**IN THE COURT OF APPEAL, FIJI**
**[On Appeal from the High Court]**

**CIVIL APPEAL NO. ABU 008 of 2025**
**[In the High Court at Suva Case No. 155 of 2017]**

**BETWEEN** : **FIJI FOOTBALL ASSOCIATION** an association duly affiliated and registered with Federation Internationale de Football Association and having its registered office at Taramati Street, Bhindi Sub-division, Vatuwaqa, Suva, Fiji.

***Appellant***

**AND** : **NASINU LAND PURCHASE & HOUSING CO-OPERATIVE LIMITED (formerly Nasinu Land Purchase and Housing Co-operative Society Ltd)** a society duly registered under the Co-operative Societies Ordinance and having its head office at 6 ½ miles, Nasinu, Suva.

***1st Respondent***

**ATTORNEY GENERAL OF FIJI** as the legal representative of the Registrar of Titles, Level 1, Suvavou House, Victoria Parade, Suva.

***2nd Respondent***
***(Proposed second defendant in High Court)***

**Coram** : **Prematilaka, RJA**

**Counsel** : **Mr. D. Patel for the Appellant**
**Mr. V. Maharaj for the 1st Respondent**
**Ms. M. Faktaufon for the 02nd Respondent**

**Date of Mention** : **09 March 2026**

**Date of Ruling** : **13 March 2026**

# RULING

[1] The appellant (original plaintiff) filed a summons in the High Court on 26 July 2023 and sought leave to amend the writ of summons and the statement of claim filed on 30 May 2017 in order to join the Attorney General of Fiji (A.G) as the legal representative of the Registrar of Titles (ROT) as a party to the proceedings.

[2] An affidavit in opposition was filed by the RTO for and on behalf of the A.G to be joined as an interested party to the proceedings.

[3] The appellant's application apparently arose from the facts disclosed by the 01st respondent (original defendant) in its responding affidavit and submissions made during the hearing of the injunction application.

[4] The appellant filed the action by writ of summons on 30 May 2017 against the 01st respondent, Nasinu Land and Purchase and Housing Co-operative Ltd, for breach of contract. The cause of action was the alleged breach of a Sale and Purchase Agreement dated 05 April 2002 (which was varied on 23 January 2006) and the relief sought was 'specific performance'.

[5] The 01st respondent revealed in its opposition to the interim injunction that it had already dealt with the land of 20 acres within the Certificate of Title No. 12486 (which is the subject of the Sale and Purchase Agreement) and proceeded to subdivide it and sell to third parties. The appellant submits that the caveat shows that as of 30 May 2022, it remained valid and not cancelled but despite the caveat, the transfers were allowed to be registered by the RTO.

[6] Therefore, specific performance became no longer available to the appellant. As a result, the appellant's claim against the 01st respondent had to be limited to damages (which had not pleaded in the statement of claim) in lieu of specific performance. This prompted the appellant to file a summons for amendment of the statement of claim in order to seek

damages (cause of action) pursuant to section 140 of the Land Transfer Act 1971 and to do so, to add the A.G as (addition of a party) representing the RTO as the nominal defendant.

[7] The High Court judge dismissed the summons along with the two applications[1]. The appellant moved for leave to appeal the interlocutory judgment but leave to appeal too was refused[2].

[8] Thus, what is before me is a renewed application for leave to appeal the interlocutory judgment of the High Court dated 25 April 2024.

[9] The 01st respondent did not file any opposition to the appellant's renewed summons though represented by counsel at the hearing. The 02nd respondent opposes leave to appeal. It has taken a preliminary objection on the premise that the summons has not been filed within 14 days from the time leave to appeal was rejected by the High Court on 24 April 2025. Although, the Court of Appeal Rules do not stipulate a timeline for renewing leave to appeal, the Practice Directions No. 3 of 2018 and No. 4 of 2019 do say that any renewed summons should be filed within 14 days of the refusal by the High Court.

[10] The time within which the lower court is determining the initial application for leave to appeal is considered to be excused where a renewed application is made before the Court of Appeal.[3] The renewed leave application has been filed 20 days later and not within 14 days. It is common ground that the High Court pronounced the decision in open court on 24 April 2025 but reasons were not given. Nor was a written ruling delivered to the parties. The appellant states that the 'judgment' containing reasons has been sent only to the 02nd respondent by email on 03 February 2025 but not sent or received by the appellant at any stage. If the days are counted from 03 February the appellant's renewed summons is within the 14 day period. However, the 02nd respondent contends that the time should run from 24

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[1] **Fiji Football Association v Nasinu Land Purchase & Housing Co-operative Ltd** [2024] FJHC 255; HBC155.2017 (25 April 2024)
[2] **Fiji Football Association v Nasinu Land Purchase & Housing Co-operative Ltd** [2025] FJHC 9; HBC155.2017 (24 January 2025)
[3] **Suva City Council v Saumatua** [2017] FJCA 150 at [22]

April because the renewed summons for leave to appeal is effectively challenging not the leave to appeal ruling but the interlocutory judgment dismissing the appellant's summons for amendment of the statement of claim and adding the A.G as a party. Therefore, according to the 02nd respondent, the appellant did not have to know the reasons for refusing leave to appeal to file the renewed summons within 14 days.

[11] While on its own there is merit in the 02nd respondent's argument, it ignores an important consideration. A party cannot decide whether to file renewed summons for leave to appeal unless and until it examines the reasons for the refusal, for upon perusing the reasons that party may or may not decide to renew the application for leave. To take that decision, reasons for the initial refusal are necessary.

[12] Rules of court must, *prima facie*, be obeyed and in order to justify a court in extending the time during which some step in procedure is required to be taken there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation[4]. Thus, time limits for appeals normally run from the date of the decision or order. But, this is not absolute.

[13] Where reasons are not delivered or communicated**,** the appellant may lack the ability to formulate grounds of appeal. In such circumstances, the delay may be treated as excusable**,** or the court may treat time as effectively running from when the reasons become available**.** This principle may be applied *mutatis mutandis* when reasons are necessary to decide whether to proceed further or not as in the case of renewed summons. Upon reasons being made available, an aggrieved party may decide to file renewed summons or not.

[14] Where a renewed application for leave to appeal is made to the Court of Appeal after refusal by the lower court**,** the court commonly treats the period during which the lower court was considering the leave application, and the period during which reasons were unavailable as time that should not operate against the appellant**.** This reflects the general approach that

[4] **<u>Ratnam v Cumarasamy</u>** [1964] 3 All E.R. 933

procedural rules governing time limits should not defeat the substantive right of appeal where the delay is not attributable to the appellant.

[15] Because reasons were not delivered in open court, and the appellant did not receive the written ruling**,** I would hold that time cannot fairly run against the appellant until the reasons were available. This is the stronger legal position. I would take 03 February 2025 as the earliest date (*i.e.* when the written judgment containing reasons was apparently emailed only to the 02nd respondent) when the time allowed for a renewed application begins to run. Thus, in my view the appellant's renewed summons filed on 13 February 2025 is within time. I also take this view as the right of filing a renewed summons for leave to appeal cannot be meaningfully exercised because in the first place the decision to do so cannot be taken without reasons for the initial refusal. Accordingly, the preliminary objection is overruled.

***Amending the Writ of Summons and Statement of Claim***

[16] As the counsel for the 02nd respondent rightly pointed out the main issue is whether there was a valid caveat registered. If not, the appellant's summons to add ROT/A.G and to include a cause of action for damages against ROT would not succeed.

[17] The High Court judge's arguments could be summarized as follows:

*(i) The caveat was not registered since it was not in its proper form.*

*(ii) The caveat does not protect the interests of the appellant under the lease as the appellant is not the applicant of caveat and/or the caveator in that the caveat forbidding registration of dealing with land lodged on 15 April 2010 by the caveator, Bob Sant Kumar presented his interest as a beneficiary by virtue of Lease Number 38753 dated 23 December 2006 and not presented the interest of the appellant.*

*(iii) The caveat did not specifically indicate the part of the land under the lease which was intended to be caveated and did not relate to any interest of Bob Sant Kumar in respect of the Sale and Purchase Agreement which was executed between the appellant and the 01st respondent.*

[18] Perhaps, the trial judge may have thought that the caveat was not in proper form due to the absence of the ROT’s signature. However, there is clearly a number, date & time of registration and acceptance of registration fees endorsed on the caveat. The ROT had issued a certified copy of the original on 30 May 2022 which means that the office of ROT had not rejected registration and returned the caveat. The ROT's failure to cancel the caveat under section 166 of the Land Transfer Act 1971 further supports its validity. Secondly, putting his signature is a matter for the ROT and it is an administrative act. Any omission on his part to do so cannot invalidate the caveat.

[19] The assertion that Bob Sant Kumar presented himself as the beneficiary by virtue of Lease Number 38753 dated 23 December 2006 and not represented the interest of the appellant arguably does not appear to hold much water. Kumar has identified himself as the chief executive of the appellant. So, he could not possibly have claimed estate and interest as beneficiary independent of the appellant. His interest in the land was irrevocably interwoven with that of the appellant. The trial judge has crucially disregarded the relevance of the lease number 38753 attached to the caveat in this context. The lease is between the appellant and the 01st respondent. Therefore, if one were to consider the caveat along with the attached lease agreement, I do not think it could reasonably be inferred that Kumar presented his own interest and not that of the appellant in the land. Kumar could claim no personal interest in the land.

[20] On the trial judge’s conclusion that the caveat did not specifically indicate the part of the land under the lease which was intended to be caveated, I could only refer to paragraph (c) of the lease agreement where the land is identified as Lot 2 of 8.1821 ha in extent and showed as the shaded area of the survey plan marked as schedule ‘A’. Upon an examination of ‘A’, I have no difficulty in identifying Lot 2. The 02nd respondent argues, that the survey plan is not registered (the trial judge has not said so). If that is so, it is a different trail issue not related to what the trial judge has stated about lack of specificity or identity of the land.

[21] It is also a question of law whether Kumar could be considered to be beneficially interested *‘in the land’* or *‘any interest therein’* in terms of section 106 of the Land Transfer Act to

qualify as a person who could lodge the caveat. If so, he had capacity to file the caveat despite the absence of the words that he was filing it on behalf of the appellant.

[22] Therefore, in my view, there is at least an arguable case presented on the trial judge's determination on the caveat not being valid, if not a realistic chance for the appellant to succeed. I would grant leave to appeal on this aspect of the appeal.

***Is the proposed cause of action against Registrar of Tiles time barred?***

[23] The trial judge has said that even if he accepts that the caveat was lodged on 15 April 2010, still any cause of action against the A.G. representing the ROT is prescribed by February 2023 as it would have arisen from the date of the first transfer and/or dealing *i.e.* 14 February 2017 effected after the registration of the said caveat; the action having been being instituted on 30 May 2017, 06 years as stipulated by subparagraph (i) of section 4(1)(d) of Limitation Act 1971 would have lapsed by February 2023.

[24] There are two problems with this conclusion. Apparently, but not challenged by the 02nd respondent, there was no material before the trial judge to conclude that the cause of action against ROT arose on 14 February 2017 with the first transfer registered. What about the subsequent transactions? Are they also not within the 06 year period? Were the relevant periods current (see O.15, r.5(a) of High Court Rules) at the dates of those subsequent transactions? These are still unanswered questions. Secondly, is this an instance where in terms of O.15, r.5(b) the judge may direct that the provisions in subparagraph (i) of section 4(1)(d) of Limitation Act 1971 should not apply to the proposed cause of action against RT? I need not answer this questions in these proceedings. But, at least, the trial judge should have given his mind to the fact that he had the discretion to do so. Does section 4(7) of the Limitation Act apply here to take the proposed cause of action out of prescriptive period? This is a question of law.

[25] Further, the appellant says that it only became aware of the transactions in 2022, and then an urgent application for injunctive relief was sought and argues that the time for filing a claim

against the 02nd Respondent would have commenced from 2022 when it became aware that dealings had been registered on CT 12468 that affected its rights. A 6-year limitation period, if taken from 2022, would expire in 2027. The appellant argues that its application to join the 2nd respondent in July 2023 was therefore well within the limitation period. These are contested positions and only evidence at the trail could resolve.

[26] On the other hand, it is always open to the A.G to take up the position in its statement of defense that the cause of action based on damages is prescribed and raise an issue at the trial. If answered in its favour upon evidence, the appellant's action would fail. In my view, as far as the matter before me is concerned, the determination by the trial judge appears to be premature. There is an arguable case, if not a real prospect of success for the appellant in appeal.

[27] Therefore, I am inclined to grant leave to appeal on the question of joinder of the A.G as the party representing the ROT.

***Is the proposed cause of action a new one altogether?***

[28] It appears that the trial judge did not consider that the summons for amendment of the statement of claim was not only related to the joinder of the ROT but also that the appellant sought to amend the claim against the 01st respondent, specifying and particularizing the damages and updated the cause of action as a result of the events arising while the action was pending.

[29] The trial judge has tied this issue up with the issue of joinder of the A.G. He has said that that if he accedes to the appellant's application for 'joinder', the appellant would be at liberty to file/serve its amended statement of claim. Then the initial cause of action of the appellant seeking the relief of 'specific performance' would also be amended, allowing for a claim for 'damages' in lieu, amounting to a 'new cause of action' altogether.

[30] To summarize the common law, a court will generally allow an amendment introducing a new cause of action only if:

1. *It arises out of the same or substantially the same facts already pleaded.*
2. *It does not defeat a limitation defence.*
3. *The other party can be compensated by costs.*
4. *It does not fundamentally change the character of the litigation.*

[31] The trial judge seems to have thought that given the fact that 07 years have lapsed since the filing and commencement of the initial writ action in 2017 and the substantive matter has been pending for 07 years, it is not fair and justified to allow a new cause of action to be added. However, in this case the trial has not commenced. The parties have spent all these years on interlocutory matters including the injunction application.

[32] In **Cropper v Smith** (1884) 26 Ch D 700 (CA) Cotton LJ, delivering the leading judgment, held that the Court should allow amendments to pleadings when they are necessary to resolve the substantive rights of the parties. He famously stated that the function of the court *"is to decide the rights of the parties, and not to punish them for mistakes in the conduct of their cases."* The Court of Appeal allowed the amendment, emphasizing that procedural rules exist to facilitate, not obstruct, the administration of justice.

[33] **Ketteman v Hansel Properties Ltd** [1987] AC 189 (House of Lords); [1988] 1 All ER 38 established that:

- *Allowing amendments is a matter of judicial discretion guided by the interests of justice.*
- *Courts must weigh factors such as delay, potential prejudice, and the stage of proceedings.*
- *Indulgence toward negligent litigation conduct should be limited; procedural discipline promotes fairness and efficiency.*

[34] **Weldon v Neal** (1887) 19 QBD 394 became a leading authority on the relationship between procedural flexibility and limitation rules. It established the enduring principle that the statute of limitations cannot be circumvented by amendment.

[35] In **<u>Johnson v Agnew</u>** [1980] AC 367 the House of Lords relevantly held that:

- *Seeking specific performance does not amount to an irrevocable election that bars later termination and damages. If performance becomes impossible or is not complied with, the innocent party may treat the contract as at an end.*
- *Termination for breach is prospective, not retrospective: it ends obligations for future performance but preserves accrued rights.*
- *Damages are usually assessed at the date of breach, but courts have discretion to select another date when justice demands.*

[36] This judgment clarified that pursuing specific performance does not preclude later termination and a claim for damages if the order is not fulfilled, and that damages should generally be assessed at the date justice requires rather than automatically at breach. Thus, a claim for damages in lieu of specific performance is often treated not as a wholly new cause of action but as an alternative remedy arising from the same facts. Therefore an amendment to claim damages instead of specific performance is usually allowed, even at a late stage, provided the factual basis (breach of contract) remains the same.

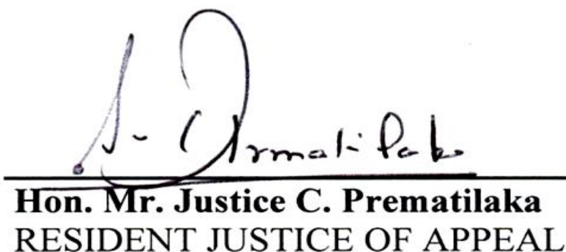
[37] To me the most relevant here is O.20, r.5 (2) and (5) of the High Court Rules. O.20, r.5 (2) applies to a situation where the application to amend the writ is made after the limitation period current at the date of the writ, has expired, the court may still grant leave to amend in certain circumstances including what is given in O.20, r.5 (5) if the court thinks it just to do so. The argument of the 02nd respondent is that the cause of action, if any against it is prescribed by the time the appellant made the application for amendment. I have dealt with this already. However, assuming that the appellant is right in its argument that alone is not a reason to refuse the amendment. Because, O.20, r.5 (5) read with O.20, r.5 (2) allows an amendment notwithstanding that the effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts in respect which relief has already been claimed.

[38] A claim for damages in lieu of specific performance is often treated not as a wholly new cause of action but as an alternative remedy arising from the same facts. This issue raised by the appellant deserves the granting of leave to appeal.

[39] Therefore, following the principles governing leave to appeal interlocutory orders more fully summarized in **Malani v Director of Public Prosecutions** [2025] FJCA 82; ABU019.2022 (6 June 2025) at [6] to [8], I am inclined to allow leave to appeal the 'judgment' dated 25 April 2024.

***Orders of the Court:***

1. *Leave to appeal the 'judgment' dated 25 April 2024 is allowed.*
2. *No costs.*



**Hon. Mr. Justice C. Prematilaka**
RESIDENT JUSTICE OF APPEAL

**Solicitors:**

Samuel Ram Lawyers for the Appellant
Vijay Maharaj Lawyers for the 1st Respondent
SG's Office for the 2nd Respondent