IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 18 of 2014

BETWEEN : **PARVEEN KRISHNA NAICKER** of Navoli, Ba,

PLAINTIFF

AND : **LAND TRANSPORT AUTHORITY** a body corporate established under the **LAND TRANSPORT ACT** No. 35 of 1998.

1st DEFENDANT

AND : **LEONI KACISAU** of Lot 63, Nasevou Street, Lami,

2nd DEFENDANT

Mr.Rajendra P.S. Chaudhary for the Plaintiff.
(Ms.) Jyoti Sangeeta Singh Naidu for the First Defendant.
No appearance for or on behalf of the Second Defendant.

Date of Hearing : - 04th July 2016.
Date of Ruling : - 04th November 2016.

RULING

(A) INTRODUCTION

(1) The matter before me stems from the First Defendant's Summons dated 04th November 2015, made pursuant to Order 13, Rule 10 of the High Court Rules 1988, and the inherent jurisdiction of the Court seeking the grant of following Orders;

(a) THAT the Judgment in Default entered against the 1st Defendant on the 14th day of April 2014 be wholly set aside.

(b) *THAT the execution of the Notice of Assessment of Damages and Default Judgment entered against the 1st Defendant be stayed pending until the determination of this application.*

(c) *THAT leave be given to 1st Defendant to file their Statement of Defence within 21 days.*

(d) *THAT service of this Summons and Affidavit to the Plaintiff be abridged to one day.*

(e) *THAT costs of this application be costs in the cause.*

(2) The First Defendant's Summons is supported by an Affidavit sworn by one "Tomasi Radakua", the Human Resource Manager, in the employment of Land Transport Authority.

(3) The Summons is strongly contested by the Plaintiff.

(4) The Plaintiff filed an 'Affidavit in Opposition' opposing the Summons followed by an 'Affidavit in Reply' thereto.

(5) The Plaintiff and the first Defendant were heard on the Summons. They made oral submissions to Court. In addition to oral submissions, counsel for the Plaintiff filed a careful and comprehensive written submission for which I am most grateful.

(B) BACKGROUND

(1) What are the circumstances that give rise to the present application? What is this case before me?

(2) By a Writ dated 14th February 2014, the Plaintiff claimed damages from the Defendants for personal injuries, loss and damage he sustained on 27th July 2013, due to a motor vehicle accident. The first Defendant was the owner of the motor vehicle registration no. FA 187.

(3) The second Defendant was an employee of the first Defendant and was driving the said vehicle as the servant and/or agent of the first Defendant on the date in question.

(4) With that short introduction, let me set out the relevant facts. The Plaintiff in his statement of claim pleads *inter alia* (As far as relevant);

Para (3) *THAT at all material times the Plaintiff was in the process of crossing the road at Waimalika and was on the left lane as you go towards Nadi.*

(4) *THAT on or about the 27th day of July 2013 the Second Defendant drove the said motor vehicle so negligently, carelessly and recklessly on Queens Road, Waimalika, Sabeto that it bumped and collided with the Plaintiff.*

PARTICULARS OF NEGLIGENCE

(i) Failing to keep any or any proper lookout;
(ii) Driving at an excessive speed having regard to all the circumstances;
(iii) Failing to stop, to slow down, to swerve or in any other way so to manage or control the said motor vehicle as to avoid the said accident;
(iv) Failing to see the Plaintiff in sufficient time or at all to avoid the said accident;
(v) Driving onto the wrong lane and failing to drive on his correct lane.
(vi) Driving without due care and attention.
(vii) Driving below the standard of a careful and prudent driver.

(5) *THAT as a result of the said accident the Plaintiff suffered severe personal injuries.*

(5) The Plaintiff claims the following;

(i) Special Damages in the sum of $704.00 as per paragraph 6.
(ii) The sum of $356.60 as per paragraph 7.
(iii) The sum of $5110.00 as per paragraph8.
(iv) General damages for pain and suffering, loss of amenities of life, and loss of earning capacity.
(v) Any other and further relief that seem just to this Honourable Court.
(vi) Interest.
(vii) Cost of this Action.

(C) THE STATUS OF THE SUBSTANTIVE MATTER

(1) The Plaintiff instituted the proceedings herein against the Defendants on 14th February 2014.

(2) According to the Affidavit of Service filed by the Plaintiff on 09th April 2014, the Writ of Summons was served on the first and second Defendants on 18th February 2014 and 19th February 2014, respectively.

(3) On 09th April, 2014, the Plaintiff, having searched and finding that the Defendants had failed to give 'Notice of Intention to Defend' and serve the 'Statement of

Defence' within the prescribed time, entered default judgment against the Defendants on 14th April 2014.

(4) The sealed default judgment reads as follows;

INTERLOCUTORY JUDGEMENT

No Acknowledgment of Service and Statement of Defence having been filed and served by the above named Defendants herein.

IT IS THIS DAY ADJUDGED that the Defendants do pay the Plaintiff damages to be assessed and costs before a single Judge.

DATED this 14th day of April 2014

BY THE COURT

(Signed)

DEPUTY REGISTRAR

(5) On 01st July 2014, the Plaintiff filed Notice of Assessment of damages and interest.

(6) Upon being served with Notice of Assessment of damages and interest, on 19th May 2015 the first Defendant issued a Summons pursuant to Order 19, rule 09 of the High Court Rules, 1988 seeking an Order to set aside the default Judgment entered against the first Defendant. I dismissed the application on 14th October 2015 on a technical ground. This is the second application made by the first Defendant.

(D) THE LAW

(1) Before turning to the substantive submissions, it is convenient to indicate something of the relevant law.

(2) Rather than refer in detail to the various authorities, I propose to set out, with only very limited citations, what I take to be the principles in play.

An application to set aside a default judgment is not the invocation of an appellate jurisdiction but of a specific rule enabling the court to set aside its own orders in certain circumstances where the action has never been heard on the merits.

A Defendant against whom judgment in default has been entered may apply for it to be set aside under Order 13, rule 10 or under Order 19, rule 9 of the High Court Rules.
In situations where the Defendant has failed to file in the first instance, notice of intention to defend, then order 13 procedure is the correct process.

Order 19 is applicable only where, after notice of intention to defend is filed, no statement of defence had followed.

❖ THE PRINCIPLES OF SETTING ASIDE DEFAULT JUDGMENTS

A default judgment can be obtained regularly or irregularly and both of these forms of judgments can be set aside.

However, there is a distinction between setting aside a default judgment for irregularity and setting aside a judgment which was in fact regular.
Fry L J in **Alaby –v- Praetorious [1888] 20 QBD 764** at 769 succinctly drew the distinction as follows:-

> *"There is a strong distinction between setting aside a default judgment for irregularity in which case the court has no discretion to refuse to set it aside, and setting it aside where the judgment though regular has been obtained through some slip or error on the part of the Defendant in which case the court has a discretion to impose terms as a condition of granting the Defendant relief."* (Emphasis added).

This principle was adopted and applied by the Fiji Court of Appeal in **"Subodh Kumar Mishra v Rent-a-car"**(1985) 31 FLR 52. Thus, where an irregular default judgment is entered (for example time for acknowledging service or for serving a defence had not expired by the time the default judgment was entered) which irregularity cannot be cured the Defendant is entitled as of right to have the judgment set aside.

However, where the default judgment had been entered regularly, the Court has a wide discretion and neither Order 13, rule 10 nor Order 19, rule 9 of the High Court Rules impose any restriction in the manner in which the discretion is to be exercised
The rationale for the unconditional discretion that allows the court to intervene is explained by Lord Atkin in **"Evans v Bartlam"**, 1937 DC 473 as follows;

> *"The Principle obviously is that unless and until the Court has pronounced a judgment upon the merits or by consent, it is to have the power to revoke the expression of its coercive power where that has only been obtained by a failure to follow any of the rules of procedure."*

Lord Atkins pronouncement was endorsed and followed by the Fiji Court of Appeal in **The Fiji Sugar Corporation v Mohammed Ismail** FLR Vol 34, p75.

The Principles applicable for analysis of the merit of an application to set aside a default judgment are well known and settled. The leading authority is **Evans –v- Bartlam** [1937] 2 All E.R. 646. The following passage from the judgment of Lord Atkin in **"Evans v Bartlam"** is pertinent in the subject of principles on which a court acts where it is sought to set aside a regular Default judgment;

> *"The primary consideration is whether he has merits to which the Court should pay heed; if merits are shown the court will not prima facie desire to let a judgment pass on which there has been no proper adjudication.....The Court might also have regard to the applicant's explanation why he neglected to appear after being served, though as a rule his fault (if any) in that respect can be sufficiently punished by the terms as to costs or otherwise which the Court in its discretion is empowered by the rule to impose."*

The principles of that case have been widely adopted in Fiji, and by the Fiji Court of Appeal in **Pankanji Bamola&Anor. –v- Moran Ali** Civil Appeal No. 50/90 and **Wearsmart Textiles Limited –v- General Machinery Hire & Anor** Civil Appeal No. ABU0030/97S.

In **"PankajBamola &Anor v Moran Ali"** (supra) the Court of Appeal held;

> *It is not sufficient to show a merely "arguable" defence that would justify leave to defend under Order 14; it must both have "a real prospect of success" and "carry some degree of conviction." Thus the court must form a provisional view of the probable outcome of the action.*

In **Russell v Cox 1983 NZLR 654, McCarthy J** held;

> *"In approaching an application to set aside a judgment which complies with the rule, the Court is not limited in the considerations to which it may have regard, but three have long been considered of dominant importance.*
>
> *They are;*
>
> *1. That the defendant has a substantial ground of defence;*
> *2. That the delay is reasonably explained;*
> *3. That the plaintiff will not suffer irreparable injury if the judgment is set aside.*

A useful summary of the factors to be taken into consideration is to be found under notes to Or. 13 r9/14 of **THE SUPREME COURT PRACTICE 1995** Vol. I at p.142 and which is, inter alia, as follows:-

> *"The purpose of the discretionary power is to avoid the injustice which may be caused if judgment follows automatically on default. The primary consideration in exercising the discretion is whether the defendant has merits to which the court should pay heed, not as a rule of law but as a matter of common sense, since there is no point in setting aside a judgment if the defendant has no defence, and because, if the defendant can show merits, the court will not prima facie desire to let a judgment pass on which there has been no proper adjudication. Also as a matter of common sense the court will take into account the explanation of the defendant as to how the default occurred.*

Therefore, the judicially recognised "Tests" may be conveniently listed as follows;

(a) Whether the Defendant has a substantial ground of defence to the claim.

(b) Whether the Defendant has a satisfactory explanation for the default judgment.

(c) The promptness with which the application is made.

(d) Whether the setting aside would cause prejudice to the Plaintiff.

❖ **THE DEFENCE ON THE MERITS**

The major consideration on an application to set aside a default judgment is whether there is a defence on the merits. The purpose is to avoid injustice. The Defendant is seeking to deprive the claimant of a regular judgment which the claimant has validly obtained in accordance with the rules; this is not something which the court will do lightly.

In **Shocked v Goldsmith**(1998) 1 All ER 372 at 379ff Legatt LJ said:

> *"These cases relating to default judgment are authority for the proposition that when considering whether to set aside a default judgment, the question of whether there is a defence on the merits is the dominant feature to be weighed against the applicant's*

explanation both for the default and any delays, as well as against prejudice to the other party."

The leading case is **Evans v Bartlam** [1937] 2 All 646, [1937] AC 473. In this case, the defendant had suffered judgment to be entered against him in default of appearance. The Court of Appeal ([1936] 1 KB 202) allowed an appeal from the judge's order setting aside the judgment. But the House of Lords reversed the decision of the Court of Appeal and restored the Judge's order.

Lord Wright ([1937] 2 All ER 646 at 656, [1937] AC 473 at 489) expressed the conclusion;

"In a case like the present, there is a judgment, which, though by default, is a regular judgment, and the applicant must show grounds why the discretion to set aside should be exercised in his favour. The primary consideration is whether he has merits to which the court should pay heed; if merits are shown, the court will not prima facie desire to let a judgment pass on which there has been no proper adjudication... The court might also have regard to the applicant's explanation why he neglected to appear after being served, though as a rule his fault (if any) in that respect can be sufficiently punished by the terms, as to costs, or otherwise, which the court, in its discretion, is empowered by the rule to impose."

In **Vann V Awford** (1986) 130 SJ 682, the judge declined to set aside a judgment given against the second defendant in default of appearance, and also a judgment given against him when damages were assessed in his absence. The Defendant had lied when he said on oath that he had no knowledge of the proceedings. On appeal **Dillon LJ** considered that, despite the prejudice to the plaintiffs, as there were ample arguable defences the award should be set aside and there should be a fresh hearing. He added: "Even for lying and attempting to deceive the court, a judgment for £53,000 plus is an excessive penalty if there are arguable defences on the merits."

This case was followed two weeks later by **The Saudi Eagle [1986] 2 Lloyd's Rep 221**. After reviewing **Evans v Bartlam and Vann v Awford,** Sir Roger Ormrod came to the conclusion that the defendants in the case before the court had failed to show that their defence enjoyed a real prospect of success.

These cases relating to default judgments are authority for the proposition that when considering whether to set aside a default judgment, the question of whether there is a defence on the merits is the dominant feature to be weighed against the applicant's explanation both for the default and for any delay, as well as against prejudice to the other party.

❖ **THE YARDSTICK THAT HAS TO BE APPLIED IN DETERMINING THE MERITS OF THE DEFENCE**

The Defendant must have a case with a real prospect of success, and it is not enough to show a merely arguable defence. *(**Alpine Bulk Transport Company v Saudi Eagle Shipping Company, 1986 2 Lloyds Report, P 221).***

It must both have "a real prospect of success" and "carry some decree of conviction". Thus the court must form a provisional view of the probable outcome of the action. Unless potentially credible affidavit evidence demonstrates a real likelihood that a Defendant will succeed on fact, no real prospect of success is shown and relief should be refused. **(Wearsmart Textiles Ltd v General Machinery Hire Ltd, (1998) FJCA 26.)**

A person, who holds a regular judgment even a default judgment, has something of value, and in order to avoid injustice he should not be deprived of it without good reason. Something more than merely arguable case is needed to tip the balance of justice to set the judgment aside. **(Moore-Bick J in International Finance Corporation, (2001) CLC 1361).**

The real prospect of success means that the prospects must be better than merely arguable. The word "real" directs the court to the need to see whether there is a realistic as opposed to a fanciful prospect of success. It saves expense, achieves expedition, avoids the courts resources being used up in cases where that serves no purpose and is in the interest of justice.

There is no room for speculative defences and potentially credible affidavit evidence must demonstrate a real likelihood that a defendant will succeed. Otherwise no real prospect of success is shown and relief should be refused (**Allen v Taylor**) [1992] PLQR 255)

The test was considered in detail in **Swain v Hilman** (2001) (1), All E.R. 91 and the court confirmed that;

> *"The test is the same as the test for summary judgment. The only significant difference is that in a summary judgment application the burden of proof rests on the claimant to show that the defendant has no real prospect of success whereas in an application to set aside a default judgment it is for the defendant to show that his defence has a real prospect of success.*

❖ **DELAY**

An application to set aside default judgment must be made "promptly" and without "delay".

In **"Pankaj Bamole and Another v Moran Ali"** FCA 50/1999, a party seeking to set aside an Order had delayed for nearly 08 months. The Court took the view that no

adequate explanation had been provided for that and concluded that the application should be refused because it had not been made promptly and without delay.
Promptness will always be a factor of considerable significance and, if there has been a marked failure to make the application promptly, a court may well be justified in refusing relief, notwithstanding the possibility that the Defendant may well succeed at the trial.

Whether or not there is a defence on the merits may be, the dominant feature to be considered but that does not mean that it cannot be swamped by other features such as unexplained delay in bringing the application to set aside the judgment.

Although the fact that damages have been assessed and a final judgment entered does not deprive the court of jurisdiction to set aside a default judgment; it is highly relevant to the exercise of discretion. It is an aspect of, but separate from, the question of delay. The ***Saudi Eagle*** **case** *(supra)* is clear authority for the proposition that an application to set aside a default judgment can be made notwithstanding that final judgment has been entered.

In **Alpine Bulk Transport Co. Inc v Saudi Eagle Shipping Co. Inc (The Saudi Eagle) [1986] 2 Lloyd's Rep** the defendants, believing that they had no assets, deliberately allowed an interlocutory judgment for damages to be assessed to be entered against them by default, and only after damages had been assessed and final judgment entered, realising that they had given security, applied initially to the judge and then on appeal to the Court of Appeal, unsuccessfully at both hearings, to set aside the judgment and for leave to defend. The application was refused on the merits; but it was not suggested that the judge would not have had jurisdiction to set aside the judgment had it been appropriate to do so. Therefore, it cannot be said that a judgment (by default) for damages to be assessed is spent once damages are assessed; it remains the source of the plaintiff's right to damages. Nor can it be said that in such a case the interlocutory judgment is overtaken or superseded by the final judgment for a liquidated sum; it would be more accurate to say that it is completed and made effective by the assessment.

It cannot be safely assumed in every case that any prejudice to the plaintiff can be met by putting the defendant on terms to pay the costs thrown away by the assessment hearing. There can be no rigid rule either way; it depends on the facts of the particular case.

❖ **PROCEDURE**

An application to set aside a default judgment which has not been entered wrongly must be supported by evidence. Commonly, a draft defence is attached to the affidavit in support of the application.

A draft defence is not necessary, what is required is the affidavit of merits. (**The Fiji Sugar Corporation Ltd. v Mohammed Civil Appeal No. 28/87.**)

If the Defendant does not have an affidavit of merits, no setting aside order sought to be granted except for some very sufficient reason. **(Wearsmart Textiles Ltd v General Machinery Hire Ltd, (1998) FJCA 26.)**

In ***Wearsmart Textiles Ltd v General Machinery Hire Ltd*** [1998] FJCA 26; ***Abu0030u.97s (29 May 1998)*** the Fiji Court of Appeal cited the following passage from the Supreme Court Practice 1997 (Volume 1) at p.143.

> *"Regular judgment – if the judgment is regular, then it is an inflexible rule that there must be an affidavit of merits, i.e. an affidavit stating facts showing a defence on the merits (Farden v. Richter (1889) 23 Q.B.D. 124. "At any rate where such an application is not thus supported, it ought not to be granted except for some very sufficient reason." per Huddleston, B., ibid. p.129, approving Hopton v. Robertson [1884] W.N. 77, reprinted 23 Q.B.D. p. 126 n.; and see Richardson v. Howell (1883) 8 T.L.R. 445; and Watt v Barnett (1878) 3 Q.B.D. 183, p.363).*
>
> (My emphasis)

> *"it is an (almost) inflexible rule that there must be an affidavit of merit i.e. and affidavit stating facts showing a defence on the merits (FARDEN v RICHTER (1989) 23 Q.B.D. 124)" The Supreme Court Practice 1993 Or 13 r.9 p.137).*

> *"At any rate where such an application is not thus supported, it ought not to be granted except for some very sufficient reason" HUDDLESTON, B in FARDEN ibid p.129).*

❖ SETTING ASIDE ON CONDITIONS

In the exercise of Court's discretion, the court may attach conditions to an order to set aside judgment. In some cases the defaulting defendant will be ordered to pay the claimant's costs thrown away. In appropriate cases, the court may also require the defendant to pay money into court to await the final disposal of the claim. Such a condition is commonly imposed where,

1. The defendant has satisfied the court that it has a defence with a real prospect of success.

2. The Defendant has an explanation why he neglected to appear after being served.

3. The truth of which is indeed denied by the Plaintiff.

4. The court seeks no reason why the Defendant should be disbelieved in what appears to be a mere conflict on affidavits.

The conditions imposed on setting aside a default judgment are not intended to punish the defendant but to ensure that justice is achieved between the parties (**VIJAY PRASAD v DAYA RAM CIV** APP 61/90 FCA; **SUBODH KUMAR MISHRA s/o Ramendra Mishra v CAR RENTALS (PACIFIC) LTD** CIV APP 35/85 FCA). The said judgments do not lay down any basis upon which the discretion is to be exercised.

In **GARDNER v JAY (1885) 29 Ch.D 52** at p.58 **BOWEN L.J.** said on this aspect that:

> *"... when a tribunal is invested by Act of Parliament or by Rules with a discretion, without any indication in the Act or Rules of the grounds upon which the discretion is to be exercised, it is a mistake to lay down any rules with a view to indicating the particular grooves in which the discretion should run, for if the Actor the Rules did not fetter the discretion of the Judge why should the Court do so?"*

(E) ANALYSIS

(1) Let me now turn to the substantive application bearing in mind the above mentioned legal principles and factual background uppermost in my mind.

(2) Before I pass to consideration of submissions, let me record that Counsel for the Plaintiff in his written submissions has done a fairly exhaustive study of judicial decisions and other authorities which he considered to be applicable.

I interpose to mention that I have given my mind to the oral submissions made by Counsel, helpful written submissions and the judicial authorities referred to therein.

(3) Counsel for the first Defendant contended that the Defendant has a '*prima facie*' defence and should be allowed to come in and defend the action.

In *adverso*, Counsel for the Plaintiff submitted that there is no ground to set aside the judgment which had been regularly obtained. In the same breath, Counsel says that the First Defendant had not established an 'arguable defence' and the application to set aside was not made promptly.

(4) Counsel for the First Defendant does not raise any 'irregularity' in the entry of the default judgment. She claims that the First Defendant's proposed Statement of Defence (Annexure TR-10) comes within the 'meritorious' requirement for Judgment to be set aside.

Nevertheless, the Court is of the view that the Court is bound look into the 'regularity' of the default judgment. The Court is here to administer Justice. It is essential to bear in mind that the concept of justice is not confined to the interests of particular

litigants. It embraces and extends to the protection of the public veil. The crucial point is that the Court should arrive at a just result.

(5) Thus, the real issue and the only issue which this Court has to consider at the outset is whether the default judgment was 'regularly' entered. Where an irregular default judgment is entered, which irregularity cannot be cured the Defendant is entitled as of right to have the Judgment set aside.

However, where the default judgment has been entered regularly, the Court has a wide discretion and neither Order 13, rule 10 nor Order 19, rule 9 of the High Court Rules impose any restriction in the manner in which the discretion is to be exercised.

(6) What concerns me is whether the default judgment has been entered regularly and in compliance with the High Court Rules.

Let me now move to consider whether the default judgment is regular or irregular.

(7) On 14th February 2014, Writ of Summons with a Statement of Claim attached was issued against both Defendants.

The Affidavits of Service show that the Writ was served on the First Defendant, Land Transport Authority, on 18th of February 2014, by leaving a copy at the registered office of Land Transport Authority.

The time limit within which an Acknowledgement of Service and Notice of Intention to Defend had to be given was 14 days.

(See, High Court Rules 1988, Order 13, rule 5 and read with Order 12, rule 4)

The First Defendant should have Acknowledged Service no later than 04th March 2014. But, the First Defendant failed to do so.

On 09th April 2014, the Plaintiff, having searched and finding that both Defendants had failed to Acknowledge Service within the prescribed time, entered default judgment against both Defendants, under Order 13, rule 2 of the High Court Rules, 1988. The Plaintiff's Claim against the Defendants is for unliquidated damages only.

(8) However, I do not wish to rest the matter there. The First Defendant, Land Transport Authority, is a servant or an agent of the State. The functions and activities of the Land Transport Authority involve the affairs or property of the State and for purposes connected therewith.

(See; **Lal v Land Trasport Authority, 2009, FJHC 157, HBC 213, 1994**)

In the circumstances, it is my opinion that Order 77, rule 6 (1) applies and it must therefore follow that the default judgment against the First Defendant having been

entered irregularly the Defendant is entitled as of right to have it set aside (**Anlaby v Praetorious (1888) 20 QBD 764**). Under Order 77, rule 1 (2) an "Order against the State" includes an Order 'against a government department or against an officer of the State as such". Order 77, rule 6 expressly requires the leave of the court to any entry of default judgment against the state. Clearly this was not sought before the entry of default judgment against the first Defendant, Land Transport Authority. Thus, the default judgment is irregular.

For the sake of Completeness, Order 77, rule 6 is reproduced below in full.

Judgment in default *(O.77, r.6)*

*6. –(1) **Except with the leave of the Court, no judgment in default of notice of intention to defend or of pleading shall be entered against the State in civil proceedings against the State or in third party proceedings against the State.***

(2) Except with the leave of the Court, Order 16, rule 5 (1) (a), shall not apply in the case of third party proceedings against the State.

(3) An application for leave under this rule may be made by Summons or, except in the case of an application relating to Order 16, rule 5, by motion; and the summons or, as the case may be, notice of the motion must be served not less than 7 days before the return day.

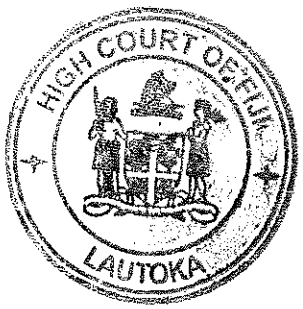
(Emphasis added)

(F) FINAL ORDERS

(1) The Judgment in default entered on 14th April 2014 is irregular and is hereby struck out unconditionally.

(3) The first Defendant is granted 14 days to file and serve a Statement of Defence and the matter should take its normal cause.

(4) That each party to bear their own costs.



.....2016.

Jude Nanayakkara
Master

At Lautoka
04th November 2016