IN THE COURT OF APPEAL, FIJI
On Appeal from the High Court of Fiji

CIVIL APPEAL No. ABU 28/2023
[Lautoka High Court Civil Case No. HBC 27/2016 consolidated with HBC 100/2012]

BETWEEN **KENTO (FIJI) LIMITED** a limited liability company having its registered office at P O Box 124, Nadi

Appellant

AND **NAOBEKA INVESTMENT LIMITED** a limited liability company having its registered office at P O Box 1719, Nadi

1st Respondent

AND **SOUTH SEAS LIMITED** a limited liability company having its registered office at P O Box 718 Nadi

2nd Respondent

AND **iTAUKEI LAND TRUST BOARD** formerly known as **NATIVE LAND TRUST BOARD** a statutory body registered under the provisions of the Native Land Trust Act having its head office at Suva, Fiji

3rd Respondent

AND **ILIASERI VARO, JOELI VATUNITU AND MANOA DRIUVAKAMAKA GADAI**

4th Respondents

Coram **Mataitoga, P**
Morgan, JA
Andrews, JA

Counsel **Mr S Inoke and Mr E Moapa, on behalf of the Appellant**
Mr J Apted, on behalf of the 1st and 2nd Respondents
Mr J Cati, on behalf of the 3rd Respondent

Date of Hearing : **14 May 2025**

Date of Judgment : **29 May 2025**

JUDGMENT

Introduction

[1] The appellant ("Kento") has appealed against the ruling delivered by Justice Tuilevuka in the High Court at Lautoka on 2 March 2023 ("the March 2023 ruling").[1] The March 2023 ruling followed a ruling issued by the Judge on 24 February 2023 ("the February 2023 ruling"), in which he found that:

[a] the appropriate sanction to be imposed on Kento for its breach of orders requiring it to provide further and better particulars of its claim against the first respondent ("NIL") and the second respondent ("SSCL"), was that its entire claim would be struck out; and

[b] the overall effect of his determination of an application by NIL and SSCL for determination of issues as Preliminary Issues, pursuant to Order 33 rule 3 of the High Court Rules ("the O33r3 application"), was that a sublease agreement relied on by Kento in its claim against NIL and SSCL was null and void, and could not sustain its claims either in contract or in tort.[2]

[2] In the March 2023 ruling, the Judge repeated his finding as to Kento's breach of orders to provide further and better particulars, and gave reasons for his determination of the Preliminary Issues. At paragraph 78 of the March 2023 ruling, the Judge said:

> *I strike out the consolidated statements of claim in HBC 27 of 2016 and HBC100 of 2012 for the following (two separate and independent) reasons:*
>
> *(i) Firstly, on account of [Kento's] contumacious and contumelious breach of Mr Justice Stuart's orders dated 10 September 2021.*
>
> *(ii) On account of my findings above, on SSCL's Order 33 Rule 3 application.*

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1 *Kento (Fiji) Limited v Naboeka Investment Ltd* [2023] FJHC 104; HBC27.2016 (2 March 2023). (The second respondent South Seas Cruises Pte Ltd is wrongly named in the proceeding as "South Seas Ltd").

2 *Kento (Fiji) Limited v Naboeka Investment Ltd* HBC27.2016 (24 February 2023).

Background

[3] NIL is a company established by members of the Naobeka *mataqali*, the traditional landowners of Malamala Island. NIL is the lessee of Malamala Island pursuant to a lease granted by the third respondent ("the iTLTB"), registered on 22 August 2007, and effective from 1 July 2007. NIL subleased the island to Kento for 25 years effective from 1 August 2007. It was not disputed that the consent of the iTLTB was required to the sublease prior to it being entered into, pursuant to ss 7 and 12 of the iTaukei Land Trust Act 1940 ("the iTLT Act") which provide, as relevant:

> ***7 iTaukei land not to be alienated save in accordance with Act***
>
> *Subject to the provisions of the State Acquisition of Lands Act 1940, the Forest Act 1992, the Petroleum (Exploration and Exploitation) Act 1978 and the Mining Act 1965, no iTaukei land shall be sold, leased or otherwise disposed of and no licence in respect of iTaukei land shall be granted save under and in accordance with the provisions of this Act.*
>
> ***12 Consent of Board required to any dealings with lease***
>
> *(1) Except as may be otherwise provided by regulations made hereunder, it shall not be lawful for any lessee under this Act to alienate or deal with the land comprised in his lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever without the consent of the Board as lessor or head lessor first had and obtained. The granting or withholding of consent shall be in the absolute discretion of the Board, and any sale, transfer, sublease or other unlawful alienation or dealing effected without such consent shall be null and void, …*

[4] Two versions of the sublease were submitted to the High Court:

[a] A sublease annexed to an affidavit sworn by Mr M Clowes, a director of Kento, on 9 May 2012 and filed at the commencement of Kento's proceeding against NIL. This stated the commencement date of the sublease as being 1 August 2007, with a term of 25 years. This document was signed on behalf of Kento by one director, only, with Kento's seal affixed. It was signed by three directors of NIL, with the seal of NIL affixed. The only indication as to when this document was executed is that "2008" is typed on the line intended to record the date of execution; there is no record of the day and month of execution. This document will be referred to as "the 2008 sublease".

[b] A sublease annexed to an affidavit sworn by Mr I Varo, a director of NIL, on 17 May 2012, in reply to Mr Clowes' affidavit. This sublease was dated as having been executed on 10 September 2007, recorded a commencement date of 1 August 2007, and was for a term of 25 years. This document was fully executed by both Kento and NIL. This document will be referred to as "the 2007 sublease".

[5] Pursuant to the iTLT Act, the consent of the iTLTB was required prior to a sublease being entered into. Witnesses for each of Kento and SSCL annexed a copy of an application for iTLTB consent to sublease in affidavits filed in the proceeding. That application was dated 16 April 2008, and the iTLTB's consent was recorded as having been granted on 20 October 2008. The application referred to a sublease for 25 years with effect from 15 August 2007.

[6] The core of the dispute between the parties is whether the sublease from NIL to Kento was valid, or null and void for having been entered into without the prior consent of the iTLTB being *first had and obtained*. Kento's claims against NIL and SSCL are premised on the sublease from NIL to Kento being valid.

[7] NIL issued notices of termination of the sublease to Kento in 2011 and 2012. NIL entered into a sublease agreement with SSCL in September 2015.

High Court proceedings

[8] Kento issued proceedings in the High Court at Lautoka on 9 May 2012 against NIL, the iTLTB and the Registrar of Titles ("the 2012 proceeding"), seeking relief against forfeiture and alleging that NIL's notices of termination were invalid, and Kento's sublease was and remained valid.

[9] On 16 February 2016 Kento issued proceedings against NIL, SSCL, the iTLTB and four named individuals (alleged to be "members and representatives of the traditional landowners of Malamala Island") ("the 2016 proceeding"). On 10 December 2019, Stuart J ordered that the 2012 and 2016 proceedings be consolidated. A Consolidated Writ of Summons and Statement of Claim was filed on 14 April 2020. An Amended Consolidated Statement of Claim was filed on 15 December 2020, and a Further Amended Consolidated Statement of Claim was filed on 20 September 2021.

Applications to the Court

[10] I refer, briefly, to applications made in the proceedings, before turning to those that are directly relevant to the appeal before this Court. For the purposes of this appeal, it is only necessary to refer to applications relating to the issues of iTLTB consent, and those that sought orders that Kento provide further and better particulars of its claim.

[a] 27 June 2013: NIL applied to strike out Kento's claim on the grounds (in summary) that the sublease was null and void for lack of iTLTB consent, the sublease was not registered, and Kento lacked the required Foreign Investment Certificate to obtain a sublease for tourism purposes, and therefore had no legal capacity. The application was dismissed in a ruling delivered on 16 October 2013.[3] With respect to the iTLTB's consent, the ruling records at paragraph 44 that the parties had:

> *... agreed during the hearing that the [iTLTB] subsequently granted its consent for this sublease on 20th August 2008 with retrospective effect from 1st of August 2007.*

[b] 1 September 2016: Kento applied for an order requiring the iTLTB to file an affidavit verifying its List of Documents, and to provide all listed documents to Kento. An order accordingly was made on 18 November 2016. The Judge's Notes of the appearance before the Master records that the iTLTB had already filed an affidavit verifying its List of Documents.

[c] 10 February 2020: NIL and SSCL applied for orders that Kento provide further and better particulars of its claim. This application was withdrawn upon Kento's agreement to file a Consolidated Statement of Claim (which was filed on 14 April 2020).

Applications for further and better particulars

[11] On 2 September 2020, following Kento's filing of a Consolidated Statement of Claim on 14 April 2020, NIL and SSCL applied for an order that Kento provide further and better

[3] *Kento (Fiji) Ltd v Naobeka Investment Ltd* [2013] FJHC 540; HBC 100.2012 (16 October 2013).

particulars of its claim. In a decision issued on 14 July 2021, Stuart J granted the application and ordered Kento to file and serve, within 28 days, an Amended Consolidated Statement of Claim complying with lengthy and detailed directions given by the Judge, and responding to the Judge's further comments as to what should be included.[4]

[12] The time for compliance was extended to 24 September 2021 pursuant to an order made by Stuart J on 10 September 2021, which included an "unless" order that:

> *If the amended Statement of Claim is not filed within that time, [Kento's] claim is struck out and dismissed.*

I will refer to the orders and directions made by Stuart J on 14 July 2021 and 10 September 2021 collectively as "the Unless Order".

[13] Kento did not seek to appeal against the Unless Order, and filed a Further Amended Consolidated Statement of Claim on 20 September 2021. NIL and SSCL did not consider the Further Amended Consolidated Statement of Claim complied with the Unless Order, and on 8 October 2021, filed an application to strike out Kento's proceeding on the grounds of non-compliance. The application was heard before Tuilevuka J on 2 December 2021.

[14] In a ruling issued on 21 February 2022 ("the February 2022 ruling"), Tuilevuka J found that Kento had not complied with the Unless Order.[5] Having gone through each of the paragraphs of the Further Amended Consolidated Statement of Claim in respect of which Stuart J had made the Unless Orders, and reviewed the relevant authorities and the parties' submissions, the judge concluded, at paragraphs 75 to 79:

> *75 Kento's attitude has been disrespectful. Despite numerous opportunities given by the Court to provide the particulars, Kento has simply not bothered to comply fully. Instead, Kento has been rather evasive and deliberately obstructive. They simply contend throughout their pleadings that it is sufficient for the defendants to understand what the two basic causes of action are.*

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4 *Kento (Fiji) Ltd v Naobeka Investment Ltd* HBC27.2016/HBC100.2012 (14 July 2021).
5 *Kento (Fiji) Ltd v Naobeka Investment Ltd* [2022] FJHC 125; HBC27.2016 (21 February 2022).

76 Since February 2020, the defendants have been seeking particulars of the claim relating to the alleged breach of the sublease, but to no avail. In relation to the second cause of action for contractual interference, Kento broadly asserts that the defendants are seeking evidence or should know the particulars – while completely ignoring the fact that the Court has ordered the particulars. Kento treats the orders as if they are of no legal effect, and as if they can be ignored at its whim.

77 I agree with the submission that Kento's response by way of the amendments and its answering affidavit arrogantly ignores the rules for open, fair litigation and insists on maintaining a strategy of trial by ambush despite numerous efforts by the defendants to obtain particulars and the very clear orders of the Court.

78. I agree that Kento's default, and its attitude, is a deliberate flouting of [the Unless Order] and therefore contumelious.

79. The question is, what consequences should flow from this?

[15] Tuilevuka J recorded at paragraph 82 of the February 2022 ruling that he would postpone making any orders as to the consequences of Kento's non-compliance, pending determination of the O33r33 application made by NIL and SSCL.

[16] In the February 2023 ruling, issued following the hearing of the O33r3 application, the Judge discussed the sanction to be imposed with respect to the breaches of the Unless Order.[6] At paragraph 4, the Judge said that:

I must say that, the striking out option has always been foremost in my mind because, in my view … there is already a strong case to strike out the claim on account of the fact that:

(i) The Order (of Stuart J) which [Kento] breached was an Unless Order.

(ii) The consequences of a breach of that Unless Order was a striking out of [Kento's] claim.

(iii) Stuart J's Unless Order was granted against a history and a pattern of stubborn and wilful disobedience – by [Kento] – of previous directions on Further and Better Particulars.

(iv) Even after the Unless Order was made, [Kento] maintained a scornful and arrogant attitude which was most evident in the evasive manner in which it responded to the particulars sought.

6 See fn 2, above.

[17] The Judge went on to conclude, at paragraph 9 of the February 2023 ruling:

> *… I am now in a position to say as follows:*
>
> *(a) firstly, that the sanction I now impose on [Kento's] contumelious and contumacious breach of Mr Justice Stuart's Unless Orders as stated in [the 21 February 2022 ruling] is to strike out the entire claim with costs to SSCL to be assessed. …*

[18] In the March 2023 ruling,[7] with respect to the strikeout application, the Judge repeated (at paragraphs 2 and 3 of the March 2023 ruling) his finding in the February 2022 ruling that "Kento's conduct was contumacious and contumelious" and his conclusion that the finding exposed Kento to a range of heavy sanctions. He noted (at paragraphs 4 and 5 of the March 2023 ruling) that while there was a strong case to strike out Kento's claim he had decided to defer pronouncement on a sanction until hearing the O33r3 application. At paragraph 8 the Judge said:

> *I have heard the submissions and read the affidavits I was referred to by counsel. In my view, the evidence and facts placed before me in the [O33r3] application, and the conclusions to be drawn from these, have only added yet another cause to strike out/dismiss [Kento's] claim against NIL and SSC.*

Order 33 r 3 application by SSCL for trial and determination of Preliminary Issues

[19] SSCL filed the O33r3 application on 25 February 2021, seeking the trial and determination of nine issues of fact and mixed fact and law (set out in the application) as Preliminary Issues.

[20] Issues 1 to 5 of the O33r3 application concerned whether the sublease from NIL to Kento was null and void for lack of iTLTB consent and sought determinations as to (in summary):

1 When did Kento execute the alleged agreements to sublease?

2 When did Kento go into possession of Malamala Island?

3 Was the 2008 sublease validly executed by Kento?

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[7] See fn 1, above.

4 Did NIL ever obtain the prior consent of the iTLTB to the alleged sublease and, if so, when?

5 Was the alleged sublease null and void under ss 7 and 12 of the iTLT Act for lack of the iTLTB's consent prior to entry into the alleged sublease and/or prior to Kento going into possession under the alleged sublease?

[21] Questions 6 to 9 of the O33r3 application were concerned with whether Kento was required to hold a Foreign Investment Certificate under s 4 of the Foreign Investment Act 1999[8] in order to enter into the sublease from NIL and, if so, whether it held a Certificate. Tuilevuka J declined to deal with these questions, as there was no firm evidence before him to confirm Mr Clowes' resident and/or immigration status at all relevant times. This Court is not required to consider this issue.

[22] The O33r3 application was heard before Tuilevuka J on 28 July 2022. The Judge issued rulings on the application in the February 2023[9] and March 2023 rulings.[10] With respect to the O33r3 application, the Judge said at paragraph 9(b) of the February 2023 ruling:

> *(b) On the Order 33 Rule 3 application, I have answered all the questions raised and the answers lead to the finding and conclusion that [Kento] did not have a valid sublease at all material times on account of the fact that the iTLTB's consent was not first had and obtained, I do not accept that the iTLTB has any power to grant consent retrospectively against the clear mandatory provision of section 12 set by Parliament. The overall effect of all this is that the sublease was null and void and cannot sustain a claim based on common law damages for breach of contract – or a claim based in tort for unlawful interference with contractual relations.*

[23] At paragraph 10 of the February 2023 ruling, the Judge said

> *My full reasons for the Order 33 rule 3 finding will be circulated shortly.*

[24] In the March 2023 ruling, the Judge set out his reasoning and determinations on the O33r3 application. The Judge's determinations in relation to the sublease are summarised in the following paragraphs.

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8 The Foreign Investment Act 1999 was repealed and replaced by the Investment Act 2021.
9 See fn 2, above.
10 See fn 1, above.

When did Kento execute the alleged agreements to sublease?

[25] In answer to the first question, the Judge referred to both the 2008 sublease and the 2007 sublease. The Judge found that *consensus ad idem* was clear and unequivocal in the 2007 sublease but absent in the 2008 sublease. He determined that NIL and Kento entered into the sublease on 10 September 2007, as recorded in the 2007 sublease, which was duly executed by all parties and duly attested to. The 2007 sublease had a term of 25 years, commencing on 1 August 2007.[11]

When did Kento go into possession of Malamala Island?

[26] As to the second question, the Judge found that Kento went into actual possession of Malamalo as from 1 August 2007.[12]

Was the 2008 sublease validly executed by Kento?

[27] The 2008 sublease was signed by only one director of Kento, with Kento's seal affixed. The Judge determined that the 2008 sublease was not validly executed.[13]

Did NIL ever obtain the consent of the iTLTB prior to entry into the alleged sublease and/or prior to Kento going into possession under the alleged sublease, if so, when?

[28] The Judge found that s 12 of the iTLT Act was clear that iTLTB's consent must be *first had and obtained* before a lessee could deal with his lease by sublease, otherwise, the sublease *shall be null and void*. The Judge referred to the copy of the iTLTB consent relied on by Kento (referred to in paragraph [5], above), and found that the application for consent was made on 16 April 2008 (seven months after the 2007 sublease was executed on 10 September 2007, and eight months after Kento went into possession), and consent was not granted until 10 October 2008 (13 months after the 2007 sublease was executed and 14 months after Kento went into possession). Accordingly, the Judge found that whether the 2007 or 2008 sublease was considered, the iTLTB consent was not *first had and obtained* as required by s 12 of the iTLT Act.

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11 2 March 2023 Ruling, fn 1 above, at paragraphs 25-32.
12 Ibid, at paragraphs 33-40.
13 Ibid, at paragraphs 41-47.

[29] The Judge also noted that the consent relied on by Kento referred to a sublease which purportedly commenced on 15 August 2007, whereas the sublease on which Kento's claims were premised (whether the 2007 or 2008 sublease) commenced on 1 August 2007, such that the consent relied on by Kento was either invalid *vis a vis* the sublease Kento relied on, or was granted for a different sublease and did not relate to either the 2007 or 2008 sublease.

[30] Further, the Judge rejected a submission made for Kento that the iTLTB had granted consent with retrospective effect. He found that the iTLTB could not grant retrospective consent when s 12 of the iTLT Act categorically states that consent must be *first had and obtained*.[14]

Was the alleged sublease null and void under ss 7 and 12 of the iTLT Act for lack of the iTLTB's consent prior to entry into the alleged sublease and/or prior to Kento going into possession under the alleged sublease?

[31] For the reasons given in respect of the fourth question, the Judge answered the fifth question in the affirmative: that is, he determined that Kento's sublease was null and void because the iTLTB's consent was not obtained prior to entry into the sublease, and/or Kento going into possession.[15]

[32] It should be noted that at paragraphs 69 and 70 of the March 2023 ruling, within a section headed "Comments", the Judge commented on submissions made on behalf of Kento.

[33] At paragraph 69, the Judge referred to a submission that the iTLTB consent before the Court had "never been discovered by the iTLTB". The Judge noted the response to that submission by counsel for the iTLTB, to the effect that "the iTLTB had always had its relevant files open for discovery" but Kento "never really made any serious attempt at discovery". The Judge also noted that Kento had always relied on the consent it had put before the Court, and had not alleged that there was another consent that the iTLTB had not discovered, or that there was another sublease that iTLTB had not discovered.

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14 Ibid, at paragraphs 48-66.
15 Ibid, at paragraph 67.

[34] At paragraph 70, the Judge dealt with a submission made for Kento that *res judicata* applied to the Preliminary Issues as a result of earlier rulings made on interlocutory applications made by NIL and/or SSCL in the course of the proceedings. The Judge said that:

> *… the findings which I make above in paragraphs 25 to 68 are final findings. They are not interlocutory findings. Accordingly, any earlier interlocutory comment or remark which might have been made on any of the subjects mentioned above, does not attract the doctrine of res judicata.*

Appeal grounds

[35] Kento's appeal was against the March 2023 ruling. The Notice of Appeal set out five grounds of appeal. In summary, Kento contended that the Judge erred:

Ground 1: in finding that Kento failed to provide sufficient information to inform NIL and SSCL as to the case they had to meet and to enable them to take steps to respond;

Ground 2: in holding at paragraph 70 of the March 2023 ruling that *res judicata* did not apply, when previous rulings were based on the same evidence, and no new evidence was adduced;

Ground 3: in not considering and applying the judgment and principles in *Native Land Trust Board v Subramani*, which was binding on him;

Ground 4: in proceeding under O33r3, when it was procedurally incorrect to do so; and

Ground 5: in that he was biased or had pre-judged the matter before him.

[36] As an overall submission, Mr Inoke submitted for Kento that Grounds 1-4 had been dealt with by the High Court at various stages over the ten year lifespan of this case up to 2022. He submitted that NIL, then SSCL, had tried to strike out Kento's claim and failed, at Master's and High Court level. He submitted that the O33r3 application was no more than another strikeout application disguised as being on other grounds. He submitted that NIL and SSCL were required to show that on the affidavit evidence, on balance of probabilities, Kento's case was not proved. He submitted that it had failed to do so. Therefore, he submitted, as a matter of law, the Judge's rulings cannot stand.

[37] He submitted that the Judge had misapplied the law in striking out Kento's claim, both procedurally and as a matter of substantive law, and that the justice of the case demands that Kento should not be denied its day in court in a full hearing

[38] Mr Inoke repeated and relied on Kento's previous submissions. Kento's written submissions in support of the appeal comprised a brief summary as to each ground of appeal, then a copy of Kento's submissions filed in the High Court on 28 June 2013.

Ground 1: Did the Judge err in finding that Kento had failed to provide sufficient information to inform NIL and SSCL of the case to meet to enable them to take steps to respond to its claim?

Submissions

[39] Mr Inoke submitted that particulars had been provided, on two separate occasions, and that Kento had complied with the Unless Order. He further submitted that up until SSCL was joined as a defendant in the 2016 proceeding, the defendants had no difficulty in identifying the issues involved, filing their defences, and attacking the claim; on the very same issues that had been ventilated and adjudicated on. He submitted that the very strong language used by the Judge ignored these facts and circumstances.

[40] Mr Inoke also submitted that the ruling given by Stuart J on 10 September 2021 that:

> *If the amended Statement of Claim is not filed within that time, [Kento's] claim is struck out and dismissed.*

was not asked for by NIL and SSCL, rather made on the Court's own initiative, without having heard the parties.

[41] Mr Apted submitted for NIL and SSCL that the finding challenged by Kento "that Kento had failed to provide sufficient information to inform NIL and SSCL of the case to meet to enable them to take steps to respond" was not made in the March 2023 ruling under appeal. He submitted that this finding was made in the Judge's February 2022 ruling; as recorded by the Judge at paragraph 1 of the March 2023 ruling. He submitted that Kento cannot appeal one ruling by challenging findings from another ruling that is not under appeal.

[42] Mr Apted further submitted that, in any event, the Judge was correct. He submitted that at the hearing before Tuilevuka J on 2 December 2021 of NIL and SSCL's application for an order striking out Kento's claim for failure to comply with the Unless Order, Kento did not submit that it was unable to provide any particulars, that the request was oppressive, beyond the scope of particulars, a probe for evidence, or that it placed an unreasonable burden on Kento. He further submitted that Kento's submissions on appeal to this Court did not include any reference as to how and in what way the particulars requested did so.

[43] He also submitted that there is no requirement that an "unless" order be specifically sought, and that it is not unusual for a judge to make an "unless" order, if the Judge considers it appropriate. He also submitted that it was not correct that Kento had no opportunity to make submissions as to its non-compliance with the Unless Order: there was a lengthy hearing prior to the February 2022 ruling, and Kento had the opportunity to be heard on whether, if the Judge were to hold that Kento had not complied with the Unless Order, its claims could, or should, be struck out.

[44] Mr Apted submitted that following a review of the procedural history dating from the application for further and better particulars filed by SSCL and NIL on 10 February 2020, and a review of Stuart J's orders, the Judge correctly concluded that Kento had not complied with the Unless Order and that Kento had in effect treated the Court orders as if they were of no legal effect, and could be ignored.

Discussion

[45] Ground 1 of Kento's appeal against strikeout cannot be dismissed simply for the reason that it did not appeal against the Judge's February 2022 ruling. That is because the ruling was not complete: as recorded at paragraph [15] above, the Judge deferred making an order as to the consequences of Kento's breach of the Unless Orders until he had heard the O33r3 application. The ruling was complete when the Judge struck out Kento's consolidated statements of claim in the March 2023 ruling.

[46] It is evident on the face of the February 2022 and February 2023 rulings that the Judge undertook a thorough review of the terms of the Unless Order, Kento's response by way of the Further Amended Consolidated Statement of Claim, the parties' submissions, and the relevant law before reaching his conclusion that Kento had breached the Unless Order, and that the breach was contumelious and contumacious. That conclusion was well open to him on the material before the Court. Further, as Kento did not appeal against the Unless Order, it cannot now contend that that order should not have been made.

[47] The first ground of Kento's appeal must be dismissed.

Ground 2: Did the Judge err in holding that the doctrine of res judicata did not apply?

Submissions

[48] Mr Inoke submitted that between 2012 and 2020 NIL and SSCL had "tried to strike us out" and had failed. He submitted that the same issues had been considered and rejected in previous strikeout applications. In particular, he submitted, the issue as to whether s 12 of the iTLT Act had been complied with was "comprehensively determined" by the ruling issued on 16 October 2013 (referred to in paragraph [10][a], above).[16] He submitted that the questions set out in the O33r3 application had already been determined in Court rulings, and those rulings were *res judicata*.

[49] Mr Inoke further submitted that the law and facts are "beyond argument", having regard to the "long history of judgments in Kento's favour".

[50] Mr Apted submitted that *res judicata* does not apply to the earlier rulings, as the decisions that preceded the March 2023 ruling were "interlocutory" not "final", and the parties (which did not include SSCL) cannot be regarded as the same. In other words, he submitted, the hearing of the Preliminary Issues did not revisit the earlier striking out applications.

Discussion

[16] See fn3, above.

[51] The requirements for a decision being *res judicata* are well-known. They include that the decision was final, and on the merits, that it determined a question that is raised in later litigation, and that the parties to the decision and the later litigation are the same or their privies.[17]

[52] SSCL was not named in the proceeding at the time of the application which led to the 16 October 2013 ruling, so was not a party to the proceeding, let alone the application. The application was made by NIL. The application was not an O33r3 application for determination of preliminary issues: it was an application for Kento's claim to be struck out and dismissed on the grounds that it disclosed no reasonable cause of action, was scandalous, frivolous or vexatious, and an abuse of the process of the Court.

[53] The outcome of the application was a finding that Kento had disclosed a reasonable cause of action, which needed to be determined at a "proper hearing". As to the "consent" issue, it was noted in the 16 October 2013 ruling (at paragraph 44) that the parties "agreed during the hearing that the iTLTB subsequently granted its consent, with retrospective effect".

[54] The 16 October 2013 ruling cannot be seen as a final determination, on the merits. On the issue of the iTLTB's consent, the ruling records (without more) what was said at the hearing. Further as SSCL was not a party to the application (or the proceeding), it cannot be said that the parties were "the same". *Res judicata* cannot apply.

[55] The second ground of appeal must be dismissed.

Ground 3: Did the Judge err in not considering and applying Native Land Trust Board v Subramani?

[17] See *Varani v Native Lands Commission* [2022] FJSC 16; CBV0014.2018 (29 April 2022) (at [41]-[43], citing Spencer Bower and Handley *Res Judicata* (4th ed) (Butterworths Common Law Series, LexisNexis, 2009, paragraph 1.01.

Submissions

[56] Mr Inoke submitted that the judgment of the Court of Appeal in *Native Land Trust Board v Subramani* ("*Subramani*")[18] is relevant, and was binding on the Judge. He submitted that the Court of Appeal held that the prohibitions set out in ss 7 and 12 of the iTLT Act are not absolute. He submitted that having regard to the circumstances and facts of the present case where (he submitted) there was "active participation and knowledge" of the iTLTB and NIL, those principles should be applied in this case. He submitted that the judgment had been brought to the Judge's attention, but he did not refer to it or deal with it.

[57] Mr Apted submitted that *Subramani* is distinguishable. He submitted that the Court of Appeal was concerned in *Subramani* with the renewal of a sublease, not consent to a sublease; it was not a case where the validity of the dealing was in issue. He submitted that the proceeding before the Court of Appeal was a claim for compensatory damages after the (then) Native Land Trust Board ("the NLTB") had refused to renew, and terminated, a sublease. In contrast, he submitted, in the present case Kento's claim sought to enforce a sublease, and Kento had the burden of proving that it held a valid sublease, which involved the issue of whether the statutory requirement for iTLTB's consent prior to entry into the sublease had been complied with.

[58] He further submitted that the claim in *Subramani* was brought, and decided, on equitable principles, on the basis of a contention that the NLTB had given Mr Subramani an assurance that the sublease would be renewed, and he had spent money in reliance of that assurance, whereas Kento's claim was not based on any equitable principle.

Discussion

[59] In *Subramani*, Mr Subramani held a sublease for a property. The sublease was due to expire on 24 December 1995. Prior to the expiry of the term of the sublease, Mr Subramani applied to the NLTB for renewal. He was told by the NTLB that his sublease would be renewed, albeit at an increased rental, to which he agreed. It was accepted in the High Court and

[18] *Native Land Trust Board v Subramani* [2010] FJCA 9; ABU0076.2006 (25 February 2010).

Court of Appeal that he had a legitimate expectation that his lease would be renewed. On 30 September 1997, the NLTB advised Mr Subramani that his sublease would not be renewed and that he was unlawfully occupying the land.

[60] The Court of Appeal upheld the High Court's conclusion that the NTLB's conduct was unconscionable and sufficient to give rise to an estoppel preventing it from denying Mr Subramani's right to renewal of his sublease. The Court of Appeal also considered that Mr Subramani had an equity in the land, which could be compensated in damages.[19]

[61] In *Subramani*, the Court of Appeal distinguished the judgment of the Privy Council in *Chalmers v Pardoe*, which arose out of a failure to obtain consent to a dealing in land leased under the iTLT Act.[20] Mr Pardoe was the lessee of land leased from the NLTB. Mr Chalmers built a residence and other buildings on the land, and the Privy Council concluded on the facts that the arrangement between Mr Pardoe and Mr Chalmers could reasonably be inferred as being a sublease, for which the NTLBs consent was required to be *first had and obtained* pursuant to s 12 of the iTLT Act, but was never obtained.

[62] Mr Pardoe later issued proceedings in trespass. Mr Chalmers issued proceedings claiming to be entitled to an equitable charge or lien on the land, to which Mr Pardoe counterclaimed. The Supreme Court (as it was then known) rejected all claims and counterclaims, but made an order allowing Mr Chalmers to remove the buildings. Both parties appealed to the Court of Appeal, which dismissed Mr Chalmers' appeal (holding that an equitable charge could not arise out of an unlawful transaction), and allowed Mr Pardoe's appeal against the order that Mr Chalmers could remove the buildings.

[63] Before the Privy Council, the sole issue was whether Mr Chalmers was entitled to equitable relief. The Privy Council held that since the NLTB's consent had not been obtained, it followed that the dealing between Mr Chalmers and Mr Pardoe was unlawful. In those circumstances, equity would not assist Mr Chalmers. His appeal was dismissed.

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19 *Subramani*, above fn 18, at paragraphs [32]-[36].
20 *Chalmers v Pardoe* [1963] 1 WLR 677.

[64] It must first be noted that the Court of Appeal in *Subramani* accepted that *Chalmers v Pardoe* is authority for the proposition that a dealing within the meaning of s 12 of the iTLT Act is null and void if the consent of the iTLTB is not obtained prior to entry into the dealing.[21] There is no dispute in the present case that the sublease to Kento was subject to s 12 of the iTLT Act.

[65] Secondly, there was no issue in *Subramani* as to the validity of the sublease held by Mr Subramani. In the present case, that is the central issue. Kento was required to prove that it held a valid sublease, and for that it had to prove that the iTLTB's consent was *first had and obtained* before the sublease was entered into. The facts and circumstances before the Court of Appeal in *Subramani* are not the same (or even similar) to those in the present case.

[66] Thirdly, Kento's pleadings did not include any claim in equity. It claimed it held a valid sublease (consented to by the iTLTB) which it sought to enforce. Its claims were made in contract and in tort (for interference in contractual relations). There was no claim in equity before the Court.

[67] Kento's submission that *Subramani* was binding on the Judge is not tenable. The third ground of appeal must be dismissed.

Ground 4: Did the Judge err in proceeding under Order 33 r 3 of the High Court Rules?

Submissions

[68] Mr Inoke submitted that the O33r3 application was not appropriate. He submitted it was just another strikeout application on procedural and substantive grounds disguised as a new application, and it should never have been heard, let alone ruled on.

[69] At the hearing of the O33r3 application, it was submitted that Kento's position had always been that this was not the proper way to proceed. Kento submitted that previous Court Rulings had dismissed applications to strike out Kento's claim, and the hearing of the O3r33

[21] *Subramani*, fn 18, above, at [31].

application sought, improperly, to revisit those applications: that NIL and SSCL could not backtrack on their previous conduct. It was further submitted that *res judicata* attached to the previous findings that had "comprehensively and finally" determined the outcome of the O33r3 application in favour of Kento, that it was procedurally improper to continue the hearing without full and complete discovery, and that even without such discovery, NIL and SSCL with their best affidavit evidence had not been able to prove their defence.

[70] Mr Inoke submitted that there had been "several" applications filed by NIL and SSCL to strike out Kento's original claim in the 2012 proceeding, and its subsequent amendment and consolidation with the 2016 proceeding. He submitted that they were all based on issues as to the legality of the sublease agreement: that is, execution and contractual arrangements, the legality of iTLTB consent, issues as to a Foreign Investment Certificate, and the basis of the claim against SSCL. He submitted that all of them had failed. He also submitted that the questions set out in the O33r3 application required discovery to be given by the iTLTB and a trial with oral evidence.

[71] Mr Apted submitted that the Judge did not err in proceeding with O33 r3 application, in particular, as Kento had consented at a Chambers hearing on 28 February 2022 to the hearing of the Preliminary Issues proceeding on affidavit evidence.[22] He further submitted that at that hearing the parties were given leave to file whatever affidavit evidence it wished to rely on, but Kento did not do so, and only raised the issue of cross examination on the affidavits at the hearing.

[72] Mr Apted submitted that discovery had been completed. He submitted that the consolidated proceedings dated back to 2012 and 2016 respectively, and Kento had had the opportunity over the ten-year year period to obtain any documents it thought necessary by way of specific discovery. With respect to the submission that discovery was required by the iTLTB, Mr Apted submitted that the iTLTB had filed a verified List of Documents in the 2012 proceeding, and orders had been made for the iTLTB to provide documents. He submitted that no order had been sought by Kento for the iTLTB to provide any further documents. He further submitted that on 6 February 2018 Kento had filed a summons to set the 2012

[22] See Judges Notes, High Court Record p2070-2071.

proceeding down for trial; indicating that it was ready to proceed to trial on the basis of the discovery that had been made.

[73] Mr Apted further submitted that following consolidation, Kento again had the opportunity to apply for specific discovery if it really needed it, and it could have opposed the application for determination of Preliminary Issues to allow time for more discovery, but did not do so, and consented to the hearing on the affidavits. Kento chose not to file further affidavits, and relied on affidavits already filed. These affidavits exhibited the only iTLTB consent that had ever been produced or referred to. Mr Apted submitted that Kento only claimed a need for further discovery at an adjourned hearing date, as a reason for seeking a further adjournment.

[74] Mr Apted submitted that the Preliminary Issues (as relevant to this appeal) turned on the terms of the Kento sublease and the existence of any written consent from the iTLTB. He submitted that all of the documents relied on by Kento were in Kento's possession, and before the Court.

[75] With respect to Kento's submission as to *res judicata*, Mr Apted submitted that any previous rulings on applications to strike out were irrelevant; the refusal to strike out a claim does not make it wrong to proceed with an O33r3 application, the hearing of which is a part of the substantive trial and not an interlocutory hearing.

[76] Mr Apted submitted that Order 33 rule 3 is headed "Place and Mode of Trial", and deals with potential methods of trying issues in a proceeding. He submitted that it is clear from Order 33 rr 3, 4, and 7 that Preliminary Issues are "tried" in the same way as at trial: after the trial of a Preliminary Issue, the Court has the power to dismiss the action or give judgment. Thus, a decision on a Preliminary Issue is not a decision preliminary to a final order, but is to be treated as a final order. He submitted that where the determination substantially disposes of a matter at issue, such that it is no longer necessary to try and determine other issues, the Court may determine the action or give such other judgment as may be just.

[77] Mr Apted submitted that in any event, the issues (as relevant to this appeal) came down to whether there was the necessary consent from iTLTB: this turned on documentary evidence, for which affidavit evidence sufficed. He submitted that Kento could have opposed the hearing of the O33r3 application, or sought trial on the affidavit evidence: it did not, it consented to the hearing. Even after that, he submitted Kento could have sought orders for the Preliminary Issues to be tried on oral evidence: it did not. It chose to rely on earlier affidavit evidence. He submitted that it was far too late to complain at the hearing of the O33r3 application that the issues required oral evidence and/or cross examination at a full trial, and the Judge was correct to reject Kento's submission, and determine the Preliminary Issues as he did.

Discussion

[78] Kento's argument that *res judicata* attached to earlier determinations in the proceeding, precluding the determination of Preliminary Issues by way of an O33r3 application and hearing is not tenable, for the reasons set out in respect of ground 2 of the appeal.

[79] Order 33 rr 1, 3, 4, and 7 are relevant to this appeal. They provide:

> ***Place of trial (O 33, R 1)***
>
> *Subject to the provisions of these Rules, the place of trial of a cause or matter, or of any question or issue arising therein, shall be determined by the Court.*
>
> ***Time etc of trial of questions or issues (O 33, R 3)***
>
> *The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.*
>
> ***Determining the place and mode of trial (O 33, R 4)***
>
> ***(1)*** *In every action begun by writ, an order made on the summons for directions shall determine the place and mode of the trial, and any such order may be varied by a subsequent order of the Court made at or before the trial.*

> ***(2)*** *In any such action different questions or issues may be ordered to be tried at different places or by different modes of trial and one or more questions or issues may be ordered to be tried before the others.*
>
> ***Dismissal of action etc after decision of preliminary issue (O 33, R 7)***
>
> *If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment therein as may be just.*

[80] As Calanchini P said in *Te Arawa Ltd v One Hundred Sands Ltd*:[23]

> *The hearing of a preliminary issue can be considered as the first part of a final hearing and is not an issue preliminary to a final hearing".*

[81] The effect of O33r3 is, therefore (as Mr Apted submitted) that in an O33r3 application, unlike in an interlocutory application:

[a] The Court is trying substantive issues of fact and/or law in advance of the trial;

[b] The Court is not precluded from trying preliminary issues which have been raised unsuccessfully in prior interlocutory applications to strike out;

[c] Since the issues have been "tried' by way of the O33r3 application, the Court's determinations are final, in the same way as if they had been determined at trial; and

[d] Where the determination substantially disposes of the matters in issue in the proceeding, so that it is no longer necessary to try and determine remaining issues, the Court may dismiss the proceeding or give such other judgment in the proceeding as may be just.

[82] The issues of the entry into the sublease and of the iTLTB's consent were well able to be determined on the documentary evidence exhibited in the affidavits filed on behalf of the parties. Kento agreed to the application being heard and did not seek to file further evidence,

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[23] *Te Arawa Ltd v One Hundred Sands Ltd* [2019] FJCA 5; ABU34.2018 (5 February 2019), at [20].

or seek leave to cross examine witnesses up until the hearing of the O33r3 application. Mr Apted rightly submitted that by then it was far too late to raise any objection to the process. The Judge did not err in proceeding with the O33r3 application on the affidavit evidence before him and the parties submissions, and in determining the Preliminary Issues as he did.

[83] The fourth ground of appeal must be dismissed.

Ground 5: Was the Judge biased and/or had he prejudged the matter?

[84] Mr Inoke submitted that there was no suggestion of actual bias; rather, Kento's submission was that the manner in which the Judge decided the O33r3 application, and the strong language used by the Judge in the February 2023 and March 2023 rulings would give a fair-minded lay observer a real impression that the Judge did not bring an impartial mind to his determination.

[85] Mr Inoke submitted that Kento relied, first, on the manner in which the rulings were delivered: the Judge heard the O33r3 application on 28 July 2022, he then delivered a "first ruling" almost seven months later on 24 February 2023. He submitted that this ruling was to inform the parties as to the orders the Judge was inclined to make. He submitted that the Judge stated that his reasons would be "circulated shortly", and those reasons were "circulated" six days later in the March 2023 ruling.

[86] Mr Inoke submitted that a fair-minded lay observer could conclude that as at the February 2023 ruling the Judge had made up his mind but not fully reasoned it out. Otherwise, he suggested, why would the Judge wait six days to deliver the orders together with his reasons? He submitted that in completing the reasoning process the Judge might have come across an issue that would render his orders untenable. He submitted that is a possibility that could not be discounted. However, published orders cannot be retracted. Mr Inoke acknowledged that the procedure of a High Court Judge publishing orders, with reasons given later, is "not too uncommon" but he submitted that the procedure is inherently flawed and should not be encouraged.

[87] Secondly, Mr Inoke submitted that the language used by the Judge was not supported by the facts of the case, as "further particulars" were delivered twice, yet NIL and SSCL had seen fit to attack Kento's claim by way of strike out applications, both in substance and disguised as the O33r3 application. He submitted that these applications "were on the same and repeated bases and grounds which the High Court had ruled against". He submitted that a fair minded lay observer might well ask how Judges of the same Court could come to different rulings on same facts in the same form, and would conclude that the last of the Judges was not fair-minded

[88] Thirdly, Mr Inoke submitted that the Judge totally failed to acknowledge a judgment of the Court of Appeal made known to him when he heard an application by Kento for an injunction restraining NIL from issuing or granting a sublease to SSCL. He submitted that the Judge had said in his ruling issued on 24 July 2014[24] (in which he refused to grant an injunction against NIL) that "illegality cannot be determined as a preliminary point even on the affidavits because the allegation is hotly disputed". He also submitted that the Judge said in his ruling that he "would have made the same decision" as two Masters who had refused applications to strike out Kento's claim. Mr Inoke submitted that the facts before the Judge in 2014 were the same as those before him nearly ten years later, and asked "why did the Judge change his mind?" He submitted that "that fact" coupled with the Judge's "mistaken conclusion that *res judicata* did not apply", would leave a fair-minded lay observer with a real impression that the Judge "had deviated from deciding this case on its merits".

[89] Mr Apted submitted that Ground 5 of Kento's appeal is misconceived and must be dismissed. He submitted that a fair-minded lay observer would not reasonably apprehend that the Judge might not have brought an impartial mind to the determination.

[90] Mr Apted submitted that the Judge was reluctant to strike out Kento's claim: he referred to the Judge's decision to defer his decision whether to strike out Kento's claim, after determining it was in breach of the Unless Order, his concern as to the quantum of the claim, and his wish to see whether there were any facts or evidence that would mitigate against

[24] *Kento (Fiji) Ltd v Naobeka Investment Ltd* [2014] FJHC 537; Civil Action 100.2012 (24 July 2014).

striking out.[25] He submitted that the Judge's concern was "a far cry" from a Judge who had pre-judged the outcome against Kento. Mr Apted submitted that the Judge considered the evidence from both parties and the relevant law before concluding that the Preliminary Issues did not give rise to:[26]

> *any facts/evidence that would mitigate against striking out*

and that he was:[27]

> *... left with no option but to strike out the statement of claim – based on the findings above.*

[91] Mr Apted also submitted that Kento's submission that the six days between the February 2023 and March 2023 rulings showed that the Judge had "not completed the reasoning process" and had "made up his mind but not fully reasoned it out" is speculative, and has no rational basis. He submitted that it is not uncommon for Judges to give a decision, followed later by full reasons. He further submitted that there is nothing in the rulings which could give rise to Kento's contention that the Judge "[came] across an issue which would render his published orders [in the February 2023 Ruling] completely untenable". He submitted that there is no inconsistency in the two rulings; rather, paragraphs 1-8 of the March 2023 ruling reproduce word for word paragraphs 1-8 of the February 2023 ruling, and the findings and conclusions on the O33r3 application in the March2023 ruling support the conclusions at paragraph 9 of the February 2023 ruling.

[92] Mr Apted further submitted that Kento's submission as to "the language used" by the Judge is untenable. He submitted that the findings referred to in Mr Inoke's submissions, regarding Kento's failure to comply with the Unless Order were made in the Judge's February 2022 Ruling, which had not been challenged on appeal.

[93] Mr Apted also submitted that Kento's submission regarding the Judge's ruling on 24 July 2014 (that it showed that the Judge had "changed his mind", and pointed to bias) is also untenable and misconceived. He submitted that the 24 July 2014 ruling was interlocutory,

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25 See fn 1, at paragraphs 6 and 7.
26 Ibid, at para 6.
27 Ibid, at para 76.

and *res judicata* does not attach. He also submitted that the Judge would have been entitled to change his mind, but did not. He noted that the first statement referred to in Kento's submissions as demonstrating that the Judge "changed his mind" is wrongly attributed to the Judge, as it is in fact an excerpt from submissions made by counsel for Kento (and referred to the "Foreign Investment" issue, which was part of Preliminary Issues trial but not ruled on); and the second statement was a reference to interlocutory rulings of Masters Ajmeer and Rajasinghe on applications by the iTLTB to strike out Kento's claim against it, on the grounds that Kento had no reasonable cause of action against it. He submitted that the March 2023 ruling does not contradict the Judge's statement.

Discussion

[94] The fact that the Judge issued rulings on 24 February 2023 and 2 March 2023 cannot be taken as demonstrating bias or lack of fairness, or as raising an issue as to whether the Judge might have changed his mind. As Mr Apted submitted, the practice of issuing reasons separately is not uncommon, and there is no inconsistency between the rulings.

[95] There is no substance in Mr Inoke's submission as to the "language" used in the rulings, in relation to Kento's breach of the Unless Order. That breach was referred as "contumacious and contumelious" in the February 2022 ruling.[28] Paragraphs 75 to 79 of the February 2022 ruling are set out in paragraph [16], above. If Kento objected to the Judge's language in the ruling, the point could have been raised during subsequent hearings before the Judge. There is no indication that this occurred.

[96] Nor can it be said that the Judge's ruling on 24 July 2014 (in which he dismissed Kento's application for an injunction against NIL) was *res judicata*. It was an interlocutory ruling, involving different issues, at a time when SSCL was not a party to the proceeding.

[97] Further, the examples given in Mr Inoke's written submissions as demonstrations of the Judge "changing his mind" are inapt. It is patently clear that the first statement was not made by the Judge, it was a quotation from submissions made by Kento's counsel, and in

[28] See fn 13, above.

any event relates to the Foreign Investment Certificate, which was not considered in the March 2023 ruling and has no relevance to the ruling under appeal. The second statement says no more than that the Judge would have reached the same conclusion on applications made by the iTLTB to strike out the claim against it, and again has no relevance to the ruling under appeal.

[98] Kento's submissions as to bias and pre-judgment of the issues are untenable. There is nothing that would lead a fair-minded lay observer to have any concern as to the Judge's impartiality, that he had pre-judged the issue, that he had "changed his mind" or that he was not fair-minded. The fifth ground of appeal must be dismissed.

Conclusion as to the appeal

[99] It should not be lost sight of that Kento's claims were struck out on two bases, described by the Judge as "separate and independent": first, for non-compliance with the Unless Order; and secondly, as a consequence of the Judge's determination of the Preliminary Issues: in particular that the sublease between NIL and Kento (whether the 2007 or the 2008 sublease) was null and void and of no effect because s 12 of the iTLT Act (requiring iTLTB's consent to be *first had and obtained* prior to entry into the sublease) was not complied with. Either of those bases justified an order to strike out Kento's claim.

[100] Kento has not established that the Judge erred in finding that the claim should be struck out for non-compliance with the Unless Order, or in finding that the sublease to Kento was null and void and could not sustain Kento's claims brought in contract and tort. Pursuant to O33r7, having made that finding, the Judge was entitled to strike out Kento's claim.

[101] Mr Inoke's overall submission was that the justice of the case demanded that Kento should not be denied its day in court in a full hearing. It has had its "day in court" by way of the hearing of the O33r3 application (to which it had consented), where the issue as to the validity of the sublease (on which its claims were premised) was determined. The appeal must be dismissed.

ORDERS:

(1) The appeal is dismissed and the rulings made in the High Court on 24 February and 9 March 2023 are affirmed.

(2) Kento is ordered to pay costs of $5,000 (summarily assessed), within 21 days of the date of this judgment.

Hon. Mr. Justice Isikeli Mataitoga
PRESIDENT, COURT OF APPEAL

Hon. Mr. Justice Walton Morgan
JUSTICE OF APPEAL

Hon. Madam Justice Pamela Andrews
JUSTICE OF APPEAL