

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 106 of 2022

BETWEEN:

USAIA GAUNAVOU
1ST PLAINTIFF

AND:

AMENA MARARUA
2ND PLAINTIFF

AND:

MALELI SAVAI
3RD PLAINTIFF

AND:

SEMESI ROKORUILOMA
4TH PLAINTIFF

AND:

SEREMAIA TAMANI
5TH PLAINTIFF

AND:

MIKAELE KOLILEVU
6TH PLAINTIFF

AND:

THE ATTORNEY GENERAL CHAMBERS AND MINISTER FOR JUSTICE
1ST DEFENDANT

AND:

ITAUKEI LAND AND FISHERIES COMMISSION
2ND DEFENDANT

AND:

ITAUKEI LAND TRUST BOARD
3RD DEFENDANT

BEFORE:

Acting Master L. K. Wickramasekara

COUNSELS:

Sunil Kumar Esquire for the Plaintiffs
Attorney General's Chambers for the 1st and 2nd Defendants
Legal Department of iTaukei Land Trust Board for the 3rd Defendant

Date of Hearing:

By way of Written Submissions

Date of Ruling:

05 August 2024

RULING

01. 3rd Defendant in this action, on the 05/09/2023, filed Summons to Strike Out seeking the following orders,

“(a) *Order under 0.18 r 18(1) (a) of the High Court Rules, 1988 and the inherent jurisdiction of the Court that the Statement of Claim be*

- wholly struck out and the Plaintiffs claims against the Defendant contained therein be dismissed upon the ground that they disclose no reasonable cause of action;*
- (b) Further or in the alternative, an Order under 0.18 r18(1)(b) of the High Court Rules, 1988 that the Statement of Claim be wholly struck out and the Plaintiff's claims against the Defendant contained therein be dismissed, upon the ground that they are scandalous, frivolous or vexatious;*
 - (c) Further or in the alternative, an Order under 0.18 r18(1)(c) of the High Court Rules, 1988 that the Statement of Claim be wholly struck out and the Plaintiff's claims against the Defendant contained therein be dismissed, upon the ground that they prejudice, embarrass or delay the fair trial of the action;*
 - (d) Further or in the alternative, an Order under 0.18 r18(1)(d) of the High Court Rules, 1988 that the Statement of Claim be wholly struck out and the Plaintiff's claims against the Defendant contained therein be dismissed, upon the ground that they are otherwise an abuse of the process of the court;*
 - (e) Further or in the alternative, an Order under O.25 r.9 (1) of the High Court Rules, 1988 that the matter be wholly struck out and the Plaintiffs claims against the Defendant contained therein be dismissed, upon the grounds that they are otherwise an abuse of the process of the court;*
 - (f) An order that the Plaintiff pays the Defendants costs of this application on a full indemnity basis; and*
 - (g) Such further and other orders as this Honourable Court may deem just.*

02. This application is supported by an Affidavit of Semi Senikuraciri, a litigation assistant for the 3rd Defendant. In the above Affidavit, it is averred that,

- “3. **That** I verily believe that the Plaintiffs do not have the relevant locus standi to bring this action against the Board and thereby their claim has no reasonable cause of action against the Board, is frivolous and vexatious as they are not the registered land-owning unit of the land which is subject of this litigation.*
- 4. **That** the Plaintiffs have no reasonable cause of action with no specific claim against the Board and therefore no remedy applicable to be granted against the Board.*
- 5. **That** the Veitarogi Vanua of 1936 as claimed by the Plaintiffs falls under the responsibility of the 2nd Defendant and the Board has no active duty on that part.*
- 6. **That** the iTaukei Land Trust Board works under the iTaukei Land Trust Board Act of 1940 and therefore the Board was not active nor*

administering any iTaukei land in the year 1936. The allegations of breach of duties or fraudulent action by the Board is incorrect as the Board was set up and administered under the above-mentioned Act of 1940.

7. ***That** the Board relies on the 2nd Defendant who ascertains and records the iTaukei land with their respective iTaukei Land owning units. As per information received and the records with the Board, the Plaintiffs are not the land-owning unit.*
8. ***That** the Plaintiffs claim is frivolous, vexatious and also an abuse of process due to the false representation or claim made by the Plaintiff to the Court and against the Board.*
9. ***That** Mr. Tuicolo has also advised me that any dispute regarding ownership of iTaukei land falls under the responsibility of the 2nd Defendant. As such, this claim should have been brought to the 2nd Defendant's Commissioners to ascertain or appeal the decisions that the Plaintiffs are aggrieved with.*

03. The Plaintiffs have filed an Affidavit in Opposition to the 3rd Defendant's summons, as deposed by Usaia Gaunavou on the 29/09/2023. In its Affidavit, *inter alia* it is averred,

- “5. ***THAT** I vehemently deny paragraph 3 of the said Affidavit and state in response thereof that historically my forefathers/ancestors were custodians of the land in question before the arrival of any European settlers and therefore the establishment of any form of unified government system in Fiji.*
6. ***THAT** I further state that the area of land in question had prior to the Deed of Cession in 1874 been continually in the possession and use of my ancestors which by right of communal inheritance or succession should have naturally been passed unto us, as their agnate descendants.*
7. ***THAT** I state also that our three ancestral village sites of Mataniwaibuta, Basaganadawa and Nadi have been assessed and surveyed by the Department of Archeology of the Fiji Museum and has been preserved cultural site under the Fiji Museum Act.*
8. ***THAT** I further state that this right was re-affirmed by the colonial government subject only to land sales lawfully undertaken by the custodians or custom owners themselves.*
9. ***THAT** I state as I am advised that the forceful overtaking or demarcation of the same piece of land thereafter by those outside of the plaintiff's landowning units, is in fact and in law null and void.*
10. ***THAT** I further state that our forceful removal from the said land was in fact contrary to law and to natural justice.*

11. **THAT** I further state that the recognition of such actions by government or any government departments including its preceding officials thereof is contrary to law and in Opposition to the rules of natural justice which is expected of them.
12. **THAT** I further state as I am advised that rights to land is permanent subject only to properly/lawfully executed alienations.
13. **THAT** I deny paragraph 4 of the said Affidavit and further state as I am advised that as I am an agnate descendant of the historical custodians of the said land, I have for that sole reason locus standi to bring these proceedings for the recovery of the Same especially where the said land was alienated by fraudulent means.
14. **THAT** I admit paragraph 5 of the said Affidavit.
15. **THAT** I in response to paragraph 6 of the said Affidavit I state that iTaukei Land Trust Board through its enabling legislation specifically section 4 of the iTaukei Land trust act of 1940 has vested control over all and every iTaukei land.
16. **THAT** by implication that the iTaukei Land Trust Board has vested control over the pieces of land now being contended who by reason of their failure to recognize our ownership and vice versa continued recognition of the fraudulent demarcation or our removal by its former office has motivated us to bring this action against them.
17. **THAT** specifically I state that ITLTB (iTaukei Land Trust Board) is fully involved as 4 of all the 6 pieces of land which we are now contesting have been converted to Native Leases which involve ITLTB namely:
 - (a) Delaivukavuka Native lease which they have changed the name to Bucaleka Native lease
 - (b) Tekaca Native Lease
 - (c) Cakaudrove Native Lease
 - (d) Naikasakasa Native Lease In fact TLTB assisted the brothers living in Lokuya settlement working under Naikasakasa Gau, to subdivide the lease known as Delaivukavuka which has now been changed to Bucaleka lease.”

04. The 3rd Defendant having filed an Affidavit in Reply on 16/10/2023, *inter alia* avers the following facts,

“6. **THAT** the Board agrees to paragraph 14 and further states that since the Respondents/Plaintiffs admit that the Board was not responsible for the Veitarogi Vanua of 1936 or had any active duty on the same as claimed by the Plaintiffs under their Statement of Claim, there is no cause of action against the Board under the various cause of action or particulars thereof as stated in the Statement of Claim.

7.

8. ***THAT*** the Board denies paragraph 16. The Board recognizes and administers iTaukei land for the benefit of the respective iTaukei landowners who are registered as iTaukei landowners with the 2nd Defendant and therefore the Respondents/Plaintiffs should consult the 2nd Defendant first in order to be registered as landowners of the 4 named parcels of iTaukei land.
 9. ***THAT*** unless the Plaintiffs/Respondents are recognized and registered as iTaukei landowners by the 2nd Defendants, the Board does (not) recognize nor administer the 4 iTaukei lands for the Applicants/Respondents under paragraph 17 of the Opposing Affidavit.”
05. 3rd Defendant had filed a comprehensive written submission in support of its Summons to Strike Out on the 24/10/2023 and the Plaintiff filed its written submissions in opposition of the summons on 22/02/2024.
 06. On 04/06/2024, when the matter was taken up for Hearing, the 3rd Defendant and the Plaintiff agreed to have this summons dealt with by way of written submissions.
 07. The counsel for the Plaintiff on the day of the Hearing, however, submitted to Court that the 3rd Defendant, having so far failed to file a Statement of Defence, is in law not eligible to bring in a Summons for Strike Out. The counsel relied on the Fiji Court of Appeal decision in **Abhinesh Singh, Jyoti Singh v Rajesh Singh & Others; ABU089.2020 (28 July 2023)** in support of this position.
 08. The Court invited both the parties to file further written submissions on the above preliminary issue and accordingly, the Plaintiff had filed further written submissions on 24/06/2024 and the 3rd Defendant filed on 28/06/2024. Both parties agreed thereupon to have the summons dealt with by way of written submissions.
 09. Having duly considered all Affidavit evidence and the written submissions of the parties, the Court proceeds to make its ruling on the Summons to Strike Out as follows.
 10. Before I move to consider the substantive application for Striking Out, I shall address the preliminary issue raised by the Plaintiff pursuant to the decision in **Abhinesh Singh, Jyoti Singh v Rajesh Singh & Others (Supra)**.
 11. As per the *dicta* in the above judgment by His Lordship, Justice Gunaratne, P (as he then was) at paragraph 45 it is stated,

“Some Final Comments

45. *Before I part with this judgment I would like to make some final comments.*

Should a party defendant be allowed to intervene in an application to strike off a claim (originating in summons) without filing a Statement of Defence within time as requisite in law?

46. *My unreserved view writing for this court is that it should not be allowed for the simple reason that a defaulting defendant’s such conduct amounts to an attempt to do indirectly to do he/she is not entitled to do directly.*

47. *In such situations a court (in this instance, the High Court) should not permit such an exercise, if not for anything else, for regular procedure laid down by the legislature as per the High Court Act, would be rendered otherwise, although I am mindful of Order 18 Rule 18 (1) (a) as being an exception to that regular procedure.*

12. It appears that the Plaintiff is, in fact, premised its preliminary objection against the 3rd Defendant’s summons on the sentiments expressed by His Lordship in the above paragraphs, especially on the view that by allowing a Defendant who had failed to file a Defence, to challenge the claim by way of a striking out application, would contradict the regular procedure as ensued by the legislature in the High Court Act. But notwithstanding the above views, His Lordship identified exceptions to the same and in the latter part of the paragraph 47 clearly held that Order 18 Rule 18 (1) (a) is such an exception,

“47. although I am mindful of Order 18 Rule 18 (1) (a) as being an exception to that regular procedure.” (Emphasis Added)

13. In the case of **Kaumaitotoya v Air Terminal Services (Fiji) Ltd** [2024] FJCA 93; ABU045.2022 (30 May 2024), His Lordship Justice Morgan, JA held with reference to

Lindon v Commonwealth of Australia (No 2) [1996] HCA 14;136 ALR 251,

“[27] Order 18 Rule 18(1) unequivocally states that the Court may at any stage of the proceedings order that any pleading be struck out on the grounds that it is scandalous, frivolous or vexatious or it is otherwise an abuse of the process of the Court.

[28] In the High Court of Australia case Lindon v Commonwealth of Australia (No 2) [1996] HCA 14; 136 ALR 251 which as noted above, the Judge referenced in his decision. Kirby. J stated the following at page 256.

“6. The guiding principle is, as stated in O 26, r 18(2), doing what is just. If it is clear that proceedings within the concept of the pleading under scrutiny are doomed to fail, the court should

dismiss the action to protect the defendant from being further troubled, to save the plaintiff from further costs and disappointment and to relieve the court of the burden of further wasted time which could be devoted to the determination of claims which have legal merit.”

[29] *This Court agrees with and affirms this principle in applying Order 18 Rule 18(1) of the High Court Rules. **The application to strike out should be made as soon as it is clear the pleadings under scrutiny are bound to fail. This can be before a Statement of Defence is filed as in this case. Order 18 Rule 18(1) permits this.** It is noted that the Respondent prayed in its Summons to Strike Out that the filing of its Defence be stayed until seven days after the hearing and determination of its application. The Summons and the Affidavit in Support both disclose that the application is based on the contention that the claim is statute barred and that it is scandalous, frivolous or vexatious or that it is otherwise an abuse of the process of the Court.*

[30] *I find that the Judge did not err in law by entertaining the Respondent’s application to strike out the Appellant’s claim before a Statement of Defence specifically pleading the Statute of Limitation was filed. ...” (Emphasis Added).*

14. Having considered the above Court of Appeal authority along with the exception as identified by His Lordship, Justice Gunaratne, P, in **Abhinesh Singh, Jyoti Singh v Rajesh Singh & Others** (*Supra*) at paragraph 47 of the judgment, this Court finds that the Plaintiffs preliminary objection against the 3rd Defendants Summons to Strike Out holds no water. The 3rd Defendant is well within his legal rights to have brought this summons for striking out though a Statement of Defence is not being filed.
15. Accordingly, I shall dismiss the preliminary objection by the Plaintiffs and thus move on to consider the substantive application by the 3rd Defendant to strike out the claim of the Plaintiff primarily on the ground that the Plaintiff has failed to disclose a reasonable cause of action against the 3rd Defendant.
16. As per the Statement of Claim, the Plaintiff’s claim that they are descendants of ‘Yavusa Nasau’ and are claiming hereditary and native title to the lands namely, Waidalice Crown Grant 5347, Waidalice Crown Grant 5369, Delaivukavuka Native Lease, Tekaca Native Lease, Cakaudrove Native Lease, and Naikasakasa Native Lease.
17. It is further claimed that during the *veitarogi vanua* meeting in the 1936, where none of the Plaintiffs Unit forefathers were invited to attend, their above claimed lands were alienated from them.

18. In a cause of action based on ‘breach of natural justice’ the Plaintiffs claim,

“a. The 2nd and 3rd Defendants during the veitarogi vanua meeting in the year 1936 failed to follow due process of law; did not notify the Plaintiff’s units nor did it give them any chance to be heard due to their non-attendance.

b. The Yavusa Nasau was treated unfairly when in their absence the veitarogi vanua had their rights as native owners of the land at Naikasakasa were to be heard and given chance produce evidence before native lease was decided”.

19. Further, in a cause of action based on ‘breach of legal duty of care’ the Plaintiffs claim,

“a. The Plaintiffs unit claims that the 2nd and 3rd Defendants had breached its duty of care by not advertising or it failed to properly conduct a veitarogi vanua which could have outlined the native title owners of the claimed area and have committed fraud by knowingly failed to advise.

20. In a cause of action based on ‘fraud’,

“a. The 2nd and 3rd Defendants were well aware that the real owners of the claimed area is the Plaintiffs unit up till today, yet fraudulently allowed the wrongful registration of Naikasakasa land under a non-native owner to remain till today and have no intention to rectify the record.

b. The 2nd and 3rd Defendants were well aware that the man who made entries during veitarogi vanua was an iTaukei land commission officer namely Vakarewakobau yet allowed him to give evidence during veitarogi vanua meeting for the Yavusa Navitilevu lands which was in conflict of interest, yet he was allowed to give evidence and participate.

21. In a cause of action based on ‘breach of fiduciary duty’,

“a. The 2nd and 3rd Defendants never returned the Waidalice Crown Grant as was being agreed upon by the Yavusa Nasau forefathers but instead the said land became the property of the Crown.

b. The 2nd and 3rd Defendants knew very well that they are to take care of the native titles yet at their own discretion did not take care of the Plaintiffs unit native title and instead entered it in their own name.

c. The 2nd and 3rd Defendants breached its fiduciary duty when it forcefully ordered Yavusa Nasau to vacate their old cultural site and moved to Nakalawaca village to merge with other villages as one.

22. In a cause of action based on ‘deceit’,

- “a. The mataqali Naikasakasa of Gau Island through the assistance of the 2nd and 3rd Defendants have deprived Yavusa Navitilevu of the lease monies they were entitled to for a very long time since 1919 when the native lease expires.
- b. The 2nd and 3rd Defendants took advantage of the Plaintiffs units thinking that the Plaintiffs unit will not do anything about it.
- c. The 2nd and 3rd Defendants took advantage of the Plaintiffs units vulnerability knowing that the Plaintiff’s unit would not understand the system of administering land.
- d. The 3rd Defendant was well aware that the land at Naikasakasa should be returned to the Yavusa Navitilevu when the lease expires but instead allowed the Mataqali Naikasakasa of Gau to receive lease monies.”

23. The relief sought as per the Statement of Claim of the Plaintiffs is as follows,

- “a. **A Declaration that:**
 - i. All land administration in the Veitarogi Vanua in the year 1936 by the 2nd Defendant be declared null and void due to **breach of legal duty of care, fraud, breach of fiduciary duty of care and deceit.**
 - ii. The state in right of the Crown has breached the Plaintiff Unit’s right to life under current Constitution by depriving them of their livelihood from all of their lands in the claim area.
- b. **An Order** and or **Declaration** that a veitarogi vanua be **done to properly** conducted to ascertain the native title ownership of the Yavusa Nasau and its members in the claimed area at Naikasakasa Native Lease.
- c. **An Order** directing the 2nd and 3rd Defendant, that the evidence of administration of land done by Vakarewakobau be expunged on the grounds of **breach of legal duty of care, fraud, breach of fiduciary duty of care and deceit** and the Yavusa Naitilevu name be inserted.
- d. **An Order** of damages against 2nd and 3rd Defendants for the detriment caused to the Plaintiff’s unit.
- e. **An Order** for costs on indemnity basis for all the efforts, pain and suffering done to the Plaintiff’s unit making them run from pillar to post.
- f. **An Order** that the Plaintiff’s unit receives the estimated sum of royalties deprived from them for royalties, lease monies, economic earnings in the sum of \$ 100 million dollars.
- g. **An Order** that the Plaintiff’s unit be given compensation for all breach of fiduciary duties, fraud, deceit committed against them for the estimated sum of royalties deprived from them for all royalties, lease monies, economic earnings in the sum of 100 million dollars.

h. Any further orders that this court deems just.

24. The 3rd Defendant has pointed out that it was only established in 1940 through the iTaukei Land Trust Board Act of 1940. As such the 3rd Defendant hadn't or literally couldn't have had anything to do with the *veitarogi vanua* held in 1936 on which all of the Plaintiff's cause of actions are based upon.
25. The Plaintiffs in all their causes of action stated in the Statement of Claim alleges that the 3rd Defendant acted with the 2nd Defendant to defeat their hereditary native titles to the lands claimed by the Plaintiffs during the *veitarogi vanua* held in 1936. This is undoubtedly impossible when the 3rd Defendant was not in existence at the time of the *veitarogi vanua* held in 1936.
26. The Plaintiffs also claims that the 3rd Defendant '*fraudulently allowed the wrongful registration of Naikasakasa land under a non-native owner to remain till today and have no intention to rectify the record*'.
27. However, the 3rd Defendant has pointed out that the '*the Board recognizes and administers iTaukei land for the benefit of the respective iTaukei landowners who are registered as iTaukei landowners with the 2nd Defendant and therefore the Respondents/Plaintiffs should consult the 2nd Defendant first in order to be registered as landowners of the 4 named parcels of iTaukei land*'.
28. It is clear from the legislative mandate given to the 3rd Defendant, that it has the administrative powers over the native lands, but the ownership of such land is determined by the 2nd Defendant. In the written submissions filed on behalf of the 3rd Defendant it is submitted that,

“The 3rd Defendant submits that unless and until the Plaintiffs are registered as land owning units for the subject iTaukei land claimed with the 2nd Defendant as per section 9 of the iTaukei Lands Act 1905, the 3rd Defendant does not administer the subject land on behalf of the Plaintiffs as claimed.”

29. The Plaintiff other than repeating its claim as per the Statement of Claim fails to address the above legislative mandate of the 3rd Defendant in their written submissions. They have submitted the general duty of the 3rd Defendant pursuant to the iTaukei Land Trust Board Act and the rights of the Plaintiffs pursuant to the Constitution of Fiji. However, none of the above cast any powers on the 3rd Defendant to administer iTaukei land on behalf of an unregistered party by the 2nd Defendant.

30. In overall consideration of the material facts submitted in the Statement of Claim, this Court finds no basis for the claims against the 3rd Defendant by the Plaintiffs. As per the discussions in the foregoing paragraphs, I find that the claims against the 3rd Defendant are factually and legally impossible.

31. Order 18 Rule 18 (1) (a) of the High Court Rules 1988 reads as follows,

18 (1) The Court may at any stage of the proceedings order to be struck out or amend any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-

It discloses no reasonable cause of action or defence, as the case may be; or

32. No evidence is admissible when considering the above ground of ‘no reasonable cause of action’ for the obvious reason, that the court may only come to a conclusion of an absence of a reasonable cause of action, merely on the pleadings itself, without any extraneous evidence. His Lordship the Chief Justice A.H.C.T. GATES (as His Lordship then was) in **Razak v Fiji Sugar Corporation Ltd [2005] FJHC 720; HBC208.1998L (23 February 2005)** held that:

“To establish that the pleadings disclose no reasonable cause of action, regard cannot be had to any affidavit material [Order 18 r.18(2)]. It is the allegations in the pleadings alone that are to be examined: Republic of Peru v Peruvian Guano Company (1887) 36 Ch.D 489 at p.498”.

33. Citing several authorities, Halsbury’s Laws of England (4th Edition) in volume 37 at para 18 and page 24, defines the reasonable cause of action as follows:

“A reasonable cause of action means a cause of action with some chance of success, when only the allegations in the statement of case are considered” Drummond-Jackson v British Medical Association [1970] 1 ALL ER 1094 at 1101, [1970] 1 WLR 688 at 696, CA, per Lord Pearson. See also Republic of Peru v Peruvian Guano Co. (1887) 36 ChD 489 at 495 per Chitty J; Hubbuck & Sons Ltd v Wilkinson, Heywood and Clark Ltd [1899] 1 QB 86 at 90,91, CA, per Lindley MR; Hanratty v Lord Butler of Saffron Walden (1971) 115 Sol Jo 386, CA.

34. The Court may not use its discretionary power to strike out a claim under this Rule, for the reasons it is weak, or the plaintiff is unlikely to succeed. The power should rather be used when the claim is obviously unsustainable. His Lordship the Chief Justice A.H.C.T. GATES in **Razak v Fiji Sugar Corporation Ltd** (supra) held that:

“The power to strike out is a summary power “which should be exercised only in plain and obvious cases”, where the cause of action was “plainly unsustainable”; Drummond-Jackson at p.1101b; A-G of the Duchy of Lancaster v London and NW Railway Company [1892] 3 Ch. 274 at p.277.”

35. Pursuant to the decision in *Abhinesh Singh, Jyoti Singh v Rajesh Singh & Others* (*Supra*) a cause of action is defined as follows,

“What is “a cause of action?”

-the essential two elements

52. *The first is “a right” claimed by a party and the second is the “denial of that alleged right”.*

36. The Plaintiff in his Statement of Claim claims an alleged “right”. However, when it comes to the “denial of that alleged right”, there’s no nexus between that alleged denial and the 3rd Defendant. In fact, it is impossible to have any nexus as the 3rd Defendant was not existent at the time the Plaintiff alleges the “denial of that alleged right”.
37. When carefully considering the whole of Plaintiff’s Statement of Claim, it is evident that there is simply no ground articulated therein which can be identified as the basis for a claim of damages and/or compensation against the 3rd Defendant.
38. Nor there is any ground on which the ‘declarations and/or orders’ sought by the Plaintiff in its reliefs can be made as against the 3rd Defendant, pursuant to the legal provisions in the iTaukei Lands Act 1905 and/or iTaukei Lands Trust Act 1940. As such, this Court, is unable to identify any nexus between the Plaintiff’s claim and the 3rd Defendant’s liability in this action.
39. In the above context, I see no sense in the claim of the Plaintiffs against the 3rd Defendant, as it is clearly unenforceable and nugatory in the circumstances discussed in the foregoing paragraphs in this Ruling.
40. Thus, having carefully considered all facts before this Court, I do not find, based on the facts pleaded therein the Statement of Claim, that the alleged rights and breaches as claimed by the Plaintiffs as giving rise to any cause of action in law against the 3rd Defendant in this case.
41. Accordingly, it is the Court’s considered view that the Plaintiffs Statement of Claim discloses no reasonable cause of action against the 3rd Defendant and that this claim is

therefore obviously unsustainable and has no chance of success whatsoever against the 3rd Defendant.

42. Based on the above findings of the Court, I am satisfied that this is a fit case to exercise the discretionary power of the Court under Order 18 Rule 18 (1) (a) and wholly strike out the action of the Plaintiffs as against the 3rd Defendant.
43. It shall thus follow, that the Plaintiffs' Summons to Enter Default Judgment against the 3rd Defendant, as filed on 30/09/2022, necessarily fails and shall therefore be dismissed accordingly, without further deliberation on the same, for the obvious reason that the Court has already concluded that the Plaintiffs have failed to disclose any reasonable cause of action against the 3rd Defendant and thus the 3rd Defendants Summons to Strike Out is therefore successful.
44. Consequently, the Court makes the following orders.
 1. The Summons to Strike Out as filed by the 3rd Defendant on 05/09/2023 is hereby allowed subject to the following orders of the Court.
 2. Plaintiffs claim as per the Statement of Claim filed on 04/04/2022 is hereby wholly struck out and dismissed as against the 3rd Defendant pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules 1988.
 3. Plaintiff's Summons to Enter Default Judgment against the 3rd Defendant filed on 30/09/2022 is hereby struck out and dismissed.
 4. Plaintiff shall pay a cost of \$ 3000.00 to the 3rd Defendant within 28 days, as summarily assessed by the Court, as costs of these proceedings.
 5. Subject to the striking out of the claim against the 3rd Defendant, the Plaintiff shall amend the Writ of Summons and the Statement of Claim filed on 04/04/2022 to reflect the same and file and serve the Amended Writ of Summons and the Statement of Claim within 07 days from this Ruling (That is by 14/08/2024).
 6. If the need be, the 1st and 2nd Defendants may file and serve their amended Statement of Defence, 07 days after (That is by 23/08/2024).
 7. If the 1st and 2nd Defendants file and serve an Amended Statement of Defence, then the Plaintiff may, if the need be, file and serve a Reply to the Amended Statement of Defence, 07 days after (That is by 03/09/2024).

8. The Plaintiff shall, 07 days after, file and serve the Summons for Directions (That is by 12/09/2024).
9. In failure to comply with the above orders, as the case may be, the defaulting parties' pleadings shall be struck out subject to a cost of \$ 4000.00 as summarily assessed by the Court.
10. Matter shall be for mention only on the next Court date.



A handwritten signature in blue ink, appearing to read "L. K. Wickramasekara".

L. K. Wickramasekara,
Acting Master of the High Court.

At Suva,
05/08/2024.