

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 72 of 2014

BETWEEN : **MAYA KIDMAN**

Plaintiff

AND : **PREM CHANDRA & AJENDRA PRASAD**

Defendants

Before : Acting Master U.L. Mohamed Azhar

Counsels : Mr. Z Mohammed for the Plaintiff
Mr. A. J. Singh for the Defendants

Date of Ruling : 26th September 2017

RULING
[On Summary Judgment]

The cause

01. The plaintiff sued the defendants for wrongfully transferring the property which was purchased using the money that she remitted from Australia. The plaintiff claimed in her statement of claim that, in or about 2012, the first defendant recommended to her to purchase a property in Fiji, to which she expressed her interest and on 29th January 2013 remitted a sum of A\$ 300,000.00 which was, at that time, equivalent to F\$ 514,751.00 to the account of one Chandra Kant Lodhia whom the plaintiff did not know. The defendants entered into a Sale and Purchase Agreement with one Ishwar Lal for the purchase of a property situated at Kennedy Avenue, Nadi for FJ\$ 475,000.00 and later the defendants transferred the said property to their names by a Transfer dated 08th May 2013. Therefore, the plaintiff prayed, *inter alia*, for a declaration that the defendants are holding the said property in trust for the plaintiff; an order for that the defendants to transfer the said property at their own cost to the plaintiff and judgment for the balance of F\$ 39,751.00 after deducting the purchase price of F\$ 475,000.00 from the total amount of F\$ 514,751.00 which she remitted from Australia. It is interesting to note that, the plaintiff did not disclose the relationship with the defendants in her statement of claim. A person who just reads the statement of claim will infer that, the defendants were the real estate agent who recommended some properties in Fiji for the plaintiff.

02. The defendants filed their statement of defence and claimed that, the plaintiff, after the death of her first husband, married to the first defendant in 1995 and continued to live with him till 2013 despite their divorce in 2000. The second defendant was married to the daughter of the plaintiff and they were too divorced in the same year. The defendants further stated that, the money was remitted from the joint account of the plaintiff and the first defendant opened in a bank in Australia to buy a house in the name of the defendants and they are the registered proprietors of the indefeasible title. The defendants, thus, prayed for the dismissal of plaintiff's action with the cost on Solicitor/Client indemnity basis.
03. The plaintiff whilst admitting the joint account of both her and the first defendant claimed in her reply to the defence that, she was coerced by the first defendant to add his name to that account and the money in that account was the proceeds of sale of two properties situated in Australia which belonged to her and her daughter. The pleading were closed and the summons for directions was too filed. At that time, the defendants filed the summons for security for cost since the plaintiff is an Australian citizen though she was a Fiji national before her migration to Australia. The said summons was turned down by the previous Master for the reasons mentioned in his ruling.
04. Thereafter, the plaintiff filed this summons, pursuant to Order 14 rule 1 of the High Court Rule and the inherent jurisdiction of this court, seeking summary judgment against the defendants. The summons is supported by an affidavit sworn by the plaintiff. The defendants opposed the summons and filed the affidavit in opposition. This ruling relates to the said summons for summary judgment filed by the plaintiff.

Summary judgment

05. The summary judgment is a procedural cannon used during the civil litigation to promptly and expeditiously dispose any case without trial proper. An applicant is entitled for a summary judgment as a matter of law if there is no defence and no dispute as to the material facts of the case. The purpose of summary judgment is to obtain quick judgment avoiding unnecessary trial incurring the cost and expenses and exhausting the resources of the court which is not infinite. "The purpose of Ord 14 is to enable a plaintiff to obtain a quick judgment where there is plainly no defence to the claim. If the defendant's only suggested defence is a point of law and the court can see at once that the point is misconceived the plaintiff is entitled to judgment. If at first sight the point appears to be arguable but with relatively short argument can be shown to be plainly unsustainable the plaintiff is also entitled to judgment. But Ord 14 proceedings should not in my view be allowed to become a means for obtaining, in effect, an immediate trial of an action, which will be the case if the court lends itself to determining on Ord 14 applications points of law which may take hours or even days and the citation of many authorities before the court is in a position to arrive at a final decision" ; Parker L.J. in *Home and Overseas Insurance Co. Ltd v Mentor Insurance Co. (UK) Ltd (in Liq)* (1989) 3 All E.R. 74 at 77, "The Order 14 summary judgment procedure is available to any Plaintiff who desires a quick judgment on his or her claim where there is no defence to a claim. It is also available where any defence raised is either not a bona fide defence or discloses no triable issues so as to merely delay a judgement in favour of the Plaintiff" ; Master Anare Tuilevuka in *Vatukoula Gold Mines Ltd v Anand* [2010] FJHC 46; HBC218.2008 (16 February 2010).

06. The law relating to entering summary judgment is provided in Order 14 of the High Court Rules. The said order provides for entering summary judgment against the defendant and the plaintiff as well on counterclaims. The rules 1 to 4 are relevant to the summons before me and those rules provide for the actions for which the rule on summary judgment applies; the manner in which the application must be made; how the judgment for the plaintiff to be entered and how the defendant be allowed to defend his case. Those rules are as follows:

Application by plaintiff for summary judgment (O.14, r.1)

1. (1) *Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that the defendant has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.*
- (2) *Subject to paragraph (3), this rule applies to every action begun by writ other than –*
 - (a) *an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment.*
 - (b) *an action which includes a claim by the plaintiff based on an allegation of fraud.*
- (3) *This Order shall not apply to an action to which Order 86 applies.*

Manner in which application under Rule 1 Must be made (O.14, r2)

2. (1) *An application under rule 1 must be made by summons supported by an affidavit verifying the facts on which the claim, or the part of a claim to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the cause may be, or no defence except as to the amount of any damages claimed.*
- (2) *Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.*
- (3) *The summons, a copy of the affidavit in support and of any exhibits referred to therein must be served on the defendant not less than 10 clear days before the return day.*

Judgment for Plaintiff (O.14, r.3)

3. (1) *Unless on the hearing of an application under rule 1, either the Court dismisses the application or the defendant satisfies the Court with respect to the claim, or the part of a claim, to which the*

application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the claim or part as may be just having regard to the nature of the remedy or relief claimed.

- (2) *The Court may by order, and subject to such conditions if any, as may be just, stay execution of any judgment given against a defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action.*

Leave to defend (O.14, r.4)

- 4.-(1) *A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.*
- (2) *Rule 2 (2) applies for the purposes of this rule as it applies for the purposes of that rule.*
- (3) *The Court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.*
- (4) *On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity-*
- (a) *to produce any document;*
- (b) *if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.*

07. The principles that govern the application of these rules are discussed in many cases both English and local, and reference need not to all the cases. The court's duty when an application for summary judgment is filed, to ascertain whether there is a triable issue and no arguable defence to the claim. If there is an arguable issue to be tried and there are matters of facts to be resolved, which can only be resolved in a trial, the court should not allow the application for summary judgment, but should grant leave to defend the matter in a full and proper trial, no matter how strong the plaintiff's case would be. **Greer L.J** in *Powszechny Bank Zwiakony W Polsch v Paros* (1932) 2 K.B. 353 said at page 359 that:

"It has long been the rule that in proceedings under Order XIV, what the Court, whether this Court or the King's Bench Division, has to ascertain is whether there is a triable issue. If there is, no matter how strongly the

Court may anticipate that it will be decided in the plaintiff's favour, it must order a trial."

08. In *Express Newspapers Plc v News (UK) Ltd and Others* [1990] 3 All E.R. 376 at 379 Browne-Wilkinson V-C said:

"Summary judgment under Order 14 is a judgment given in the clearest cases before an ordinary trial has taken place. Summary judgment is only given where it is clear that there is no arguable defence to the claim. If there is an arguable issue to be tried, in particular where there are matters of fact to be resolved which can only be resolved at trial, the court gives leave to defend and the case goes to trial to be heard out. Summary judgment is a means of short-circuiting that system in the clear case where it is shown that, even if it went to trial, the defence could not succeed".

09. Raising a point of law by the defendant as a defence against the claim of the plaintiff can be an arguable point. The court at this point should consider whether there is any substance in that in that proposed defence. Finally if the court can come to a conclusion, simply on submission of the parties without reference to contested facts, that the said point is bad in law, it can give the summary judgment for the plaintiff. **Kerr L.J** in *S.L. Sethia Liners Ltd v State Trading Corporation of India* (1986) 1 Lloyd's Rep. 31 at page 38 said:

"if a point of law is raised on behalf of the defendants, which the Court feels able to consider without reference to contested facts simply on the submissions of the parties, then it is now settled law that in applications for summary judgment under Order 14 the Court will do so in order to see whether there is any substance in the proposed defence. If it concludes that, although arguable, the point is bad, then it will give judgment for the plaintiffs."

10. Citing *1991 The Supreme Practice Vol 1* especially the pages 146,147,152 and 322, the Fiji Court of Appeal in *Carpenters Fiji Ltd v Joes Farm Produce Ltd* [2006] FJCA 60; *ABU0019U.2006S* (10 November 2006) at paragraph 21 held that:

Here it is timely to state some of the well-established principles relating to the entry of summary judgment:

- (a) The purpose of 0.14 is to enable a plaintiff to obtain summary judgment without trial if he can prove his claim clearly and if the defendant is unable to set up, a bona fide defence or raise an issue against the claim which ought to be tried.*
- (b) The defendant may show cause against a plaintiff's claim on the merits e.g. that he has a good defence to the claim on the merits or there is a dispute as to the facts which ought to be tried or there is a difficult point of law involved.*
- (c) It is generally incumbent on a defendant resisting summary judgment, to file an affidavit which deals specifically with the plaintiff's claim and affidavit and*

states clearly and precisely what the defence is and what facts are relied on to support it.

(d) *Set off, which is a monetary cross claim for a debt due from the plaintiff, is a defence. A defendant is entitled to unconditional leave to defend up to the amount of the set off claimed. If there is a set off at all, each claim goes against the other and either extinguishes or reduces it Hanak v. Green (1958) 2 QB 9 at page 29 per Sellers LJ.*

(e) *Likewise where a defendant sets up a bona fide counter claim arising out of the same subject matter of the action, and connected with the grounds of defence, the order should not be for judgment on the claim subject to a stay of execution pending the trial of the counter claim but should be for unconditional leave to defend, even if the defendant admits whole or part of the claim; Morgan and Sons Ltd v. S.Martin Johnson Co (1949) 1 KB 107 (CA)*

11. The above authorities manifestly indicate that, the onus, in an application for summary judgment, is on the plaintiff to sufficiently convince the court that a particular case is the clearest and case the defendant has no fairly arguable defence. This burden is generally discharged by an affidavit with the assertion of statement of claim and belief of the plaintiff on oaths that, the defendant has no real defence for the claim. Once this burden is discharged, then it is upon the defendant, if he wishes to resist such application for summary judgment, to provide some evidential foundation for the defences which are raised. The nature of the onus casted on the plaintiff, the burden on the defendant and the nature of the affidavit required from the defendant in an application for summary judgment are clearly explained in two decisions cited by Justice Fatiaki in Fiji Development Bank v Moto [1995] FJHC 166; Hbc0055j.95s (22 November 1995). His Lordship said that:

The correct approach to an application for summary judgment is succinctly summarised in my view in the headnote to the New Zealand Court of Appeal decision in Pemberton v. Chappell (1987) 1 N.Z.L.R. 1 where it was said of the N.Z. equivalent of Order 14:

"Held: ... the High Court Rules casts onto the plaintiff the onus of convincing the Court that the defendant has no fairly arguable defence. Normally that onus will be satisfied by the plaintiff's affidavit verifying the allegations in the Statement of Claim and his oath that he believes that the defendant has no defence to the claim ... If a defence is not evident on the plaintiff's pleading and the defendant wishes to resist summary judgment, the defendant must file an affidavit raising an issue of fact or law and give reasonable particulars of the matters which he claims ought to be put in issue. Where the only arguable defence is a question of law which is clear-cut and does not require findings on disputed facts or the ascertainment of further facts, the Court may, and normally should, decide it on the application for summary judgment. But where the defence raises questions of fact on which the outcome of the cause may turn it will not often be right to enter summary judgment."

Over a century earlier in 1880 Lord Blackburn in Wallingford v. Mutual Society (1880) 5 A.C. 685 said of the nature of the affidavit required from a defendant in opposing an 'Order 14' application, at p.704:

"I think that when the affidavits are brought forward to raise (a) defence they must, if I may use the expression, condescend upon particulars. It is not enough to swear 'I say I owe the man nothing'. Doubtless, if it was true, that you owed the man nothing as you swear, that would be a good defence. But that is not enough. You must satisfy the judge that there is reasonable ground for saying so... And in like manner as to illegality, and every other defence that might be mentioned."(Emphasis is original)

12. As the summary judgments are entered on the affidavit evidence before the court, it should not be a mere denial of defendant's right, to which he is entitled by natural justice, to have his day in the court and to have his defences explored and examined in detail. There has to be a balancing between the right of the defendant and the appropriate robust and realistic approach called for by the particular facts of the case. Having carefully considered the rules under Order 14 and the decided cases, both foreign and local, on entering summary judgments, I can conveniently list the procedure and the principles that devolve from those rules and the cases as follows:
 - a. The plaintiff may, after the notice of intention to defend the action has been filed, apply for summary judgment against the defendant on the ground that the defendant has no defence to the claim or part of the claim included in the Writ except the amount of damages: *rule 1 (3)*. This application must be by way of summons supported by an affidavit with the assertion of facts and the belief of the deponent that there is no defence to the claim. This summons to be served on the other party to be heard inter parte: *rule 2*.
 - b. The procedure under Order 14 rule 1 is applicable to every action begun by a Writ. However, it cannot be revoked for an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment and for an action which includes a claim by the plaintiff based on an allegation of fraud : *rule 1 (2)*. Likewise, this Order is neither applicable to summary judgment in specific performance under Order 86 nor does affect the provisions of Order 77 which applies for the proceedings against the state: *rules 1 (3) and 12*.
 - c. The power to grant summary judgment should be exercised with care and should not be exercised unless it is clear there are no real issues to be tried: *Fancourt v Mercantile Credits Ltd* (1983) 154 CLR 87 at 99; *Theseus Exploration NL V Foyster* (1972) 126 CLR 507. It would be difficult to obtain summary judgment when there is an array of defences. However an application for summary judgment should not be refused for raising seemingly difficult issues to blot out otherwise simple cases: *Hibiscus Shoppingtown Pty Ltd v Woolworths* [1993] FLR 106; *Territory Loans Management v Turner* (1992) 110 FLR 341.
 - d. The legal burden of proof is borne by the plaintiff throughout the application, however, when he has established a prima facie right to an order, a "persuasive" or "evidential" burden shifts to the defendant to satisfy the court that judgment should not be given against him: *Australian & New*

Zealand Banking Group v David (1991)105 FLR 403. Although the onus is upon the plaintiff there is upon the defendant a need to provide some evidential foundation for the defences which are raised. If not, the plaintiff's verification stands unchallenged and ought to be accepted unless it is patently wrong: Australian Guarantee Corporation (NZ) Ltd v McBeth [1992] NZLR 54.

- e. The defendant may show cause against a plaintiff's claim on the merits. It is generally incumbent on a defendant resisting summary judgment, to file an affidavit which deals specifically with the plaintiff's claim and states clearly and precisely what the defence is and what facts are relied on to support it: 1991 The Supreme Practice Vol 1 pages 146,147,152 and 322. Mere raising of a defence that is complicated or difficult will not of itself result in a refusal to grant summary judgment: Civil & CIVIC Pty Ltd v Pioneer Concrete (NT) Pty Ltd (1991) 103 FLR 196.
- f. If a point of law is raised which the Court feels able to consider without reference to contested facts simply on the submissions of the parties, then it will see whether there is any substance in the proposed defence. If it concludes that, although arguable, the point is bad, then it will give judgment for the plaintiffs: Sethia Liners Ltd v State Trading Corporation of India (1986) 1 Lloyds Rep. 31.
- g. There has to be a balancing between the right of the defendant to have his day in Court and to have his proper defences explored and examined in details and the appropriate robust and realistic approach called for by the particular facts of the case: Bibly Dimock Corporation Ltd v Patel (1987) 1 PR NZ 84; Cegami Investments Ltd v AMP Financial Corporation (NZ) Ltd (1990) 2 NZLR 308; Australian Guarantee Corporation (NZ) Ltd v McBeth [1992] NZLR 54.

Analysis

13. As mentioned above, the plaintiff deposed in her affidavit that, first defendant is her former husband and divorced in year 2000 and likewise the second defendant is the former husband of her daughter and they too were divorced in the same year. The first defendant whilst was in Australia in July 2012 requested her to open a joint account so that she can remit the money to Fiji to if necessary to purchase any property in Fiji. She opened the account accordingly and deposited the sale proceed of her and her daughters property to that account. Then she remitted a total of AUS \$ 300,000.00 to the account of one Chandra Kanth Lodhia whom she did not know, on the request of the first defendant in order to purchase the property of Certificate of Title No 11093 situated in Nadi. However, the defendant registered the said property in their name without the knowledge of the plaintiff. It is the argument of the plaintiff that, the defendants have no defence and therefore, supports her summons for summary judgment. In the statement of the claim filed by the plaintiff, she averred that, the defendants converted the money remitted by her to their own use. From this argument it implies that, the plaintiff's claim is based on the allegation of fraud on part of the defendants. The Order 14 rule 1 clearly excludes any claim based on the allegation of fraud from the ambit of this rule. Therefore, the court specifically asked

the counsel for the plaintiff during the hearing of this summons, whether the claim of the plaintiff is based on the allegation of fraud. The counsel categorically answered negatively and stated that, it is based on the breach of trust and not based on the fraud.

14. On the other hand, the first defendant in his affidavit in opposition stated that, he and the second defendants parted with the plaintiff and her daughter on good terms. The plaintiff and her daughter had substantial properties in Australia and requested the defendants not to take legal action for property distribution as estate was in Probate and the trustee one Jewan Lal was delaying the settlement. The second defendant further deposed in his affidavit that, on 27.05.2011 the plaintiff had executed a Will, appointing the second defendant as the Executor and Trustee of her Will. A copy of the said Will is attached marked "**PC 2**" with the affidavit of the first defendant. On the same day i.e. 27.05.2011 the plaintiff executed a Power of Attorney, as well, jointly appointing the first defendant and the daughter of the plaintiff. The said Power of Attorney is attached with his affidavit marked as "**PC 4**". The first defendant further states that the joint account was opened in order to facilitate the property settlement between them and the arrangement was that the plaintiff and her daughter to sell some properties and make both defendants as beneficiaries. The first defendant further stated that, he and the plaintiff are still the co-owners of a property in Queensland, Australia.
15. Though the plaintiff, in her affidavit in reply, denies the assertions of the first defendant and states that, the said Will had been revoked; there are several issues that arise from the affidavits of the parties in this matter. What was the purpose of opening a joint account after 11 long years from the date of divorce? Whether the plaintiff was coerced by the first defendant, as she claimed in her reply to defence, to join him to the said account or not? Was there any property settlement as claimed by the first defendant? Whether the first defendant just recommended to the plaintiff to purchase a property in Fiji as the plaintiff claimed? If the daughter of the plaintiff also deposited her money, as claimed by the plaintiff, why she did not institute any action against the defendants or why she did not join with the plaintiff in suing the defendants? Why the plaintiff executed a Will after 11 years of divorce devising and bequeathing her properties to the first defendant and also appointed him as her Attorney by a separate Power of Attorney executed on the same day on which the said Will was executed? Whether said Will was revoked as the plaintiff claims or not? These are some real issues to be decided by this court. There are conflicting assertions by the plaintiff and the defendants in their affidavit in respect of these issues. In fact, most of the above issues are arising from the affidavit of the first defendant and later denial by the plaintiff. It is danger to completely rely on the assertions of the parties at this stage. The correctness of these issues cannot be decided based on the affidavits only. The court needs the oral evidence tested and refined by the cross examination to come to a determination in those issues. **Bingham LJ** in ***Bhogal -v- Punjab National Bank [1988] 2 ALLER 296*** at 303 said:

"But the correctness of factual assertions such as these cannot be decided on an application for summary judgment unless the assertions are shown to be manifestly false either because of their inherent implausibility or because of their inconsistency with the contemporary documents or other compelling evidence."

16. Admittedly, there was a joint account of both plaintiff and the first defendant in a bank in Australia from which the money had been remitted to Fiji. The defendants did not deny that the money to the said account was deposited by the plaintiff, but said that was the result of settlement of matrimonial property between the plaintiff and her daughter on part and the defendants on the other part. There is a legal issue as to the ownership of the money deposited to a joint account by one person. It was decided in *McEvoy v Belfast Banking Co Ltd* [1935] AC 24, [1934] All ER Rep 800 that, the intention of parties to decide the claim of one person over the money held in the joint account. In any event, this issue cannot be decided without the full trial in this matter.


17. In the meantime, the first defendant states in his affidavit that, his and second defendant title to the property is indefeasible by the registration of their title. The sections 39, 40 and 41 of the Land Transfer Act Cap 131 provide that the estate of registered proprietor is paramount and the title is guaranteed except in case of fraud. There are several authorities which confirm this position and needless to cite them. The only exception to the title of the defendant could be the fraud. However, the counsel for plaintiff confirmed to the court at the beginning of the hearing of this summons that, the plaintiff's claim is not based on the allegation of fraud. He further stated that, the claim is based on 'trust'. If that is the case, the plaintiff has to prove 'the creation of trust', the details of the beneficiary and whether the defendants have failed to discharge their duty under the so called trust or not etc. However, the plaintiff pleaded nothing about this so called trust. The only pleading is that, the defendants converted the money sent by her to their use and wrongfully transferred the property to their names. The issue is whether this 'conversion', as pleaded by the plaintiff, is sufficient enough to defeat the title to the said property acquired by the defendants by registration under the Land Transfer Act Cap 131. In any event, this is an issue, which cannot be achieved by way of summary judgment, but warrants the trial proper. And again if this 'conversion' could be considered as enough as the *fraud* mentioned in the Land Transfer Act to challenge the title of the defendants, the plaintiff cannot revoke the jurisdiction of this court under Order 14 rule 1, as this rule shall not apply to any claim based on the allegation of fraud according to the sub rule (2) (b). The counsel for the plaintiff argued that, the facts, that the money had been sent by the plaintiff and the property was purchased using the said money, have never been disputed by the defendants. In fact, the defendants admitted those facts and they did not dispute at all. However the issue is whether the first defendant and second defendants, being the ex- husbands of the plaintiff and her daughter, were entitled for that money by way of settlement of matrimonial property or not. The court needs both the oral and documentary evidence which should rigorously be tested by cross examination to decide this issue.

18. The above analysis manifestly demonstrates that there are several facts remain disputed by the parties; difficult questions of laws to be decided and the defendants have reasonable arguable defence in this case. In deciding whether to grant the application, the court will refuse the application if relevant facts remain in dispute, or in a difficult question of law remains to be decided. In cases where the defendant has a reasonably arguable defence, the court will find that it is appropriate for the matter to proceed to trial: *Hibiscus Shopping Town Pty Ltd -v- Woolworths Ltd* [1993] FLR 106. Thus, this court should exercise its discretion under Order 14 rule 4 (3) to give unconditional leave to the defendants to have their defences fully explored and examined in full and proper trail.

19. For the reasons mentioned above, the summons filed by the plaintiff pursuant to Order 14 of the High Court Rules ought to be dismissed with the cost, given the delay and expenses caused to the defendants by this application. Accordingly the final orders are;
- a. The summons for summary judgment is dismissed,
 - b. The plaintiff to pay a summarily assessed cost of \$ 500.00 to the defendant within 14 days from today and
 - c. The plaintiff to take other pre-trial steps as per the directions.



At Lautoka
26/09/17


U.L. Mohamed Azhar
Acting Master