IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 142 of 2013

BETWEEN : **MAHENDRA VIJAY** of Vatumami, Rakiraki.

PLAINTIFF

A N D : **ALUMITA MAKUTU** of Loloma, Vatukoula as the Adminstratix and Trustee in the Estate of **SEVANAIA NAWAINITU** of Nukulau Village, Rakiraki (Deceased).

DEFENDANT

Mr. Janendra Kaushik Sharma for the Plaintiff
No appearance for or on behalf of the Defendant

Date of Hearing : - 26th May 2016
Date of Ruling : - 30th September 2016

RULING

(A) INTRODUCTION

(1) The Court on its own motion issued a Notice to the parties on 2nd February 2016, listing the matter for the parties to show cause as to why the case should not be struck out for "Want of Prosecution" or as an "Abuse of process of the Court" since no action was taken for a period of more than six (06) months.

(2) The Notice was issued pursuant to Order 25, Rule 9 of the High Court Rules, 1988.

(3) Upon being served with Notice, the Plaintiff filed an Affidavit to show cause as to why the matter should not be struck out for Want of Prosecution or as an Abuse of Process of the Court.

(4) The Defendant neither appeared nor filed any Affidavit or Submission to oppose the Plaintiff's Affidavit to show cause.

(B) THE FACTUAL BACKGROUND

(1) What are the facts here? To give the whole picture of the action, I can do no better than set out hereunder the averments/assertions of the Statement of Claim.

(2) The Plaintiff in his Statement of Claim pleads *inter alia*;

Para 1. *The Defendant, Alumita Makutu is being sued in her capacity as the Adminstratix and Trustee in the Estate of SEVANAIA NAWAINITU of Nukulau Village, Rakiraki (Deceased).*

2. *The said SEVANAIA NAWAINITU died on the 30th of March, 2009 ("Deceased") and Letters of Administration no. 48759 were granted to Alumita Makutu on the 06th day of August, 2009.*

3. *The Plaintiffs became aware of the grant of the Letters of Administration to the Defendant on or about the 23rd day of August, 2011.*

4. *At all material times the deceased was the owner and driver of a motor vehicle registration number FD 122.*

5. *On or about the 14th day of February, 2007 the Plaintiff was travelling in the Plaintiff's motor vehicle registration number DE 639 from Rakiraki when the vehicle registration number FD 122 owned and driven by the deceased collided with the Plaintiff's vehicle at Tavua.*

6. *The said collision was caused by the sole negligence of the deceased.*

PARTICULARS OF NEGLIGENCE

The deceased was negligent in that he:

(a) *Drove too fast when approaching the Plaintiff's vehicle and failed to reduce his speed;*

(b) *Failing to keep any or proper look out or to have any or any sufficient regard for the ahead motor vehicle;*

(c) *Failing to see the Plaintiff's in sufficient time to avoid colliding with the vehicle or at all;*

(d) *Failing to accord precedence to the Plaintiff's vehicle which was ahead of the Defendant*

(e) *Failing to stop before reaching the limits of the Plaintiff's vehicle.*

(f) *Failing to give any or any adequate warning of his approach;*

(g) *Failing to stop, to slow down, to swerve or in any other way so to manage or control the vehicle as to avoid the collision.*

(h) *Failing to heed to the bridge Sign Board mounted before approaching the bridge.*

(i) *Failing to slow down upon approaching a bridge.*

(j) *Overtaking when approaching a bridge;*

7. *As a result of the Accident the Plaintiff's vehicle went off the road and overturned into the river.*

8. *Further, the deceased was convicted on 21st July, 2008 for the Offence of failure to comply with requirements following an accident contrary to Sections 98 (1) and 35 of 1998 of the Land Transport Act 1998 and fined $120.00 in default 10 days imprisonment. The said conviction of the Defendant is relevant to the issue of negligence and breach of statutory duty and the Plaintiff intend to rely on it as evidence in this action.*

9. *So far as is necessary, the Plaintiff will rely upon the doctrine of res ipsa loquitir.*

10. *By reason of the matters aforesaid, the Plaintiffs have suffered injury, pain, loss and damage.*

PARTICULARS OF 1st PLAINTIFF'S INJURIES

i) *Abrasions L upper Limb;*

ii) *Contusion Right Arm;*

iii) *Laceration Left Foot;*

iv) *Injuries to the Back;*

v) *Muscle spasm of the low lumbar Para spinal and glue teal muscles*

vi) *Pain in back radiating to the right leg;*

vii) *Was under water for some time*

PARTICULARS OF 1ST PLAINTIFF'S SPECIAL DAMAGES

i)	*Taxi Fare (Tavua to Rakiraki Hospital)*	*$100.00*
ii)	*Taxi Fare (Rakiraki to Ba Hospital) – Return*	*$100.00*
iii)	*Fare (Lautoka Hospital – 5 times)*	*$600.00*
iv)	*CT Scan (Suva – Return)*	*$160.00*
v)	*CT Scan Costs*	*$320.00*
vi)	*Air Fare (Return)*	*$905.00*
vii)	*Australian Medical*	*$ TBA*
viii)	*Van Repair*	*$ TBA*

11. *As a result of the injuries the Plaintiff was admitted to Lautoka Hospital for 9 days.*

12. *The Plaintiff continues to suffer pain and suffering.*

PARTICULARS

i) *Inability to kneel*

ii) *Inability to lift weights*

iii) *Pain with walking long distances. Only able to walk about 50 meters at a time.*

iv) *On going back ache and inability to work as a driver.*

v) *Unable to sit for long period of time*

vi) *Unable to sit on floor*

vii) *Unable to bend*

viii) *No longer sexually active*

ix) *Needs to lie down constantly*

x) *Inability to do manual work*

xi) *Pain in cold weather*

xii) *Trauma*

(3) Wherefore, the Plaintiff claims from the Defendant;

(1) General Damages for Pain & Suffering (Past & Future);

(2) Special Damages to be particularized and details provided at Discovery;

(3) Interest pursuant to Section 3 of the Law Reform Miscellaneous Provisions (Death and Interest) Act.

(4) Costs on Solicitor/Client basis.

(5) Such further and other relief this Honourable Court deems just.

(C) THE STATUS OF THE SUBSTANTIVE MATTER

(1) The action was instituted by the Plaintiff on 06th August 2013, by way of Writ of Summons and Statement of Claim against the Defendant claiming damages for personal injuries for negligence.

(2) According to the Affidavit of Service filed by the Plaintiff on 16th August 2013, the Writ of Summons and the Statement of Claim has been duly served on the Defendant on 12th August 2013.

(3) The Defendant failed to file an Acknowledgement of Service and Notice of Intention to Defend under Order 12, Rule 4 of the High Court Rules.

(4) On 2nd February 2016, the Court issued Notice herein pursuant to Order 25, Rule 9 of the High Court Rules, 1988.

(D) THE LAW

(1) Against this factual background, it is necessary to turn to the applicable law and the judicial thinking in relation to the principles governing the striking out for want of prosecution and abuse of process of the Court.

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

(3) Provisions relating to striking out for want of prosecution and abuse of process of the Court are contained in Order 25, rule 9 of the High Court Rules, 1988.

I shall quote Order 25, rule 9, which provides;

> *"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.*
> *Upon hearing the application the court may either dismiss the cause or matter on such terms as maybe just or deal with the application as if it were a summons for directions".*

(4) Order 25, rule 09 expressly gives power to the court on its own motion to list any cause or matter, where no step has been taken for at least six (06) months.

(5) The Court is allowed to strike out an action on the failure of taking of steps for six (06) months on two grounds. The first ground is for **want of prosecution** and the second is an **abuse of process of the Court.**

(6) The principles for striking out for **want of prosecution (first ground)** are well settled. Lord **"Diplock" in "Birkett v James" (1987), AC 297,** succinctly stated the principles at page 318 as follows:

> *"The power should be exercised only where the court is satisfied either (1) that the default has been intentional and contumelious, e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court; (2) (a) that there*

has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as it is likely to cause or to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between each other or between them and a third party."

(7) The test in **"Birkett vs James"** (*supra*) has two limbs. The first limb is **"intentional and contumelious default"**. The second limb is **"inexcusable or inordinate delay and prejudice."**

(8) In, **Pratap v Chirstian Mission Fellowship, (2006) FJCA 41, and Abdul Kadeer Kuddus Hussein V Pacific Forum Line, IABU 0024/2000,** the Court of Appeal discussed the principles expounded in **Birkett v James** (*Supra*).

The Fiji Court of Appeal in **"Pratap V Chrisitian Mission Fellowship"** (*supra*) held;

*The correct approach to be taken by the courts in Fiji to an application to strike out proceedings for want of prosecution has been considered by this court on several occasions. Most recently, in **Abdul Kadeer Kuddus Hussein v Pacific Forum Line – ABU0024/2000 – FCA B/V 03/382)** the court, readopted the principles expounded in **Birkett v James [1978] A.C. 297; [1977] 2 All ER 801** and explained that:*

'The power should be exercised only where the court is satisfied either (i) that the default has been intentional and contumelious. e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court; or (ii) (a) that there has been inordinate and inexcusable delay on the part of the Plaintiff or his lawyers, and (b) that such delay would give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the Defendants either as between themselves and the Plaintiff or between each other or between them and a third party'."

(9) The question that arises for consideration is what constitutes **"intentional and contumelious default"** (First Limb). The term **"Contumely"** is defined as follows by the Court of Appeal in **Chandar Deo v Ramendra Sharma and Anor, Civil Appeal No, ABU 0041/2006,**

"1. Insolent reproach or abuse, insulting or contemptuous language or treatment; despite; scornful rudeness; now esp. such as tends to dishonour or humiliate.

2. Disgrace; reproach."

(10) In **Culbert v Stephen Wetwell Co. Ltd,** (1994) PIQR 5, Lord Justice Parker succinctly stated,

> *"There is however, in my view another aspect of this matter. An action may also be struck out for contumelious conduct, or abuse of the process of the Court or because a fair trial in action is no longer possible. Conduct is in the ordinary way only regarded as contumelious where there is a deliberate failure to comply with a specific order of the court. In my view however a series of separate inordinate and inexcusable delays in complete disregard of the Rules of the Court and with full awareness of the consequences can also properly be regarded as contumelious conduct or, if not that, to an abuse of the process of the court. Both this and the question of fair trial are matters in which the court itself is concerned and do not depend on the defendant raising the question of prejudice."*

Lord Justice Nourse in Choraria [Girdharimal] v Sethia (Nirmarl Kumar) Supreme Court Case No. 96/1704/B, C.A. 15.1.98 said;

> *"However great does not amount to an abuse of process, delay which involves complete, total or wholesale disregard, put it how you will, of the rules of the court with full awareness of the consequences is capable of amounting to such an abuse, so that, if it is fair to do so, the action will be struck out or dismissed on that ground."*

It has been further stated by ***Nourse J:***

> *"That is the principle on which the court must now act. Whether it is identified as being comprehended within the first limb of **Birkett v James** or as one having an independent existence appears to be a point of no importance. I have already said that it is clear that the relevant ground of decision in **Culbert** was based on the first limb of **Birkett v. James**. In other words, it was there effectively held that the plaintiff's conduct had been intentional and contumelious.*
>
> *In my view that conclusion was well justified on the facts of the case, which demonstrated not only the plaintiff's complete disregard of the rules but also his full awareness of the consequences. He had, at the least, been reckless as to the consequences of his conduct and, on*

general principles that was enough to establish that the defaults had been intentional and contumelious."

(11) Therefore, the failure to comply with peremptory orders and/or flagrant disregard of the High Court Rules amounts to contumaciousness.

(12) The next question is what constitutes **"inexcusable or inordinate delay and prejudice".**

In **Owen Clive Potter v Turtle Airways LTD**, Civil Appeal No, 49/1992, the Court of Appeal held,

> *"(Inordinate)....means so long that proper justice may not be able to be done between the parties. When it is analysed, it seems to mean that the delay has made it more likely than not that the hearing and/or the result will be so unfair vis a vis the Defendant as to indicate that the court was unable to carry out its duty to do justice between the parties."*
>
> *And at page 4, their Lordships stated:*
>
> *"Inexcusable means that there is some blame, some wrongful conduct, some conduct deserving of opprobrium as well as passage of time. It simply allows the Judge to put into the scales the Plaintiff's conduct or reasons for not proceeding, as well as the lapse of time and the prejudice that would result to him from denying him opportunity from pursing his action or perhaps any action against the defendant."*

In **Tabeta v Hetherigton** (1983) The Times, 15-12-1983, the court observed;

> *"Inordinate delay means a delay which is materially longer that the time which is usually regarded by the courts and the profession as an acceptable period."*

(13) The Court of Appeal, in **"New India Assurance Company Ltd, V Rajesh k. Singhand Anor, Civil Appeal No, ABU 0031/1996,** defined the term "prejudice" as follows,

> *"Prejudice can be of two kinds. It can be either specific that is arising from particular event that may or may not occur during the*

relevant period or general, and prejudice that is implied from the extent of delay."

(14) Lord "Woolf" in **"Grovit and Others v Doctor and Others" (1997) 01 WLR 640, 1997 (2) ALL ER, 417,** has discussed the principles for striking out for **"Abuse of process" (Second ground in Order 25, rule 9) as follows,**

*"This conduct on the part of the appellant constituted an abuse of process. The court exists to enable parties to have their disputes resolved. To commence and to continue litigation which you have no intention to bring to conclusion can amount to abuse of process. Where this is the situation the party against whom the proceedings is brought is entitled to apply to have the action struck out and if justice so requires (which will frequently be the case) the courts will dismiss the action. The evidence which was relied upon to establish the abuse of process may be the plaintiff's inactivity. The same evidence will then no doubt be capable of supporting an application to dismiss for want of prosecution. However, if there is an abuse of process, it is not strictly necessary to establish want of prosecution under either of the limbs identified by Lord Diplock in **Birkett v James** [1978] A.C 297. In this case once the conclusion was reached that the reason for the delay was one which involved abusing the process of the court in maintaining proceedings where there was no intention of carrying the case to trial the court was entitled to dismiss the proceedings".*

(15) The Court of Appeal in **Thomas (Fiji) Ltd –v- Frederick Wimheldon Thomas & Anor, Civil Appeal No. ABU 0052/2006** affirmed the principles of **Grovit –v- Doctor** as ground for striking out a claim, in addition to, and independent of principles set out in **Birkett v James** (see paragraph 16 of the judgment). Their Lordships held:-

*"It may be helpful to add a rider. During the course of his careful and comprehensive ruling the judge placed considerable emphasis on the judgment of the House of Lords in **Grovit and Ors v Doctor** [1997] 2 ALL ER 417. That was an important decision and the judge was perfectly right to take it into account. It should however be noted that Felix Grovit's action was struck out not because the accepted tests for striking out established in **Birkett v James** [1977] 2 ALL ER 801; [1978] AC 297 had been satisfied, but because the court found that he had commenced and continued the proceedings without any intention of bringing them to a conclusion. In those circumstances the court was entitled to strike out the action as being an abuse of the process of the Court. The relevance of the delay was the evidence that it furnished of the Plaintiff's intention to abuse the process of the Court"*

(16) **It seems to me perfectly plain that under "Grovit and Others v Doctor and Others" (*supra*) there is no need to show prejudice any more for it says that maintaining proceedings without a serious intention to progress them may amount to "abuse of process" which justifies for want of prosecution without having to show prejudice.**

(E) ANALYSIS

(1) The action was instituted by the Plaintiff on 06th August 2013, by way of Writ of Summons and Statement of Claim against the Defendant claiming damages for personal injuries for negligence.

According to the Affidavit of Service filed by the Plaintiff on 16th August 2013, the Writ of Summons and the Statement of Claim has been duly served on the Defendant on 12th August 2013.

The Defendant failed to file an Acknowledgement of Service and Notice of Intention to Defend under Order 12, Rule 4 of the High Court Rules, 1988.

On 2nd February 2016, the High Court Registry issued a Notice pursuant to Order 25, Rule 9 of the High Court Rules, for the Plaintiff to show cause as to why the action should not be struck out for Want of Prosecution or as an Abuse of the process of the Court.

(2) Between 16th August 2013 and 2nd February 2016 that is for 02 years and 05 months no steps were taken by the Plaintiff to enter interlocutory judgment against the Defendant for damages to be assessed.

(3) The onus is on the Plaintiff to provide a cogent and credible explanation for not taking steps to enter interlocutory judgment against the Defendant under Order 13, Rule 2 of the High Court Rules, for failure to give Notice of Intention to Defend.

(4) As I understand the evidence, the Plaintiff's explanation is as follows;

Reference is made to paragraph 04, 05, 06, 07, 08 and 09 of the Plaintiff's Affidavit in Answer;

> Para 4. *The Defendant did not file an acknowledgement of Service and my Solicitors advised me to file a Notice of Motion to Enter Default Judgment against the Defendant.*

5. *My Solicitors also advised me to carry out queries on whether the defendant's estate has assets and/or ability to satisfy any judgment this Honorable Court may deliver.*

6. *I have faced difficulties in carrying out my inquiries and thus the delay in proceeding with this matter.*

7. *I have however, instructed my Solicitors to proceed with applying for Judgment against the Defendant and I am informed by my solicitors and verily believe that my Notice of Motion to Enter Judgment is ready for filing.*

8. *Such delay to the current proceeding is not inordinate or intentional and an explanation has been provided for the said default as it is not contumelious and I have not disobeyed any orders of the Honourable Court.*

9. *The Defendant in this matter has not suffered any great injustice, and she in fact did not file any acknowledgement and has not shown any interest to defend the matter.*

(5) This is a cause in which there has been no proceeding for two years and five months from the last proceeding. The Plaintiff averred that the delay was a result of difficulties he faced in carrying out his inquiries as to whether the Defendant's estate has assets.

I am not impressed at all. I completely reject the excuse presented in the Affidavit due to lack of evidence and essential particulars. Nothing said in the Affidavit or in submissions answered the reasons for delay. I do not think it necessary to say any more about it.

In my view, where the word "proceed" is used in the existing High Court Rules, it refers to some proceeding while the matter is still in controversy, or there is still some further step to be taken before Judgment is obtained.

On the other hand if Judgment has not been obtained then any step taken towards obtaining it would appear to be a step in those proceedings which are covered by the rules.

Therefore, entering Judgment by default is a proceeding in an action.

Returning back to the case before me, from 16th August 2013 to 02nd February 2016 that is for 02 years and 05 months, the Plaintiff had all the time to take steps to enter

interlocutory Judgment against the Defendant under Order 13, Rule 2 of the High Court Rules, for failure to give Notice of Intention to Defend.

I must stress here that no steps were taken by the Plaintiff to enter Interlocutory Judgment against the Defendant for failure to give Notice of Intention to Defend.

Emanating from this issue alone, the fundamental question is whether the Plaintiff is serious about pursuing his claim when he let his claim sleep for two years and five months?

The fact of more than two years having lapsed since the last proceedings tends to show that the Plaintiff had intended to abandon his claim or there is either the inability to pursue the Claim with reasonable diligence and expedition or lack of interest in bringing it to a conclusion. I cannot resist in saying that it would be an affront to justice to allow the Plaintiff's case to continue any further.

This is not a criminal case in which I am called upon to allow my imagination to play upon the facts and find reasonable hypothesis consistent with innocence. A balance of probability is enough. And when the greater probability is that the Plaintiff did not care at all for more than two years to enter Interlocutory Judgment against the Defendant under Order 13, Rule 2 of the High Court Rules, 1988, why should this Court hesitate to find accordingly against the Plaintiff??

Broadly speaking, the Plaintiff has adopted a "**sitting on the hands**" approach and allowed the proceeding to lay dormant. The Plaintiff by his conduct has clearly demonstrated that he has no regard to the primary policy of the High Court Rules.

It is worth remarking that, a delay of more than two years in any Civil Action in the High Court constitutes both inexcusable and inordinate. **It must be remembered that the Plaintiff delayed for 6 years before filing the action.** This is legal but unhelpful to the just process of finding a speeding resolution.

The delay of more than two years could not possibly be described as "reasonable" even in the most generous minded and indulgent view. To my mind, two years and five months is a long time to sleep over a matter. It seems to me perfectly plain that the Plaintiff slept over the matter and did not wake up at all from his slumber.

Already two years and five months have elapsed since the last formal step in the proceedings. To allow the action to be without a single step of any kind being taken for more than two years resulted in a delay that is both inordinate and inexcusable.

(6) It is not essential that the defendant demonstrates prejudice ***(Grovit v Doctor & Others* [1997] 2 ALL ER 417)**. The Court still has the power under its inherent jurisdiction to strike out or stay actions on the grounds of abuse of process irrespective of whether the classic tests enunciated in ***Birkett v James*** (supra) for dismissal for want of prosecution have been satisfied.

"The circumstances in which abuse of process can arise are varied and the kinds of circumstances in which the court has a duty to exercise its inherent jurisdiction are not limited to fixed categories. The dual principles are well settled. It is a matter of determining on the facts whether the continuation of the present proceedings will be an abuse of process of the court" **(Richardson J in the New Zealand Court of Appeal decision of *Reid v New Zealand Trotting Conference* [1984] 1 NZLR 8 at page 10).**

The fact of more than two years having lapsed since the last proceedings tends to show that the Plaintiff had intended to abandon his claim or there is either the inability to pursue the Claim with reasonable diligence and expedition or lack of interest in bringing it to a conclusion.

I must stress here that it is an abuse of Court process if actions are commenced or maintained without the intention to pursue them with reasonable diligence and expedition.

Certainly, this case falls within the category of "abuse of process" held in "***Grovit and Others v Doctor and Others***" (*supra*). As earlier mentioned, it seems to me perfectly plain that under "***Grovit and Others v Doctor and Others***" (*supra*) there is no need to show prejudice any more for it says that maintaining proceedings without a serious intention to progress them may amount to "abuse of process" which justifies for want of prosecution without having to show prejudice. I echo the words of Lord "Woolf" " in "***Grovit and Others v Doctor and Others***" (*supra*)

> "*This conduct on the part of the appellant constituted an abuse of process. The court exists to enable parties to have their disputes resolved. To commence and to continue litigation which you have no intention to bring to conclusion can amount to abuse of process. Where this is the situation the party against whom the proceedings is brought is entitled to apply to have the action struck out and if justice so requires (which will frequently be the case) the courts will dismiss the action. The evidence which was relied upon to establish the abuse of process may be the plaintiff's inactivity. The same evidence will then no doubt be capable of supporting an application to dismiss for want of prosecution. However, if there is an abuse of process, it is not strictly necessary to establish want of prosecution under either of the limbs identified by Lord Diplock in* ***Birkett v James*** *[1978] A.C 297. In this case once the conclusion was reached that the reason for the delay was one which involved abusing the process of the court in*

maintaining proceedings where there was no intention of carrying the case to trial the court was entitled to dismiss the proceedings".

It has further stated by **Lord Woolf**:

> *"The Court had power under its inherent jurisdiction to strike out or stay actions on the grounds of abuse of process irrespective of whether the test for dismissal for want of prosecution was satisfied.* ***Accordingly, since the commencement and continuation of proceedings with no intention of bringing them to a conclusion was itself sufficient to amount to an abuse of process which entitled the court to dismiss the action, it was not strictly necessary in such a case to establish want of prosecution by showing that there had been inordinate and inexcusable delay on the part of the plaintiff which had prejudiced the defendant.*** *It followed, on the facts that the deputy judge had been fully entitled to strike out the action. The appeal would therefore be dismissed."*
>
> (Emphasis Added)

Similar sentiment was expressed in **Thomas (Fiji) Ltd –v- Frederick Wimheldon Thomas & Anor,** Civil Appeal No. ABU 0052/2006;

> *"It may be helpful to add a rider. During the course of his careful and comprehensive ruling the judge placed considerable emphasis on the judgment of the House of Lords in* ***Grovit and Ors v Doctor*** *[1997] 2 ALL ER 417. That was an important decision and the judge was perfectly right to take it into account. It should however be noted that Felix Grovit's action was struck out not because the accepted tests for striking out established in* ***Birkett v James*** *[1977] 2 ALL ER 801; [1978] AC 297 had been satisfied, but because the court found that he had commenced and continued the proceedings without any intention of bringing them to a conclusion. In those circumstances the court was entitled to strike out the action as being an abuse of the process of the Court. The relevance of the delay was the evidence that it furnished of the Plaintiff's intention to abuse the process of the Court"*

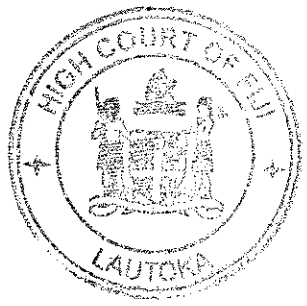
(F) CONCLUSION

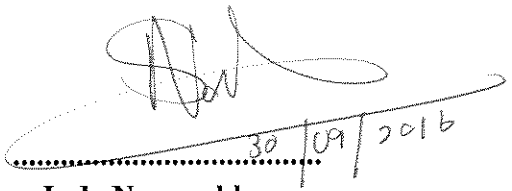
Having regard to the facts of this case, I apply the legal principles laid down in the case of **Grovit and Others v Doctor and others** (*Supra*). Accordingly, I conclude that the Plaintiff maintained the action in existence notwithstanding that he had no interest in bringing it to a conclusion.

This conduct on the part of the Plaintiff constituted an abuse of process.
This should be made clear; the limited resources of this Court will not be used to accommodate sluggish litigation.

(G) FINAL ORDERS

The Plaintiff's action against the Defendant is dismissed for abuse of process of the Court.





Jude Nanayakkara
Master.

At Lautoka

30th September 2016.