

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 177 OF 2007

BETWEEN : **KHUSH NOOR NISHA** (father's name Yusuf Ali) of
Nawaicuba, Nadi, Domestic Duties

Plaintiff

AND : **ATTORNEY GENERAL OF FIJI**

Defendant

Appearances:

No appearance for the plaintiff
Mr Pickering for the defendant

Date of Hearing : 25/08/14
Date of Final Order : 25/08/14

FINAL ORDER

[1] This is a notice issued pursuant to Order 25, Rule 9 of the High Court Rules (as amended) 1988 (HCR) by the High Court Registry at Lautoka to strike out the matter for want of prosecution. Ord. 25, r. 9 provides:

*'9.-(1) If **no step** has been taken in any cause or matter **for six months** then any party on application or the Court of its own motion may list the cause or matter for the parties **to show cause why it should not be struck out for want of prosecution or as an abuse of the process of the Court.***

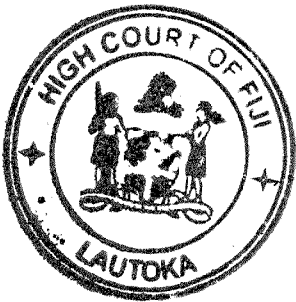
2) *Upon hearing the application the Court may either dismiss the cause [or] matter on such terms as may be just or deal with the application as if it were a summons for directions.* (Emphasis added).

- [2] The notice has been duly served on Messrs Krishna & Co as Official Receiver for Mr Haroon Ali Shah, solicitor for the plaintiff.
- [3] The matter came on for hearing in court today (27/08/14). There was no appearance for or by the plaintiff. Once a notice under Ord. 25, r.9 is issued, the parties must show cause why the action should not be struck out for want of prosecution or as an abuse of the process of the court.
- [4] The plaintiff did not file notice of intention to proceed either. Pursuant to Ord. 3, r.5 of HCR, he should have filed such a notice after 6 months delay, if he had intention to proceed. Ord. 3, r. 5 provides:
- '5. Where six months or more has elapsed since the last proceeding in a cause or matter, the party who desires to proceed must give to every other party not less than one month's notice of his intention to proceed.*
- A summons on which no order was made is not a proceeding for the purpose of this rule'.*
- [5] Mr Pickering, counsel for the defendant supports and applies that this matter must be struck out for want of prosecution.
- [6] The plaintiff has not taken any step to progress the matter after 26 July 2012. As a result the matter has just been lying in the Registry for about 2 years.
- [7] In **Grovit v Doctor and Others** (1997 1 WLR 640 at 641 H.L) it was held in a situation such as the present:

“That for the plaintiff to commence and to continue litigation which he had no intention to bring to a conclusion could amount to an abuse of process; and that, accordingly, once the court was satisfied that the reason for the delay was one which involved an abuse of process in maintaining proceedings when there was no intention of carrying the case to trial it was entitled to dismiss the action” (Emphasis provided).

[8] There is no response to the notice issued by the court. The plaintiff commenced the matter in 2007, but failed to diligently prosecute it. The conduct of the plaintiff shows that he has no intention to bring the matter to a conclusion, which could amount to an abuse of process.

[9] I therefore struck out the matter for want of prosecution. I make no order as to cost. Order accordingly.



At Lautoka

27/08/14

M H Mohamed Ajmeer

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M H Mohamed Ajmeer
Master of the High Court