

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. 30/2015

BETWEEN : **RAJENDRA MANI** of Field Forty,
Lautoka

PLAINTIFF

AND : **VIJAYANTIMALA NAIDU** of Simla,
Lautoka

1ST DEFENDANT

AND : **KRISHNA MURTI NAIDU** of Simla,
Lautoka

2ND DEFENDANT

AND : **RAM KRISHNA** of Field Forty, Lautoka

3RD DEFENDANT

AND : **JARNARDHAN GOUNDAR** of Field Forty,
Lautoka

4TH DEFENDANT

AND : **DINESH CHAND** of Field Forty,
Lautoka

5TH DEFENDANT

Appearance

For Plaintiff : No appearance

1st & 2nd Defendants : No appearance

3rd & 4th Defendants : In Person

Date of Hearing : 14 March 2016

Date of Ruling : 14 March 2016

R U L I N G

1. The Registry at Lautoka High Court issued notice on all parties to the action requiring them to appear in court and show cause why the action should not be struck out for want of prosecution or as an abuse of the process of the court.

2. The notice has been issued pursuant Order 25, rule 9 of the High Court Rules 1988, as amended ('HCR') which 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).

3. The matter was listed today (14 Mar. 16) for the parties to show cause. Only 3rd and 4th defendants appeared in person. Rest of the parties did not appear though they were served with the notice.
4. On 17 February 2015 the plaintiff appearing in person took out writ of summons against the defendants seeking damages. His claim arises out of a complaint that the defendants made to police against him about some misuse of fund at Field 40 Gangaiyamman Temple and Field 40 Kindergarten of which he was the President for 40 years. On 14 May 2015 the matter came before the Master on summons for direction when the Master recused himself from hearing the case on the ground that he has known a party as his landlord. As a result of it, the matter was allocated to me. I then caused the matter to be listed before me on 25 May 2015 for mention only. On that day there was no appearance for or by the plaintiff. The clerk of the court informed that the plaintiff had passed away. The defendants confirmed this. The court ordered the matter to be taken off the cause list. The matter has been dormant without any steps being taken to proceed with since 25 May 2015. On 11 March 2016 the Registry issued O.25, r.9 notice to all parties to the action requiring them to appear in court and show cause why the action should not be struck out for want of prosecution.

5. As the plaintiff had passed away the notice was served on the plaintiff's wife, Rukmani by Deputy Sheriff Officer. Mrs Rukmani then informed the Sheriff Officer that she does not want to proceed with the case anymore. The Sheriff Officer has reported this to the court. The Sheriff Officer's Report dated 11 March 2016 reads:

'Proceed to Field 40, the address of the plaintiff Mr. Rajendra Mani. At 12:45pm reached the address, where I met one Mrs. Rukmani wife of the late Mr. Rajendra Mani. I was then informed by her that she doesn't want to proceed with the case anymore and that the court should close the case.

She then called her son Krishneel who reside [sic] in New Zealand to confirmed [sic] that he too wants the case closed. Spoke with Krishneel and he confirms that too, that the case was an allegation made and that there were no proof of the said allegation which was made. Thus, they confirmed that they want the case closed.

The notice was then served to her and again was informed by her that she won't be able to attend the case on Monday 14th March, 2016 as she is home alone.

Sgd

Malakai. T. Bulivakarua
For Deputy Sheriff Officer
High Court, Lautoka'

6. There has been no notice of intention to proceed after six months delay as required in O.3, r.5, HCR. That rule provides:

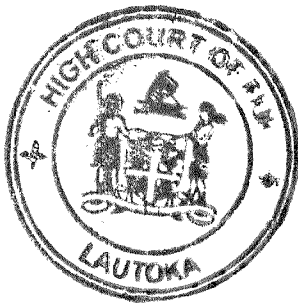
'5. Where six months or more has elapsed since the last proceeding in a cause or matter, a party intending to proceed must give not less than one month's notice of that intention to every other party.

An application on which no order was made is not a proceeding for the purpose of this rule.'

7. In this case more than nine months has elapsed since the matter was taken off the cause list on 25 May 2015. The plaintiff or his representative did not file the notice envisaged in rule 5.
8. Once a notice under O.25, r.9 is issued, the plaintiff must appear in court and show cause why the action should not be struck out for want of prosecution or as an abuse of the process of the court.
9. The plaintiff had passed away. The O.25, r.9 notice was served on the plaintiff's wife. He has unequivocally expressed her intention not to proceed with the case. This clearly shows that she has no cause to show why this matter should not be struck out for want of prosecution.
10. No cause has been shown by either party why the action should not be struck out for want of prosecution. I therefore acting under O.25, r.9, HCR struck out the action for want of prosecution. I would make no order as to costs, since the matter has been moved by the court's own motion.

Final outcome

- (i) The action is struck out for want of prosecution.
- (ii) There will be no order as to costs.



M H Mohamed Ajmeer
.....
M H Mohamed Ajmeer

JUDGE

At Lautoka

This 14th day of March 2016.