

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO. ERCC 002 OF 2023

BETWEEN : **PATRICK VICTOR ADRIAN**
Applicant

AND : **TELECOM FIJI LIMITED**
Respondent

Counsel : **Mr Karunaratne for the Applicant**
Ms Chowdhury for the Respondent

Hearing : **11 October 2024**

Judgment : **11 October 2024**

JUDGMENT

(Summons by Plaintiff for specific discovery)

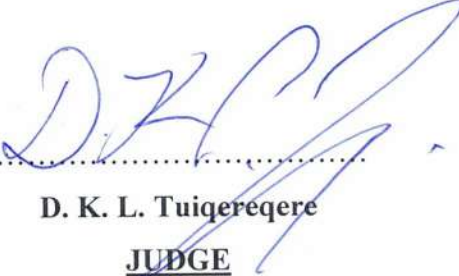
- [1] This matter was set down for hearing today. The Plaintiff seeks four documents specified in its Summons. I have been informed by the parties that the Defendant has supplied two of the four documents, being an email of 20 January 2023 and the Defendant's Whistleblow Policy. It has not, however, supplied the emails of 28 and 29 January 2023.
- [2] Ms. Chowdhury advises from the bar that her instructions are that the Defendant does not have copies of these two emails. No affidavit in opposition has been filed for the Defendant deposing to this or whether these emails originally existed.
- [3] I am satisfied that the two outstanding emails in question are relevant to this proceeding. Equally, I am satisfied that there is insufficient information or evidence placed before me to make any finding that the emails were not sent and/or received by the Defendant in the first instance. In other words, there was no evidence before me that it did not have possession of the two emails at some point in time or that the Defendant is no longer in

possession of these emails – I cannot, for the purposes of a determination of the Summons, place any reliance on statements from the bar.

- [4] That being the case, I will make an order in terms of the Plaintiff's Summons of 9 August 2024 as per paragraphs 2, 3, 4 and 5 – noting of course that the Defendant has complied in respect to paragraphs 2 and 5 and the only outstanding documents not produced are the emails identified at paragraphs 3 and 4 of the Summons.
- [5] There remains the issue of costs. Mr. Karunaratne seeks costs of \$4,000. He has explained the trouble, inconvenience and cost that the Plaintiff has been put. Ms. Chowdhury resists, submitting that the figure is excessive and that costs should be in the cause. I am aware of the disparate financial positions of the two parties. The Defendant is a large organization with considerable financial resources. The Plaintiff is an individual who previously worked for the Defendant. The efforts and time expended by the Plaintiffs' counsel to obtain this information will be costs that he will incur and pay in the meantime. Frankly, the emails should have been discovered in the Defendant's AVLD – there should have been no need to request the same and certainly not to the point of a formal application (I don't have sufficient information about the Whistleblow Policy to have a view about this document). In light of this, an award for costs for the Plaintiff is in order. I agree with Ms Chowdhury that the amount of \$4,000 is too high. The question is what is a reasonable figure? I am satisfied that the amount of \$750 is more than adequate having regard to all the circumstances, including the filing of the documentation, appearance for mention to fix a hearing date and preparation/attendance for the hearing today - noting that the Defendant's acquiescence in part has come late.
- [6] Accordingly, my orders are as follows:
1. The Plaintiff's Summons for Specific Discovery is granted in terms of the orders sought as per items 2,3,4 and 5 of the Summons. The outstanding documents, being items 3 and 4, to be provided to the Plaintiff within 14 days.

2. Costs are awarded to the Plaintiff summarily assessed in the amount of \$750 to be paid by the Defendant within 21 days.




.....
D. K. L. Tuiqereqere
JUDGE

Solicitors:

Karunaratne Lawyers for the Plaintiff

Neel Shivam Lawyers for the Defendant