17] In relation to the defendant's application for security for costs I make orders as set out in paragraph 2 above.

[18] I dismiss the application to set aside the interim restraining orders made on 26 January 2017 but vary the orders as set out in paragraph 15 above.

[19] This action is adjourned until 1 May 2017 and will follow LA 32 of 2016. However, if the defendant wishes the action to be progressed separately from LA 32 of 2016 it should apply for a timetabling conference.

[20] Costs are reserved.



O.G. Paulsen  
**PRESIDENT**

**NUKU'ALOFA: 9 FEBRUARY 2017.**

N. 'Inafo  
09 /02/2017