

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION**

CIVIL ACTION NO. HBC 236 OF 2018.

BETWEEN : **FRANK YEATES**, retired person of Malololailai Island, Fiji
PLAINTIFF

AND : **MUSKET COVE RESORTS LIMITED**, a limited liability company
having its registered office at Dick’s Place, Malololailai, Fiji
1ST DEFENDANT

AND : **PINE LIMITED** a limited liability company c/o HLB Crosbie &
Associates, 3 Cruickshank Road, Nadi Airport.
2ND DEFENDANT

BEFORE : Hon. Mr. A. M. Mohamed Mackie

APPEARANCES : Mr. O’Driscoll, for the Plaintiff
Mr. C.B. Young, for the 1st Defendant
Ms. Samantha. N. for the 2nd Defendant

WRITTEN SUBMISSIONS: By the 1st & 2nd Defendants on 19th August 2022.
By the Plaintiff on 15th September 2022.
Submissions in Reply by the 1st Defendant on 12th October 2022.

DATE OF RULING : On 12th May 2023.

RULING

A. INTRODUCTION:

1. Before me are 2 Summons preferred by the 1st and 2nd defendants on 14th January 2019 and 29th April 2019 respectively, pursuant to Order 18 Rule 18 (1) (b) (c) & (d) of the High Court Rule 1988 and under inherent jurisdiction of this Court seeking reliefs , inter alia, to strike out the plaintiff’s claim.
2. The Summons by the 1st defendant is supported by an affidavit sworn on 11th January 2019 by one JOSEPHINE SMITH – MOFFAT, Director of the 1st defendant Company ‘Musket Cove Resorts Limited’ (“the 1st Defendant”) and filed along with annexures marked from “JSM 1” to “JSM 20”.
3. The affidavit in response thereto, sworn by the plaintiff, on 2nd April 2019, was filed on 3rd April 2019, with no annexures , and the reply affidavit thereto, sworn by said JOSEPHINE SMITH- MOFFAT on 9th May 2019 was filed on 16th May 2019, along with further annexures marked as “JSM 1” to “JSM 3”.

4. Summons by the 2nd defendant Company ' Pine Limited' ("the 2nd defendant") was supported by an affidavit sworn on 24th April 2019 by one THOMAS MONTGOMERY BAYER , Director & Chairman of the 2nd defendant and filed (a copy) on 29th April 2019, with annexures marked as "TMB 1" to "TMB 4".
5. The affidavit in opposition, to the supporting affidavit of the 2nd defendant' Summons , sworn by the Plaintiff was filed on 20th June 2019, with an annexure marked as "FYTB1" and the affidavit in reply thereto sworn on 25th July 2019 by THOMAS MONTGOMERY BAYER was filed on 29th July 2019 with annexures marked as "TMB 5" to "TMB 8".
6. The 2nd defendant in its Summons relies on the following grounds ;
 1. *The Plaintiff's dealings relied on and in support of the plaintiff's claim are illegal, null and void and in contravention of sections 6 and 7 of the Land Sales Act.*
 2. *The proper forum for the Plaintiff's cause of action is Vanuatu.*
 3. *The action is otherwise scandalous, frivolous, or vexatious and in abuse of the process of the Court.*
7. At the hearing, learned counsel for the parties made lengthy oral submissions. They have also filed helpful written submission as aforesaid, for which I am thankful to them.

B. BACKGROUND FACTS:

8. By Lease No. 233064, executed on 13th November 1985 by RICHARD SYDNEY SMITH as the Lessor, an entity called "KOBE TRADING Co LIMITED" ("KOBE") a Company duly incorporated in Vanuatu, became the Lessee of all the land in Title C.T 17202, Lot 2 on D. P 5633 in the extent of 33.7843 Hectares situated in Malololailai, Fiji.
9. Thereafter, a Sub Lease Agreement was executed on 19th June 1990 by the said KOBE as the sub Lessor and the 2nd defendant hereof as the sub-Lessee, in respect of the Land (in CT 26031 being part of the said land) in the extent of 2.0296 hectares more or less being Lot 1 in deposited Plan No. 6829 on the Island of Malololailai, Fiji.
10. Prior to the aforesaid sub-Lease Agreement , the 2nd Defendant and the plaintiff hereof had on 15th May 1990 entered into an Trust / Fiduciary Agreement , whereby the plaintiff was to be the beneficiary and the 2nd defendant was to be the Trustee, to hold the said Sub – Lease as the Trustee of the plaintiff- beneficiary .
11. According to the plaintiff , he had already paid the full rental that was due for the said Sub-Lease for a term of 146 years to be effective from 8th February 1990, and as per the said Trust Agreement the 2nd defendant was to fulfill all the legal requirements for the benefit of the plaintiff being the beneficiary.
12. The plaintiff averred, that since the 2nd defendant was a non-resident foreign Company, in order to have the Sub - Lease executed in its name and hold it, the consent of the

Director of land being needed in terms of Section 6(1) of the Land Sales Act , it had been obtained by the 2nd Defendant . (Vide annexure "JSM 19" tendered by the 1st defendant).

13. The Plaintiff averred further that as he never held the Lease as a Lessee and only the 2nd defendant has always held it on Trust for him , he did not require the consent of the Minister of Land as the 2nd defendant had duly obtained it.
14. As per the said Trust Agreement entered into on 15th May 1990, between the plaintiff and the 2nd defendant, it had been agreed, *inter alia*, that the 2nd defendant, when called upon by the plaintiff (beneficiary), will assign the Sub-Lease to the Plaintiff or to his nominees and the Plaintiff will indemnify and keep indemnified the 2nd defendant and its servants.
15. In the meantime, the 1st defendant had become the assignee / transferee of the Sub-Lease from KOBE by Memorandum of Transfer, which was duly registered on or about 8th August 1996.
16. The plaintiff alleges that the 1st defendant wrongfully repudiated the Sub-Lease by Notice of Re-Entry and determination of Sub-Lease dated 1st June 2018 and trespassed on the Land from that date.
17. The Plaintiff, having filed his Writ of Summons and indorsement of claim on 25th October 2018, subsequently on 25th October 2018 filed his Statement of Claim and sought the reliefs "A" to "T" against the 1st defendant, reliefs "U" to "X" against the 2nd defendant and reliefs "Y" and "Z" against both the defendants, as per the prayers to the Statement of claim, which are, *inter alia*, for declarations and specific performances.
18. As the grounds relied on and the reliefs sought in both the Summons are similar in nature, this Ruling will dispose both the Summons on consideration of the Laws that govern the subject, contents of the submissions, pleadings and annexures thereto.

C. RELEVANT LAW:

19. Order 18 rule 18 (1) of the High court Rules 1988 provides:

"The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-

(a) it discloses no reasonable cause of action or defence, as the case may be; or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be".

20. In *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 3) [1970] Ch 506* it was held that the power given to strike out any pleading or any Part of a pleading under this rule is not

mandatory but permissive, and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending plea.

21. In the case of **Walters v Sunday Pictorial Newspapers Limited [1961] 2 All ER 761** it was held:

"It is well established that the drastic remedy of striking out a pleading or, part of a pleading, cannot be resorted to unless it is quite clear that the pleading objected to, discloses no arguable case. Indeed, it has been conceded before us that the Rule is applicable only in plain and obvious cases".

22. In **Narawa v Native Land Trust Board [2003] FJHC 302; HBC0232d.1995s (11 July 2003)** the Court made the following observations:

"In the context of this case, I find the following statement of Megarry V.C. in Gleeson v J. Wippell & Co. [1971] 1 W.L.R. 510 at 518 apt:

First, there is the well-settled requirement that the jurisdiction to strike out an endorsement or pleading, whether under the rules or under the inherent jurisdiction, should be exercised with great caution, and only in plain and obvious cases that are clear beyond doubt. Second, Zeiss No. 3 [1970] Ch. 506 established that, as had previously been assumed, the jurisdiction under the rules is discretionary; even if the matter is or may be res judicata, it may be better not to strike out the pleadings but to leave the matter to be resolved at the trial".

23. It is well established that jurisdiction to strike out claim or pleadings should be used very sparingly and only in exceptional cases: **Timber Resource Management Limited v. Minister for Information and Others [2001] FJHC 219; HBC 212/2000 (25 July 2001)**.

24. In **National MBF Finance (Fiji) Ltd v. Buli Civil Appeal No. 57 of 1998 (6 July 2000)** the Court stated as follows: -

"The Law with regard to striking out pleadings is not in dispute. Apart from truly exceptional cases the approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be proved.

If a legal issue can be raised on the facts as pleaded, then the Courts will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention. It follows that an application of this kind must be determined on the pleadings as they appear before the Court..."

25. It is also well settled that this Court has inherent jurisdiction to strike out the claim or pleadings for abuse of Court process and reference is made to paragraph 18/19/18 of the Supreme Court Practice 1993 Vol. 1.-

At paragraphs 18/19/17 and 18/19/18 of **Supreme Court Practice 1993 (White Book) Vol 1** it is stated as follows:-

"Abuse of Process of the Court"- Para. (1) (d) confers upon the Court in express terms powers which the Court has hitherto exercised under its inherent jurisdiction where there appeared to be "an abuse of the process of the Court." This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation (see Castro v. Murray (1875) 10 P. 59, per Bowen L.J. p.63). See also "Inherent jurisdiction," para.18/19/18."

26. "Inherent Jurisdiction - Apart from all rules and Orders and notwithstanding the addition of para.(1)(d) the Court has an inherent jurisdiction to stay all proceedings before it which are obviously frivolous or vexatious or an abuse of its process (see **Reichel v. Magrath [1889] UKLawRpAC 20; (1889) 14 App.Cas. 665). (para 18/19/18)**
27. In Halsbury's Laws of England Vol 37 page 322 the phrase "abuse of process" is described as follows:

"An abuse of process of the court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purposes, or, more simply, where the process is misused. In such a case, even if the pleading or endorsement does not offend any of the other specified grounds for striking out, the facts may show it constitutes an abuse of the process of the court, and on this ground the court may be justified in striking out the whole pleading or endorsement or any offending part of it. Even where a party strictly complies with the literal terms of the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of an abuse of process, and where subsequent events render what was originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court."

28. The phrase "abuse of process" is summarized in Walton v Gardiner (1993) 177 CLR 378 as follows:

"Abuse of process includes instituting or maintaining proceedings that will clearly fail proceedings unjustifiably oppressive or vexatious in relation to the defendant, and generally any process that gives rise to unfairness"

D. DISCUSSION;

29. The issue that requires the determination by this court is whether the Plaintiff's action is scandalous, frivolous or vexatious, or it is otherwise an abuse of the process of the Court, to justify an order for striking out on the grounds adduced.
30. The grounds advanced by both the defendants in support of their Applications are;
- The absence of consent for the Plaintiff from the Ministry of Land,
 - The Plaintiff is not a Fijian Citizen,
 - The proper forum to file action on the Plaintiff's cause of action is Vanuatu,
 - Abuse of Power of Attorney.

31. The main instrument relied on by the Plaintiff, to substantiate his claim in this action is none other than the "Trust / Nominee/ Fiduciary Agreement" (the Trust Agreement) dated 15th May 1990 entered into by and between the plaintiff and the 2nd defendant, which is marked as exhibit 'GSM-20' and annexed to the affidavit sworn by Josephine Smith Moffat, on behalf of the 1st defendant.
32. As per the said Trust Agreement, the 2nd defendant was required and authorized to obtain a Sub- Lease for the subject matter Land for the Plaintiff to become the beneficiary thereof in terms of said Trust Agreement dated 15th May 1990. Accordingly, the Sub-Lease Agreement dated 19th June 1990 was executed in favor of the 2nd defendant as the Lessee and the said "KOBE" as the Lessor.
33. It is undisputed that pursuant to the said Trust Agreement dated 15th May 1990 and the subsequent Sub-Lease dated 19th June 1990, the Plaintiff went into the possession of the subject Land, occupied it, operated his business therein and benefitted out of it, being the beneficiary thereof as intended by the said Trust Agreement till his vacation of it on his own volition or his and his partner's eviction therefrom on the execution of the writ of possession issued against both of them in the connected action no. HBC 159 of 2018.
34. It is also undisputed that the plaintiff's possession of the Land, occupation and obtaining benefits therefrom, were almost similar those activities of a legally recognized owner or a Lessee.
35. It is observed that by clause 3 sub paragraph (d) of the Trust Agreement, the Plaintiff had declared, undertaken and warranted that he will indemnify and keep indemnified the 2nd defendant and its servants in any claim or action against it. This shows that both the parties, at the time of entering into the Trust Agreement, were well aware of an element of risk involved in the performance of this Trust Agreement, in the absence of the Minister's consent in plaintiff's name for him to be the lawful Lessee of the subject matter Land.
36. The facts hereof clearly show that the 2nd defendant had acted as an agent of the plaintiff to obtain a Land on Lease contravening the section 6(1) of the Land Sales Act. It is also observed that the only purpose of the impugned Trust Agreement was, obtaining the Sub-Lease, holding it and transferring it as and when the plaintiff asks to do so.

Accordingly, the pertinent question that arises, whether the 2nd defendant, who had obviously acted as an agent of the plaintiff in obtaining the Sub-Lease contravening the section 6(1) of the Land Sales Act), could be declared as a lawful nominee as the plaintiff moved for in his Statement of claim. The answer, in my view, is obviously negative. If the nominee/ Trusteeship is for a purpose of this nature, the Court will not grant such a declaratory relief.

37. On careful scrutiny of the pleadings, affidavits, contents of the annexures filed and the relevant law that governs the sale of Lands in Fiji, it becomes as clear as crystal that the

Plaintiff, being a non-resident of Fiji, has used this Trust Agreement dated 15th May 1990 as a device to avoid the legal barrier imposed by the legislature pursuant to Sections 6(1) and 7(1) of the Land Sales Act, which prohibits a non-resident becoming a Lessee or owner of a Land that exceeds the permitted extent by the Act.

Section 6(1) & 7(1) of the Land Sales Act state.

6.-(1) No non-resident or any person acting as his agent shall without the prior consent in writing of the Minister responsible for land matters make any contract to purchase or to take on lease any land:

Provided that nothing contained in this subsection shall operate to require such consent or prevent a non-resident from making any such contract if the land together with any other land in Fiji of such non-resident does not exceed in the aggregate an area of one acre.

"7.-(1) No non-resident or any person acting as his agent shall without the prior consent in writing of the Minister responsible for land matters make any contract for the disposition of any land in favour of another non-resident".

38. If, the Trust Agreement in question was executed for the purpose of vindication or protection of any legally recognized right, title or interest of the Plaintiff in the subject matter Land, the court will not hesitate to entertain such a claim for adjudication. But, if it is tainted with illegality or contravenes any provision of the Law, the Court will not extend its helping hand.

In Belford Insurance Co. Ltd v. Instituto de Resseguros do Brazil [1985] Q.B. 966; [1984] 3 All ER 786, " where the Plaintiff requires any aid from an illegal transaction to establish his cause of action, the Court will not give him any aid but will dismiss the action"

39. Admittedly, the plaintiff is a non-resident. It is obvious that the 2nd defendant has been made used as an agent by the plaintiff to take on lease the subject matter land contravening the section 6(1) of the Land Sales Act. The plaintiff being a non-resident for him to have taken a Lease under his name, the consent of the Minister of Land was a *sine qua non* prior to entering into such an Agreement.
40. It is also to be noted that the 2nd defendant has not so far challenged the 1st defendant's Re-Entry notice and determination of Sub- Lease No. 288423 dated 1st June 2018. Because, 2nd defendant knew that it was facilitating the plaintiff, who was a non-resident, to become a Lessee through the impugned Trust Agreement for the plaintiff to possess, occupy and enjoy the benefits of the land in question.
41. The consent obtained by the 2nd defendant from the Minister concerned for it to obtain a Sub- Lease from 'KOBÉ' could not have served the plaintiff to have himself and his business established in the land in question under the guise of so-called Trust Agreement, which, undoubtedly, has been designed to defeat the purpose of section 6(1) and 7(1) of the Land Sales Act.
42. The Plaintiff cannot claim any right for possession, occupation of the Land in question or any benefit out of it as he has violated the section 6(1) and 7 (1) of the Land Sales

Act. Whatever the interpretation he may give to the impugned Trust Agreement, the subsequent performance of it, at the end of the day brings it to the light that the whole exercise was an act of leasing a land to a non-resident without the consent of the Minister pursuant to section 6(1) and disposition of the land contrary to section 7(1) of the Land Sales Act.

43. In short, this Court sees the whole scenario as a transaction where the lending and borrowing of the 2nd defendant's name have occurred through the impugned Trust Agreement for the sole purpose of circumventing the requirement of having the prior consent of the Minister in charge for a non-resident to obtain a lease of a land .

In **Gonzalez v Akhtar [2004] FJSC 2; CBV 00011.2002 S (21 May 2004)** the Supreme Court of Fiji has held that the mere making of a contract without the prior consent in writing renders that contract illegal and unenforceable. This will apply to any contract for the disposition of any land in favour of another non-resident.

In **Hunter v Apgar [1989]35 FLR 180** the High Court held that if there was a breach of s. 6(1) of the Land Sales Act then any contract for sale was void even though the consent was subsequently obtained and it was confirmed by the Supreme Court in **Gonzalez v Akhtar (supra)** by concluding at para 132.

"For these reasons, we consider that the Court of Appeal correctly held that the 1985 agreement was illegal, and unenforceable. In our view, Hunter v Apgar was correctly decided, and remains good law. The appellant could not establish a cause of action based upon that agreement, and therefore could not rely upon the caveat, the sole basis for which was that agreement. Nor could the appellant succeed in the claim based on fraud since no loss of any kind was sustained as a result of that fraud. The appeal must be dismissed".

The above position was re-endorsed in **Covec (Fiji) Ltd v Atendra Singh [2008] FJCA 81; ABU 0083 of 2007 S** where at paragraph 24 their Lordships sated;

*"[24] What then flows from the evidence and the relevant legislation? To answer this question we need go no further than applying to the facts of this case the reasoning of the Supreme Court of Fiji in **Gonzales v Akhtar** and of the High Court of Fiji in **Tokomaru Ltd v Port Denerau Marina Ltd**, both of which cases consider the effect of the provisions of s6(1) of the Land Sales Act. Those cases decide that s6(1) is a clear and unequivocal declaration by the Legislature that in the public interest the particular types of contract referred to in the sub-section shall not be entered into without the written consent of the Minister. Further, that any contract or lease entered into in breach of the express prohibition stated in the sub-section can only be regarded as void ab initio, illegal, and unenforceable. The result is that neither party to the lease agreement the subject of this case can sue for breach of any of its terms".*

44. In view of the above authorities, it is clear that the plaintiff cannot claim any right under the purported Trust Agreement marked by him as exhibit "FYSP2". The Plaintiff's claim emanates from the said Trust Agreement. The Agreement, as I see, is a sham executed with the view of circumventing the effect of section 6(1) of the Land Sales Act.

45. The definition of the term 'Owner' in the Property Law Act reads;

"Owner" means the owner of any property or any estate or interest therein, and includes a proprietor;

"proprietor" means the person who for the time being is registered as the proprietor of land subject to the provisions of the Land Transfer Act, or of any estate or interest therein and in the case of property or any estate or interest therein not subject to the provisions of that Act whether on account of non-registration thereunder or otherwise means the owner of that property or person entitled to an estate or interest therein;

"property" includes real and personal property, and any estate or interest in any property real or personal, and any debt, and anything in action, and any other right or interest";

46. Thus, it is clear that under the provisions of the Property Law Act in Fiji, the Plaintiff can be known, seen and treated as an "Owner" because he has an estate or interest as a beneficiary and his possession, occupation and all other rights similar to those of a conventional owner. But, what he lacks is the prior consent of the Minister in charge.

47. The 2nd defendant's affidavit sworn by Thomas Montgomery Bayer on 24th April 2019 refers to the Power of Attorney marked as "TMB2" given to the Plaintiff granting authority to enable him to organize the matters in order to take over the Sub-Lease. According to the schedule thereto, the plaintiff had been given all the authorities in respect of the Land in Question to deal with it, including selling, gifting, transferring and sub- Leasing in accordance with the laws of Vanuatu and Fiji.

48. However, the conditions of power of Attorney, allegedly, being violated by the plaintiff, the Director of the 2nd defendant Thomas M. Bayer, sent an e - mail marked "TMB3" to the plaintiff's New Zealand Solicitors informing about the revocation of the Power of Attorney and asking the plaintiff to obtain a Sub- Lease for the plaintiff directly from the 1st defendant, which the plaintiff avoided for the reason best-known to him.

49. The plaintiff neither proceeded to obtain a sub-Lease from the 1st defendant Musket Cove, nor demanded the 2nd defendant to do so as per the terms of the impugned Trust Agreement, because, he knew that his identity as a non- resident will have to be declared and his past violation of the relevant provision of the Land Sales Act could be highlighted in the process. The Court cannot assist the plaintiff as he has violated the Law in respect of the subject matter Land.

Jurisdiction:

50. As far as the question of Jurisdiction is concerned, the plaintiff and the 2nd defendant , in paragraph 5 of the Trust Agreement , have agreed as follows;

"5. This Agreement shall be governed by and construed in accordance with the Laws of Vanuatu and the parties hereto irrevocably submit to the non- exclusive jurisdiction of the Vanuatu Courts"

51. The fact that the defendants accepted the service of writ of Summons, by filing the acknowledgment of service does not, necessarily, mean that they have admitted and subjected themselves to the jurisdiction of this Court. The 1st and 2nd defendants, after the service of the Writ of Summons, have promptly moved the Court by filing their respective Summons for strike out.
52. Except for the fact that the Land in question is situated in Fiji, the plaintiff has not adduced any compelling reason for the action to be filed and continued in Fiji. He does not give a valid reason why the proceeding cannot be filed in Vanuatu. If the Laws of Fiji and Vanuatu are same, as he states, the question arises as to why a specific provision was not included in the Agreement for the laws of Fiji too to be applied and matter to be heard in the Courts of Fiji as well , particularly when the land is situated in Fiji.
53. In relation to the case Law Authority relied on by the plaintiff in **Bhagat v Bhagat [2015] FJHC 836; HBC310.2015 (29 October 2015)**, facts contained in the Ruling thereof are insufficient to ascertain whether the defendant's Suva Property in that action was also formed a part of the Mortgage Bond, seemingly, executed in Australia in respect of the defendant's another property in Australia, when the defendant obtained a loan from the plaintiff. If the Suva property of the defendant thereof was not a part of the Mortgage Bond, which was to be governed by Australian Laws, there could not have been any impediment in instituting the proceedings in Fiji with regard to the Suva property. Further, it was a Ruling made when the application for injunction was supported ex-parte.
54. When the parties, as per clause 5 of the Agreement, have expressly agreed for the impugned Trust Agreement dated 15th May 1990 to be governed and construed in accordance with laws of Vanuatu and irrevocably submitted to the jurisdiction (non-exclusive) of Vanuatu Courts, I am of the view that the expressed provision of the Agreement should prevail.
55. Having perused and analyzed both the written and oral submissions raised on behalf of the Plaintiff and the defendants, coupled with the principles dealing with the present applications to Strike out the Plaintiff's action, for the reasons given above this court arrives at the conclusion that Plaintiff's action is scandalous , vexatious and an abuse of the process of the Court.
56. Thus, the 1st and 2nd defendant's Applications for strike out should succeed and the Plaintiff's Writ of Summons, together with the Statement of claim, should be struck out. The action of the Plaintiff should also be dismissed with an order for a reasonable sum to be paid to both the defendant as summarily assessed Costs.

E. FINAL ORDERS:

57. Accordingly, I make the following orders-
 - a. That the First and Second defendant's Summons for Striking Out succeed.

- b. The Plaintiff's Statement of Claim is accordingly struck out and the action is hereby dismissed.
- c. The Plaintiff is ordered to pay the First and the Second Defendants Costs summarily assessed at \$ 2,500.00each totaling to \$5,000.00.
- d. The Costs ordered above to be paid within 28 days from today.




A.M. Mohamed Mackie
Judge

At the Civil High Court of Lautoka on this 12th day of May, 2023.

SOLICITORS:

For the Plaintiff:

For the 1st Defendant:

For the 2nd Defendant:

O'Driscoll & Co – Barristers & Solicitors.

Young & Associates – Barristers & Solicitors.

A.K. Lawyers – Barristers & Solicitors.