

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

**Civil Action No. HBC 356 of 2023**

**BETWEEN:**

**MATAIASI VAKAMOCE**  
**PLAINTIFF**

**AND:**

**SECRET SPOT INVESTMENT HARDWOOD PTE LTD**  
**1<sup>ST</sup> DEFENDANT**

**AND:**

**TANIELA SAMUTITOGA**  
**2<sup>ND</sup> DEFENDANT**

**BEFORE:**

Acting Master L. K. Wickramasekara

**COUNSELS:**

Mathews Law for the Plaintiff  
No appearance for the Defendants

**Date of Hearing:**

By way of Written Submissions

**Date of Ruling:**

03 October 2024

# RULING

01. The Court, on its own motion, has issued a notice to the Plaintiff on 26/07/2024 pursuant to Order 25 Rule 9 of the High Court Rules, to show cause as to why this matter should not be struck out for want of prosecution or as an abuse of process of the court due to the failure of the Plaintiff to take any steps in the matter for over 06 months.
02. Upon being issued with the Notice, the Plaintiff has filed a Notice of Intention to Proceed pursuant to Order 3 Rule 5 of the High Court Rules 1988, on 13/08/2024. Further to the same, the Plaintiff has also filed an Affidavit to Show Cause on the same day.
03. Furthermore, the counsel for the Plaintiff has thereafter filed a written submission in support of his position to proceed with the matter on 05/09/2024.
04. This cause has commenced by way of a Writ of Summons and Statement of Claim filed on the 27/11/2023 seeking judgment in favour of Plaintiff for a sum of \$ 100000.00 for loss suffered by the Plaintiff in investing in the 1<sup>st</sup> Defendant company on the inducement of the 2<sup>nd</sup> Defendant for monetary returns. Plaintiff has claimed that the 2<sup>nd</sup> Defendant had offered investment opportunities in the 1<sup>st</sup> Defendant company for monetary returns and accordingly the Plaintiff entered into an investment agreement with the Defendants. However, upon investing a total sum of \$ 40000.00, the Defendants have failed to return the said investments and/or any monetary returns for the investments.
05. The Affidavit of Service on the Writ has been filed on 15/05/2024. Pursuant to the said Affidavit of Service the Writ and the Statement of Claim have been served on both the Defendants on 05/02/2023.
06. From that day onwards there had been no progress in the matter, to have the proceedings moved forward, until the Court issued the Order 25 Rule 9 Notice on 26/07/2024.
07. It is to be noted that the date of service of the Writ and Statement of Claim, as per the Affidavit of Service, is manifestly wrong, since the Writ has been issued only on 27/11/2023, whereas the service is claimed to be made on 05/02/2023.
08. Owing to the above error on the part of the Plaintiff, the Order 25 Rule 9 Notice had been issued inadvertently by the Court, since the Writ shall be valid for service for 12 months from the date of the issuance of the Writ. In this matter, therefore, the Writ shall be valid for service till 26/11/2024.

09. The 6 months' period for moving the proceedings forward, pursuant to Order 25 Rule 9 of the High Court Rules shall apply to the current proceeding, from the date of service of the Writ, whereas no other pleadings being filed in the matter. However, considering the erroneous date of service as mentioned in the Affidavit of Service, the period applicable for this matter, under Order 25 Rule 9, cannot be duly calculated.
10. In the event the Court disregards the Affidavit of Service filed on 15/05/2024, then the Writ shall still be valid for service till 26/11/2024. In the above premise, the issuance of the Order 25 Rule 9 Notice necessarily becomes inadvertent.
11. 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".*
12. In view of the facts highlighted by the Court in the foregoing paragraphs, I find the Order 25 Rule 9 Notice issued in this matter is inadvertent and must therefore be vacated.
13. Furthermore, the Court finds that the Affidavit of Service, as filed on 15/05/2024, is manifestly erroneous, as outlined in the foregoing paragraphs and is clearly wrong in its form, as it fails to specify the exact mode of service on each of the Defendants, the manner and place in which the service was made and whether or not the Defendants accepted the service and if so any copies of the acceptance to be attached. As such, the Affidavit of Service filed on 15/05/2024 must necessarily be struck out and expunged from the record.
14. In view of the foregoing discussions and findings, this Court concludes that there is no necessity to consider the legal provisions relating to Order 25 Rule 9 of the High Court Rules regarding this matter and that the Notice under Order 25 Rule 9 must necessarily be vacated.
15. Consequently, the Court makes the following final orders,

- I. Order 25 Rule 9 Notice issued on the 26/07/2024, is hereby vacated and dismissed and,
- II. The Plaintiffs Affidavit of Service filed on 15/05/2024 is hereby struck out and expunged from the Case Record,
- III. Upon due service of the Writ and the Statement of Claim, the Plaintiff may file a proper Affidavit of Service and move the matter forward forthwith pursuant to the relevant High Court Rules.
- IV. This matter shall henceforth take its normal cause.



**At Suva,  
03/10/2024.**

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