

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 24 of 2024

BETWEEN:

ARUN LATA
PLAINTIFF

AND:

SHAN MOHAMMED
1STDEFENDANT

AND:

RAVINESH GOUNDER
2NDDEFENDANT

AND:

LANT TRANSPORT AUTHORITY
3RDDEFENDANT

BEFORE:

Acting Master L. K. Wickramasekara

COUNSELS:

Sunil Kumar Esquire for the Plaintiff
Amrit Chand Lawyers for the 1st Defendant
Patel / Skiba Lawyers for the 2nd Defendant
In-house Counsel of the Land Transport Authority for the 3rd Defendant

Date of Hearing:

By way of Written Submissions

Date of Ruling:

26th May 2025

RULING

The Application

01. The current application for determination is the Summons filed by the 1st Defendant on 25/03/2024 for Leave to File Statement of Defence Out of Time made pursuant to Order 3 Rule 4 of the High Court Rules 1988.
02. This application is supported with an Affidavit of the 1st Defendant, Shan Mohammed, sworn on 25/03/2025.

History

03. The Plaintiff has filed its Writ of Summons along with the Statement of Claim on 06/02/2024.
04. Pursuant to the Affidavit of Service filed on behalf of the Plaintiff, it is deposed that the Writ and the Statement of Claim has been personally served on the 1st Defendant on 12/02/2024.
05. The 1st Defendant filed its Acknowledgment with Notice of Intention to Defend on 26/02/2024. Accordingly, the Statement of Defence was due by 11/03/2024. However, the 1st Defendant has failed to file the Statement of Defence by the above date and instead filed the current application on 25/03/2024.
06. The Plaintiff objected to the current application and filed its Affidavit in Opposition on 24/05/2024 and the 1st Defendant then filed an Affidavit in Reply on 29/05/2024.
07. As per the directions of the Court, the Plaintiff filed its Written Submissions on 19/06/2024 and the 1st Defendant filed its Written Submissions on 04/10/2024.
08. Both the parties have now agreed for the Court to make its Ruling based on Affidavit evidence and the written submissions of the parties. Accordingly, the Court makes its Ruling as follows.

The Affidavits

09. As per the Affidavit in Support filed on 25/03/2024, it is the contention of the 1st Defendant that its solicitors requested for a 'vehicle and taxi permit search' to be obtained from the Land Transport Authority to prepare the Statement of Defence. It is submitted that the said search from the LTA could only be obtained on 14/03/2024 and upon receiving the same the solicitors for the 1st Defendant had completed the Statement of Defence and had attempted to file the same on 18/03/2024, which was 07 days late from the due date for filing the Statement of Defence.
10. The 1st Defendant further deposes that upon the directions from the Court Registry, the solicitors for the 1st Defendant sort consent for late filing of the Statement of Defence from the Plaintiffs' solicitors on 19/03/2024¹, which was done immediately upon the directions of the Court Registry. A draft copy of the Statement of Defence is also annexed to the Affidavit².
11. However, the Plaintiffs' solicitors on 21/03/2024 had written back to the solicitors for the 1st Defendant that the Plaintiff is not consenting for the late filing³. Accordingly, the current Summons was filed.
12. The Plaintiff in the Affidavit in Opposition⁴ has claimed that a 'demand notice' was served on the 1st Defendant on 05/07/2023 but that he failed to reply on the same. Apart from the above reason the Plaintiff claims that it is a 'privy' for the Plaintiff to grant/refuse consent for late filing and that she refuses to grant the consent due to the 'contemptuous default' in filing the Statement of Defence on time.
13. In the Affidavit in Reply⁵, the Defendant has denied receiving a 'demand notice' and has highlighted that there is no legal requirement to respond to such a notice. It is also deposed that the delay in filing the Statement of Defence was insignificant as it was only 4 working days and that the 1st Defendant has a meritorious defence.

Written Submissions

14. Both parties have filed comprehensive written submissions, and the Court has carefully considered the same.

¹ Annexure-1 of the Supporting Affidavit of Shan Mohammed filed on 25/03/2025.

² Annexure-3 of the Supporting Affidavit of Shan Mohammed filed on 25/03/2025.

³ Annexure-2 of the Supporting Affidavit of Shan Mohammed filed on 25/03/2025.

⁴ Affidavit of Arun Lata filed on 24/05/2024.

⁵ Affidavit of Shan Mohammed filed on 29/05/2024.

The Applicable Law

15. Order 3 Rule 4 of the High Court Rules governs the applications for Leave to Extend Time to File Pleadings. This Rule reads as follows.

Extension, etc., of time (O.3, r.4)

- 4.-(1) *The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorized by these rules, or by any judgment, order or direction, to do any act in any proceedings.*
- (2) *The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.*
- (3) *The period within which a person is required by these Rules, or by any order or direction to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose. Provided that wherever the period for filing any pleading or other document required to be filed by these rules or by the Court is extended whether by order of the Court or by consent a late filing fee in respect of each extension shall be paid in the amount set out in appendix II by the Party filing the pleading or other document unless for good cause the Court orders that some or all of the same be waived.*

16. When dealing with an application for extension of time pursuant to Order 3 Rule 4, the law is well settled. Pursuant to the relevant case authorities in this regard, the criteria in considering an application for extension of time pursuant to this Rule needs evaluation of the following factors,

- i) length of delay
- ii) reason for delay
- iii) whether a party has a claim or defence on merits
- iv) whether the respondent will be prejudiced.

(See *Vanualevu Hardware (Fiji) Limited v Labasa Town Council* [2016] HBC 29/12B 10 February 2016 at [3.32])

17. I have further considered at length the case authorities cited by both the counsels in this regard as per their comprehensive written submissions.
18. It is pertinent to note, in an application for leave for extension of time, the sentiments expressed by the Court in the case of *Seru Taralilai & Tevita Seniviavia*

Volanacagi Taralilai [2020] Civil Action No. HBC 89 of 2017 (Judgment) 24 July 2020, where it was held,

“Extension of time in terms of Order 3 Rule 4 (1) of the High Court Rules 1988 needs careful exercise of discretionary power of the court, that can eliminate injustice, but if exercised wrongly can deny justice and or access to justice” and later on “The discretion of the court should not be in favour of refusal of extension of time when there are merits...prolonging the matter may serve justice than quick disposal of that without consideration of merits”.

The Analysis

19. Pursuant to the affidavit evidence before this Court the claim arises from a transfer of a ‘taxi permit’ to the 1st Defendant as per a ‘sales and purchase agreement’ between the deceased, Ashok Kumar Sharma, and the 1st Defendant. Plaintiff has alleged fraud and misrepresentation among other causes of action against the 1st and 2nd Defendants. As per the relief sort, the Plaintiff seek the revocation of the transfer of the said ‘taxi permit’ and damages among other reliefs as against all the Defendants.
20. Pursuant to the proposed Statement of Defence for the 1st Defendant, as annexed with the Supporting Affidavit filed on 25/03/2024, the 1st Defendant has denied all allegations made in the Statement of Claim by the Plaintiff. 1st Defendant has claimed that the deceased, Ashok Kumar Sharma, was living alone, and that it was the 1st Defendant who looked after him during his final days. It is also claimed that the deceased had entered into the said ‘sales and purchase agreement’ whilst in proper mental capacity to do so.
21. It is not for the Court at this stage of the proceeding to test and verify all facts alleged on behalf of either party. Suffice to say, I find there are triable issues raised on behalf of the 1st Defendant which needs proper deliberation by way of evidence being evaluated at a proper trial.
22. In respect of the length and reasons for the delay, I find that the actual delay in filing the Statement of Defence of the 1st Defendant was merely 07 days as the solicitors for the 1st Defendant were ready with the Statement of Defence of the 1st Defendant by 18/03/2024 and sort consent for late filing from the solicitors for the Plaintiff on 19/03/2024. Since the Plaintiff refused to consent to the said request, the current application was filed on 25/03/2024. I therefore find that the delay in filing the Statement of Defence of the 1st Defendant, in the circumstances of the current case, is insignificant.

23. Moreover, the reasons for this short delay is due to mere technicality as the 1st Defendant had to await a search from the LTA regarding the said ‘taxi permit’ upon the instructions from its solicitors. I am inclined to accept this as a genuine and reasonable explanation for the delay. There was no contemptuous delay on the part of the 1st Defendant in filing its Statement of Delay as alleged by the Plaintiff. The Plaintiffs’ claim that there was 09 months delay from the time of issuing a ‘demand notice’ is irrelevant in this instance and the Plaintiff is misconceived on the law relating to the same.
24. The Plaintiff has failed to show any prejudice that would be caused to her if the leave was granted for the 1st Defendant to file its Statement of Defence out of time. Instead, it appears that the Plaintiff is trying to vent her frustration and anger regarding the dispute between the parties by objecting to the current application. Having considered all facts before the Court, I find that there shall be no prejudice, at all, to the Plaintiff by allowing the 1st Defendant to file its Statement of Defence out of time.
25. Accordingly, the Court makes the following orders.
1. The Summons filed by the 1st Defendant on 25/03/2024, for Leave to File Statement of Defence Out of Time is hereby allowed subject to following terms,
 - I. 1st Defendant to file and serve its Statement of Defence within 03 days from today (That is by 29/05/2025).
 2. The Plaintiff shall (if wishes to do so) file and serve its ‘Reply to the Statement of Defence of the 1st Defendant’, 04 days after (That is by 05/06/2025).
 3. The Plaintiff shall thereupon file and serve its Summons for Directions by 06/06/2025.
 4. In failure to comply with any of the above orders of the Court, the defaulting parties’ pleadings shall stand struck out subject to a cost of \$ 2000.00, as summarily assessed by the Court, to be paid to the other party.
 5. Parties shall bear their own costs in this application.



At Suva
26/05/2025


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