IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HPP 20 of 2023

BETWEEN:

NITIKA NANDANI
PLAINTIFF

AND:

LAKSHMI KANT
DEFENDANT

BEFORE:

Acting Master L. K. Wickramasekara
COUNSELS:

Mishra Prakash & Associates for the Plaintiff
S Nand Lawyers for the Defendant

Date of Hearing:
By way of Written Submissions

Date of Ruling:
09th April 2025

RULING

01. This Ruling deals with the Notice issued by the Court, on its own motion, pursuant to Order 25 Rule 9 of the High Court Rules 1988 on the Plaintiff to show cause as to why this matter should not be struck out for want of prosecution and/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. The Order 25 Rule 9 Notice was issued on 26/07/2024 and served on the Plaintiffs solicitors on 01/08/2024 whereas it was served on the Defendant's solicitors on 31/07/2024.

03. When the matter was first called before this Court on 13/08/2024 pursuant to Order 25 Rule 9 Notice, the Plaintiff had filed a Notice of Intention to Proceed and was allowed further time to file an Affidavit to Show Cause as to why the matter should not be Struck Out pursuant to Order 25 Rule 9 of the High Court Rules. The Defendant was also granted time to file an Affidavit, if necessary.

04. Plaintiff has accordingly filed an Affidavit to Show Cause on the 15/08/2024 whereas the Defendant has opted not to file any Affidavit.

05. This cause has commenced by way of a Writ of Summons and Statement of Claim filed on the 08/03/2023. The claim is for challenging the validity of an alleged will in the Estate of Avinesh Prasad Gosai and for a grant of Letters of Administration in the said estate.

06. The cause being a probate matter, the Plaintiff had filed its Affidavit of Testamentary Script on 24/03/2023. The Defendant had filed its Statement of Defence on 27/03/2023 and its Affidavit of Testamentary Script on 30/05/2023.

07. After 30/05/2023, upon the Defendant's Affidavit of Testamentary Script being filed, for over 14 months, there were no steps taken in these proceedings, until such time the Court issued the Notice under Order 25 Rule 9 of the High Court Rules on 26/07/2024, on its own motion.

08. It is therefore clear from the Court record that since the last steps taken in the cause, as highlighted above, for over 14 months, the Plaintiff has failed to take any steps to move this matter forward and the Plaintiff has left the matter dormant for such time.

09. As per the directions of the Court, the counsel for the Plaintiff has filed comprehensive written submissions in opposition of striking out the cause. The counsel for the Defendant, though given the opportunity to file written submissions has opted not to file any submissions.

10. The Court shall consider the facts averred in the Affidavit to Show Cause as filed by the Plaintiff, the written submissions on behalf of the Plaintiff and the relevant legal provisions and the case authorities regarding Order 25 Rule 9 of the High Court Rules whilst reaching a decision in this matter.

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,

Strike Out for Want of Prosecution (O 25, R 9)

> *9. (1) 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.*
>
> *(2) Upon hearing the application, the court may either dismiss the cause or matter on such terms as maybe just or deal with the application as if it were a summons for directions.*

12. The grounds for striking out as provided in the above rule are firstly, the want of prosecution and secondly, the abuse of process of the Court. This is a rule that was introduced to the High Court Rules for case management purposes and was effective from 19 September 2005. The main characteristic of this 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 Taqa* *[2007] FJCA 9; ABU0062J.2006 (9 March 2007***). Well before the introduction of this rule, the Courts in Fiji have exercised the 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.

13. **Justice Scott**, whilst 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),*** held,

> *"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)".*

14. The Court of Appeal of Fiji in ***Trade Air Engineering (West) Ltd v Taqa*** (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".*

15. Pursuant to the above decision of the Court of Appeal in ***Trade Air Engineering (West) Ltd v Taqa*** (supra), 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 a new rule (Or 25 R 9).

16. **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.*
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> *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*
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> *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)

17. The first limb in the test for striking out a pleading and/or a matter as expounded in the above case is ***the intentional and contumelious default***. **Lord Diplock** gave two examples for that 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.*** In considering the above examples, it is clear that the second ground as 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** abuse of the process of the Court falls under the broad category of '***the intentional and contumelious default.'***

18. 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".*

19. 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."

20. **Master Azhar** (as His Lordship then was) 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, e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court…"** (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 **Culbert v Stephen Wetwell Co. Ltd,** (1994) PIQR 5 as follows,*
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> *"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."*

21. It must, however, 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, in such an instance, it is sufficient to

establish the Plaintiff's inactivity coupled with the complete disregard of the Rules of the Court with the full awareness of the consequences, for the action to be struck out pursuant to Order 25 Rule 9 of the High Court Rules.

22. 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** (as His Lordship then was) 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."*

23. 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 that it 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.

24. 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"*. 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".*

25. 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** (as His Lordship then was) 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."*

26. 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 the provisions of the said rule.

27. Surprisingly, in this case, in the Affidavit to Show Cause as sworn by the Plaintiff, the Court is unable to cite a clear reason for the delay of over 14 months. The Plaintiff's position appears to be that the Defendants Statement of Defence and the Affidavit of Testamentary Script was defective in its form and contents and as such the solicitors for the Plaintiff had requested from the solicitors for the Defendant to rectify the same. This request appears to have being made on 09/06/2023 and there had been no response from the Defendant or its solicitors. However, since 09/06/2023 the Plaintiff had failed to take any further steps to move this matter forward for over 13 months until the Court issued the Order 25 Rule 9 Notice on 26/07/2024.

28. For the sake of avoiding any doubt, I shall reproduce *in verbatim* the averments in the Plaintiff's Affidavit to Show Cause filed on 15/08/2024 which attempts to explain the delay in the proceedings.

8. ***THAT*** *the Writ of Summons and Statement of Claim in this action was filed on 08th March 2023 and served on the Defendant on 11th March 2023.*

9. ***THAT*** *the Statement of Defense was filed and served on 27th March 2023.*

10. ***THAT*** *the Plaintiff's Affidavit of Testamentary Script was filed on 24th March 2020 and was served on City Agents of Defendants solicitors on 27th March 2023.*

11. ***THAT*** *the Defendant's Affidavit of Testamentary Script was filed on 30th May 2023 and served on my Solicitors on 31st May 2023.*

12. ***THAT*** *I have been advised by my Solicitors and believe that the Defendant's Affidavit of Testamentary Script was defective in form and substance and the Defendant's Solicitors were accordingly informed by my Solicitors email dated 9th June 2023. My Solicitors had not received any response, however on 13th August 2024 the Defendant's Solicitors confirmed that they will file and serve Supplementary Affidavit of Testamentary Script.*

13. ***THAT*** *further my Solicitors have not yet received any confirmation from the Defendant's solicitors whether the Testamentary Script or original Will of the Deceased has been lodged in the Court Registry.*

14. ***THAT*** *my solicitors received service of the Statement of Defence on 27th March 2023. The Defendant is claiming to establish the alleged Will of the Deceased dated 30th April 2019 however she has not filed a counter claim to that effect.*

15. ***THAT*** *the Defendant's Solicitors have on the 13th August 2024 informed my Solicitors that they intend to file amended defence and counter claim to bring their pleadings in compliance with the High Court Rules.*

16. ***THAT*** *exhibited hereto and marked with letters "A" and "B" are copies of email dated 9th June 2023 and email dated 12th August 2024.*

17. ***THAT*** *I am informed by my solicitors and believe that since my claim is in a probate action, default judgement orders could not be applied for in default of pleadings. If the Defendant does not act expeditiously to amend her pleadings, I have been advised by my Solicitors to apply to court to set the matter for hearing as a Short Cause.*

29. Pursuant to the above averments, the sole reason for the delay of over 14 months in this proceeding is the defects in the Statement of Defence and the Affidavit of Testamentary Script of the Defendant.

30. Pursuant to the provisions in Order 76 of the High Court Rules, the general provisions relating to default of acknowledgment of the writ and/or default of pleadings shall not apply to a cause in probate. At such instances, Order 76 Rule 6 and 10 provides for the Plaintiff to apply for Trial of the action and that if Trial is fixed under the above rules, the action could be tried by way of affidavits.

31. Moreover, pursuant to Order 76 Rule 8 it is specifically stated that a Defendant who's making a claim or remedy in relation to a grant of probate of the will or the Grant of Letters of Administration in an estate of a deceased person, then the Defendant **must** file a Counter Claim.

32. If the Defendants pleadings are defective, as alleged by the Plaintiff, it was open for the Plaintiff to move the Court by Summons to have such pleadings struck out as an abuse of the process of the Court and then resort to have the action fixed for Trial under Order 76 Rule 6 or 10.

33. However, despite such clear option being available to the Plaintiff, the Plaintiff chose just to notify the solicitors for the Defendant to rectify the defects in their pleadings and thereafter to simply ignore these proceedings for over 13 months.

34. Although the Plaintiff now submits that it now intends to proceed with the matter, this Court is surprised by the fact that the Plaintiff fails to offer any reason whatsoever regarding a delay of over 14 months and falling into a slumber during such period.

35. 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.

36. In the circumstances of this case, the delay is 14 months, which is well beyond the acceptable limit of 06 months. The Court therefore cannot find any justification in the position of the Plaintiff where it appears to suggest that a delay of over 14 months could simply be excusable by submitting that it was waiting for the Defendant's solicitors to amend their defective pleadings.

37. In Courts considered view, the Plaintiff has resorted to a lethargic and unprecedented approach to its own cause and caused a delay of 14 months. A delay of such a magnitude, in Court's considered view, shall certainly affect the conduct of a fair trial. The alleged will in question as per the facts available before this Court, has been executed in April 2019. 07 years have lapsed from the time the will was executed. Such a time gap will certainly have an adverse effect on the memory of any potential

witnesses. The Plaintiff has failed to provide any plausible reason to explain the 14 months delay in these proceedings. Moreover, the Plaintiff has also failed to show that such lengthy delay has not prejudiced the Defendant. In the above context, it is therefore the conclusion of the Court that the delay in this proceeding is inordinate and inexcusable.

38. Furthermore, this Court concludes that the conduct of the Plaintiff in this matter (as discussed in the foregoing paragraphs) is such that it is clearly evident that this legal proceeding is being brought with no clear intention of bringing it to a finality, which in fact amounts to an abuse of the process of the Court.

39. 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).

40. I shall accordingly reiterate the fact that, although the Plaintiff instituted this action against the Defendant, it is apparent from the conduct of the Plaintiff that it did not share any intention to bring these proceedings to a conclusion within a reasonable time.

41. 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,

> *"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".

42. As already highlighted in the foregoing paragraphs, the acceptable and/or tolerable period of inaction in any matter is 6 months as embodied in 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. In this case, there is no justifiable reason given for the delay other than claiming that the Plaintiff was waiting for the Defendant's solicitors to amend their pleadings.

43. As stated in many previous rulings of this Court, 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.

44. The Courts should not ignore such practices 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).

45. Such a practice is in clear violation of the fundamental rights guaranteed by 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)

46. 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 over an unprecedented period of time.

47. In its final determination this Court accordingly concludes that the Plaintiff has failed to duly show cause as to why his action should not be struck out for want of prosecution and/or as an abuse of the process of the Court.

48. The Court accordingly orders that the Writ of Summons and the Statement of Claim filed on 08/03/2023, to be struck out pursuant to Order 25 Rule 9 of the High Court Rules.

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

I. Plaintiff's Writ of Summons and the Statement of Claim filed on 08/03/2023 is struck out and dismissed pursuant to Order 25 Rule 9 of the High Court Rules.

II. No orders for costs.

III. This Cause is wholly struck out and dismissed.

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

At Suva,
09/04/2025.