

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 324 of 2011

**BETWEEN** : **SELAU VALENTINE aka TANISELAU CELUA**  
**PLAINTIFF**

**AND** : **JOELI DRUMA**  
**DEFENDANT**

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**APPEARANCES/REPRESENTATION**

**PLAINTIFF** : Mr. Tuifagalele [Tuifagalele Legal]  
**DEFENDANT** : Not Present [Legal Aid Commission]  
**RULING OF** : Acting Master Ms Vandhana Lal  
**DELIVERED ON** : 13 June 2019

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**INTERLOCUTORY RULING**

[Reinstatement of Action]

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**Introduction**

1. The Plaintiff on or about the 05 March 2018 filed an application seeking orders for the within action which was struck out on 22 February 2018 to be reinstated.
2. The Defendant was served with the application and had applied for Legal Aid Commission's assistance. After numerous adjournments (to allow the Legal Aid Commission to locate its file and vert the application) a hearing date was assigned on 4 December 2018. Mr. Qetaki from Legal Aid Commission had appeared in court and confirmed that the Legal Aid Commission will appear for the Defendant.

The Defendant was given time to file and serve his opposition to the application with Plaintiff to reply and the application fixed for hearing.

On the hearing date, the Defendant and his counsel failed to appear in court. No reason was given for their absence.

Hence this court proceeded to hear the Plaintiff on the application.

**Substantive Claim and History of the File**

3. On or about 24 October 2011 the Plaintiff via its previous solicitor caused a writ to be issued against the Defendant whereby the Plaintiff sought following orders:
- a) **DECLARATION** that the purported Will dated 26<sup>th</sup> February 1992 were obtained fraudulently and is deemed null and void and of no effect;
  - b) **DECLARATION** that the purported Will dated 25<sup>th</sup> September 1978 to be true wishes and the final Will & Testamentary disposition of the late THOMAS VALENTINE;
  - c) **DECLARATION** that the First Defendant had no power or proper locus standi to deal with the estate of the late THOMAS VALENTINE and that the purported Dealings by the Defendant specifically over C. T. 18236 was fraudulent and unlawful;
  - d) **AN ORDER** for the revocation of the earlier Probate No. 30775 dated 28<sup>th</sup> June 1994 in favour of Joeli Druma;
  - e) **AN ORDER** for the grant of a new Probate Document in favour of the Plaintiff;
  - f) **AN ORDER** for damages for loss of inheritance, loss of family home and loss of income;
  - g) **AN ORDER** for General Damages;
  - h) **AN ORDER** for Special Damages;
  - i) **AN ORDER** for Punitive Damages;
  - j) **COST** on a full scale indemnity basis.
4. The Writ was said to be served on 19 January 2012. An Affidavit of Service was filed on 19 March 2012.
5. There is an Acknowledgment of Service filed on 25 January 2012.
6. Instead of moving the Court and entering the matter for trial the Plaintiff's solicitors on the 16 March 2012 filed a praecipe with default judgment.

The High Court Registry instead of seeking appropriate directives and sanction allowed the Default Judgment to be sealed on or about 19 March 2012. This was served on the Defendant on the 19 March 2012. I should highlight at this point that the Defendant has not till to-date moved the Court to have the default judgment so entered set aside.

On or about 01 May 2012 the Plaintiff filed a summon for assessment of damages. Said application was listed for first call on 29 May 2012.

On 29 May 2012 matter was adjourned to 25 June 2012 for service.

Thereafter no action was taken by the Plaintiff and an Order 25 rule 9 notice was issued by the Registry. On 21 November 2013 matter was struck out under Order 25 rule 9.

Sometimes on or about 09 February 2017 the Plaintiff in person filed a motion to reinstate the matter. Application was first called on 07 March 2017. When the Defendant appeared and was directed to file and serve his Affidavit and secure legal representation.

On 6 July 2017, court was informed that there were two prior cases of same nature HBC 15 of 2004 and HBC 229 of 2008.

On 5 September 2017 the Plaintiffs Solicitors filed an application to amend the default judgment order sealed on 19 March 2012.

On 24 October 2017 there was no appearance by Plaintiff or counsel and the court had struck out the motion.

On 26 October 2017 the Plaintiff's Solicitor, filed an application seeking orders that matter be reinstated.

On 28 November 2017 the court make following observation and orders:

- *Default judgment was entered;*
- *There is an error in the title number;*
- *Mr. Tuifagalele to file a fresh motion seeking "an order to reinstate the Motion" and not the whole action.*

Matter was adjourned.

Later on 22 February 2018 there was no appearance for the Plaintiff. The Court made following observation and orders;

- a) *Case filed in 2011;*
- b) *At one stage action was struck out;*
- c) *Plaintiff still not moving and not present;*
- d) *Plaintiff is not interested taking into consideration that his non-appearance and not pursuing this matter;*



- e) *Upon a careful consideration of application in this file and the manner in which this matter has been handle by Plaintiff or Counsel it is very unsatisfactory;*
- f) *Accordingly, I make reference to case of "Grovit" – Plaintiff not intending to bring this matter to its finality;*
- g) *I struck out the matter accordingly.*

Following this the Plaintiff's Counsel on 05 March 2018 filed said application for reinstatement of action.

7. Grounds for filing of the application are laid out in the Affidavit of Karalaini Korokorovata filed in support of the application.
8. Karalaini is a Legal Executive with Tuifagalele Legal. There are no reason given why the Plaintiff is not able to depose the Affidavit.
9. According to Karalaini she had conducted a search of the file with the High Court Registry in the afternoon of 22 February 2016 and found out the matter was struck out for non-appearance.
10. According to her, instruction was given to M.Q. Lawyers to appear on their behalf as her principal was attending a matter at Nausori Court.

And later she found out that the solicitor (who was present in court) from M.Q Lawyers did not enter any appearance when the matter was called.

Hence she seeks orders to have motion of 5 September 2017 reinstated.

11. The Plaintiff has failed to specify under which order of the High Court Rules he is making the said application for reinstatement.
12. From the wording of the observation and orders made on 22 February 2018, it is obvious that the court exercised its power under Order 25 rule 9.
13. In *Trade Air Engineering (West) Limited & Others v. Taga & Others* a Court of Appeal Number ABU 0062 of 2006 delivered on 9 March 2017 the Court of Appeal held:

*".....Mr. Haniff was unable to refer to us any provision in the rules granting the court power to reinstate an action struck out in the circumstances. Generally a party's only remedy following the striking out of its action is appeal. Exceptions to this general rule such as it is for this paragraph Order 13 rule 10, Order 14 rule 11, Order 24 rule 17 or Order 32 rule 6 have no application to Order 25.*

14. Hence I find it is not proper for Plaintiff to apply for reinstatement but to appeal the decision/order made on 22 February 2018.
15. For this reason the application shall fail. The motion dated and filed on 05 March 2018 is dismissed with no orders as to costs.



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**Vandhana Lal [Ms]**  
Acting Master  
At Suva.