IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 364 of 2022

BETWEEN:

MAJOR JOSEFA SAVUA
1ST PLAINTIFF

AND:

WARRANT OFFICER CLASS 1 (WO1.) JONE BUADROMO
2ND PLAINTIFF

AND:

JOLAME NASILASILA
3RD PLAINTIFF

AND:

SERGEANT (SGT.) LIVAI BALEICOLO
4TH PLAINTIFF

AND:

CORPORAL (CPL.) MARIKA SALUSERE
5TH PLAINTIFF

AND:

PRIVATE (PVT.) SIMIONE DAU
6TH PLAINTIFF

AND:

CORPORAL (CPL.) LORIMA TINDRA
7TH PLAINTIFF

AND:

MINISTER FOR HOME AFFAIRS
1ST DEFENDANT

AND:

REPUBLIC OF FIJI MILITARY FORCES
2ND DEFENDANT

AND:

ATTORNEY GENERAL OF FIJI
3RD DEFENDANT

BEFORE:

Acting Master L. K. Wickramasekara

COUNSELS:
Fa & Company for the Plaintiffs
Office of the Attorney General for the 1st and 3rd Defendants
Army Legal Services for the 2nd Defendant

Date of Hearing:
13th May 2025

Date of Ruling:
29th August 2025

RULING

01. The subject of this Ruling is the application made by the 1st and 3rd Defendants to Strike Out the Amended Writ and the Statement of Claim of the Plaintiff as filed on 05/04/2023.

02. The said Summons to Strike Out was filed on 22/06/2023 pursuant to Order 18 Rule 18 (1) (a), (b), and (d) of the High Court Rules 1988, on the basis that the Plaintiff's Statement of Claim discloses no reasonable cause of action, that it is scandalous, frivolous or vexatious and that it is an abuse of the process of the Court.

03. The Summons further outlines the ground of Plaintiff's claim being previously litigated and dealt by the Court in HBC 101/2014 and HBC 96/2016 and hence been subjected to the principle of *res judicata* as the ground on which the application for striking out is based upon.

04. The Plaintiff raised an objection on the said Summons to the effect as it was not supported with an Affidavit the Defendant's Summons cannot stand pursuant to Order 18 Rule 18. Pursuant to Order 18 Rule 18 (2) only an application under Order 18 Rule 18 (1) (a) could be made without a supporting affidavit.

05. Counsel for the 1st and 3rd Defendant's then informed the Court that they shall rely only on Order 18 Rule 18 (1) (a) of the High Court Rules, in pursuing the application for striking out. Accordingly, this application shall only be considered under Order 18 Rule 18 (1) (a) of the High Court Rules 1988.

06. Hearing on the matter was held on 13/05/2025 whereas both parties made oral submissions in support of their respective positions. In addition, comprehensive written submissions have been filed by the parties. Counsel for the 2nd Defendant has also filed written submissions in support of the current application.

07. Having considered the oral and written submissions by the parties along with the pleadings in the matter, I now proceed to make my Ruling on the Summons to Strike Out as follows.

08. The Plaintiff's claim derives from a dispute involving the Plaintiffs, who are military personnel having served with the Republic of Fiji Military Forces. The Plaintiffs participated in peacekeeping missions in Lebanon, pursuant to mandates issued by a United Nations resolution.

09. The Plaintiffs allege that their salaries were disbursed by the United Nations to the Government of Fiji, and that the Defendants received such payments in a fiduciary and/or trustee capacity on behalf of the Plaintiffs. However, the Plaintiffs contend that the Defendants failed to remit the full amount of the salaries to the Plaintiffs and, instead, misappropriated the said funds in breach of their fiduciary duties and contrary to the interests of the Plaintiffs.

10. Accordingly, the Plaintiffs have commenced this action alleging causes of action for breach of fiduciary duty, breach of trust, and the unconscionable conduct of the Defendants. They accordingly seek the following remedies from Court,

> *"1. A Declaration that the 1st - 3rd Defendants are constructive trustees of all monies paid by the United Nations as allowances for soldiers who served as peacekeepers for UNIFIL from 1978 - 2002.*

2. *A Declaration that the 1st -3rd Defendants are liable to account for the soldiers for all monies received by them from the United Nations paid as allowances for soldiers who served as Peacekeepers for UNIFIL from 1978 - 2002 on the grounds of their breach of fiduciary duty and breach of trust.*

3. *An Order that the 1st - 3rd Defendants pay interest at the rate of 8.5% per annum compounded from 1978 till payment of all monies owed to the soldiers for serving as Peacekeepers for UNIFIL*

4. *An Order that the 1st - 3rd Defendants pay the soldiers the sum of USD $11,333,794,900.95 (Eleven Billion Three Hundred Thirty-Three Million Seven Hundred Ninety-Four Thousand Nine Hundred and Ninety-Five Cents) or such other sum as the court thinks fit, being the total sum received by the 1st -3rd Defendants from the United Nations as allowances for the soldiers who served as peacekeepers for UNIFIL from 1978-2002.*

5. *An Order that the soldiers legal counsel provide the court with a distribution plan to be approved by the court for the distribution of the soldiers allowances.*

6. *Special Damages*

7. *General Damages*

8. *Costs of the Proceedings"*

11. The Defendant's position, as articulated in the Summons to Strike Out, is that the Plaintiff has already contested the same matter in HBC 101/2014 and HBC 96/2016, thereby precluding the current claim pursuant to the doctrine of res judicata.

12. In addition to the foregoing position, counsel for the 1st and 3rd Defendants further submitted that the Plaintiffs' claim is barred by statute pursuant to Section 4 (1) (a) of the Limitations Act 1971. The Defendants contend that the Plaintiffs' claim is founded upon a contractual relationship and, accordingly, should have been instituted within six (6) years from the date of the breach of such contractual obligations.

13. Counsel for the Plaintiffs, in opposition, contended that the previous cases of HBC 101/2014 and HBC 96/2016 did not involve the same causes of action as the present matter. It was argued that the decision in HBC 101/2014 was based on statutory limitation under Section 4(1)(a) of the Limitations Act 1971, which does not adversely impact the current causes of action. Furthermore, it was submitted that the ruling in HBC 96/2016 was grounded on the doctrine of res judicata, predicated on the Court's previous determination that the causes of action in HBC 101/2014 were statute barred. The Plaintiffs assert that these prior decisions have no bearing on the

present case, as the current causes of action are not statute barred and differ substantively from those in the previous matters.

14. Pursuant to Order 18 Rule 18 (2), no evidence shall be admissible upon an application under Order 18 Rule 18 (1) (a), to determine if any pleading discloses no reasonable cause of action or defence. No evidence is admissible for this ground for the obvious reason that the Court can conclude absence of a reasonable cause of action or defence merely on the pleadings itself, without any extraneous evidence.

15. As noted by the counsel for the Plaintiff, this Court concurs that the Defendant's application for striking out on the basis of *res judicata* ought to have been properly filed under the ground of abuse of process of the Court (See, ***Johnson v Gore Wood & Co*** *(a firm) [2000] UKHL 65; [2001] 1 All ER 481 at 525-526, [2002] 2 AC 1 at 58-59)* pursuant to Order 18 Rule 18(1)(d), having submitted all relevant evidence through a supporting affidavit.

16. However, in the absence of such relevant evidence, Court shall take judicial notice of the decisions made in HBC 101/2014 and HBC 96/2016. Both these decisions have been submitted by the Defendants along with their written submissions.

17. I shall now consider the relevant legal provisions and the case authorities in this regard. As per the Summons for Striking Out, the application has been made pursuant to Order 18 Rule 18 (1) (a) on the following grounds.

a) That there is no reasonable cause of action against the Defendant

18. Order 18 Rule 18 (1) of the High Court Rules 1988 reads as follows.

> *Striking out pleadings and indorsements (O.18, r.18)*
>
> *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*
>
> *(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).*

> *(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.*

19. Master Azhar, in the case of ***Veronika Mereoni v Fiji Roads Authority:*** *HBC 199/2015 [Ruling; 23/10/2017]* has succinctly explained the essence of this Rule in the following words.

> *"At a glance, this rule gives two basic messages, and both are salutary for the interest of justice and encourage the access to justice which should not be denied by the glib use of summery procedure of pre-emptory striking out. Firstly, the power given under this rule is permissive which is indicated in the word "may" used at the beginning of this rule as opposed to mandatory. It is a "may do" provision contrary to "must do" provision. Secondly, even though the court is satisfied on any of those grounds mentioned in that rule, the proceedings should not* ***necessarily*** *be struck out as the court can, still, order for amendment. In* ***Carl Zeiss Stiftung v Rayner & Keeler Ltd*** *(No 3) [1970] Ch. 506, it was held that the power given to strike out any pleading or any part of a pleading under this rule is not mandatory but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending plea.* ***MARSACK J.A.*** *giving concurring judgment of the Court of Appeal in* ***Attorney General v Halka*** ***[1972] FJLawRp 35; [1972] 18 FLR 210 (3 November 1972)*** *held that:*
>
> *"Following the decisions cited in the judgments of the Vice President and of the Judge of the Court below I think it is definitely established that the jurisdiction to strike out proceedings under Order 18 Rule 19 should be very sparingly exercised, and only in exceptional cases. It should not be so exercised where legal questions of importance and difficulty are raised".*

20. As stated in the foregoing paragraphs of this ruling, pursuant to Order 18 Rule 18 (2), no evidence shall be admissible upon an application under Order 18 Rule 18 (1) (a), to determine if any pleading discloses no reasonable cause of action or defence. His Lordship the Chief Justice A.H.C.T. GATES (as His Lordship then was) in ***Razak v Fiji Sugar Corporation Ltd*** ***[2005] FJHC 720; HBC208.1998L (23 February 2005)*** held 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) 36 Ch.D 489 at p.498".*

21. Citing several authorities, Halsbury's Laws of England (4th Edition) in volume 37 at para 18 and page 24, defines the reasonable cause of action as follows:

"A reasonable cause of action means a cause of action with some chance of success, when only the allegations in the statement of case are considered" Drummond-Jackson v British Medical Association [1970] 1 ALL ER 1094 at 1101, [1970] 1 WLR 688 at 696, CA, per Lord Pearson. See also Republic of Peru v Peruvian Guano Co. (1887) 36 ChD 489 at 495 per Chitty J; Hubbuck & Sons Ltd v Wilkinson, Heywood and Clark Ltd [1899] 1 QB 86 at 90,91, CA, per Lindley MR; Hanratty v Lord Butler of Saffron Walden (1971) 115 Sol Jo 386, CA.

22. Given the discretionary power the Court possesses to strike out under this rule, it cannot strike out an action for the reasons it is weak, or the plaintiff is unlikely to succeed, rather it should obviously be unsustainable. His Lordship the Chief Justice A.H.C.T. GATES in ***Razak v Fiji Sugar Corporation Ltd*** (supra) held that:

"The power to strike out is a summary power "which should be exercised only in plain and obvious cases", where the cause of action was "plainly unsustainable"; Drummond-Jackson at p.1101b; A-G of the Duchy of Lancaster v London and NW Railway Company [1892] 3 Ch. 274 at p.277."

23. It was held in ***Ratumaiyale v Native Land Trust Board [2000] FJLawRp 66; [2000] 1 FLR 284 (17 November 2000)*** that:

*"It is clear from the authorities that the Court's jurisdiction to strike out on the grounds of no reasonable cause of action is to be used sparingly and only where a cause of action is obviously unsustainable. It was not enough to argue that a case is weak and unlikely to succeed, it must be shown that no cause of action exists (**A-G v Shiu Prasad Halka** [1972] 18 FLR 210; **Bavadra v Attorney-General** [1987] 3 PLR 95. The principles applicable were succinctly dealt by Justice Kirby in **London v Commonwealth [No 2]** 70 ALJR 541 at 544 - 545. These are worth repeating in full:*

*1. It is a serious matter to deprive a person of access to the courts of law for it is there that the rule of law is upheld, including against Government and other powerful interests. This is why relief, whether under O 26 r 18 or in the inherent jurisdiction of the Court, is rarely and sparingly provided (**General Street Industries Inc v Commissioner for Railways (NSW)** [1964] HCA 69; (1964) 112 CLR 125 at 128f; **Dyson v Attorney-General** [1911] 1 KB 410 at 418).*

*2. To secure such relief, the party seeking it must show that it is clear, on the face of the opponent's documents, that the opponent lacks a reasonable cause of action (**Munnings v Australian Government Solicitor** (1994) 68 ALJR 169 at 171f, per Dawson J.) or is advancing a claim that is clearly frivolous or vexatious; (**Dey v. Victorian Railways Commissioners** [1949] HCA 1;(1949) 78 CLR 62 at 91).*

*3. An opinion of the Court that a case appears weak and such that it is unlikely to succeed is not alone, sufficient to warrant summary termination. (**Coe v The Commonwealth** (1979) 53 ALJR 403; (1992) 30 NSWLR 1 at 5-*

7). Even a weak case is entitled to the time of a court. Experience reaches that the concentration of attention, elaborated evidence and argument and extended time for reflection will sometimes turn an apparently unpromising cause into a successful judgment.

*4. Summary relief of the kind provided for by O 26, r 18, for absence of a reasonable cause of action, is not a substitute for proceeding by way of demurrer. (**Coe v The Commonwealth**(1979) 53 ALJR 403 at 409). If there is a serious legal question to be determined, it should ordinarily be determined at a trial for the proof of facts may sometimes assist the judicial mind to understand and apply the law that is invoked and to do so in circumstances more conducive to deciding a real case involving actual litigants rather than one determined on imagined or assumed facts.*

*5. If notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it has failed to put in proper form, a court will ordinarily allow that party to reframe its pleadings. (**Church of Scientology v Woodward** [1982] HCA 78; (1980) 154 CLR 25 at 79). A question has arisen as to whether O 26 r 18 applies only part of a pleading. (**Northern Land Council v The Commonwealth** (1986) 161 CLR 1 at 8). However, it is unnecessary in this case to consider that question because the Commonwealth's attack was upon the entirety of Mr. Lindon's statement of claim; and*

6. The guiding principle is, as stated in O 26, r 18(2), doing what is just. If it is clear that proceedings within the concept of the pleading under scrutiny are doomed to fail, the Court should dismiss the action to protect the defendant from being further troubled, to save the plaintiff from further costs and disappointment and to relieve the Court of the burden of further wasted time which could be devoted to the determination of claims which have legal merit".

24. Section 4 of the Limitation Act reads as follows,

[LIM 4] Limitation of Actions of Contract and Tort, and Certain Other Actions

4 (1) The following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued, that is to say—

(a) actions founded on simple contract or on tort;
(b) actions to enforce a recognizance;
(c) actions to enforce an award, where the submission is not by an instrument under seal;
(d) actions to recover any sum recoverable by virtue of any Act, other than a penalty or forfeiture or sum by way of penalty or forfeiture, provided that—
(i) in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any

Act or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to 6 years there were substituted a reference to 3 years; and

(ii) nothing in this subsection shall be taken to refer to any action to which section 6 applies.

(2) An action for an account shall not be brought in respect of any matter which arose more than 6 years before the commencement of the action.

(3) An action upon a specialty shall not be brought after the expiration of 12 years from the date on which the cause of action accrued, provided that this subsection shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act.

(4) An action shall not be brought upon any judgment after the expiration of 12 years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of 6 years from the date on which the interest became due.

(5) An action to recover any penalty or forfeiture, or sum by way of penalty or forfeiture, recoverable by virtue of any Act or Imperial enactment shall not be brought after the expiration of 2 years from the date on which the cause of action accrued, provided that for the purposes of this subsection the expression "penalty" shall not include a fine to which any person is liable on conviction of a criminal offence.

(6) Subsection (1) shall apply to an action to recover seamen's wages, but save as aforesaid this section shall not apply to any cause of action within the Admiralty jurisdiction of the High Court which is enforceable in rem.

(7) This section shall not apply to any claim for specific performance of a contract or for any injunction or for other equitable relief, except in so far as any provision thereof may be applied by the court by analogy in like manner as has, prior to the commencement of this Act, been applied.

25. Sec. 9 of the Limitation Act reads as follows,

[LIM 9] Limitation of Actions in respect of Trust Property

9 (1) No period of limitation prescribed by the provisions of this Act shall apply to an action by a beneficiary under a trust, being an action—

(a)in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b)to recover from the trustee, trust property or the proceeds thereof in the possession of the trustee or previously received by the trustee and converted to his or her use.

(2) Subject as aforesaid and to the provisions of the Trustee Act 1966, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued, provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest fell into possession.

(3) No beneficiary as against whom there would be a good defence under the provisions of this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he or she could have obtained if he or she had brought the action, and this Act had been pleaded in defence."

26. In considering an application for summary dismissal of proceedings, the Court shall invariably adhere to the principles of a fair trial. The doctrine of a fair trial mandates that all parties are afforded a hearing that is fair and public, conducted within a reasonable timeframe, by an independent and impartial tribunal established in accordance with the law.

27. Courts are accordingly vested with the authority to strike out any proceeding or claim that impedes or undermines the conduct of a fair trial. Furthermore, the rule of law and principles of natural justice mandate that every individual has access to justice and possesses the fundamental right to have their disputes adjudicated by an independent and impartial Court or Tribunal. The principle of a fair trial is now enshrined in the Constitution of Fiji, thereby establishing it as a constitutional right of every litigant within the jurisdiction.

28. I shall now consider the principle of *res judicata*. In the Supreme Court decision of ***Varani v Native Lands Commission****; CBV0014.2018 (29 April 2022),* His Lordship Justice Marsoof at paragraphs 40-43 of the Judgment states as follows,

*" **Res Judicata***

[40] The concept of res judicata is well known in both common Law and civil law jurisdictions, though in certain legal systems it is more popularly known as "claim preclusion". Under Roman law, the principle was embodied in two legal maxims, ***interest rei publicae ut sit finis litium****, meaning "it concerns the State that there be an end to lawsuits" and* ***nemo debet bis vexari pro una et eadem causa****, meaning "no man should be vexed twice over for the same cause"*[1]*. As Halsbury's Laws of England*

[1] See, Lockyer v. Ferryman (1877), 2 App. Cas. 519 at p. 530, per Lord Blackburn.

explains, "the doctrine of res judicata is not a technical doctrine applicable only to records; it is a fundamental doctrine of all courts that there must be an end of litigation.[2]"

[41] Spencer Bower and Handley have defined res judicata as a "decision pronounced by a judicial or other tribunal with jurisdiction over the cause of action and the parties, which disposes once and for all of the fundamental matters decided, so that, except on appeal, they cannot be re-litigated between persons bound by the judgment."[3] A plea of res judicata can consist of a cause of action estoppel or an issue estoppel[4]. A cause of action estoppel is concisely defined by ***Spencer Bower and Handley*** *in this way: "If the earlier action fails on the merits a cause of action estoppel will bar another."[5] By way of contrast, an issue estoppel applies to "a state of fact or law which is necessarily decided by the prior judgment, decree or order."[6]*

[42] The recent decision of the English Supreme Court in ***R (Coke-Wallis) v. Institute of Chartered Accountants in England and Wales***[7] *which involved two successive sets of disciplinary proceedings, provides an example of a cause of action estoppel. Lord Clarke of Stone-cum-Ebony J. (with whom Lord Phillips of Worth Matravers P, Lord Rodger of Earlsferry and Lord Collins of Mapesbury JJ agreed) outlined the requisites of res judicata in its application to the proceedings before administrative tribunals in the following manner:*[8]

"In para 1.02 ***Spencer Bower & Handley, Res Judicata , (4th ed.)*** *makes it clear that there are a number of constituent elements in a case based on cause of action estoppel. They are: '(i) the decision, whether domestic or foreign, was judicial in the relevant sense; (ii) it was in fact pronounced; (iii) the tribunal had jurisdiction over the parties and the subject matter; (iv) the decision was— (a) final; (b) on the merits; (v) it determined a question raised in the later litigation; and (vi) the parties are the same or their privies, or the earlier decision was in rem.' It is not in dispute that all those elements are established except (iv) and (v). Even if any of the others were in dispute, I would hold that they are plainly satisfied. As to (vi), it was not suggested that the first decision was* ***in rem*** *but it is plain that the parties to both sets of proceedings were the same." (emphasis added)*

[43] It is trite law that a party to a dispute relying on res judicata in the form of cause of action estoppel must clearly set it up in its pleadings and establish all the

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[2] Halsbury's Laws of England (3rd Edition), Vol 15 para. 357 at page 185.
[3] Spencer Bower and Handley, Res Judicata (4th Edition) (Butterworths Common Law Series, LexisNexis, 2009) paragraph 1.01.
[4] ibid., paragraph 1.05.
[5] Ibid., paragraph 1.06.
[6] See, Dixon J in Blair v. Curran [1939] HCA 23; [1939] 62 CLR 464 at 532. See also Spencer Bower and Handley, Res Judicata , supra note 3 paragraph 8.01.
[7] R (Coke-Wallis) v. Institute of Chartered Accountants in England and Wales [2011] 2 AC 146.
[8] ibid., paragraph 34.

constituent elements adverted to by Lord Clarke of Stone-cum-Ebony JSC in the above quoted passage from his judgment in in ***R (Coke-Wallis) v. Institute of Chartered Accountants in England and Wales***[9].

29. After careful consideration of the decisions in HBC 101/2014 and HBC 96/2016, this Court finds that the judgment in HBC 101/2014 was based on the ground of statutory limitation, specifically on the basis that the Plaintiffs' claim arose from a simple contract. Accordingly, the Court in HBC 101/2014 determined that the claim was statute barred pursuant to Section 4(1) of the Limitations Act 1971.

30. However, the present claim does not rest upon a cause of action derived from a simple contract. As submitted by the counsel for the Plaintiff, this Court finds that the current claim does not arise from a contractual obligation of a simple contract. Instead, it is evident that the Plaintiffs' claim is founded in equity and is predicated on a fraudulent breach of trust, as alleged in the Amended Statement of Claim.

31. In the decision of HBC 96/2016, the Court had concluded that the same issue of statutory time limitation applies to the claim of the Plaintiffs and hence the matter is *res judicata.*

32. In the present case, as this Court has previously emphasized, the claim is not founded upon a simple contract. Therefore, it shall not be barred by time pursuant to Section 4(7) of the Limitations Act 1971. Additionally, since the claim is predicated on a fraudulent breach of trust, it is not subject to time limitations under the provisions of Section 9 of the Limitations Act.

33. In the above context, having thoroughly considered the decisions in HBC 101/2014 and HBC 96/2016, this Court concludes that the current matter is not barred by time pursuant to Section 4(1) of the Limitations Act 1971, nor is it a matter that has been previously litigated and finally decided, such that it would be barred by the doctrine of *res judicata*. It is therefore the conclusive finding of this Court that the current claim does not fall under *a cause of action estoppel or an issue estoppel.*

34. Further, the Court concludes that the questions regarding the existence of a constructive trust between the parties shall be a matter to be determined upon the presentation of proper evidence at a competent tribunal. Similarly, the issue of whether the Defendants acted in a fiduciary capacity in receiving payments from the United Nations concerning the peacekeeping missions undertaken by the Plaintiffs also requires full adjudication. These issues are not suitable for summary disposition and must be properly litigated before a competent tribunal in due course.

[9] Supra, note 3.

35. When the Court identifies real issues between the parties to a matter, it was held that the matter should not be summarily dismissed.

> *"Once it appears that there is a real question to be determined whether of fact or of law and that the rights of the parties depend upon it, then it is not competent for the court to dismiss the action as frivolous and vexatious and an abuse of process"*
> ***(as per Dixon J in Dey v.Victorian Railways Commissioners [1949] HCA 1; (1949) 78 CLR 62, 91***

36. In the foregoing paragraphs of this ruling, the Court has already found that there are triable issues between the Plaintiffs and the Defendants in this matter. This Court therefore concludes that the current matter must proceed to a trial before a competent Tribunal.

37. Accordingly, the Court concludes that the Defendants have not been able to pass the threshold for allowing an application to strike out the Writ of Summons/Statement of Claim pursuant to Order 18 Rule 18 (1) of the High Court Rules 1988 and that this application should therefore necessarily fail. Further, it is the considered view of this Court that this application for strike out was frivolous and vexatious as per reasons expounded in the foregoing paragraphs of this ruling.

38. Consequently, the Court makes the following orders,

1. The Summons to Strike Out as filed by the 1st and 3rd Defendants on 22/06/2023 is hereby refused and struck out subject to the following orders of the court,

2. 1st and 3rd Defendants shall pay a cost of $ 2000.00, as summarily assessed by the Court, to the Plaintiff within 28 days.

HIGH COURT OF FIJI SUVA

At Suva
29/08/2025

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