

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 45 of 2023

**BETWEEN : LEWENI SERIA WAQA
FIRST PLAINTIFF**

**: WASALIWA PTE LIMITED
SECOND PLAINTIFF**

**AND : JAYKAM TELLU TAVANAVANUA
FIRST DEFENDANT**

**: KOKOMO SERVICES PTE LTD
SECOND DEFENDANT**

**: PACIFIC LINE PRODUCTION PTE LTD
THIRD DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFFS : Mr. I.J. Fa [Fa & Co]

FIRST DEFENDANT : No appearance entered

**SECOND
DEFENDANT : Mr J Liganivai [Munro Leys]**

THIRD DEFENDANT : Ms L Prasad [Sherani & Co]

RULING BY : Master Ms Vandhana Lal

DELIVERED ON : 11 August 2025

INTERLOCUTORY RULING
[Striking out of Plaintiffs' Claim]

Application for determination

1. The Second Defendant seeks to have the claim struck out as it:
 - a) discloses no reasonable cause of action;
 - b) is scandalous, frivolous or vexatious; and
 - c) is an abuse of the Court's process.

Plaintiff's claim

2. The First Plaintiff is a businesswoman and a 50% shareholder and director of the Second Plaintiff, Wasaliwa Pte Limited.
3. The Second Plaintiff is a limited liability company incorporated to operate a liquor bar at Buliya Base Camp (BBC), Kadavu Island.
4. The First Defendant is a businessman and the other 50% shareholder and director of the Second Plaintiff.
5. The Second Defendant owns and operates BBC and was contracted by the Third Defendant to provide support services for film crews shooting TV series on Kadavu Island.
6. In February 2018, the Second Defendant constructed facilities at BBC including:
 - Accommodation for 195 people
 - Restaurant
 - Bar
 - Laundry facilities
 - Administration and logistics support
7. The Plaintiffs and the First Defendant are members of the Mataqali Korovou of Buliya village, on whose iTaukei land BBC was constructed.
8. BBC was developed by the Second Defendant to support filming of the French Survivor TV series, including facilities for accommodation, dining, and a bar.

9. The First Plaintiff and First Defendant, both from the Mataqali Korovou of Buliya village, jointly formed Wasaliwa Pte Limited to operate a bar at BBC.
10. Wasaliwa Pte Limited was granted a liquor license in April 2019 to serve alcohol to film crews.
11. It is alleged that the First Defendant:
 - Registered and operated a separate business, **Nukurama Bar**, at BBC under false pretences.
 - Used Wasaliwa's liquor license to run Nukurama Bar without informing or involving the First Plaintiff.
 - Profited unlawfully and failed to provide financial transparency.
 - Violated Section 75 of the Fijian Competition Consumer Commission Act 2010 [FCCC] through deceptive and misleading conduct.
12. According to the Plaintiff, the Second and Third Defendants:
 - Supported and conspired with the First Defendant to operate Nukurama Bar unlawfully.
 - Allowed operation of a bar without a valid liquor license, depriving Wasaliwa Pte Limited and its shareholders of rightful profits.
 - Engaged in deceptive and misleading conduct under the same legal provision.

Second Defendant's Defence

13. According to the Second Defendant the First Plaintiff lacks standing in bringing this proceeding. The First Plaintiff cannot sue as a shareholder of the Second Plaintiff because the Second Plaintiff was deregistered on 1 January 2022.
14. The Second Defendant claims it built structures in Buliya under a Memorandum of Understanding with Mataqali Nakorovou, not with the Plaintiffs.

15. The Second Defendant denies breaching section 75 of the *Fijian Competition and Consumer Commission Act 2010*, and argues:
- Any alleged loss or damage must be suffered as a consumer under section 146 to be recoverable.
 - Therefore, no valid claim can be made against the Second Defendant under section 75.

Second Defendant's Argument

16. The Second Plaintiff, Wasaliwa Pte Limited, has been deregistered since 1 January 2022 for failing to re-register.
17. Under section 605(1) of the Companies Act 2015, a deregistered company ceases to exist as a legal entity.
18. As a non-existent entity, the Second Plaintiff lacks standing to bring or maintain any proceedings.
19. The First Plaintiff's only connection is her 50% shareholding in the now-deregistered company.
20. Claims for wrongs done to the company belong to the company itself, not to individual shareholders.
21. Consequently, the proper plaintiff rule bars the First Plaintiff from stepping into the company's shoes and prosecuting these claims.
22. The Plaintiffs alleges that Kokomo engaged in deceptive and misleading conduct contrary to section 75 of the FCCC Act.
23. Section 75 which falls under Part 7 of the Act prohibits a trader from engaging in conduct that is misleading or deceptive, or likely to mislead or deceive. Any representation or omission that leads a person to believe one thing when another is true falls within its ambit.

24. Section 146(1) allows any person who suffers loss or damage from a breach of Parts 6 or 7 to recover that loss by action against the wrongdoer or any person involved.
25. Section 146(2) imposes a three-year limitation: an action must start within three years of the cause of action accrual.
26. But Section 146(1)(iii)(a) carves out all contraventions of section 75 unless the loss was suffered by a “consumer.”
27. Under section 4, a “consumer” is presumed to be any person who, in a particular transaction, acquires goods or services as a consumer.
28. According to the Second Defendant, The Plaintiffs do not allege in their Claim or the Waqa Affidavit that they acquired any goods or services from Kokomo under a contract, as defined by section 4 of the FCCC Act.
29. The Plaintiffs’ claim under section 75 of the FCCC Act is based on Kokomo allegedly conspiring to allow the First Defendant to operate the Nukurama Bar.
30. The Claim does not involve any goods or contractual services as defined by the FCCC Act, nor does it reference any contract between Kokomo and the Plaintiffs.
31. Therefore, it is argued that the Plaintiffs are not “consumers” under the Act and cannot seek compensation from Kokomo for the alleged breach of section 75.
32. The Plaintiffs' lawyer admitted that the Second Plaintiff is a deregistered company with no pending application for reinstatement.
33. Though the Plaintiffs argue that deregistration does not extinguish causes of action arising prior to it. However, this is legally unsupported.
34. *The Supreme Court Practice (1999) at page 10* confirms that a plaintiff must exist at the time proceedings commence.

35. Actions brought by non-existent entities are nullities and must be struck out.
36. Courts lack jurisdiction to substitute or join valid plaintiffs to proceedings initiated by non-existent entities.

Plaintiffs Contention

37. Administrative deregistration under the Companies Act does not retrospectively extinguish causes of action that accrued while the company was validly registered.
38. Sections 609(1) and (2) of the Companies Act 2015 empower the Registrar or the High Court to reinstate a deregistered company where it is “just” to do so, thereby preserving all rights and liabilities that existed at deregistration.
39. Section 609(5) deems a reinstated company to have continued in existence as if never deregistered.
40. This ensures the company’s status, rights, liabilities, and the court’s jurisdiction over ongoing proceedings are all preserved for the period in question.
41. Allowing deregistration to extinguish a live cause of action would defeat justice, especially where the misconduct occurred during valid registration.
42. The Defendant’s attempt to strike out the claim against Kokomo improperly seeks summary resolution of disputed statutory construction and factual issues—matters that warrant a full hearing.

Determination

Can the First Plaintiff seek declaratory orders under the Fijian Competition and Consumer Commission Act 2010 [FCCC Act] against the Second and Third Defendants?

43. If the provision of the law gives powers to Court as original jurisdiction to make binding declaration of rights, Court can grant declaratory relief whether or not consequential relief is claimed.

44. Policy of the FCCC Act is concerned with public interest and warrants the Court in an appropriate case exercise its power to grant declaratory relief to mark disapproval of particular conduct contravening the Act.
45. Section 2(1) of the Act outlines what the objective of the Act are and these are:
- (a) promote the interests of the consumers;
 - (b) promote effective and efficient development of industry, trade or commerce;
 - (c) promote effective competition in industry, trade or commerce; and
 - (d) ensure equitable returns for businesses with fair and reasonable prices charged to consumers.
46. According to Section 3(1):
- 3 (1)** This Act applies to every person who does an act or makes an omission within Fiji that constitutes a contravention of this Act provided that an act or omission conducted out of Fiji constitutes a contravention of sections 6, 7, 8, 9, 10 and 11.
47. The Plaintiffs seeks declaratory orders against that the Defendants under Section 75 of the Act, which reads:
- 75 (1)** A person shall not, in trade or commerce engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
48. According to the Plaintiffs, the First Defendant used the Second Defendant's liquor licence to run Nakurama Bar whilst allegation against the Second and Third Defendants are that they conspired with the First Defendant and him to use the said licence thus depriving the Second Plaintiff and its shareholders of rightful profits.
49. The terms "Consumer", "Goods", and "Services" are respectively defined in the FCCC Act as follows:
- consumer** refers to a person who in relation to a particular transaction, whether a separate contract or separate transaction within a contract acquires goods or services as a consumer and shall be presumed hereunto unless the contrary is proved;

goods includes any article, product or thing which is the subject of trade and commerce and includes

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- (a) ships, aircraft and other vehicles;
- (b) animals, including fish;
- (c) minerals, trees and crops, whether on, under or attached to land or not;
- (d) gas and electricity; and
- (e) any component part of goods;

services includes any rights (including rights in relation to, and interests in, real or personal property) benefits, privileges, accommodation or facilities that are, or are to be, provided, granted or conferred in trade or commerce, and without limiting the generality of the foregoing, includes the rights, benefits, privileges and facilities that are, or are to be, provided, granted or conferred under—

- (a) a contract for or in relation to—
 - (i) the performance of work (including building work and work of a professional nature);
 - (ii) whether with or without the supply of goods;
 - (iii) contract for, or involving, the provision of gas or electricity or the provision of any other form of energy;
 - (iv) the provision, or making available for use, of facilities for amusement, entertainment, recreation or instruction; or
 - (v) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;
 - (vi) conferring of rights under an agreement for the provision of board or lodging;

- (b) a contract of insurance;
- (c) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking; or
- (d) a contract for or in relation to the lending of money, but does not include rights or benefits being the supply of goods or the performance of work under a contract of service;
- (e) any service supplied or carried on for hire or reward by any person engaged in trade or business;
- (f) any rights under an agreement for the provision of board or lodging;

supply , with its cognate expressions, includes to sell, or to agree to sell, to offer, advertise, have in possession for any such purposes, expose, transmit, convey, deliver, make or prepare for sale, or to hire or to exchange or dispose of for any consideration whatsoever, or to transmit, convey or deliver in pursuance of a sale, hiring, exchange or disposal as aforesaid;

50. Section 146 of the FCCC Act provides for relief and remedies for loss under the Act:

146 (1) A person who suffers loss or damage by an act, or omission of another person that, is a contravention of Parts 6 and 7 may recover the amount of the loss or damage by action against the other person or against any person involved in the contravention.

(2) An action under subsection (1) may be commenced at any time within 3 years after the date on which the cause of action accrued.

(3) Subsection (1) does not apply—

- (a) in relation to a contravention of section 75 unless the loss or damage is suffered by a consumer; or
- (b) in relation to a contravention of section 76.

51. I find the Second Plaintiff is entitled to seek declaratory orders if there existed a contract between it and the Second and Third Defendants for use of the BBC facilities to operate a bar.

52. However, under Section 146 of the Act, the Second Plaintiff cannot recover loss or damage after 03 years after the date on which the cause of action accrued.

Can the First Plaintiff as a shareholder bring this action?

53. Under the *proper plaintiff rule* a company is a separate legal entity and if a wrong is done to it, the company will be the proper Plaintiff in any legal proceedings which seeks to remedy it.

This rule applies regardless of the wrong being caused by directors or controlling members.


54. Part 16 Division 2 of the Companies Act enables shareholders and other eligible applicants to bring legal proceedings on behalf of a company if the company is unwilling or unable to do so itself.
55. Court will grant leave if the company is insolvent or under external administration.
56. Section 180 of the Act requires applicant to obtain leave of the court prior to bringing the proceedings on behalf of the company.
57. There is no dispute that Wasaliwa PTE Limited had been de-registered prior to initiation this proceeding and the status quo remains to date.
58. Section 605 (1) of the Companies Act states that “*a company ceases to exist on deregistration*”.
59. Hence the company is not entitled to bring any action upon its de-registration nor is the First Plaintiff entitled to bring the action on behalf of the company.
60. Furthermore, the Court does not have power to grant leave to an applicant to bring proceedings on behalf of the company where the company is de-registered and is non-existing.

61. Should the Second Plaintiff be registered, the First Plaintiff ought to have obtained Court's leave to bring the proceeding.
62. Since the Second Defendant is de-registered the First Plaintiff could not have obtained leave of the Court.
63. For these reasons, I find the proceeding by the Plaintiffs to be an abuse of the court process and out to be struck out.

Orders

64. The Plaintiffs' claim is dismissed wholly with costs against the First Plaintiff in favour of the Second Defendant summarily assessed at \$2,000 and the Third Defendant summarily assessed at \$1,500. Said costs to be paid within 14 days of this ruling.




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Vandhana Lal [Ms]
Master of the High Court
At Suva.

11 August 2025.

TO:

1. **Suva High Court Civil File No. HBC 45 of 2023;**
2. **Fa & Co, Solicitors for the Plaintiffs;**
3. **Jaykam Tellu Tavanavanua, the named First Defendant;**
4. **Munro Leys, Solicitors for the Second Defendant;**
5. **Sherani & Co, Solicitors for the Third Defendant.**