

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

CASE NUMBER: HBC 354 OF 2023

BETWEEN: **SERUPEPELI SOWANI**

PLAINTIFF

AND: **LITIANA MARAMA TUIVANUAVOU NAKANACAGI** a.k.a
LITIANA MARAMA Executrix and Trustee in the Estate of **RATU**
LUKE NAMARAMA DALIGADUA TUIVANUAVOU
NAKANACAGI a.k.a **LUKE TUIVANUAVOU NAKANACAGI**

1st DEFENDANT

KARASITIANI TUIVANUAVOU a.k.a. **KARASITIANI**
NAKANACAGI as beneficiary in the Estate of **RATU LUKE**
NAMARAMA DALIGADUA TUIVANUAVOU NAKANACAGI
a.k.a **LUKE TUIVANUAVOU NAKANACAGI**

2nd DEFENDANT

MARIKA FRANK BANUVE NAKANACAGI a.k.a. **MARIKA**
NAKANACAGI as beneficiary in the Estate of **RATU LUKE**
NAMARAMA DALIGADUA TUIVANUAVOU NAKANACAGI
a.k.a **LUKE TUIVANUAVOU NAKANACAGI**

3rd DEFENDANT

Appearances: *Mr. N. Sharma for the Plaintiff.*

Mr. V. Faktaufon and Ms. V. Faktaufon for the Defendants.

Date/Place of Judgment: *Tuesday 23 September 2025 at Suva.*

Coram: *Hon. Madam Justice Anjala Wati.*

RULING

(Application for Extension of Time to seek Leave to Appeal Master's Decision)

Cause and Background

1. This is the plaintiff's application for extension of time to seek leave to appeal the decision of Master Wickramasekara of 13 June 2024. The application was filed on 30 January 2025, 6 months after the delivery of the Master's ruling.
2. On 13 June 2024, the Master had delivered a ruling striking out the plaintiff's claim on the grounds that it disclosed no reasonable cause of action, it was frivolous and vexatious, and an abuse of the process of the court. The Master had also ordered the plaintiff to pay \$8,000 costs to the defendants within 30 days from the date of the ruling.
3. The defendants are the biological children of late Ratu Luke Namarama Daligadua Tuivanuavou Nakanacagi a.k.a Luke Tuivanuavou Nakanacagi [*"the deceased"*]. The 1st named defendant is the Executrix and Trustee in the Estate of the deceased. The 2nd and 3rd defendants are the beneficiaries in the Estate of the deceased.
4. The plaintiff claims to be the de-facto partner of late Ms. Olive Whippy a.k.a Olive Tuivanuavou [*"Olive Whippy"*] who was the widow of the deceased. He claims to have advanced monies to Ms. Olive Whippy which was used to repair the property contained in Crown Lease No. 443700 Lot 166 on Vavalagi Place, Wainibuku, Naitasiri [*"the property"*]. The plaintiff is claiming refund of these monies in the sum of \$170,000.
5. The defendants say that the plaintiff started to live in this property after the death of Ms. Olive Whippy. They say that they only became aware of this when the 1st defendant went to check the property after she was informed of the passing away of Ms. Olive Whippy.
6. On 13 October 2022, the property was transferred to the 2 beneficiaries under the will of the deceased.

Law and Analysis

7. The plaintiff had 14 days from the delivery of the ruling by the Master to seek leave to appeal the decision before a single judge. That was not done. An application was made after 6 months to enlarge the time to seek leave to appeal the decision of the Master.
8. I will consider the following factors in determining the application for extension of time. They are:

(a) The length of the delay and the reason for the failure to file the application within time.

(b) Whether there is a ground of appeal that will probably succeed, notwithstanding the length and inexcusable delay?

(c) Prejudice to the parties if the application is allowed or refused.

9. The plaintiff says that he was not aware of his options regarding the ruling. He says that when he sought legal advice, he was told that he can appeal the issue of costs ordered against him. He further says that he was not financially stable and was not able to seek legal advice to file the application.
10. I do not find the length of the delay and the reasons for the delay to be reasonable or excusable. The plaintiff had a counsel on record who collected the judgment. All that he needed to do was to just ask his counsel of his rights.
11. If there were financial constraints, the plaintiff could have sought advice and assistance of Legal Aid Commission. There is no record of the plaintiff ever having sought assistance of Legal Aid Commission for anything.
12. He simply did not make any effort to vindicate his rights and only decided to appeal when he was faced with the Judgment Debtor Summons for enforcement of the order for costs. His conduct shows that he would not have even bothered about the outcome of the Master's ruling had he not been confronted with the enforcement proceedings.
13. Nevertheless, I would have considered granting the application for extension of time if there was any merits in the grounds of appeal.
14. The plaintiff simply does not have a claim against the beneficiaries or the property of the deceased. He has sued the executrix/trustee and the beneficiaries of the estate on the grounds that he was in a de-facto relationship with the deceased's wife. The plaintiff claims to have given the de-facto partner monies to repair the property now owned by the beneficiaries.
15. The plaintiff says that Ms. Olive Whippy left a will bequeathing her equity in the property to him and he therefore claims refund of monies spent on repairing the property. Ms. Olive Whippy could not give to the plaintiff what she never owned in the first place. She did not have any legal interest in the property and she was not given any beneficial interest by her late husband.

16. The claim is clearly unsustainable against the defendants or their interest in the property. The deceased or the beneficiaries did not take any money to renovate the property. They did not ask or invite him to expend monies on the property. He did so, perhaps on the request of Ms. Olive Whippy, who holds no interest in the property. There is also no existing claim by her challenging the will of the deceased. She had filed one but discontinued it later.
17. The Master has clearly identified that there is no cause of action against the defendants as follows and I find no basis to interfere with it:

“[34] Plaintiff in the Statement of Claim has not claimed that the defendants at any point of time promised the plaintiff and/or the late Olive Whippy any interest in the estate of Ratu Luke Namarama Daligadua Tuivanuavou Nakanacagi, nor has encouraged and/or invited the plaintiff and/or the late Olive Whippy to do renovations or upgrade to the property at Lot 166 Vavalagi Place, Nakasi, Nasimu which is part and parcel of the estate of the late Ratu Luke Namarama Daligadua Tuivanuavou Nakanacagi.

[35] It is therefore apparent that the alleged claim of the plaintiff relates to monies allegedly spent on renovations and upgrade of a property that plaintiff and/or the late Olive Whippy had no legal interest in. Whereas, it is clear that the plaintiff has no locus standi to bring this action and also there is no reasonable cause of action disclosed by the plaintiff in this action against the defendants.”

18. It is also undisputed that the plaintiff had filed an earlier claim against the 1st defendant being HBC 248 of 2022. The claim in that case is based on the same facts. The Master found that filing of a second action is an abuse of the process of the court. I could not agree more.
19. This was not only a case of an abuse of the process of the court but a frivolous claim failing to show any cause of action against the defendants and the property. Such cases only cause grief and financial drain to parties who are dragged in court unnecessarily. Parties who bring such claims in court ought to be prepared to pay costs of the proceedings at a higher scale.
20. The action had to be defended by the beneficiaries who had nothing to do with the plaintiff expending monies on his de-facto partner's wishes. The defendants had to engage a lawyer to defend the claim.

It is not easy for people to retain lawyers and defend cases by parties who have no locus to bring cases against them. In such cases, indemnity costs are often considered. I see no basis to interfere with the costs order.

21. I do not find any merits in the grounds of appeal and there is little point in continuing to drag this matter. The respondents will be financially drained to defend an action which has no chance of survival.

Finals Orders

22. In the final analysis, I make the following orders:

(a) The plaintiff's application for extension of time to seek leave to appeal is dismissed.

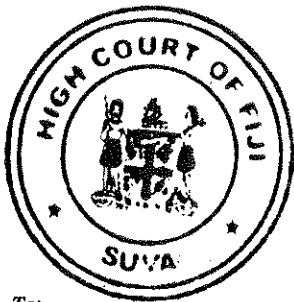
(b) The plaintiff shall pay costs of the application to the defendants in the sum of \$1,500.



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Hon. Madam Justice Anjala Wati

Judge

23.09.2025



To:

1. ***Kumar Legal for the Plaintiff.***
2. ***Vama Law for the Defendants.***
3. ***File: HBC 354 of 2023.***

