IN THE HIGH COURT OF FIJI AT LAUTOKA
EXERCISING CIVIL JURISDICTION

CIVIL ACTION NO. HBC -201 of 2024

BETWEEN	:	**GOPAL PILLAY**, of Kavaganasau, Nadrala, Sigatoka.
		PLAINTIFF
AND	:	**MUNSAMI NAIDU** aka **MUNSAMY NAIDU**, of Kavaganasau, Nadroga, Sigatoka, Fiji, Cultivator as the sole executor of the Estate of Appal Sami aka Appa Sami.
		DEFENDANT
BEFORE	:	Mr. A.M. Mohamed Mackie-J.
COUNSEL	:	Mr. S. Nair with Ms. A. Sharma -For the Plaintiff.
	:	Mr. V. Swamy with Mr. Arun - For the Defendant.
	:	Mr. S. Kant - for the Interested Party
HEARING	:	Held on 19th March 2025.
W. SUBMISSIONS	:	Filed by both parties on 19th March 2025.
	:	Reply filed by the Defendant on 02nd April 2025.
RULING	:	Delivered on 13th June 2025.

RULING

(On Application for Striking Out)

A. INTRODUCTION:

1. Before me is a Summons filed by the Defendant on 18th October 2024, and supported inter-parte on 18th November 2024, seeking*, inter alia*, the following Orders;

1. That the Notice of Motion filed on 11th September 2024 by the Plaintiff against the against the Defendant be struck out;

2. That the Writ of Summons filed on 11th September 2024 by the Plaintiff against the Defendant be struck out;

3. That the proceedings under the Notice of Motion filed on 11th September 2024 be stayed pending determination of this strike out Application;

4. That the proceedings under the Writ of Summons filed on 11th September 2024 be stayed pending determination of this Strike out Application;

5. That the Plaintiff do pay the Defendant costs of this Application on an indemnity basis;

2. The ground relied on by the Defendant to prefer this Summons is that both the **Writ of Summons** and the **Notice of Motion** filed, on 11th September 2024, by the Plaintiff against the Defendant, disclose no reasonable causes of action against the Defendant.

3. The Summons states that it is made pursuant to Order 18 Rule 18 (a) of the High Court Rules 1988, and inherent jurisdiction of this Court.

4. By the said **Writ of Summons**, the Plaintiff had prayed for, inter alia, the following reliefs against the Defendant.

a. Declaration that the Plaintiff has rights on the Land known as Crown Lease No-6189 being Lot 8 Plan 1985 part of Kovokainagasau (farm 5656) in Tokina Baravi in the province of Nadroga Navosa.

b. That the Orders granted on 31st July 2024 be set aside and or revoked.

c. Damages

d. costs

5. By the simultaneously filed said **Notice of Motion**, the Plaintiff had prayed for, *inter alia*, the following Orders;

1. *That the Defendants and/ or its agents be restrained from interfering, dealing with , Leasing, Transferring, Selling , alienating or otherwise disposing of land comprised in Crown Lease no 6189 being lot 8 Plan 1985 part of Kavokainagasau (farm 5656) In Tokina Baravi in the province of Nadroga Navosa.*

2. *That the Orders granted in Civil Action No-62 of 2022 be stayed or revoked pending determination of this proceedings hereof;*

6. Having filed its acknowledgment of service on 24th September 2024, the Interested Party filed its Statement of Defence on 09th October 2024, and the Plaintiff filed his Reply thereto on 08th November, 2024.

7. The Defendant, who filed her acknowledgment of service of the Writ of Summons on 03rd October 2024 and the Notice of Intention to defend on 09th October 2024, without resorting to file her Statement of Defence thereto, filed the Summons in hand seeking to strike out the **Notice of Motion** and the **Statement of Claim** filed by the Plaintiff.

8. Hearing being taken up on 19th March 2025, Counsel representing all parties made oral submissions, and additionally, counsel for the Plaintiff and the Defendant have filed their respective written submissions too as stated above.

B. BACKGROUND FACTS:

9. The Statement of Claim, *inter alia*, states **THAT;**

a. He is a resident of Kavaganasua Sigatoka in the land known as lot 1 Plan NDSW 532 being sub-division of Lot 8 N 1985 Kavokainagasau for more than 20 years.

b. The Defendant is the purported Trustee and the Executer of the Estate of one Appal Sami aka Appa Sami, pursuant to probate no- 22045.

c. Appal Sami aka Appa sami, who was the original Owner of the subject property in Crown Lease No- 6189 being lot 08 Plan 1985 pt of Kavokainagasau (farm 5656), upon his demise had declared his Estate to be distributed among three beneficiaries namely, **Bangaramma, Munsamy Naidu (the Defendant)** and **Appana Naidu.**

d. In 1991 said **Bangramma , Appana Naidu and Munsamy Naidu** executed a deed of Renunciation renouncing their shares in the said land known as Lot-1 plan NDSW 532 being subdivision of Lot 8 N 1985 Kovokainagasua part of and to Letter of Administration and gave all rights and shares to one **BAL KRISHNA** father's name **Appal Sami** of Nadrala, Sigatoka, Fiji. Subsequently, the Defendant **Munsamy Naidu** transferred the subject property to **BAL KRISHNA** in natural love and affection, which was registered on 28th October 1992.

e. During BAL KRISHNA was ill, the Plaintiff came into the property consented by BAL KRISHNA to look after him, until his demise.

f. Upon BAL KRISHNA's death, his portion of property was allocated to his wife, namely **Muniamma Naidu** pursuant to Probate jurisdiction no 43784 and to the Last Will of BAL KRISHNA dated 25th May 2004.

g. Plaintiff paid a total sum of $20,000.00 to **Muniamma Naidu** for the property sold to him, upon which he was allocated the land whilst managing the cane farm.

h. **Muniamma Naidu** did neither execute nor carry out the transfer of the property through the Defendant as the trustee and executor nor did so by herself for the subject property.

i. Despite the lack of formal transfer, the plaintiff took possession of the property and has resided there for more than 20 years, during which time he renovated, maintained, and developed the property, including looking after the farm, while paying the rental to the Defendant.

j. The Defendant, **Munsami Naidu**, while collecting the rent from the plaintiff for his occupation, applied to have the property registered in his name as trustee and executor of Appal Sami's Estate, when the lease had expired, without informing the Plaintiff or other beneficiaries.

k. The land was consequently registered solely in the Defendant's name as trustee and executer, despites the Plaintiff's longstanding occupation and contribution to the property awaiting for the Defendant to comply with the duty of the Trustee in distributing the Estate of Appal Sami.

l. Now the Defendant claims to be the sole owner and had initiated eviction proceedings against the Plaintiff. An eviction order was obtained by the Defendant, purportedly through a consent order agreed to by the plaintiff's then legal representative, for which he did not consent to.

m. The Defendant holds the property in trust for the Plaintiff. The Defendant now is acting in ways to stop the plaintiff from continuing in the occupation and to evict him from the property.

10. There was no necessity to file Affidavit in support for the Defendant's Sammons for strike out as it was made pursuant to Order 18 Rule 18 (1) (a) of the HCR.

C. LAW ON STRIKE OUT:

11. Provisions relating to striking out are contained in Order 18, rule 18 of the High Court Rules, 1988, which reads as follows;

18. *(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action or anything in any pleading or in the indorsement, on the ground that –*

(a) ***It discloses no reasonable cause of action or defence, as the case may be; or*** *(emphasis mine)*
(b) It is scandalous, frivolous or vexatious; or
(c) It may prejudice, embarrass or delay the fair trial of the action; or
(d) It is otherwise an abuse of the process of the court;

And may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1) (a).

12. Footnote 18/19/3 of the 1988 Supreme Court Practice reads;

"It is only plain and obvious cases that recourse should be had to the summary process under this rule, per Lindley MR. in Hubbuck v Wilkinson (1899) 1 Q.B. 86, p91 Mayor, etc., of the City of London v Homer (1914) 111 L.T, 512, CA). See also Kemsley v Foot and Qrs (1952) 2KB. 34; (1951) 1 ALL ER, 331, CA. affirmed (195), AC. 345, H.L .The summary procedure under this rule can only be adopted when it can be clearly seen that a claim or answer is on the face of it obviously unsustainable " (Att – Gen of Duchy of Lancaster v L. & N.W. Ry Co (1892)3 Ch 274, CA). The summary remedy under this rule is only to be applied in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process or the case unarguable (see per Danckwerts and Salmon L. JJ in Nagle v Feliden (1966) 2. Q.B 633, pp 648, 651, applied in Drummond Jackson v British Medical Association (1970)1 WLR 688 (1970) 1 ALL ER 1094, CA".

13. Footnote 18/19/4 of the 1988 Supreme Court Practice reads;

"On an application to strike out the statement of claim and to dismiss the action, it is not permissible to try the action on affidavits when the facts and issues are in dispute (Wenlock v Moloney) [1965] 1. WLR 1238; [1965] 2 ALL ER 87, CA).

It has been said that the Court will not permit a plaintiff to be "driven from the judgment seat" except where the cause of action is obviously bad and almost incontestably bad (per Fletcher Moulton L.J. in Dyson v Att. – Gen [1910] UK Law RpKQB 203; [1911] 1 KB 410 p. 419)."

14. In the case of ***Electricity Corporation Ltd v Geotherm Energy Ltd [1992] 2 NZLR 641,*** it was held;

"The jurisdiction to strike out a pleading for failure to disclose a cause of action is to be sparingly exercised and only in a clear case where the Court is satisfied that it has all the requisite material to reach a definite and certain conclusion; the Plaintiff's case must be so clearly untenable that it could not possibly success and the Court would approach the application, assuming that all the allegations in the statement of claim were factually correct"

15. In the case of **National MBF Finance (Fiji) Ltd v Buli [2000] FJCA 28; ABU0057U.98S (6 JULY 2000),** it was held;

"The law with regard to striking out pleadings is not in dispute. Apart from truly exceptional cases the approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be proved. If a legal issue can be raised on the facts as pleaded then the courts will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention. It follows that an application of this kind must be determined on the pleadings as they appear before the Court".

16. In ***Tawake v Barton Ltd [2010] FJHC 14; HBC 231 of 2008 (28 January 2010), Master Tuilevuka*** (as he was then) summarized the law in this area as follows;

> "The jurisdiction to strike out proceedings under Order 18 Rule 18 is guardedly exercised in exceptional cases only where, on the pleaded facts, the plaintiff could not succeed as a matter of law. It is not exercised where legal questions of importance are raised and where the cause of action must be so clearly untenable that they cannot possibly succeed (see Attorney General –v- Shiu Prasad Halka 18 FLR 210 at 215, as per Justice Gould VP; see also New Zealand Court of Appeal decision in Attorney –v- Prince Gardner [1998] 1 NZLR 262 at 267."

D. **ANALYSIS & DETERMINATION:**

a. **The Issue For determination**:

17. The issue before the Court for determination, as per the Defendant's Summons for strike out, is whether the Plaintiff's **Statement of Claim** and the **Notice of Motion** disclose a reasonable cause of action? or any cause of action at all? and, if they do not disclose, whether they ought to be struck out with costs?

18. In deciding the above questions, the Plaintiff is called upon to show prima-facie that he has an indefeasible title to the subject property for him to have the declaratory relief sought in the prayer to the statement of claim at the end of the substantive action, so that he can survive the Summons for Strike out.

19. The other question that begs answer is whether the Plaintiff can have the consent judgment entered in the connected matter set-aside as prayed for in the prayer (b) to the Statement of Claim.

20. If the Plaintiff demonstrates that he has a winnable cause of action, it is unassailable and finally it is bound to lead to the victory in the eyes of the Law, the Defendant's Summons for Strike Out will have no role to play in favor of the Defendant and it deserves nothing but dismissal.

b. **Submissions:**

21. I have carefully considered the contents of the oral submissions made and those of the written submissions filed on behalf of both parties. I find that the Counsel for the Defendant at the oral hearing, and in his written submissions, has advanced forceful arguments in order to warrant the striking out of the Statement of Claim and the Notice of Motion preferred by the Plaintiff. The learned Counsel for the interested party too has made helpful oral submissions supporting the stance taken by the Counsel for the Defendant.

22. I observe that in the event the Statement of Claim is struck out, no necessity would arise to go into the **Notice of Motion** simultaneously filed by the Plaintiff seeking for injunctive reliefs.

c. Analysis:

23. The substantive reliefs sought by the Plaintiff, as per his Statement of Claim, are;

a. Declaration that the Plaintiff has rights on the Land known as Crown Lease No-6189 being Lot 8 Plan 1985 part of Kovokainagasau (farm 5656) in Tokina Baravi in the province of Nadroga Navosa. And

b. That the Orders granted on 31st July 2024 be set aside and or revoked.

24. In the event, this Court foresees at this early point of litigation that Plaintiff's above substantive reliefs are bound to fail, undoubtedly, the Defendant's Striking out Application should succeed resulting the dismissal of the Plaintiff's unmeritorious claim, which will necessarily cut-down a long and laborious litigation involving further loss of time and money for all the parties.

25. The submissions made orally and in writing by the Counsel for the parties have given me a through insight on their respective stance in relation to the Application in hand, which have in turn ably assisted me in my task here. I thank them profusely for the same. Let me briefly discuss the pertinent points raised during the hearing and in the written submissions, which I hope will dispose this Application appropriately.

a. A pertinent point to be observed here is that the Plaintiff in paragraph (b) of the prayer to his purported Statement of Claim has prayed for a relief of ***"That the Orders granted on 31st July 2024 be set side or revoked"***. Surprisingly, I don't find even an iota of required pleadings or averments in his Statement of Claim in relation to the said relief. Not even the number or any particulars of the case, in which such an order was granted, is pleaded.

b. However, paragraphs 16 and 17 of the Affidavit in support for the Notice of Motion simultaneously filed by the Plaintiff seeking injunctive Orders against the Defendant and the annexure marked as "E" thereto show that there had been a separate action bearing No-HBC 62 of 2022 filed by the Defendant hereof against the Plaintiff GOPAL PILLAY in relation to same subject matter land under Section 169, 170 and 171 of the Land Transfer Act, which has been finally settled before the present Master of this Court on 31st July 2024 by way of consent.

c. It is after entering into a settlement on 31st July 2024, the Plaintiff, **Gopal Pillay,** (the Defendant in the former action) has initiated these proceedings before this Court on 11th September 2024, which appears to be on an afterthought.

d. When the Plaintiff, in his purported Statement of Claim, has failed to plead the circumstances under which he was allegedly led to enter into the terms of settlement, how can the Defendant be called upon to response against granting of such a relief, leave alone the predicament that the Court will be in when called upon to decide on the matter at the end of the day.

e. It is clear that the Plaintiff, having surrendered his defence, if he had any, through the settlement in the former action, and instead of pursuing for his relief if any against his former Solicitor, who admittedly represented him in that action, is now in an unwarranted exercise to delay the execution of the consent judgment by filing this action.

f. When the relief of setting aside prayed for by the Plaintiff is doomed to fail on account of obvious reasons stated above, which will be further discussed later in this Ruling, I don't find that the Plaintiff is having sustainable cause of action against the Defendant for him to become victorious at the end, if this action proceeds for trial.

g. However, for the sake of completeness, let me consider the propriety of the averments pleaded by the Plaintiff in his purported Statement of Claim for the purpose of obtaining the first relief (a) prayed for in the prayer thereto.

h. In paragraph 8 of the SOC, the Plaintiff claims that the Defendant transferred the subject property to one BAL KRISHNA, who is said to be the brother of the Defendant. But the Plaintiff has not pleaded or shown prima -facie that the said transfer was endorsed on the subject lease, being the State Lease No- 6189. Thus, in the absence of necessary pleadings in this regard, the safest inference that can be reached is that no title has been passed unto the said BAL KRISHNA.

i. Then the question arises as to how the Plaintiff could have entered into any agreement with said BAL KRISHNA in relation to the subject land, which he did not own at that time or paid $20,000.00 to BAL KRISHNA'S wife Muniamma Naidu, when the subject land had not become the part of his Estate. No evidence for the proof of payment was adduced through the Affidavit filed with the Notice of Motion.

j. Further, how can the Plaintiff expect the wife of Bal KRISHNA to cause the transfer of the subject property unto him through the Defendant, who had, admittedly, not transferred his interest in the property to BAL KRISHNA.

k. The Plaintiff, in paragraph 13 of his purported SOC, has admitted that there was no formal transfer from the Defendant to Bal Krishna. The purported Agreement for the sale was made only orally. There is no written Agreement or Contract in this regard annexed to the Affidavit in support of the Notice of Motion. The Section 59 (d) of the Indemnity, Guarantee and Bailment Act 1881 states that pure oral Contracts for sale of any interest in the land is unenforceable. This will, undoubtedly, inhibit the Plaintiffs' claim against the Defendant.

l. According to what transpires here, if the Plaintiff has any claim, it may be against Bal Krishna's wife Muniamma and not against the Defendant hereof as the Defendant had nothing to do with the Plaintiff. As per the Pleadings in the

SOC, there is no any direct contract or dealing between the Plaintiff and the Defendant. The Plaintiff may have a valid cause of action against Muniamma for selling the land to him, which she (Muniamma) or her late Husband Bal Krishna did not own.

m. Even if it is assumed for the sake of argument that Bal Krishna had title to dispose the land in question, it would not have materialized due to the absence of consent from the Director of Land. Thus, in the light of the above discussion, it is abundantly clear that the Plaintiff has no any cause of action against the Defendant in order to proceed with this action to obtain the relief (a) prayed for in the prayer to the purported SOC.

n. Coming back to the relief of setting aside the consent judgment prayed for in paragraph (b) of the prayers to the purported SOC on the alleged single ground that his Solicitors in that action had no authority to enter into the consent judgment, I find that the Defendant has nothing to do with this predicament of the Plaintiff as it is a matter between the Plaintiff and the Solicitor in that action. However, no pleadings whatsoever is found in the purported SOC calling upon the Defendant to response by way of his Statement of Defence.

o. Learned Counsel for the Defendant has drawn my attention to several case law authorities in this regard, by which I am inclined to be guided.

1. In **Hussain v Ali [2023] FJHC 623 ; HBC 302 of 2022 (30th August 2023)** it was stated , inter alia, that;

(15) I agree with the submissions of Mr. Narayan that a lawyer representing a client has general apparent authority to settle claims without the express authority of the client (Mathew v Munster [1887] UKLawRpKQB 189; (1888) 20 QBD 141; Tagra Spare Parts & Carwash (Fiji) Ltd v Khan [2017] FJHC 51; HBC09.2017 (1 February 2017). Any such consent judgement thus binds the client.

(16) If Hussein really asserts that Prakashan & Associates did enter into the Terms of Settlement without his instructions, then he must take action against his lawyers.

2. In ***Deo V Kumar [2014] FJHC 648; HBC 122 of 2013 (8th September 2014)*** it was stated inter alia, that;

[31]. In Singapore, a solicitor instructedto conduct legal proceedings has an implied authority of the client to compromise them, once legal proceedings have commenced, in the absence of instructions to thecontrary. This was the positioning Bank of China v Maria Chia Sook Lan [1976] 1 MLJ 41at 48and upheld on appeal by the Singaporean Court of Appeal in Maria Chia Sook Lan v Bank of China [1976] 1 MLJ 49.

[32]. In this case before me, there is no evidence of fraud, undue influence or misrepresentation involved. But even if there was, such evidence will have to be that of the fraud, undue influence, or misrepresentation (or any other valid ground to set aside a contract) of the defendant to be sufficient to unsettle the settlement between Iqbal Khan & Associates and AK Lawyers. Flowing from this, I say that, ***even if Deo is able to establish any impropriety against his lawyers (Iqbal Khan &***

Associates), that will only be sufficient to found a separate cause of action against his solicitors, but will not be enough to set aside settlement *in question****.***

[34]. The plaintiff only alleges that he did not instruct Messrs Iqbal Khan & Associates to settle the case. This point is irrelevant, in the context of setting aside a consent order, or even an out of court settlement, for the reasons stated above. ***It is a matter between Deoand Iqbal Khan & Associates what exact authority the latter had. From the defendant's perspective, Iqbal Khan & Associates retained full authority to act for and bind his client, Deo . The defendant need not inquire further as to whether or not Iqbal Khan had actual authority. It is of course still open to the plaintiff to pursue a separate claim against Iqbal Khan – but that is for him to choose.***

3. In ***Tokalaulevu v Dentzler Inc [2015] FJHC 78 of 2015 (6th November 2015*** it was stated, inter alia;

(5) As I have said earlier, the Plaintiff's complaint essentially is against his former Counsel in Lautoka High Court Case No. 81 of 2014. ***The Plaintiff says that his Counsel acted without his instructions to settle the matter out of Court and a consent order was entered upon that compromise.***
[….]

*In this case before me, the Plaintiff has failed to establish the aforesaid limited grounds****.*** ***The fact that the Plaintiff had given no authority to his Counsel to settle the matter nor had he ever been asked to consent to any terms of settlement, is totally irrelevant in the context of setting aside consent orders****. Because this state of things raises the question of the relationship between Counsel and his client, which is sometimes expressed as if it were that of agent and principal****.***

[…]

Now let me consider what authority there is on this point.

In Mathew v Munster [1887] UKLawRpKQB 189; (1888) 20 QBD 141, the House of Lords held that ***a Counsel who settled a claim on behalf of his client, in the absence of, and without the instructions of, his client, had the apparent general authority to do so. Accordingly, any consent judgement entered upon that compromise could not be set aside****.* ***The headnote to the case reads:***

[…]

The High Court of Malaysia in Yap Chee Meng v Ajinomoto (1978) 2 MLJ 249, said on this aspect that,

*"As a general rule, it is against public policy to allow settlements concluded between solicitors on behalf of their respective clients in accident cases to be challenged with impunity****.*** ***To do so would open the flood-gates of endless litigation initiated by parties who become wise after the event. It will also discourage the practice of out of court settlements.*** *That would be a great pity. But a settlement is a contract and like all contracts it is voidable on specific grounds e.g. undue influence, misrepresentation, fraud or mistake. If this can be shown it is then the duty of the court to interfere so that justice is done. In this case, prima facie there is a valid settlement, conducted between advocates and solicitors 5 of this court****."***

(6) *At this point, I cannot resist in saying that the above authorities are clear, uniform and conclusive that* ***any consent judgment entered upon a compromise/agreement reached between the Solicitors on behalf of their***

respective clients, in the absence of and without the instructions of the client, cannot be set aside.

The Plaintiff has a right of action against his Counsel in respect of his conduct. The Plaintiff has to pursue a separate claim against his Counsel.

26. With the above observation, I find that the Plaintiff has not pleaded any cause of action against the Defendant. Instead his cause of action, if any, is against his Solicitors in his previous action. Either his former Solicitors should have been made a party to this action or preferably a separate action should have been initiated against them.

27. The Statement of Claim must plead facts that support the legal conclusion sought by the Plaintiff. A mere recitation of facts, without connecting those facts to a legally recognized cause of action is insufficient. Thus, the purported cause of action for the relief (b) hereof should necessarily fail and the Plaintiff's action should be struck out in this regard too.

28. That the Statement of claim, even if considered as a whole, is vague and incapable of being comprehended in terms of legal issues at stake. The facts presented are disjoined and fail to show how they relate to any particular cause of action or how they give rise to any legal right.

29. Pleadings must be drafted with sufficient clarity so as to enable the Defendant to understand the nature of the claim and to properly defend it. In this case the SOC does not meet this requirement. The Defendant cannot discern from the SOC what specific claim is being made or how the facts alleged are linked to any enforceable legal right.

30. That the failure to plead a proper cause of action in the SOC is prejudicial to the Defendant, as it forces the Defendant to attempt to defend against an unarticulated and vague claim.

31. The Defendant has a right to know the precise legal grounds upon which the Plaintiff's claim is based. The absence of a discernible cause of action prejudices the Defendant's ability to respond adequately and to make an informed decision on whether to settle or defend the matter.

32. It is an abuse of the process of the Court and striking out will ensure that the Court's resources are not consumed by vague or improper pleadings that do not raise a valid legal issue.

33. What the Counsel for the Plaintiff has to urge is that the Application for strike out by the Defendant is an extreme measure and should only be considered as a last resort; after all available avenues under the law have been exhausted.

34. To exhaust the same, at the first available opportunity is in itself viewed as an abuse of process, infringing, inter alia, the Plaintiff's constitutional right to having the matter determined by a court of law. Notwithstanding the Defendant's application for Striking Out, the Plaintiff has the right to invoke Order 20 Rule 5 of the High court Rules 1988 to amend the pleadings with leave. But no such move has been made by the Plaintiff's Solicitors in this action. However, such a move for obvious reasons will not salvage the Plaintiff.

35. As noted above, the Courts rarely will strike out a proceeding. It is only in exceptional cases where, on the pleaded facts, the Plaintiff could not succeed as a matter of law or where the cause of action is so clearly untenable that it cannot possibly succeed, the courts will act to strike out a claim.

36. In this regard, I am inclined to be guided by the decision of the New Zealand Court of Appeal in "**Lucas & Sons (Nelson Mail) v O. Brien (1978) 2 N.Z.L.R 289** as being a convenient summary of the correct approach to the application before the court. It was held;

> *"The Court must exercise .....jurisdiction to strike out pleadings sparingly and with great care to ensure that a Plaintiff was not improperly deprived of the opportunity for a trial of his case. However, that did not mean that the jurisdiction was reserved for the plain and obvious case; it could be exercised even when extensive argument was necessary to demonstrate that the Plaintiff's case was so clearly untenable that it could not possibly succeed."*
>
> *"Where, a claim to strike out depends upon the decision of one or more difficult points of law, the court should normally refuse to entertain such a claim to strike out. But, if in a particular case the court is satisfied that the decision of the point of law at that stage will either avoid the necessity for trial altogether or render the trial substantially easier and cheaper ; the court can properly determine such difficult point of law on the striking-out application. In considering whether or not to decide the difficult question of law, the court can and should take into account whether the point of law is of such a kind that it can properly be determined on the bare facts pleaded or whether it would not be better determined at the trial in light of the actual facts of the case"* ***See; Williams & Humber Ltd v H Trade markers (jersey) Ltd (1986) 1 All ER 129 per Lord Templeman and Lord Mackay.***

37. In relation to the ground of "no reasonable cause of action", paragraph 18/19//10 of the White Book states –

> *".... A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered (per Lord Pearson in Drummond-Jackson v British Medical Association [1970] WLR 688; [1970] 1 All ER 1094, CA."*

What is a "Cause of Action"?

38. The High Court in Dean v Shah [2012] FJHC 1344, defined a cause of action in the following way;

> "A cause of action is said to be a set of facts that gives rise to an enforceable claim by a Plaintiff. In Read v Brown [1888] UKLawRpKQB 186; 22 QBD 128 Esther M.R. States that a cause of action comprises every fact which if traversed the Plaintiff must prove in order to obtain Judgement. Lord Diplock in Letang v Cooper [1964] EWCA Civ 5; (1965) 1 QB 232 at 242-243 states that a cause of action:

> ".... Is simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person"

39. It is apparent from the authorities that the term "cause of action" means allegations of material facts which, if proved, will provide a complete foundation for a recognised type of claim. There are two aspects to consider: first, does the law recognise the Plaintiff's claim as one as an enforceable one, and if so, secondly do the material facts alleged if proved, give rise to a right to a remedy.

40. In those circumstances, particularly, in the absence of any cause of action and serious issues to be tried at the trial, it is pointless for the case to go on so that the Defendant can deliver a defense. The delivery of the defense and attending other formalities in Court are bound to waste the time and money.

41. Notwithstanding the very high standard and precautionary test that the authorities imposed on Application such as this and in applying these authorities to the facts and submissions in this matter, I am of the opinion that the Application for strike out should be granted. The Plaintiff's claim is bound to fail having regard to the facts hereof. I stand convinced that the Plaintiff's action is not backed by a reasonable cause of action and it is doomed to fail.

42. For the reasons stated above, I stand convinced to say at this initial stage itself, that the Plaintiff's Statement of Claim does not raise debatable questions. Any amendment to the SOC is not going to validate the Plaintiff's action against the Defendant. Therefore, it is competent for the Court to strike out the SOC and dismiss the Plaintiff's action on the ground that it discloses no reasonable cause of action against the Defendant.

43. On the other hand, the continuation of this action, even with any amendment to address the weaknesses in the Plaintiff's SOC, will not salvage the Plaintiff's action, which is bound to consume extensive time and money and the resources of this Court.

44. Accordingly, there is no alternative but to strike out the Statement of claim and dismiss the Plaintiff's action in order to protect the Defendant from being troubled any further. This move also would save the Plaintiff from further costs & disappointments and would relieve the Court too of its unnecessary burden in order to avoid the waste of its precious time and resources, which could be devoted to the determination of claims which have legal merits.

45. In view of the above observations made in relation to the Plaintiff's Statement **of Claim**, no necessity would arise to consider the **Notice of Motion** filed by the Plaintiff and same also should stand dismissed.

E. FINAL ORDERS:

a. The Defendant's Summons dated and filed on 18th October 2024 seeking to strike out the Plaintiff's Writ of Summons and Notice of Motion succeeds.

b. The Plaintiff's Notice of Motion filed on 11th September 2024, seeking Restraining and Stay Orders is hereby struck out.

c. The Plaintiff's Writ of Summons and the Statement of claim filed on 11th September 2024 is also hereby struck out.

d. The Plaintiff shall pay the Defendant a sum of $ 1,500.00 and the Interested party $750.00 (totaling to $2,250.00), being the summarily assessed costs within 28 days from today.

On this 13th day of June 2025 at the High Court of Lautoka.

HIGH COURT OF FIJI
LAUTOKA

A.M. Mohamed Mackie
JUDGE
High Court (Civil Division)
Lautoka

SOLICITORS:

For the Plaintiff**- PRIKANS LAW- Barristers & Solicitors.**

For the Defendant**- MILLBROOK HILLS LAW PARTNERS- Barristers & Solicitors.**

For the Interested Party**- Attorney General's Chambers.**