

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

**Civil Action No. HBC 226 of 2020**

**BETWEEN**                    **RUSIATE MESAKE DILOI** of Lot 1, Caubati Stage 2,  
Nasinu, Driver.  
**PLAINTIFF**

**AND**                            **VATUKOULA GOLD MINES LIMITED** a limited liability  
Company incorporated under the Companies Act,  
Having its registered officer at Loloma Road, Vatukoula  
Fiji.  
**DEFENDANT**

**BEFORE**                    **Master P. Prasad**

Counsel for Plaintiff: Legal Aid Commission

Date of Hearing: 2 and 10 December 2024

Date of Judgment: 10 December 2024

**EX TEMPORE JUDGMENT**

1. The Plaintiff has filed a Writ of Summons (Writ) on 22 September 2020 but failed to serve the same on the Defendant.
2. The Writ expired on 21 September 2021 and the Plaintiff made no applications to the Court for extension of the validity of the Writ neither before nor immediately after its expiry.
3. Therefore, on 11 September 2024, after almost 3 years, the Writ was struck out on the basis that it had expired.
4. The Plaintiff has on 16 October 2024 filed an Ex-parte application seeking an Order for the Writ to be re-instated on the cause list.
5. An Affidavit in Support erroneously intituled as an "Affidavit in Opposition" has been filed with the said application in which the Plaintiff avers that the reason for the Writ expiring was due to the failure of the then legal counsel in-carriage from the Legal Aid Commission (LAC) to serve the same within time. The Plaintiff further avers that he was advised in June 2023 that the Writ had expired and that it would most likely be struck off. The LAC wrote

to the Lautoka High Court registry on 6 February 2024 to conduct a file search but did not get a response. The Plaintiff was then informed on 11 September 2024 that the Writ was stuck off.

6. The Ex-parte application was set for hearing on 29 November 2024. On that date the counsel for the LAC was not prepared to address the Court on their application. As such the matter was adjourned to 2 December 2024. On 2 December 2024, LAC counsel appeared and made submissions and asked for further time to file written submissions. The application was then adjourned to 10 December to allow LAC counsel time to file written submissions and for the Court to hear further oral submissions. The matter was called today and LAC counsel informed the Court that she will not be filing any written submissions but made further oral submissions on her application.
7. The Plaintiff's application is made pursuant to Order 2 Rule 2, Order 3 Rule 4, Order 24 Rule 17 and Order 34 Rule 2 of the High Court Rules 1988 (HCR).
8. Order 2 Rule 2 deals with an application to set aside for irregularity any proceedings. Order 3 Rule 4 deals with extension of time for periods. Order 24 Rule 17 is for revocation and variation of any order made under Order 24 which deals with discovery and inspection of documents. Order 34 Rule 2 deals with pre-trial conferences.
9. A writ which has been struck out due to its expiry cannot be re-instated on the cause list as it remains an expired writ.
10. Although the Plaintiff has made an application only for the re-instatement of the Writ and not for extension of the validity of the same, I will address all the relevant issues pertaining to the subject matter.
11. The relevant rule for the extension of the validity of a writ is Order 6 Rule 7 of the HCR. Order 6 Rule 7 states that:

*7(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for 12 months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.*

*(2) where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding 12 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.*

(3) Before a writ, the validity of which has been extended under this Rule, is served, it must be marked with an official stamp showing the period for which the validity of the writ has been so extended.

(4) Where the validity of a writ is extended by order made under this Rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the order.

12. The following excerpts from the 1997 Supreme Court Practice provide the scope of the rule together with guiding factors when dealing with an application for the extension of the validity of a writ.

13. Footnote 6/8/1 of the 1997 Supreme Court Practice on Order 6 Rule 8 of the Supreme Court Rules (the equivalent of our Order 6 Rule 7) at page 54 reads:

*“This rule provides a comprehensive code for the renewal of a writ, and therefore an irregularity in procedure caused by failure to renew a writ under this rule is such a fundamental defect in the proceedings that the wide powers of the Court under O.2, rr.(1) and (2) to cure non-compliance with the rules ought not to be exercised by treating a writ which has become invalid for service as though it had been renewed and is therefore valid for service (Bernstein v. Jackson [1982] 1 W.L.R. 1982; [1982] 2 All E.R. 806, C.A.)”*

14. Footnote 6/8/4 of the 1997 Supreme Court Practice at page 55 and 56 reads:

*“Waddon v. Whitecroft-Scovill Ltd [1988] 1 W.L.R. 309, [1988] 1 All E.R. 996, H.L., where the House of Lords considered and applied the principles in a more common factual context. There is nothing in the least revolutionary, however, about the decision of the House of Lords in the Kleinwort Benson case. On the contrary, it approves, with one exception, a long series of earlier decisions of the Court of Appeal and of judges at first instance. The principles to be deduced from the cases may be set out shortly as follows:*

*(1) It is the duty of the plaintiff to serve the writ promptly. He should not dally for the period of its validity; if he does so and gets into difficulties as a result, he will get scant sympathy.*

*(2) Accordingly there must always be a good reason for the grant of an extension. This is so even if the application is made during the validity of writ and before the expiry of the limitation period; the later the application is made, the better must be the reason.*

*(3) It is not possible to define or circumscribe what is a good reason. Whether a reason is good or bad depends on the circumstances of the case. Normally the showing of good reason for failure to serve the writ during its original period of validity will be a necessary step to establishing good reason for the grant of an extension (Waddon v.*

*Whitecroft-Scovill Ltd [1988] 1 W.L.R. 309; [1988] 1 All E.R. 996, H.L.).*

(4) *Examples of reasons which have been held to be good are:*

(a) *a clear agreement with the defendant that service of the writ be deferred;*

(b) *impossibility or great difficulty in finding or serving the defendant, more particularly if he is evading service.*

(5) *Examples of reasons which have been held to be bad are:*

(a) *that negotiations are proceeding....*

(b) *that legal aid is awaited ...*

(c) *that there is difficulty in tracing witnesses or obtaining expert or other evidence. ...*

(d) *carelessness;*

(e) *that plaintiff trustees wished to make an application to the Court for a Beddoe Order (to safeguard their position as to costs)....*

(f) *the need perceived by the plaintiff's solicitors to serve a statement of claim with the writ: ...*

(6) *The application for renewal should ordinarily be made before the writ has expired. The court has power to permit a later application but it must be made within the appropriate period of the first expiry. **The laxer practice of allowing two or more successive renewals to bring the writ up to date is no longer available** since Chappell v. Cooper [1980] 1 W.L.R. 958; [1980] 2 All E.R. 463, C.A....*

(7) *A writ will not normally be renewed so as to deprive the defendant of the accrued benefit of a limitation period. The strict view taken in Heaven v. Road and Rail Wagons Ltd [1965] 2 Q.B. 355; [1965] 2 All E.R. 409 was approved by the Court of Appeal in Chappell v. Cooper (above), but must be read in the light of the decision of the House of Lords in Kleinwort Benson Ltd v. Barbrak Ltd, The Myrto (No.3) [1987] A.C. 597; [1987] 2 W.L.R. 1053; [1987] 2 All E.R. 289. Possible exceptions are the good reasons in 4(a) or (b), above, or very sharp practice by the defendants which has deceived the plaintiff into inactivity.*

(8) *Where application for renewal is made after the writ has expired and after the expiry of a relevant period of limitation the applicant must not only show good reason for the renewal, but must give a satisfactory explanation for his failure to apply for renewal before the validity of the writ expired.*

(9) *The decision whether an extension to the validity of a writ should be allowed or disallowed is a matter for the discretion of the court dealing with the application. Jones v. Jones [1970] 2 Q.B. 576; [1970] 3 All E.R. 47, C.A. shows that in exercising discretion the judge is entitled to have regard to the balance of hardship. The exercise of*

*discretion, however, follows upon the showing of good reason by the applicant. Hardship to the applicant if the extension is disallowed is not a substitute for good reason (see *Waddon v. Whitecroft-Scovill Ltd* [1988] 1 W.L.R. 309; [1988] 1 All E.R. 996, H.L.).*

*(10) Where a plaintiff is faced with the sort of difficulty categorised in paragraph (5) of this note or for any other reason wishes to delay the action the proper and prudent course is to serve the writ and to apply to the defendant for an extension of time to serve the statement of claim or, failing agreement with the defendant, to apply to the court.”*

15. Footnote 6/8/5 of the 1997 Supreme Court Practice at page 57 reads:

*“Where there has been delay it is incumbent on solicitors to act with all expedition. If solicitors allow a writ to remain unserved right up to the end of the time limit, and they make a mistake as to the date of the writ’s expiry, the validity of the writ will not be extended (*Doble v. Haymills (Contractors) Ltd* (1988) 132 S.J. 1063, C.A.)...”*

*In exercising the discretion whether to grant or refuse renewal of the writ, the court is entitled to consider and to balance the relevant hardships that will be sustained by the plaintiff and the defendant respectively, e.g., that the plaintiff might be left without remedy or that the defendant may suffer as a result of long delay, but only where there are matters which, potentially at least, could constitute good reason for extension. Balance of hardship itself cannot constitute good reason (*Waddon v. Whitecroft Scovill Ltd*, above at p.318; see also *Jones v. Jones* [1970] 2 Q.B. 576; [1970] 3 All E.R. 47, C.A.)....*

*It is not sufficient or good reason justifying the exercise of discretion to extend the validity of the writ that the defendant knew of the existence of a claim, nor that he knew that a writ had been issued, nor that he is unable to show that there would be any specific prejudice or detriment to him in conducting his defence (*Heaven v. Road and Rail Wagons Ltd* [1965] 2 Q.B. 355, p.365).”*

16. Having referred to the applicable legal principles, I will now discuss the reasons why the Plaintiff’s application for an extension for the validity of the Writ (if it had been made) would have been unsuccessful.

17. The Plaintiff in his Affidavit gives the reason for the expiration of the Writ to be the failure of then LAC counsel in-carriage to serve the same on the Defendant and the Plaintiff’s unawareness of the same till June 2023.

18. An application for the extension of the validity of a writ must ordinarily be made before the said writ has expired. While the court has the power to permit an application filed after the expiry of the writ, it must be made within the appropriate period of the first expiry. The practise of allowing two or more successive extensions to bring the writ up to date is no longer available [see ***Chappell v. Cooper*** [1980] 1 W.L.R. 958; [1980] 2 All E.R. 463].

19. The Plaintiff's Writ expired on 22<sup>nd</sup> September 2021. Per Order 6 Rule 7, extensions are only allowed not exceeding 12 months at any one time. The Plaintiff could have applied for an extension of the validity of the Writ prior to 22<sup>nd</sup> September 2021 which would have placed the application within the acceptable prescribed time. As is clear, the Plaintiff did not do this.
20. The Plaintiff could have also filed an application for the extension of the validity of the Writ after the expiration of the Writ provided "good reasons" supported the application. The Plaintiff did not file any application during this period either.
21. If the Plaintiff's application for an extension of the validity of the Writ is made now in November 2024, it will fall outside the appropriate period of first expiry and in essence the application would amount to allowance of 3 successive renewals to bring the Writ up to date since it expired on 22<sup>nd</sup> September 2021. This is neither conforming to the general principles of granting an extension nor permitted by the HCR.
22. In any event, carelessness on the part of the Plaintiff's solicitor to serve the Writ in time is not a good reason for the grant of an extension.
23. The Plaintiff's counsel submitted two cases during the hearing: (i) **Karan v Chand** [2013] FJHC 552; and (ii) **Rabila v McConnel Dowell (Fiji) Ltd** [2012] FJHC 911. Neither of these two cases support the Plaintiff's application.
24. While **Karan v Chand** (supra) was a decision on reinstatement of a statement of claim taken off the cause list, Justice Ajmeer held that blaming the solicitor of the party for the delay was not good reason for the inexcusable and inordinate delay in making the application.
25. **Rabila v McConnel Dowell (Fiji) Ltd** (supra) was a decision on an expired writ where Justice Amaratunga held at paragraph 12:
  12. *The provision discussed in the said case in Chappell v Cooper, Player v Brugiare [1980] 2 All E R 463 is identical the Order 6 rule 7(2) of High Court Rules of Fiji and the reasoning given in the said decision is applicable to this case. In this case the Writ of summons was filed on 30th November, 2007 and the writ would have expired on the 29th November, 2008. Any application made after 30th November, 2008 could have extended the writ only up to 29th November, 2009 and no more, as the validity can only be extended for 12 months at a time. So, no application, after 29th November, 2009 could be made as the writ has lapsed since the court can only extend the writ for 12 months' time period at a time and that time period of extension, by virtue of the provision contained in the Order 6, rule 7(2) and it starts from the day following the expiration of the writ and any extension beyond this time period would make the provisions contained therein a nugatory.*

*The two salient features of the said provision are that the extension cannot be extended beyond 12 months at one time and that extension starts from the date of expiry of the validity of the writ. It is also clear that multiple applications for extension cannot be made to overcome these impediments.*

13. *The Plaintiff is yet to make any application for extension of the writ, and even such an application is made the court has no power for such an extension as decided in the case Chappell v Cooper, Player v Brugiere [1980] 2 All E R 463.*
  14. *Even if that fails, the writ cannot be extended after the expiry of the limitation time period as held Kleinwort Benson Ltd v Barbark Ltd, The Myrto (No 3) [1987] A.C 597.*
26. Similarly in this current application before the Court, it is also important to note that not only has the Writ expired, but the cause of action pleaded in the Writ is now statute barred pursuant to the Limitation Act 1971.
27. Footnote 6/8/6 of the 1997 Supreme Court Practice at page 57 is relevant and it reads:

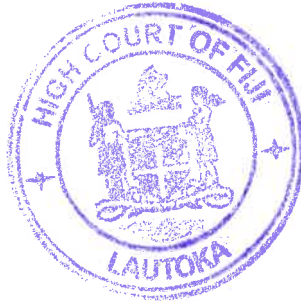
*“In an action for damages for personal injuries, 6/8/6 the general rule of practice that the Court would not exercise its discretion to allow the renewal of a writ after the period allowed for service had expired if the effect of doing so would be to deprive the defendant of the accrued benefit of a limitation period, is not inconsistent with and remains unaffected by the provisions of s.33 of the Limitation Act 1980 which confers a power on the court to override the time limits specified by the Act, and therefore a plaintiff who fails to issue and serve his writ in due time must comply with the established principles and practice for the renewal of a writ in order to obtain an extension of its validity (Chappell v. Cooper [1980] 1 W.L.R. 958; [1980] 2 All E.R. 463, C.A.)” ... Moreover, it is not a good reason for allowing the renewal of the writ that the plaintiff seeks to show by credible testimony that he has a good prima facie case or a good arguable case that having regard to all the circumstances, the Court will or may exercise its power under s.33 of the Act of 1980 to override the time limits and to allow the action to proceed, since if the plaintiff had started his action within the primary period of limitation but for any reason has failed to proceed with it, whether because he or his solicitor failed or chose not to serve the writ in time or because the action was subsequently dismissed for want of prosecution or was for good or bad reasons discontinued, it was not thereafter open to him to seek to take advantage of the provisions of s.33 of the Act, because in such case the cause of his prejudice is not the existence of the primary limitation period under s.11(4) of the Act but is his own or his solicitor’s act or omission in acting or failing to act as he or they should have done in relation to that action (Chappell v. Cooper [1980] 1 W.L.R. 958; [1980] 2 All E.R. 463, C.A., applying Walkley v. Precision Forgings Ltd [1979] 1 W.L.R. 606; [1979] 2 All E.R. 548, H.L.).”*

28. Therefore, this Writ cannot be reinstated for the reason that it was expired and even if the Plaintiff had made an application for the extension of the validity of the Writ, the Court has no powers to grant such an extension. Furthermore, the Writ cannot be extended after the expiry of the limitation period.

29. The onus was on the Plaintiff to serve the Writ before its expiry failing which he should have made an application for an extension of the validity of the Writ under Order 6 Rule 7.

30. While this Court sympathizes with the Plaintiff, it was his solicitor's inaction, if not carelessness, which has led to the predicament that the Plaintiff is currently in.

31. Therefore, I dismiss the application.



**P. Prasad**  
**Master of the High Court**

**At Lautoka**  
**10 December 2024**