PACLI - 20/06/25.

IN THE HIGH COURT OF FIJI

WESTERN DIVISION

AT LAUTOKA

[CIVIL JURISDICTION]

CIVIL ACTION NO. HBC 123 OF 2020

BETWEEN	:	**ABHI MANU** formerly of Natawarau Settlement, Ba, now of 26 Peninsula Road, Maqere, Auckland, New Zealand.
		PLAINTIFF
AND	:	**SHARON SHYAMANI NARAYAN aka SHARON SHYAMNI NARAYAN** and **SURUJ WATI NARAYAN aka SURUJ WATI** both of 74 Andrews Road, Nadi, as Executors and Trustees in the Estate of **SHIU NARAYAN**.
		DEFENDANT

BEFORE	:	**Master P. Prasad**
Counsels	:	Mr. C. B. Young for Plaintiff Ms. A. Swamy for Defendant
Date of Hearing	:	27 March 2025
Date of Ruling	:	20 June 2025

RULING

1. The Plaintiff commenced the substantive proceeding by filing an action against Shiu Narayan. Shiu Narayan is now deceased, and his Executors and Trustees were substituted in place of Shiu Narayan by Order of this Court on 12 July 2024.

2. The Plaintiff's claim against the Defendant (Shiu Narayan) arises from a sum of NZ$9,555.00 deposited into the Defendant's Bank of New Zealand bank account by the Plaintiff on 29 July 2024 (**Claimed sum**). The Plaintiff claims that the Defendant has unjustly enriched himself and continues to benefit from the retention of the Claimed sum. The Plaintiff thus claims an equivalent of the NZ$9,555.00 being FJ$15,000.00 from the Defendant together with interest pursuant to Law Reform (Miscellaneous Provisions) (Death and Interest) Act from 28 July 2024 to the date of payment.

3. The Plaintiff then proceeded to file the Summons for Summary Judgment pursuant to Order 14 Rule 1 of the High Court Rules 1988 (**HCR**) supported by the Plaintiff's Affidavit. The Defendant has opposed the said application.

4. The Defendant has also filed a Summons pursuant to Order 18 Rule 18 (1)(a) of the HCR to strike out the Plaintiff's claim as it discloses no reasonable cause of action. The Plaintiff has opposed this.

5. This Ruling pertains to the two respective applications by the parties.

6. I will deal with the Strike out application filed by the Defendant first and then deal with the Summons for Summary Judgment.

Strike Out

7. Footnote 18/19/7 of the 1997 Supreme Court Practice reads:

> *"Exercise of powers under this rule—It is only in plain and obvious cases that recourse 18/19/7 should be had to the summary process under this rule, per Lindley M.R. in Hubbuck v. Wilkinson [1899] 1 Q.B. 86, p.91 (Mayor, etc., of the City of London v. Horner (1914) 111 L.T. 512, C.A.). See also Kemsley v. Foot [1951] 2 K.B. 34; [1951] 1 All E.R. 331, C.A., affirmed [1952] A.C. 345, H.L. It cannot be exercised by a minute and protracted examination of the documents and facts of the case, in order to see whether the plaintiff really has a cause of action (Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.)."*

8. Footnote 18/19/11 of the 1997 Supreme Court Practice on no reasonable cause of action or defence reads:

> *"Principles—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] 1 W.L.R. 688; [1970] 1 All E.R. 1094, C.A.). So long as the statement of claim or the particulars (Davey v. Bentinck [1893] 1 Q.B. 185) disclose some cause of action, or raise some question fit to be decided by a Judge or a jury.*

the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out (Moore v. Lawson (1915) 31 T.L.R. 418, C.A.; Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.);..."

9. The legal principles regarding striking out pleadings are clear and widely understood. The Court of Appeal in ***National MBF Finance v Buli*** [2000] FJCA 28 determined the principles for strike out. In ***Attorney-General v Shiu Prasad Halka*** 18 FLR 210 at 214 Justice Gould V.P. in his judgment expressed "*that the summary procedure under O.18, r.19 is to be sparingly used and is not appropriate to cases involving difficult and complicated questions of law.*"

10. For an application made pursuant to Order 18 Rule 18 (1) (a), the Court may only conclude an absence of a reasonable cause of action on the pleadings itself with no evidence being admissible. His Lordship Chief Justice Mr. A.H.C.T. Gates (as His Lordship then was) held in **Razak v Sugar Corporation Ltd** [2005] FJHC 720 that:

> *"To establish that the pleadings disclose no reasonable cause of action, regard cannot be had to any affidavit material [Order 18 r.18(2)]. It is the allegations in the pleadings alone that are to be examined: Republic of Peru v Peruvian Guano Company [1887] UKLawRpCh 186; (1887) 36 Ch.D 489 at p.498".*

11. As per the pleadings the Plaintiff asserts that the Defendant has unjustly enriched himself and continues to benefit from funds provided by the Plaintiff, which the Defendant has yet to repay.

12. To ascertain if there is a reasonable cause of action, this Court needs to determine whether a cause of unjust enrichment arises from the particulars in the Statement of Claim.

13. Although the Defendant filed only one affidavit (**Affidavit in Opposition**) with heading "*Affidavit of Shiu Narayan in support of application to strike out the proceedings*", the second page of the said affidavit after paragraph 7 has a heading "*Affidavit of Shiu Narayan in reply*". Given that the Defendant's Summons is pursuant to Order 18 Rule 18 (1)(a) of the HRC, and no evidence is admissible on such an application, the Court disregards paragraphs 1 to 7 of the said affidavit and will consider the contents from paragraph 8 onwards.

14. The Court notes the following from the Defendant's Statement of Defence: the Plaintiff's claim relates to a purported agreement of loan made and performed in New Zealand thereby placing the matter outside of the jurisdiction of this Court; the Claimed sum was repayment of a loan advanced by a 3rd party to the Plaintiff; and the Defendant denied the rest of the Plaintiff's claim.

15. The Defendant's counsel's written submissions on the strike out application relied on Order 4 Rule (1) (1) of the HCR which states that "*proceedings must ordinarily be commenced in the High Court registry located in the Division in which the cause of action arises*". The Defendant's counsel submitted that the cause of action falls outside the jurisdiction of this Court, as the disputed transaction originated and was executed in New Zealand. Furthermore, the Defendant maintained that the Plaintiff's claim is based on an alleged agreement and its performance within New Zealand, and therefore, its validity and enforceability should first be assessed under New Zealand law.

16. The Plaintiff's counsel argued that whilst the Defendant's Summons to Strike Out states that the Plaintiff's claim discloses no reasonable cause of action, the Defendant's submissions instead only focused on the Court's lack of jurisdiction in this proceeding. Furthermore, the Plaintiff's counsel submitted that its claim presents a valid cause of action with a likelihood of success, as the pleadings establish the legal basis for the claim and detail how the Defendant has been unjustly enriched with the Plaintiff's funds.

17. Justice Mansoor J in ***Seruvatu v Nagiff*** [2022] FJHC 551; HBC375.2018 (31 August 2022) in explaining the effect of Order 4 Rule 1(1) stated as follows at paragraph 14:

> *" 14. The defendants did not bring to the attention of court any statutory provision or rule by which the plaintiff's action stood to be dismissed for want of jurisdiction.* ***Order 4 rule 1(1***) *of the High Court Rules says that proceedings must ordinarily be filed in the High Court registry located in the division in which the cause of action arises. Order 4 rule 1 (4) says that any action commenced in the High Court may be transferred by the court from one High Court registry to another or to a Magistrate's Court. Section 6 (1) of the High Court Act says that all judges of the court shall have in all respects equal power, authority and jurisdiction except where it is otherwise provided in the Act. Section 6 (2) says that any judge of the High Court may exercise all or any part of the jurisdiction vested in the court.*
>
> *15. These provisions are clarified by the Chief Justice's Circular Memorandum 1 of 2000 titled, 'Commencement of Proceedings and Allocation of Business'. This practice direction, issued by Chief Justice Tuivaga on 31 August 2000, states that the purpose of the rule in Order 4 rule 1 is to facilitate the orderly and convenient dispatch of the business of the courts. It went on to state that where it appears that proceedings have been commenced in the wrong administrative division or where there is disagreement as to the appropriate division the matter should be placed before the chief registrar or a deputy registrar as soon as possible after the proceedings have been commenced. The practice direction stated that the chief registrar has power to direct where a matter is to proceed and also has power to direct that a matter which has been commenced in one division should be transferred. Order 32 rule 9 (a) and (k) of the rules of the High Court*

are relevant for the purpose of fixing a trial and transferring proceedings. The direction made it plain that the High Court sits in three locations and that these are three branches of a single High Court."

[Emphasis added]

18. It is thus clear that the purpose of Order 4 Rule 1(1) is to ascertain whether proceedings have been commenced in the appropriate jurisdiction among the three High Court locations in Fiji.

19. It is undisputed that the Defendant resided in Nadi, Fiji, prior to his death and the Claimed sum was deposited in the New Zealand Bank account owned by the Defendant. The claim of unjust enrichment is against a party that receives the benefit and not against the process through which the said party obtains the said benefit.

20. Since the Defendant was a resident of Fiji at the material time and the Claimed sum was deposited in the Defendant's bank account, I find that the Plaintiff's claim was properly filed in the correct division of the High Court and that this Court has jurisdiction to hear the matter.

21. While the Defendant's application for Strike Out was based on Order 18 Rule 18 (1) (a) of the HCR, the Defendant's counsel offered no submissions on how the Plaintiff's claim lacks a reasonable cause of action.

22. In this regard I find that the cause of unjust enrichment is sufficiently pleaded in the Plaintiff's claim.

23. Having decided that the Defendant's application for Strike Out for want of jurisdiction and for no reasonable cause of action has no merit, I will now move on to consider the Plaintiff's application for Summary Judgement.

Summary Judgment

24. In his Affidavit in Support, the Plaintiff stated as follows:

    a. That on or about 28 July 2014, the Defendant requested the Plaintiff to deposit the sum of $9,555.00 in the Defendant's Bank of New Zealand account;
    b. That the Plaintiff deposited the money by way of a bank draft issued by ASB Bank of which the Plaintiff was a customer;
    c. The Defendant has unjustly enriched himself and continues to benefit from the same;
    d. The equivalent of NZ$9,555.00 at the rate of 1.5699 as applied on 28 July 2014 was FJ$15,000.00;

e. The Plaintiff has been deprived of the use of the Claimed sum and the Defendant has had benefit of its use since 28 July 2014;
f. Had the Plaintiff deposited the NZ$9,555.00 with ASB Bank for 5 years he would have received a interest of 4.35% for 12 months in term deposit;
g. The Defendant is indebted to the Plaintiff in the sum of FJ$15,000.00; and
h. The Plaintiff seeks summary judgment of $15,000.00 and interest.

25. In the said Affidavit, the Plaintiff has annexed copies of the following:

a. 27 June 2014 exchange rate details for New Zealand to Fijian dollars; copy of the Plaintiff's ASB bank statement confirming term deposit rate for 12 months for 2015;
b. e-mail dated 14 July 2014 from the Defendant to the Plaintiff advising the Plaintiff of the Defendant's New Zealand bank account details;
c. e-mail dated 28 July 2014 from Plaintiff to Defendant confirming deposit $15,000.00 Fijian dollars converted to New Zealand dollars; and
d. 28 July 2014 copy of cheque and deposit slip for the sum of NZ$9,555.00.

26. The Defendant in his Affidavit in Opposition states the following:

a. That sometime in 2014 the Defendant's wife and the Plaintiff entered into a Sale and Purchase Agreement (**Agreement**) for the purchase of State Lease number 14654 of which the Defendant's wife (**Suruj Wati**) was the lessee;
b. The consent for the said Agreement was refused by the Director of Lands;
c. Subsequently on the representations by the Plaintiff, the Director of Lands had granted the consent;
d. However, the Defendant's wife's solicitors advised the Plaintiff that the Agreement had come to an end after the refusal of the consent by the Director of Lands;
e. Correspondence between the solicitors for the Plaintiff and Suruj Wati reflect that the Claimed sum was paid to the Defendant on the request of Suruj Wati;
f. The Defendant denies that the Claimed sum was paid pursuant to the Agreement;
g. The Plaintiff has suffered no loss as the Plaintiff had only paid back a loan advanced to him by Suruj Wati; and
h. That the Defendant has a defence to the Plaintiff's claim and as such the application for summary judgment must fail.

27. The Defendant attached to his Affidavit in Opposition copies of the following:

a. Agreement executed between the Plaintiff and Suruj Wati aka Suruj Wati Narayan;
b. 25 May 2015 correspondence from the Ministry of Lands and Mineral Resources to Suruj Wati refusing the application for consent to transfer;
c. 29 March 2017 letter from Suruj Wati's solicitors to the Plaintiff's solicitors advising that the consent pursuant to the Agreement had been refused and the Agreement had come to an end;
d. 4 April 2018 letter from Plaintiff's solicitor to Suruj Wati's solicitor seeking a return of FJ$15,000.00 and further costs and damages; and
e. 25 April 2018 reply from Suruj Wati's solicitor denying that any deposit was paid under the Agreement.

28. I will now review the relevant legal provisions and case authorities pertinent to this application. Summary judgment is a swift procedure in civil litigation aimed at resolving cases without a full trial. An applicant is eligible for a summary judgment if there is no defence or dispute regarding the key facts of the case. The goal of summary judgment is to achieve a quick ruling in cases where there is clearly no defence, thus avoiding unnecessary trials and conserving the court's limited resources and reducing costs.

29. Order 14 of the HCR provides as follows:

> ***Application by plaintiff for summary judgment (O.14, r.1)***
>
> ***1.*** *(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that the defendant has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.*
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> *(2) Subject to paragraph (3), this rule applies to every action begun by writ other than –*
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> *(a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment.*
>
> *(b) an action which includes a claim by the plaintiff based on an allegation of fraud.*
>
> *(3) This Order shall not apply to an action to which Order 86 applies.*
>
> ***Manner in which Application under Rule 1 Must be made (O.14, r2)***
>
> ***2.*** *(1) An application under rule 1 must be made by summons supported by an affidavit verifying the facts on which the claim, or the part of a claim to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the cause may be, or no defence except as to the amount of any damages claimed.*

(2) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

(3) The summons, a copy of the affidavit in support and of any exhibits referred to therein must be served on the defendant not less than 10 clear days before the return day.

Judgment for Plaintiff (O.14, r.3)

***3.** (1) Unless on the hearing of an application under rule 1, either the Court dismisses the application or the defendant satisfies the Court with respect to the claim, or the part of a claim, to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the claim or part as may be just having regard to the nature of the remedy or relief claimed.*

(2) The Court may by order, and subject to such conditions if any, as may be just, stay execution of any judgment given against a defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action.

Leave to Defend (O.14, r.4)

***4**.-(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.*

(2) Rule 2 (2) applies for the purposes of this rule as it applies for the purposes of that rule.

(3) The Court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(4) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity-

(a) to produce any document;

(b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

30. The principles governing the application of summary judgment rules are extensively discussed in numerous cases, both domestic and international. The said principles were clearly and concisely explained by Master Azhar (as His Lordship then was) in his ruling in the case of ***Subamma v ARK Co Ltd &***

Others [2022] FJHC 315; HBC173.2015 (24 June 2022), which I graciously adopt and reproduce as follows:

> *"06. The principles that govern the application of these rules are discussed in many cases both foreign and local, and no reference is needed to all the cases.* ***The court's duty, when an application for summary judgment is filed, is to ascertain whether there is a triable issue and no arguable defence to the claim****. If there is an arguable issue to be tried and there are matters of facts to be resolved, which can only be resolved in a trial, the court should not allow the application for summary judgment, but should grant leave to defend the matter in a full and proper trail, no matter how strong the plaintiff's case would be. The law and procedure for summary judgment can be summarized as follows, based on the decisions under Order 14:*
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> *a. The plaintiff may, after the notice of intention to defend the action has been filed, apply for summary judgment against the defendant on the ground that the defendant has no defence to the claim or part of the claim included in the Writ except the amount of damages: rule 1 (3). This application must be by way of summons supported by an affidavit with the assertion of facts and the belief of the deponent that there is no defence to the claim. This summons to be served on the other party to be heard inter parte: rule 2.*
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> *b. The procedure under Order 14 rule 1 is applicable to every action begun by a Writ. However, it cannot be invoked for an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment and for an action which includes a claim by the plaintiff based on an allegation of fraud : rule 1 (2). Likewise, this Order is neither applicable to summary judgment in specific performance under Order 86 nor does affect the provisions of Order 77 which applies for the proceedings against the state: rules 1 (3) and 12.*
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> *c. The power to grant summary judgment should be exercised with care and should not be exercised unless it is clear there are no real issues to be tried: Fancourt v Mercantile Credits Ltd (1983) HCA 25; (1983) 154 CLR 87 at 99; Theseus Exploration NL V Foyster ([1972] HCA 41; 1972) 126 CLR 507. It would be difficult to obtain summary judgment when there is an array of defences. However an application for summary judgment should not be refused for raising seemingly difficult issues to blot out otherwise simple cases: Hibiscus Shoppingtown Pty Ltd v Woolworths* [1993] FLR 106; *Territory Loans Management v Turner* [1992] NTSC 82; (1992) 110 FLR 341.
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> *d.* ***The legal burden of proof is borne by the plaintiff throughout the application, however, when he has established a prima facie right to an order, a "persuasive" or "evidential" burden shifts to the defendant to satisfy the court that judgment should not be given against him****: Australian & New Zealand Banking Group v*

David (1991)105 FLR 403. Although the onus is upon the plaintiff there is upon the defendant a need to provide some evidential foundation for the defences which are raised. If not, the plaintiff's verification stands unchallenged and ought to be accepted unless it is patently wrong: Australian Guarantee Corporation (NZ) Ltd v McBeth [1992] NZLR 54.

e. The defendant may show cause against a plaintiff's claim on the merits. It is generally incumbent on a defendant resisting summary judgment, to file an affidavit which deals specifically with the plaintiff's claim and states clearly and precisely what the defence is and what facts are relied on to support it: 1991 The Supreme Practice Vol 1 pages 146,147,152 and 322. Mere raising of a defence that is complicated or difficult will not of itself result in a refusal to grant summary judgment: Civil & CIVIC Pty Ltd v Pioneer Concrete (NT) Pty Ltd [1991] NTSC 3; (1991) 103 FLR 196.

f. If a point of law is raised which the Court feels able to consider without reference to contested facts simply on the submissions of tha parties, then it will see whether there is any substance in the proposed defence. If it concludes that, although arguable, the point is bad, then it will give judgment for the plaintiffs: Sethia Liners Ltd v State Trading Corporation of India (1986) 1 Lloyds Rep. 31.

g. There has to be a balancing between the right of the defendant to have his day in Court and to have his proper defences explored and examined in details and the appropriate robust and realistic approach called for by the particular facts of the case: Bibly Dimock Corporation Ltd v Patel [1987] NZCA 193; (1987) 1 PR NZ 84; *Cegami Investments Ltd v AMP Financial Corporation (NZ) Ltd (11990) 2 NZLR 308; Australian Guarantee Corporation (NZ) Ltd v McBeth* [1992] NZLR 54.

31. As stated above, the legal burden of proof is borne by the Plaintiff throughout the application, and only when the Plaintiff has established a *prima facie* right to an order, a "persuasive" or "evidential" burden would shift to the Defendant to satisfy the Court that judgment should not be given against the Defendant.

32. I have considered the Plaintiff's Affidavit in Support and the documents annexed therein. Based on the analysis hereafter, I find that the Plaintiff's cause of action against the Defendant is duly supported to the satisfaction of the Court and the Plaintiff has established a *prima facie* case against the Defendant.

33. The Plaintiff's claim is one of unjust enrichment. In ***Manohan Aluminium & Glass (Fiji) Ltd v Fong Sun Dvelopment Ltd*** [2018] FJCA 23; ABU0018.2015 (8 March 2018), the Court of Appeal discussed 'unjust enrichment' as:

"[33] Unjust enrichment has been described as follows:

"Unjust enrichment arises in a situation in which the defendant is enriched at the expense of the claimant and there is in addition a reason, not being a, manifestation of consent or a wrong, why that enrichment should be given up to the claimant" (Peter Berks, Unjust Enrichment, second ed. 2005).

[34] Unjust enrichment has also been described as follows:

"The principle of unjust enrichment requires first, that the defendant has been enriched by the receipt of a benefit, secondly that this enrichment is at the expense of the claimant, and that the retention of the enrichment be unjust and finally that there is no defence or bar to the claim". (Chitty on Contracts, Vol 1, para 29-018, Sweet & Maxwell, 2004)....

[38] In ***Daydream Cruises Ltd v Myers*** *[2005] FJHC 316, Connors J considered the issue of unjust enrichment in respect of a claim of breach of contract and unjust enrichment....In determining this claim, Connors J having considered the relevant authorities said:*

"It is clear that any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is to prevent a man from retaining the money or some benefit derived from another which it is against conscience that he should keep." -- Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbaur LD [1943] A.C. 32 at 61 per Lord Wright.

The remedy for unjust enrichment is restitution which is the reversal of an unjust enrichment of the defendant at the expense of the plaintiff. The measure of the plaintiff's recovery in restitution is the benefit or gain of the defendant and not, as in compensatory damages, the loss suffered by the plaintiff. ...

The three elements of a claim for unjust enrichment are – ***National Bank of New Zealand Ltd v Waitaki International Processing (NI) Ltd*** *[1997] 1 NZLR:*

(i)Proof of enrichment by receipt of a benefit;
(ii)Enrichment at the expense of the plaintiff; and
(iii)That retention of the benefit is unjust."

34. The Plaintiff has attached copies of e-mails dated 14 July 2014 and 28 July 2014 respectively which state as follows:

14 July 2014 e-mail from Defendant to Plaintiff -

"*Ram Ram Abhimanu,*

Apologies for the late response.

As per our discussion please find account number below:

Acct NO: 02-0232-0001686-000

Papatoetoe 020232

I'll be sending Ranjana at Young & Associates the title after the above.

Shiu

9995241"

[Emphasis added]

28 July 2014 from Plaintiff to Defendant -

"*This is to inform you that I have Deposited the money into your Bank Account provided @ BNZ ie Fifteen Thousand Fijian Dollars converted in to NZ Dollars @ Rate of $1.5700*

Regards

Abhimanu"

35. The Plaintiff has also adduced evidence of the copy of the cheque and deposit slip with the name and bank account number of the Defendant that commensurate with the details from the Defendant's e-mail of 14 July 2014.

36. The Defendant has neither denied the said e-mails and the contents therein nor the payment of the Claimed sum in the Defendant's bank account by the Plaintiff. Although the Defendant has alleged that the Claimed sum was for a repayment of a loan, the Defendant has failed to provide in both the Statement of Defence and the Affidavit in Opposition any details of the said loan. The said lack of details regarding the purported loan weakens the Defendant's justification that the payment of the Claimed sum and the retention by the Defendant was not unjust.

37. Therefore, I find that the Plaintiff has successfully demonstrated all three elements necessary for a claim of unjust enrichment being: (i) evidence has been provided showing that the Claimed sum was deposited into the Defendant's bank account; (ii) the deposit originated from the Plaintiff's bank account; and (iii) the Defendant's retention of the Claimed sum is unjust.

38. The onus now shifts onto the Defendant to show cause and/or satisfy the Court with respect to the claim 'that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part'.

39. The Defendant contends that the Claimed sum represents the repayment of a loan provided to the Plaintiff by a 3rd party—specifically, Suruj Wati.

40. On the requirement of particulars to be provided in an affidavit, Justice Gates J in ***ANZ Banking Group Ltd v Buckley*** [2004] FJHC 317; HBC0272J.2000L (14 October 2004) at paragraph 8 stated:

> ***[8]*** *In providing evidence of a defence the defendant "must condescend upon particulars, and in all cases, sufficient facts and particulars must be given to show that there is a genuine defence." [Halsbury para 413]. In* ***Liyakat Ali v Shafiq Ali*** *(unreported) Lautoka High Court Civil Action No. 513 of 1986, 29 September 1987, a case where the defendant had filed an affidavit, Dyke J found there was a lack of accurate details set out therein. The judge found the deponent should have been more explicit in his challenge to the demand notice and that a mere blank denial did not discharge the onus.*
>
> ***[9]*** *In* ***Chandra Latchmaiya Naidu v Carpenters Fiji Ltd*** *(unreported) Fiji Court of Appeal Civil Appeal No. 48 of 1999, 27 November 1992 the Court of Appeal accepted the judge's criticism of a lack of an affidavit but said the judge had fallen into error by not considering the defence. The court said:*
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> *"A statement of defence may be a sufficient mode of showing cause."*
>
> ***[10]*** *In that case the statement of defence alleged that the guarantee had been revoked by notice in writing in accordance with clause 4 of the memorandum of guarantee. The guarantee was said to have been revoked in 1989 whilst the goods had been supplied in 1990 and 1991. If correct, this was clearly a substantial answer to liability and the court considered that an issue of such substance ought to be heard at trial, never mind the lack of an affidavit.*
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> ***[11]*** *But sometimes the court needs something more than mere assertion. It requires a sufficiency of information or detail in order to find that there is a genuine and substantial issue to be heard. In* ***Venkat Sami Naidu v D. Chand Brothers*** *(unreported) Fiji Court of Appeal Civil Appeal No. 9 of 1989, 23 March 1992 the court found there was a lack of basic facts provided in the appellant's (defendant's) affidavit. The court said (at p.5):*
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> *"Without any evidence of that kind there was nothing to inform the Court that this was a genuine issue to be tried. The mere assertion of the Appellant was far from sufficient."*

> ***[12]*** *The Supreme Court Practice for 1997 sets out the requirements of the defendant's affidavit. Besides particulars, the affidavit must "deal specifically with the plaintiff's claim and affidavit, and state clearly and concisely what the defence is, and what facts are relied upon to support it." (para 14/3-4/4). General denials are not sufficient:* ***Wallingford v Mutual Society*** *(1880) 5 App. Cas. 685 at p.704.*
>
> ***[13]*** *The defendant must go further. He "must satisfy the court that he has a fair or reasonable probability of showing a real bona fide defence, i.e.: that his evidence is reasonably capable of belief (per Ackner L.J. in* ***Banque de Paris et des Pays-Bas (Suisse) S.A. v de Naray*** *[1984] 1 Lloyd's Rep. 21, 28. See also per Bingham L.J. in* ***Bhogal v Punjab National Bank*** *[1988] 2 All E.R. 296, 303;* ***Standard Chartered Bank v Yaacoub*** *[1990], C.A. Transcript No. 699 per Lloyd L.J."*

41. The Defendant has not presented any evidence substantiating the existence of the purported loan. Additionally, neither the Statement of Defence nor the Affidavit in Opposition contains any details regarding the circumstances of the said loan. A mere assertion by the Defendant of the existence of such a loan and a general denial of the claim of unjust enrichment is far from sufficient.

42. Further, the Defendant's own e-mail of 14 July 2014 to the Plaintiff has the words "*I'll be sending Ranjana at Young & Associates the title after the above*". This suggests that the Claimed sum was deposited in the Defendant's bank account in relation to a title which the Defendant undertook to send to the Plaintiff's solicitors thereafter. As stated earlier, the Defendant has admitted to the contents of this e-mail in his Affidavit in Opposition.

43. Based on the foregoing analysis, I hold that the Defendant has failed to satisfy this Court 'that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part' against the Plaintiff's claim.

44. Having already determined a successful establishment of a *prima facie* case against the Defendant; this Court concludes that there is no basis to establish that the Defendant has a valid defence against the Plaintiff's claim.

45. Therefore, the Court is of the view that the Plaintiff is entitled to obtain Summary Judgment against the Defendant for the entirety of the Plaintiff's claim, in accordance with Order 14 Rule 1 of the High Court Rules.

46. The Plaintiff has sought interest pursuant to the Law Reform (Miscellaneous Provisions) (Death and Interest) Act 1935 from 28 July 2014 to the date of payment. In support of this, in his Affidavit in Support the Plaintiff has annexed marked '*A-2*', a copy of the Plaintiff's bank statement from ASB bank showing term deposit for a sum of $20,000.00 at 3.75% per annum for 6 months and for a sum of $40,000.00 at 4.35% per annum for a term of 12 months.

47. While the Plaintiff claims interest in the sum of 4.35%, in his Affidavit in Opposition, the Defendant states that this interest rate is for a higher sum of money than FJ$15,000.00.

48. I find that the Plaintiff is entitled to claim interest on the Claimed sum from the date of initial demand being 4 April 2018 to the date of judgment pursuant to the Law Reform (Miscellaneous Provisions) (Death and Interest) Act 1935 (see ***Deo Construction Development Company Ltd v Reddy*** [2016] FJHC 179; HBC67.2015 (18 March 2016)]. Had the Defendant complied with the demand and returned the Claimed sum, the Plaintiff could have deposited the amount into a fixed-term deposit account, allowing it to accrue interest.

49. I agree with the Defendant's counsel submissions that 4.35% per annum for a short-term deposit was for a sum of NZ$40,000.00 and not for a lesser sum of NZ$9,555. I am of the view that an interest rate of 3% is appropriate for a sum of NZ$9,555.00.

50. I therefore grant interest: (i) at the rate of 3% per annum from 4 April 2018 to the date of hearing; and (ii) at the rate of 4% per annum as post judgement interest from the date of final judgment to the date of final satisfaction of the judgment sum.

51. Accordingly, this Court makes the following final orders:

    a. The Defendant's Summons for Striking out the Plaintiff's claim is hereby dismissed.
    b. The Plaintiff's Summons for Summary Judgment is hereby granted, subject to the following orders,
        i. Judgment entered in favour of the Plaintiff in the sum of FJ$ 15,000.00.
        ii. Interest on the judgment sum at the rate of 3% per annum from 4 April 2018 to the date of hearing.
        iii. Post judgement interest at the rate of 4% per annum from the date of judgment to the date of final satisfaction of the judgment sum.

    c. The Defendant shall pay to the Plaintiff $ 2,000.00 in costs as summarily assessed by the Court.

HIGH COURT OF FIJI LAUTOKA

P. Prasad
Master of the High Court

At Lautoka
20 June 2025