

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. **HBC 120 of 2018**

BETWEEN : SAVERIO BALEIKANACEA of 3 Baka Drive, Delainavesi, Lami, Retiree.
FIRST PLAINTIFF

AND : TOKATOKA BETOBALAVU TRUST established under the trust deed dated
18th November 2016, whose principal address is Korobebe Village, Vaturu Ba.
FIRST DEFENDANT

AND : ERONI NARUA of Korobebe Village, Vaturu, Ba, Trustee.
SECOND DEFENDANT

AND : JOPE NUKUQAMU of Korobebe Village, Vaturu, Ba, Trustee.
THIRD DEFENDANT

AND : AISAKE NAVURA of Korobebe Village, Vaturu, Ba, Trustee.
FOURTH DEFENDANT

BEFORE : Hon. Justice Vishwa Datt Sharma

COUNSEL: Mr. Maisamoa K. for the Plaintiff

No Appearance of the Defendants

DATE OF DECISION: Thursday 24th April, 2025

DECISION

[Re-instatement]

1. The Plaintiffs filed an Inter Parte Summons in support of an affidavit and sought for the following orders:
 - (1) That the order of this High Court to strike out the application for assessment of damages for non-appearance of the Plaintiff's counsel on 30th May 2024 be set aside
 - (2) That the application for assessment of damages be re-instated to proceed with its normal cause by the Plaintiff be reinstated.
 - (3) That the costs of this application be costs in the cause
 - (4) That any other order that this High Court deems fair.
2. The application was made pursuant to *Order 19 Rule 9 and Order 32 Rule 5 and 6 of the High Court Rules 1988 and the Inherent Jurisdiction of this Court which is self-explanatory.*
3. No affidavit response and/or opposition was filed by the Defendants.
4. Counsel Mr. Rosa K. was representing the Defendant until he filed an application to withdraw as counsel. The matter was adjourned to 30 May 2024 when neither counsel nor parties to the proceedings appeared.

Plaintiff Contention

5. The matter has been ongoing for some time and the hearing was scheduled for several times, but due to the non-appearance of the Defendants the matter was dragged on.
6. On most occasions, the Defendant/Counsel did not appear.
7. Summons for Assessment of Damages was struck out on 30 May 2024 due to the Plaintiff's Counsel's non-appearance. The Defendant's and/or Counsel also did not appear.

Defendant's Contention

8. The Defendants never made any appearances and/or representations to this Court nor did they at any time challenge the Plaintiff's **Summons for Assessment of Damages**.

Determination

9. The Plaintiff filed a substantive **Originating Summons for Breach of Contract and specific performance together with an Ex-Parte Summons seeking for an order for Final and Interlocutory Judgment against the Defendants.**

10. The substantive and Interlocutory matters were heard together with the Plaintiff's written submission and on 21st August 2019, the Court delivered its Judgment and made the following final orders-
 - (a) The Plaintiff's Summons seeking an order for Interlocutory Judgment against the Defendants succeed;
 - (b) The Plaintiff is at liberty to proceed with the Summons for Assessment of Damages, and
 - (c) There will be no order as to cost.
11. The Plaintiff subsequently filed a **Writ of Fieri Facies into Court to enforce the Judgment awarded to the Plaintiff against the Defendants**. However, the Court heard that the Writ of *Fieri Facies* was not issued for one reason or the other, best known to the Plaintiff.
12. The Plaintiff subsequently filed and proceeded with **Summons for Assessment of Damages**.
13. The **Summons for Assessment of Damages** was scheduled for Hearing on 09th November 2022. The Plaintiff filed its written submissions.
14. The Summons for Assessment of Damages was scheduled and adjourned on several occasions in order to serve the Counsel with the notice representing the Defendants, Mr. Rosa on 28/02/2023, 10/03/2023, 20/03/2023, 03/08/2023, 04/10/2023, 25/10/2023, 13/02/2024, 23/04/2024, 01/05/2024, 09/05/2024 various adjournments and finally to 30/05/2024.
15. On 30th May 2024, there was no appearance by both counsels and parties to the proceedings on **Summons for Assessment of Damages**.
16. Although the Summons was adjourned for Hearing to 30 May 2024 to determine how this Case and or /Summons will proceed to Hearing on 30 May 2024, neither the Counsel representing the Plaintiff nor the Plaintiff in Person appeared.
17. Nothing was received from the Plaintiff's Counsel as well as the Defence Counsel and/or the Defendants in terms of communication in order to inform Court how the matters would proceed before this Court.
18. The unsatisfactory conduct of the matters at hand prompted this Court to proceed with the hearing in absence of the Plaintiff and the Defendants and/or their Counsels representing parties bearing in mind the following factors:
 - In light of the age of the case impending in Court since 30 April 2018.
 - The case remaining in the system for a total of 07 years.
 - There being no-appearance by the Plaintiff and/or Counsel coupled with the fact that the defence serving the withdrawal of Counsel representing the Defendants, and
 - Section 15 (3) of the 2013 Constitution which states that a case must be dealt with within a reasonable timeframe.

19. It is only appropriate, just and fair that in absence of any evidence tendered by the Plaintiff in terms of the **Summons for Assessment of Damages**, this Court was left in a limbo to Assess the damages sought for by the Plaintiff against the Defendants without any evidence, rather prompted Court to:
- (i) **Dismiss the application for withdrawal as Counsel by the Defendants; and**
 - (ii) **Dismiss the Plaintiff's Summons for Assessment of Damages in its Entirety accordingly.**
19. This Court is also mindful of the fact that **Section 15 (3) of the 2013 Constitution** must be invoked to avoid any further delay the matters, rather the impending cases and matters of the parties to the proceedings are dealt with within a reasonable timeframe.
20. Justice delayed is justice denied and this Court will be prompted to dismiss the impending matters that are delayed unnecessarily.
21. **The Plaintiff's Summons to reinstate the Summons for Assessment of Damages filed on 08 May 2020** after due consideration of all the factors is **dismissed in its entirety**.
22. The Plaintiff's Summons for Assessment of Damages was dismissed for non-appearance on 30th May 2024.
23. This particular order dismissing the **Plaintiff's summons for assessment of damages for non-appearance by the Counsel and the Plaintiff in this action** is a **final order of this Court**.
24. The proper remedy and/or recourse available to the Plaintiff in these circumstances was to **appeal against the dismissal order of the Summons** and not to seek an order for the **reinstatement of the Summons for assessment of Damages**, as he did herein which would obviously fail anyway.
25. For these reasons, I would hold that **this Court is ultra vires and therefore has no power to reinstate the Plaintiff's Summons for Assessment of Damages** which has been accordingly **dismissed for non-appearance and/or want of prosecution**.
26. Following are the orders of this Court.

Orders

- (i) The Plaintiffs Inter-Parte Summons seeking for the Reinstatement of the Summons for the Assessment of Damages filed on 08 May 2020 is hereby dismissed in its entirety.
- (ii) The Defendants Summons for withdrawal as counsel representing the defendants is also dismissed.

(iii) Each party to bear their own costs.

(iv) File closed.

Dated at **Suva** this **24th** day of **April** ,2025.



VISHWA DATT SHARMA
PUISNE JUDGE

cc. **Maisamoa & Associates, Rakiraki.**
Zodiac Law, Ba.