

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CIVIL JURISDICTION**

**Civil Action No HBC 181 of 2020**

**BETWEEN** : **MOHAMMED FAZAL**  
**Plaintiff**

**AND** : **KHARUN NISHA**  
**First Defendant**

**AND** : **MOHAMMED RIZWAN**  
**Second Defendant**

**AND** : **MOHAMMED ITTIKER**  
**Third Defendant**

**Counsel** : **Mr Y Kumar for the Plaintiff**  
**No appearance for the First, Second or Third Defendant**

**Hearing** : **31 October 2024**

**Judgment** : **31 October 2024**

**EX TEMPORE JUDGMENT**

[1] This is a 2020 matter filed by the Plaintiff against the three defendants. The Plaintiff claims that he loaned the sum of \$150,000 to the three defendants and expected to receive title to a property. He provided the monies but, according to the Plaintiff, the title turned out to be false.

- [2] Only the Second Defendant has filed a Statement of Defence.<sup>1</sup> The First and Third Defendants have not and, as a consequence, on 10 December 2020 the Plaintiff filed a Summons for leave to Enter Judgment against the two defendants.
- [3] For some reason the matter was not progressed thereafter until 2022. In 2022, a Summons for Directions was filed along with a Reply to the Second Defendant's Statement of Defence. In May 2022, the Legal Aid Commission (LAC) began acting for the First and Third Defendants – an affidavit dated 17 June 2022 was filed in opposition to the Plaintiff's Summons to Enter Default Judgment.
- [4] On 4 September 2023, the Master issued a Ruling that *'this is a matter which ought to be formally proved as evidence required regarding when cause of action arose and what amount was actually advanced and what the Plaintiff is actually entitled to is claim statute barred'*. Efforts were made thereafter to set the matter down for Formal Proof. The matter came before me on 28 February 2024 to fix a Formal Proof date. The Plaintiff's counsel advised that he was having difficulty obtaining instructions. On 13 March 2024, LAC sought leave to withdraw as counsel as they were also having difficulty obtaining instructions. There has been no appearance for the Second Defendant since the matter has been before me.
- [5] On 28 March 2024, the Plaintiff's counsel confirmed that the Plaintiff wished to proceed with the formal proof. Formal Proof was set down for 10 May 2024. On this date, counsel for the Plaintiff advised that he was again having difficulty obtaining instructions from the Plaintiff. The hearing was vacated. On 4 June 2024, counsel for the Plaintiff indicated that he intended to file an application to seek leave to withdraw as counsel. On 24 June, counsel advised that the Plaintiff was back in communication and the matter was adjourned to 22 July. I indicated that if there was no movement on the matter I would make unless orders. On 22 July 2024, there was no appearance for the Plaintiff and I made an order that unless there was an appearance for the Plaintiff on 26 July the Plaintiff's claim would be struck out for want of prosecution.

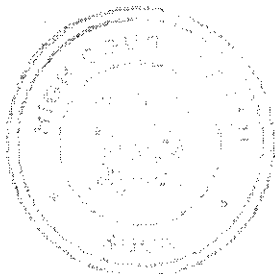
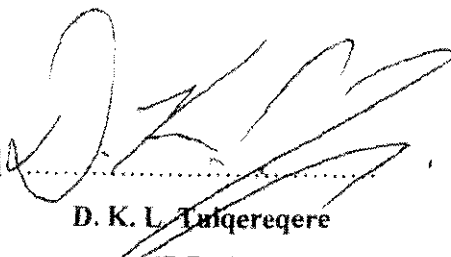
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<sup>1</sup> It was filed on 20 August 2020.

- [6] On 26 July 2024, counsel for the Plaintiff appeared and the matter was set down for Formal Proof on 31 October.
- [7] Counsel for the Plaintiff has attended today. Counsel advises that the Plaintiff is aware of today's formal proof but has not responded to communications from the solicitors. Thus, the Plaintiff is in no position to conduct the formal proof today. There is no appearance for any of the three defendants.
- [8] This is the Plaintiff's proceeding. It is incumbent on him to prosecute the matter with diligence. He has not done so. He is aware that formal proof has been set down for today. Indeed, the formal proof was previously set down on 10 May 2024 but did not proceed because the Plaintiff failed to provide proper instructions to his solicitors. The proceeding is now 4 years old. In light of the Plaintiff's failure to conduct formal proof today and prosecute his claim, the proceeding is struck out.

### **Orders**

- [9] I make the following orders:
- i. The Plaintiff's Writ of Summons dated 22 June 2020 is struck out.
  - ii. There will be no order as to costs.

   
D. K. L. Tulqereqere  
JUDGE

### **Solicitors:**

Jiten Reddy Lawyers for the Plaintiff  
Legal Aid Commission for First and Third Defendants  
Iqbal Khan & Associates for the Second Defendant