

IN THE HIGH COURT OF FIJI  
WESTERN DIVISION – IN LAUTOKA  
CIVIL JURISDICTION

Civil Action No. HBC 52 of 2023.

**BETWEEN** : **NATRAJ (FIJI) LIMITED** a Limited Liability Company having its Registered Company office at 6 Tagimoucia Street, Lautoka. **PLAINTIFF**

**AND** : **BA PROVINCIAL HOLDING COMPAY** a Limited Liability Company having its Registered Company office at 3<sup>rd</sup> Floor, Rogorogogovuda House, Tavewa Avenue, Lautoka. **DEFENDANT**

**BEFORE** : Hon. A.M. Mohamed Mackie- J.

**COUNSEL** : Mr. Kumar P.- for the Plaintiff  
Mr. Tamanikasaqa I. -for the Defendant.

**HEARING** : Disposed by way of written submissions.

**WRITTEN SUBMISSIONS:** By the Defendant – Applicant filed on 25<sup>th</sup> June 2025.  
By the Plaintiff -Respondent filed on 1<sup>st</sup> July 2025.  
By the Defendant- Applicant on 18<sup>th</sup> July 2025. (Reply)

**DATE OF RULING** : 25<sup>th</sup> August 2025.

**RULING**

[Setting aside of Interlocutory Judgment]

**A. INTRODUCTION:**

1. Before me is a Summons (" the application") dated and filed by the Defendant on 23<sup>rd</sup> April 2024 seeking, *inter alia*, the following orders;
  1. **THAT** the judgment entered herein in default of defence against the Defendant on the 29<sup>th</sup> day of June, 2023 be set aside unconditionally.
  2. **THAT** any assessment and/ or execution of the judgment and all further proceedings be stayed pending final determination of this application.
  3. **THAT** the Statement of Claim dated 10<sup>th</sup> March 2023 filed herein be struck out.
  4. **ALTERNATIVELY**, if the Statement of Claim is allowed to stand, that the Defendant do have 14 days to file defence and counterclaim.
2. The application is made pursuant to Order 19 Rule 9 and Order 18 Rule 18(d) of the High Court Rules, 1988 and the inherent jurisdiction of this Court.

3. The Defendant relies on the affidavit in support of **SIMELI SAVUTINI BOSE** aka **ISIMELI BOSE**, the Chief Executive Officer of the Defendant Company, sworn on 23<sup>rd</sup> February 2024 and filed along with annexures marked from "IB-1" to "IB-22".
4. The Plaintiff on 19<sup>th</sup> April 2024 filed its Affidavit in opposition (Scanned Copy) sworn by its Director **SWANI KUMAR MAHARAJ** on 5<sup>th</sup> April 2024 at Brisbane, Australia, with a covering Affidavit sworn by **Kristin Kritika Kumar**. Subsequently, with the leave of the Court, the Plaintiff on 17<sup>th</sup> June 2024 filed its Supplementary affidavit sworn by its said Director on 11<sup>th</sup> June 2024, with annexures marked as "SM-1" to "SM-6".
5. Thereafter, the Defendant on 30<sup>th</sup> October 2024 filed its affidavit in reply thereto, sworn by its said Director, **Isimeli Bose**, together with further annexures marked as "IB-23" to "IB-27".
6. Both parties, having agreed to dispose the hearing by way of written submissions, have filed their respective written submissions as aforesaid.

**B. BRIEF HISTORY:**

7. The Plaintiff on 10<sup>th</sup> March 2023 filed the above styled action against the Defendant seeking reliefs, *inter alia*;
  - a. **AN ORDER** for special damages for \$700,000.00 (Seven Hundred Thousand Dollars) against the Defendant.
  - b. **AN ORDER** for general damages for breach of Agreement and Memorandum of Understanding.
  - c. **AN ORDER** for exemplary and punitive damages against the defendant.
  - d. Interest & costs.
8. The Defendant filed its acknowledgement of service on 21<sup>st</sup> March 2023, however failed to file its Statement of Defence ("SD"). As a result, after ascertaining that no Defence was filed, a default judgment against the Defendant was entered on 27<sup>th</sup> June 2023.
9. Thereafter, Notice of Assessment of damages being filed and served on the Defendant, the Defendant's solicitors filed the current Summons on 23<sup>rd</sup> February 2024, seeking orders for the setting aside of the said Default judgment, as stated in paragraph 1 above, and for other Orders prayed for therein.

**Defendant's Contention**

10. The affidavit in opposition sworn by its Director averred, *inter alia*,
  - a. THAT on 30<sup>th</sup> November 2023 they were served with a Notice of Assessment of Damages dated 2<sup>nd</sup> November 2023 returnable on 8<sup>th</sup> December 2023 seeking for the orders as enumerated in the summons filed on 17 September 2024, which was adjourned to be mentioned on 26<sup>th</sup> February 2024.

- b. THAT they were not aware of the judgment dated 29<sup>th</sup> June 2023. He was advised by their Solicitor that the default judgment for \$700,000.00 has been entered since they had not filed the Statement of Defence.
- c. THAT due to an oversight they had not given full instructions to their Solicitors on the Defence, so the same could not be filed.
- d. THAT it was the former Chairman of the Defendant, who dealt with the Plaintiff's Director and he was the best person to provide instructions to the Solicitors. He met with his untimely demise on the 10<sup>th</sup> July 2023, which led them to fully go through the files and contact various parties to provide information to the Solicitors. Thus, they could not provide the full instructions in time to file the statement of defence.
- e. THAT the delay caused in filing this application was due to the Default Judgment not being served on their Solicitors Messrs. Law Naivalu, but at the Defendant's office. They were not aware of the meaning of the term "Default Judgment" and it was after service of the Notice of Assessment for damages on 30<sup>th</sup> November 2023 and on providing the same to their Solicitors, they were made to understand the meaning of the documents served, and they were able to give full instructions only a week ago.
- f. THAT prior to making this Application, they did an online search about the Plaintiff Company on digital Fiji and found that the same has been deregistered, and on a subsequent manual search being done, they confirmed that the Plaintiff Company has indeed been deregistered. In proof of same a copy of the letter dated 15<sup>th</sup> February 2024 was marked as "IB-22" and tendered with the affidavit in support.
- g. THAT he has been advised that in the circumstances, the Plaintiff Company does not have right to move this Court as it has ceased to exist and the right to claim, if any, does exist, which belongs to the Registrar of Companies alone.
- h. THAT, as per the advice, the Plaintiff Company will not suffer any prejudice, if the default judgment is set aside.

### **Plaintiff's Contention**

11. The Plaintiff in its affidavit in opposition filed on 19<sup>th</sup> April 2024 and in the supplementary affidavit filed on 17<sup>th</sup> June 2024, both sworn by the Plaintiff's Director **Swani Kumar Maharaj**, averred *inter alia*;
  - a. THAT the Defendant's admission that it was adequately represented since the writ of summons was filed in 2023 is evident that the Defendant ought to have filed its defence on time and defended the proceedings. The failure of the Defendant's Solicitors cannot be an excuse to further delay the present proceedings as it denies the Plaintiff the fruits of the judgment.
  - b. THAT the Defendant has not provided sufficient justification for the delay and the Defendant's Solicitors were fully aware of within matter and their laxity cannot be justified.

- c. THAT as he was away in overseas and the Company's registration was not renewed, upon his return he wrote a letter to the Registrar of Companies for the Re-instatement of his Company as it was not renewed and the registrar of company has responded to his Solicitors informing that the company will be reregistered. The letter sent to the Registrar of Companies and the response by the Registrar of Companies thereto are marked as "SM-4" and "SM-5" respectively and tendered with the Affidavit in response.
12. It is observed that the supplementary affidavit in opposition filed by the Plaintiff does not contain any additional grounds to oppose the Defendant's application for setting aside, except for certain averments that may become material for the consideration of the Defendant's relief of striking out sought in the same application or for the purpose of substantive matter.
13. It is to be borne in mind that, if the Defendant's application for setting aside the default judgment succeeds and the said judgment is vacated only, this Court can go into the relief of striking out sought by the Defendant. If the impugned judgment survives, there will be no need for the consideration of the application for striking out as it will be a belated and an unproductive exercise. Then, the only relief that would be available for the Defendant is appealing against the order of the judge refusing to set aside.
14. It is also to be born in mind that if the Defendant succeeds in his application for setting aside the impugned default on the ground adduced by the Defendant to the effect that at the time of filing the substantive action, the Plaintiff Company stood deregistered, then no necessity would arise to consider the relief of striking out sought by the defendant, as the statement of claim would have become null and void ab-initio due to the lack of *locus standi* to the plaintiff to file this action on account of its deregistration.

**C. DETERMINATION:**

15. Principles that govern the setting aside of Default judgment can be summarized as follows.
- a. A Default judgment can be entered at two (2) different stages of civil action. The first one is when the Defendant fails to 'give notice of intention to defend' pursuant to Order 13, and the second one is under Order 19 of the High Court Rules 1988 for 'default of pleadings.'
- b. When applying under Order 13 or Order 19, the basic principles for 'setting aside Default judgment' remains the same. The principles upon which Default judgments are set aside fall into two (2) distinct categories, which are '**regular**' and '**irregular**'.
- c. Thus, in case of an 'irregular' default judgment, the Defendant is entitled as of right to have the said Judgment set aside and in case of 'regular' default judgment, the Court has the discretion to impose conditions when considering such application.
- d. Therefore, the First issue to be considered by this Court is 'whether the interlocutory default judgment entered on 27<sup>th</sup> June 2023 was 'regular' or 'irregular'?

16. The writ of summon was, admittedly, served on the Defendant's Legal Department on 15<sup>th</sup> March 2023, pursuant to which the Defendant's Solicitors, Messrs. Law Naivalu, filed the acknowledgment of service on 21<sup>st</sup> March 2023. There is no issue on this.
17. The Defendant, though filed its acknowledgement of service, failed to file the Statement of Defence as per the High Court Rules, 1988. The Plaintiff, accordingly entered the Default judgment on 27<sup>th</sup> March 2023 pursuant to Order 19 Rule (2) of the High Court Rules 1988 (HCR). It is upon the service of the said Default Judgment; the Defendant filed the application in hand under Order 19 Rule 09 of the HCR seeking to set aside the Default judgment. It is not disputed that, under these circumstances, it is the Order 19 and Rules (2) and (9) come into play, which the Defendant's Solicitors have correctly followed.
18. The pivotal question that should be considered, above all other arguments advanced by both parties, is the issue raised by the Defendant in paragraphs 53 to 56 of the its Affidavit in support, which is on the Plaintiff Company's locus- standi to file this action at the time material. The issue raised is that at the time the action was filed against the Defendant, the Plaintiff Company stood deregistered, on account of which, it had no locus- standi to file, proceed with this action and to have the impugned judgment entered in its favour. In other words, the Plaintiff has had no legal capacity to file this action and obtain the impugned judgment.
19. The Plaintiff's director in his Affidavit in opposition and in supplementary affidavit filed, and its Counsel in his written submissions filed, have tacitly admitted the aforesaid status of the Plaintiff Company. All what they say is that the Plaintiff Company has now been reregistered. However, at the time of filing the action and obtaining the impugned judgment, the Plaintiff Company has, unarguably, remained deregistered.
20. Section 605 of the Companies Act 2015 states that the effect of deregistration is that "***a company ceases to exist on deregistration***". It is only on reregistration; a company gains its legal personality to sue. In *Interior & Exterior Engineering and Civil Engineering Works Limited v Abdul Aleem [2025] FJCA 63; ABU 011.23* it was found that the Appellant who had been deregistered at the time of filing ' ***had not been a legal person who could sue and be sued in a court of law*** ' as per Hon. Prematilaka RJA at para 8.
21. Thus, it is clear that the Plaintiff Company, which stood deregistered, had no legal personality to sue the Defendant hereof. If the action had been filed with the knowledge that it had no legal status to do so, or should it have known about it, the move by the plaintiff's Director to file the action and obtaining judgment in this manner could be an abuse of process.
22. Section 758 (1) of Companies Act tells that the effect of reregistration is that "***the registration of the company is deemed to continue from the day of reregistration***"... ***It does not*** continue the legal personality of the company as it had never been deregistered.
23. Section 758 (3) states "***Proceedings that could have been commenced or continued by or against the company before reregistration may be commenced or continued by or against the company after reregistration***".

24. None of the above provisions empower the deregistered company (the Plaintiff) to commence proceedings before reregistration. Moreover, the reference to proceedings only refers to proceedings that could have been commenced. Not proceedings that have already been commenced.
25. In view of the above, prior to going into the propriety of the impugned judgment (whether it is regular or irregular), what needs to be considered is whether a valid judgment could have been entered when the plaintiff had no locus standi to commence and proceed with the action. When the parties were not duly before the Court, the Court could not have assumed jurisdiction to adjudicate the disputes in relation to them.
26. The Plaintiff hereof could not have come before the Court, when it had lost its legal status due to its deregistration. As such, it was not duly before this Court when the action was filed and the impugned judgment was entered. Accordingly, this Court has had no jurisdiction to entertain the action on 10<sup>th</sup> March 2023 and enter the impugned judgment on 27<sup>th</sup> June 2023.
27. The action was filed on 10<sup>th</sup> March 2023, the purported Default judgment was entered on 27<sup>th</sup> June 2023 and it was served on the Defendant's office on 13<sup>th</sup> August 2023. The Application in hand for setting aside was filed on 28<sup>th</sup> February 2024, and it was after this Application, the Plaintiff wrote to the Registrar of Companies on 11<sup>th</sup> March 2024 to reregister the Company. The claim that the Plaintiff has been reregistered is yet to be substantiated by the Plaintiff's Solicitors, if the action is to be continued against the Defendant.
28. Though, the Defendant's Solicitors have moved to strike out the claim on account of what was discussed above, in the interest of justice and fair play, I decide to afford an opportunity to the Plaintiff to proceed with its action, as if the Writ of summons and the Statement of Claim were filed on the date of reregistration. The Plaintiff should file a copy of reregistration by serving a copy of the same to the Defendants Solicitors in order to regularize the record and the proceedings.
29. In view of the above, there is no necessity for this court to go into the question of "regularity" or "irregularity" of the impugned judgment, the question of delay in making this application and on the merits of the would be Defence. The impugned judgment, all the relevant proceedings and other ancillary orders made therein shall stand null and void ab initio. The Plaintiff's writ of summons and the statement of claim will stand revalidated from the date of reregistration of the Plaintiff Company and the defendant shall be at liberty to file the statement of defence.

**D. PREJUDICE & COSTS:**

30. This matter is now only two and half years old. I don't find any serious prejudice that would be caused to the Plaintiff on account of the impugned judgment and the related proceedings being made null and void. The court is providing both the parties the opportunity to proceed with their respective claims inter partes, by taking into consideration the section 15 (3) of the Constitution, in order to expeditiously disposes of the matter in its entirety. Considering the circumstances, no costs ordered, except for the cost reserved on 27<sup>th</sup> May 2024.

**E. ORDERS:**

- a. The Defendant's Summons, filed on 23<sup>rd</sup> February 2024 seeking for the setting aside of the Default judgment entered on 29<sup>th</sup> June 2023, is allowed.
- b. The interlocutory judgment entered on 29<sup>th</sup> June 2023 is hereby set aside and vacated.
- c. The order 3 sought by the Defendant, in terms of its Summons to strike out the Plaintiff's Statement of Claim, is declined.
- d. The Plaintiff's Statement of Claim will stand valid from the date of the re-registration of the Plaintiff Company.
- e. The Plaintiff shall file the Certificate of Re-registration, with copy to the Defendant, within 7 days of this Ruling.
- f. Thereafter, the Defendant is at liberty to file the Statement of Defence, with the Counter claim, if any, within 14 days.
- g. The Plaintiff may file the Reply to Defence and Defence to Counter claim, if any, within 14 days thereafter.
- h. The Plaintiff shall pay the Defendant a sum of \$250.00 (Two Hundred and Fifty Fiji Dollars) being the costs reserved on 27<sup>th</sup> May 2024, and no further costs ordered.
- i. The matter will be mentioned before the Master for the rest of the Pleadings, discoveries and PTC formalities.
- j. Parties to appear before the Master when Noticed.

  
A.M. Mohamed Mackie  
Judge



At the High Court of Lautoka on this 25<sup>th</sup> day of August, 2025.

**SOLICITORS:**

For the Plaintiff:

Messrs. S. Nand Law- Barristers & Solicitors.

For the Defendant:

Messrs. Law Naivalu – Barristers & Solicitors.