IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 180 of 2023

BETWEEN:

ABISHEK KUMARI
PLAINTIFF

AND:

RAHUL and SHASHI
1ST DEFENDANT

AND:

iTAUKEI LANDS TRUST BOARD
2ND DEFENDANT

BEFORE:

Acting Master L. K. Wickramasekara

COUNSELS:
Alofa Seruvatu Lawyers for the Plaintiff
No appearance for the 1st Defendant
Legal Department of iTaukei Land Trust Board for the 2nd Defendant

Date of Hearing:
By way of Written Submissions

Date of Ruling:
03 October 2024

<u>RULING</u>

01. The Court has issued a notice on its own motion on 19/07/2024 pursuant to Order 25 Rule 9 of the High Court Rules to the Plaintiff to show cause as to why this matter should not be struck out for want of prosecution or as an abuse of the process of the court due to the failure of the Plaintiff to take any steps in the matter for over 06 months.

02. Although there is a delay for over 12 months since the filing of the Acknowledgment of Service of the Writ and the Statement of Claim for the 2nd Defendant, the Plaintiff has failed to take any further step to move the matter forward and/or to file any Notice of Intention to Proceed pursuant to Order 3 Rule 5 of the High Court Rules 1988.

03. When the matter was first called on the Order 25 Rule 9 Notice on 13/08/2024, a counsel appearing for 'Law Solutions' submitted that they have no instructions on the matter, despite having filed the Affidavit of Service on behalf of the Plaintiff. Court, then ordered the Order 25 Rule 9 Notice to be served on 'Alofa Seruvatu Lawyers', which had thereupon been duly served on 14/08/2024 to the said solicitors.

04. The Notice under Order 25 Rule 9, which is served on the Plaintiff's solicitors, demand the Plaintiff to give *'Notice of Intention to Proceed in terms of Order 3 Rule 5,* ***<u>immediately</u>****'* and if the Plaintiff wishes to proceed with the matter any further, to *'file* ***<u>within 07 days</u>*** *from the date of service of the Notice, an Affidavit to Show Cause why the Cause/Pleadings should not be struck out for want of prosecution or as an abuse of the process of the Court'*. The said Notice is thus issued in the nature of a peremptory order of the Court, that in failure to show cause to the said Notice as demanded, the cause or the pleadings shall be struck out accordingly, pursuant to Order 25 Rule 9 of the High Court Rules.

05. When this matter was later called in Court on 27/08/2024 on the said Notice, it was revealed that the Plaintiff had failed to file any Notice of Intention to Proceed and/or any Affidavit to Show Cause as demanded by the Notice.

06. Since this Court was not satisfied of any justifiable reasons for not filing the Notice of Intention to Proceed and/or any Affidavit to Show Cause, no further time was extended to do so. However, the solicitors for the Plaintiff and the 2nd Defendant were allowed to file any legal submissions prior to the Court making its Ruling under Order 25 Rule 9 of the High Court Rules.

07. Court accordingly directed the parties to file their written submissions by 05/09/2024. Despite the said direction, the 2nd Defendants' written submissions have been filed on 10/09/2024 whereas the Plaintiff's written submissions filed only on 23/09/2024.

08. This cause has commenced by way of a Writ Summons and Statement of Claim filed on 14/06/2023 claiming for specific performance of the renewal of TLTB Lease No. 99911356, vacant possession of the property under the said Lease and claiming for damages. Plaintiff alleges that the said lease was under his mother's name, and the property under the lease was their family property for generations and despite the request for renewal the 2nd Defendant had issued a new lease to the 1st Defendants who were only the caretakers of the said property.

09. Pursuant to the Affidavit of Service filed on 21/08/2023, the Writ and the Statement of Claim have been served on the 2nd Defendant on 16/06/2023 and on the 1st Defendant on 20/06/2023.

10. The Acknowledgment of Service on behalf of the 2nd Defendant had been filed on 23/06/2023. There's no Acknowledgement of Service filed for the 1st Defendants.

11. Statement of Defence for the Defendants was filed on the 27/10/2022 and as per the Plaintiffs written submissions, it had been served on the Plaintiff on the same day.

12. Thereafter, as no steps were taken by the Plaintiff to proceed with the matter for over 12 months, the Court on its own motion issued the current Notice under Order 25 Rule 9 on 19/07/2024.

13. Whilst ruling on this matter, I have carefully considered the conduct of the Plaintiff in these proceedings and the written submissions filed on behalf of the Plaintiff and the 2nd Defendant.

14. Order 25 Rule 9 provides for the jurisdiction of the court to strike out any cause or matter for want of prosecution or as an abuse of process of the court if no step has been taken for six months. The said rule reads,

> *"If no step has been taken in any cause or matter for six months then any party on application or the court of its own motion may list the cause or matter for the parties to show cause why it should not be struck out for want of prosecution or as an abuse of the process of the court.*
>
> *Upon hearing the application, the court may either dismiss the cause or matter on such terms as may be just or deal with the application as if it were a summons for directions".*

15. Pursuant to the above rule, the grounds to be considered when making a determination under Order 25 Rule 9 of the High Court Rules are, firstly, 'want of prosecution' and secondly, 'abuse of process of the Court'.

16. This rule was introduced to the High Court Rules for case management purposes and was effective from 19 September 2005. The main characteristic of the rule is that the Court is conferred with power to act on its own motion in order to agitate the unduly lethargic litigation (**see; *Trade Air Engineering (West) Ltd v Taga* *[2007] FJCA 9; ABU0062J.2006 (9 March 2007*)**).

17. Well before the introduction of this rule, the courts in Fiji have exercised this power to strike out the cause for want of prosecution following the leading English authorities such as ***Allen v. McAlpine*** [1968] 2 QB 299;[1968] 1 All ER 543 and ***Birkett v. James*** [1978] AC 297; [1977] 2 All ER 801.

18. Justice Scott, striking out the Plaintiff's action in ***Hussein v Pacific Forum Line Ltd [2000] Fiji Law Report 24; [2000] 1 FLR 46 (6 March 2000),*** stated that,

> *"The principles governing the exercise of the Court's jurisdiction to strike out for want of prosecution are well settled. The leading English authorities are **Allen v. McAlpine** [1968] 2 QB 299;[1968] 1 All ER 543 and **Birkett v. James** [1978] AC 297; [1977] 2 All ER 801 and these have been followed in Fiji in, for example, **Merit Timber Products Ltd v. NLTB** (FCA Reps 94/609) and **Owen Potter v. Turtle Airways Ltd** (FCA Reps 93/205)".*

19. The Court of Appeal of Fiji in ***Trade Air Engineering (West) Ltd v Taga*** (supra) held,

> *"In our view the only fresh power given to the High Court under Order 25 rule 9 is the power to strike out or to give directions of its own motion. While this power may very valuably be employed to agitate sluggish litigation, it does not in our opinion confer any additional or wider jurisdiction on the Court to dismiss or strike out on grounds which differ from those already established by past authority".*

20. Pursuant to the above decision of the Court of Appeal, it is clear that the principles set out in ***Birkett v. James*** (supra) are still applicable to strike out any cause where no step is taken for six months, despite the introduction of new rule (Or 25 r 9). Lord Diplock, in ***Birkett v. James*** (supra), explained the emerging trend of English courts in exercising the inherent jurisdiction for want of prosecution. His Lordship held that,

> *"Although the rules of the Supreme Court contain express provision for ordering actions to be dismissed for failure by the plaintiff to comply timeously with some of the more important steps in the preparation of an action for trial, such as*

delivering the statement of claim, taking out a summons for direction and setting the action down for trial, dilatory tactics had been encouraged by the practice that had grown up for many years prior to 1967 of not applying to dismiss an action for want of prosecution except upon disobedience to a previous peremptory order that the action should be dismissed unless the plaintiff took within a specified additional time the step on which he had defaulted.

To remedy this High Court judges began to have recourse to the inherent jurisdiction of the court to dismiss an action for want of prosecution even where no previous peremptory order had been made, if the delay on the part of the plaintiff or his legal advisers was so prolonged that to bring the action on for hearing would involve a substantial risk that a fair trial of the issues would not be possible. This exercise of the inherent jurisdiction of the court first came before the Court of Appeal in ***Reggentin vs Beecholme Bakeries Ltd (Note)*** *[1968] 2 Q.B. 276 (reported in a note to* ***Allen v Sir Alfred McAlpine & Sons Ltd*** *[1968] 2 Q.B. 229) and* ***Fitzpatrick v Batger & Co Ltd*** *[1967] 1 W.L.R. 706*

The dismissal of those actions was upheld and shortly after, in the three leading cases which were heard together and which, for brevity, I shall refer to as *Allen v McAlpine* *[1968] 2 Q.B. 229, the Court of Appeal laid down the principles on which the jurisdiction has been exercised ever since. Those principles are set out, in my view accurately, in the note to R.S.C, Ord. 25, R. 1 in the current Supreme Court Practice (1976).* ***The power should be exercised only where the court is satisfied either (1) that the default has been intentional and contumelious, e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court; or (2) (a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between each other or between them and a third party****".*(emphasis added)

21. The first limb pursuant to the above case is '***the intentional and contumelious default'***. Lord Diplock gave two examples for the first limb in the above judgment. One is ***disobedience to a peremptory order of the court*** and the other is ***conduct amounting to an abuse of the process of the court.***

22. Thus, the second ground provided in Order 25 Rule 9, which is 'abuse of the process of the court', is a good example for '***the intentional and contumelious default'*** as illustrated by Lord Diplock in **Birkett v. James** (supra). According to Lord Diplock, the abuse of the process of the court falls under the broad category of '***the intentional and contumelious default.'***

23. House of Lords in "**Grovit and Others v Doctor and Others**" **(1997) 01 WLR 640, 1997 (2) ALL ER, 417,** held that, commencing an action without real intention of bringing to conclusion amounts to an abuse of the process of the court. It was held as follows,

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

24. The Fiji Court of Appeal in **Thomas (Fiji) Ltd –v- Frederick Wimheldon Thomas & Anor, Civil Appeal No. ABU 0052/2006,** followed the principles of "**Grovit and Others v Doctor and Others**" (supra) and held that,

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

25. Master Azhar in the case of **Amrith Prakash v Mohammed Hassan & Director of Lands; HBC 25/15: Ruling (04 September 2017)** has held,

"Both the ***The Grovit*** *case and* ***Thomas (Fiji) Ltd*** *(supra) which follows the former, go on the basis that, "abuse of the process of the court" is a ground for striking out, which is independent from what had been articulated by Lord Diplock in* ***Birkett v James*** *(supra). However, it is my considered view that, this ground of "abuse of the process of the court" is part of '****the intentional and contumelious default',*** *the first limb expounded by Lord Diplock. The reason being that this was clearly illustrated by Lord Diplock in* ***Birkett v. James*** *(supra). For the convenience and easy reference, I*

*reproduce the dictum of Lord Diplock which states that; "…**either (1) that the default has been intentional and contumelious, <u>e.g.</u> disobedience to a peremptory order of the court <u>or</u> <u>conduct amounting to an abuse of the process of the court…"</u>** (Emphasis added). According to Lord Diplock, the abuse of the process of the court falls under broad category of '**the intentional and contumelious default'**. In fact, if a plaintiff commences an action and has no intention to bring it to conclusion it is an abuse of the process of the court. Thus, the default of a plaintiff intending not to bring it to conclusion would be intentional and contumelious. Accordingly, it will fall under the first limb of the principles expounded in **Birkett v. James** (supra). This view is further supported by the dictum of Lord Justice Parker who held in **<u>Culbert v Stephen Wetwell Co. Ltd</u>,** (1994) PIQR 5 as follows,*

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

26. **It is however, to be noted that the Defendant, is under no duty to prove the prejudice to him/her, or for that matter for the Court to consider the prejudice to the Defendant, to strike out an action under Order 25 Rule 9 of the High Court Rules 1988, if the abuse of the process of the Court is established.** Whereas it is sufficient to establish Plaintiff's inactivity coupled with the complete disregard of the Rules of the Court with the full awareness of the consequences, for an action to be struck out pursuant to Order 25 Rule 9 of the High Court Rules.

27. The burden of proof in determining the matters under Order 25 Rule 9 of the High Court Rules may fall as a "negative burden of proof' on the Plaintiff itself. Master Azhar in **Amrith Prakash v Mohammed Hassan & Director of Lands** (Supra) further held,

"If the court issues a notice, it will require the party, most likely the Plaintiff, to show cause why his or her action should not be struck out under this rule. In such a situation, it is the duty of the Plaintiff to show to the Court negatively that, there has been no intentional or contumelious default, there has been no inordinate and inexcusable delay, and no prejudice is caused to the Defendant. This is the burden of negative proof. In this case, the Defendant does not, even, need to participate in this proceeding. He or she can simply say that he or she is supporting court's motion and keep quiet, allowing the plaintiff to show cause to the satisfaction of the court not to strike out

plaintiff's cause. Even in the absence of the defendant, the court can require the plaintiff to show cause and if the court is satisfied that the cause should not be struck out, it can give necessary directions to the parties. Generally, when the notice is issued by the court, it will require the defendant to file an affidavit supporting the prejudice and other factors etc. However, this will not relieve the Plaintiff from discharging his or her duty to show cause why his or her action should not be struck out. In the instant case, it was the notice issued by the court on its own motion. Thus, the Plaintiff has the burden of negative proof and or to show cause why his action should not be struck out for want of prosecution or abuse of the process of the court."

28. The second limb of the ***Birkett v. James*** (supra) is,
(a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and
(b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants.
In short, inordinate, and inexcusable delay and the prejudice which makes the fair trial impossible.

29. Fiji Court of Appeal in **New India Assurance Company Ltd v Singh** **[1999] FJCA 69; Abu0031u.96s (26 November 1999),** unanimously held that,

"We do not consider it either helpful or necessary to analyse what is meant by the words 'inordinate' and 'inexcusable'. They have their ordinary meaning. Whether a delay can be described as inordinate or inexcusable is a matter of fact to be determined in the circumstances of each individual case".

30. However, in **Deo v Fiji Times Ltd** **[2008] FJCA 63; AAU0054.2007S (3 November 2008)** the Fiji Court of Appeal cited the meaning considered by the court in an unreported case. It was held that,

> *"The meaning of "inordinate and inexcusable delay" was considered by the Court of Appeal in **Owen Clive Potter v Turtle Airways Limited v Anor** Civil Appeal No. 49 of 1992 (unreported) where the Court held that inordinate meant "so long that proper justice may not be able to be done between the parties" and "inexcusable" meant that there was no reasonable excuse for it, so that some blame for the delay attached to the plaintiff".*

31. In considering whether a period of delay to be inordinate and contumelious pursuant to Order 25 Rule 9 of the High Court Rules, Master Azhar in **Amrith Prakash v Mohammed Hassan & Director of Lands** (Supra) went on to hold,

'Order 25 Rule 9 by its plain meaning empowers the Court to strike out any cause either on its own motion or an application by the defendant if no steps taken for six

months. The acceptable and or tolerable maximum period for inaction could be six months. The threshold is six months as per the plain language of the rule. It follows that, any period after six months would be inordinate and excusable so long that proper justice may not be able to be done between the parties and no reasonable excuse is shown for it. Therefore, whether a delay can be described as inordinate or inexcusable is a matter of fact which to be determined in the circumstances of each and every case."

32. All in all, since the notice was issued by this Court on its own motion pursuant to Order 25 Rule 9, it is the Plaintiff who must show cause why his action should not be struck out under that rule.

33. Surprisingly in this case, the Plaintiff failed to file a Notice of Intention to Proceed and/or an Affidavit to Show Cause as demanded by the Order 25 Rule 9 Notice. This clearly shows the laxity on the part of the Plaintiff to duly prosecute the matter without further delay and the Plaintiff's indifference to directions/or orders of the Court. As mentioned before the Order 25 Rule 9 Notice issued by the Court is, in fact, in the colour and form of a peremptory order of the Court. However, the Plaintiff has apparently been indifferent towards the said Notice and shown contempt towards the demands of the Court.

34. As held in **Amrith Prakash v Mohammed Hassan & Director of Lands** **(Supra)**, the legally acceptable period for inaction in a civil cause in Fiji is 06 months as embodied in Order 25 Rule 9 of the High Court Rules 1988. In this case, the delay or the inaction on the part of the Plaintiff is over 12 months. However, the Plaintiff in this matter, further neglected and/or knowingly failed to provide any reasons to explain the said delay despite the Notice under Order 25 Rule 9 being duly served. Thus, in the absence of any justifiable reason for the delay, this Court has no other option but to necessarily hold the delay in this case to be inordinate and inexcusable.

35. When considering the Plaintiff's inactivity in this matter, it is to be noted with concern that the Plaintiff has clearly been in a deep slumber over this case, having no regard whatsoever to the rules of the Court or to the rights of the other parties in having this matter duly prosecuted within a reasonable time.

36. Despite the Court issuing the Notice under Order 25 Rule 9 of the High Court Rules for the delay and inactivity of the Plaintiff to move the matter forward as required by the High Court Rules, the Plaintiff, as mentioned before, had failed to comply with Order 3 Rule 5 of the High Court Rules in failing to file a Notice of Intention to Proceed. This rule reads as follows,

Notice of intention to proceed after 6 months delay *(O.3, r.5)*

5. Where six months or more has elapsed since the last proceeding in a cause or matter, a party intending to proceed must give not less than one month's notice of that intention to every other party. An application on which no order was made is not a proceeding for the purpose of this rule.

37. In **Seva Varani (as member of Mataqali Yanuya and for and on behalf of Mataqali Yanuya) v Aanuka Island Resort Limited t/a Amanuca Resort & iTaukei Land Trust Board**; HBC 161.2012, Ruling (6 February 2015), Justice Ajmeer (as he then was) has held that,
"The word 'must' used in rule 5 suggests mandatory compliance. The plaintiff was not even mindful to give the mandatory notice of intention to proceed required by HCR. This attitude clearly shows that the plaintiff has no interest in prosecuting his claim".

38. In Courts considered view, the Plaintiff's apathetic and lethargic approach to its own cause coupled with its failure to comply with the mandatory requirements under Order 3 Rule 5 and Order 25 Rule 9 of the High Court Rules as pointed in the foregoing paragraphs; the lengthy delay of over a year, in Court's considered view, cannot be justified under the circumstances of this case.

39. Moreover, as per the written submissions of the Plaintiff, there's no light being shed on any acceptable circumstances which could justify the lengthy delay. Further, in the written submissions on behalf of the 2nd Defendant, it is submitted that there is no 'Lease as per No. 99911356' and that they had requested further and better particulars from the Plaintiffs, in order to correctly identify the land in question. It is however, submitted that no such particulars have been made available by the Plaintiff and the 2nd Defendant was therefore effectively prevented from filing its Statement of Defence.

40. In view of the above findings, it is the Court's considered view, that the inaction of the Plaintiff in this case clearly amounts to an inordinate and inexcusable delay and or otherwise an abuse of the process of the Court.

41. In overall consideration of the facts and circumstances of this case, this Court conclusively finds, that the conduct of the Plaintiff in this matter is such, that the Plaintiff apparently had no intention of diligently prosecuting this cause and/or bringing these proceedings to a closure within a reasonable time when initiating the matter.

42. Lord Justice Parker in ***Culbert v Stephen Wetwell Co. Ltd,*** *(1994) PIQR 5* held,

"There is however, in my view another aspect of this matter. An action may also be struck out for contumelious conduct, or abuse of the process of the Court or because a fair trial in action is no longer possible. Conduct is in the ordinary way only regarded as contumelious where there is a deliberate failure to comply with a

specific order of the court. ***In my view however a series of separate inordinate and inexcusable delays in complete disregard of the Rules of the Court and with full awareness of the consequences can also properly be regarded as contumelious conduct or, if not that, to an abuse of the process of the court. Both this and the question of fair trial are matters in which the court itself is concerned and do not depend on the defendant raising the question of prejudice.*** *"* (Emphasis added).

43. The House of Lords in ***"Grovit and Others v Doctor and Others" (1997) 01 WLR 640, 1997 (2) ALL ER, 417,*** held that commencing an action without real intention of bringing to conclusion amounts to an abuse of the process of the court. It was held as follows,

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

44. As already highlighted in the foregoing paragraphs, the acceptable and or tolerable period of inaction in any matter is 6 months as per the plain meaning of the Order 25 Rule 9. The threshold is six months, and any delay thereafter would be inexcusable and inordinate so long as no reasonable excuse is provided, and justice may not be able to be done between the parties.

45. I shall reiterate the fact, that in this case, no reasons, whatsoever, have being advanced by the Plaintiff to explain this inordinate and inexcusable delay in diligently prosecuting its own cause.

46. I wish to repeat myself on the fact that it is to be noted that in litigation there are some parties that pursue their cases sporadically or make default with the intention of keeping the matters pending against the other parties without reaching a finality. The Courts should not ignore such practice or parties. Such practices must be disallowed promptly for reasons that it is an abuse of the process of the Court, and it is a waste of the Court's time and resources which are not infinite.

'*The more time that is spent upon actions which are pursued sporadically, the less time and resources there are for genuine litigants who pursue their cases with reasonable diligence and expedition and want their cases to be heard within a reasonable time'* (see; ***Singh v Singh*** -supra).

47. Such practice also violates the fundamental rights guaranteed by the sections 15 (2) and (3) of the Constitution which read,

(2) Every party to a civil dispute ***has the right to have the matter determined by a court of law*** *or if appropriate, by an independent and impartial tribunal.*

(3) Every person charged with an offence and ***every party to a civil dispute has the right to have the case determined within a reasonable time.*** (Emphasis added)

48. Further, such a practice may also constitute serious prejudice to the other party as justice may not be done between the parties since the matter is pending idle without any steps being taken to reach a finality.

49. For the reasons and findings set out above, it is the Courts conclusion that the Plaintiff in this matter has no interest at all in duly pursuing this cause and the delay caused by the Plaintiff in these proceedings is inexcusable and/or inordinate or otherwise amounts to an abuse of the process of the Court.

50. I therefore conclude that the Plaintiff has failed to duly show cause as to why his action should not be struck out for abuse of the process of the Court or for want of prosecution and accordingly this Court orders that the Writ of Summons filed on 14/06/2024, to be struck out and dismissed pursuant to Order 25 Rule 9 of the High Court Rules 1988.

51. Consequently, the Court makes the following final orders,

I. Plaintiff's Writ of Summons and the Statement of Claim filed on 14/06/2023 is hereby wholly struck out pursuant to Order 25 Rule 9 of the High Court Rules, subject to a cost of $ 1000.00, as summarily assessed by the Court, to be paid to the 2nd Defendant and,

II. The Cause is accordingly dismissed.

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

At Suva,
03/10/2024.