

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBA 09 of 2024
Magistrate Court Civil Action No. 201 of 2019

BETWEEN: LAISENIA NAWA & LAISENIA CABENALAWA.

APPELLANTS

AND: ILAISA RADRAVU & WILISONI DAKUNAIVUNE

RESPONDENT

BEFORE : Hon. Justice Vishwa Datt Sharma

COUNSEL: Mr. Maisamoa K. for the Appellant/Defendants

Mr. Doidoi R for the Respondent/Plaintiffs

DATE OF JUDGMENT: 23rd October, 2025

JUDGMENT

[Reinstatement]

Introduction

1. The Appellants/ Defendants filed an Ex-Parte Summons on 16th August 2024 and sought for the following orders:
 - (i) That the order of the High Court to strike out the Appeal on the First Call dated 5th August 2024 for non-appearance of the Appellant and its solicitors be set aside.
 - (ii) That the Appellants Appeal to be re-instated and to proceed with its normal cause.
 - (iii) That the Costs of the application be costs in the cause, and
 - (iv) That any other order that this High Court deems fair.
2. The application is supported by an affidavit deposed by the Appellant, Laisenia Nawa.
3. The Respondents/ Plaintiffs filed an affidavit in opposition deposed by Ilaisa Radravu

Background to case

4. The Respondent/Plaintiffs filed a Writ of Summons and a Statement of Claim against Appellants/Defendants in the Magistrates Court vide MBC 201 of 2019 seeking certain injunctive and other orders against the Defendant's/ Appellant.
5. Judgment was delivered on 25th July 2021 and the injunctive orders were accordingly granted.
6. The Defendant's/Appellant being dissatisfied with the Decision, appealed the Magistrates Court Judgment to the High Court.
7. The Magistrates Court record together with notice and grounds of appeal were received by the High Court and Notice of Adjourned hearing was directed to be served onto both parties/ counsels to the proceedings.
8. Both counsels, Law Solutions and Maisamoa & Associates were served with the Notice of Adjourned Hearing on 5th June 2024 and 30th July 2024 respectively. Affidavit of Services were also filed with their receive stamps impressed.

Determination

9. The issue for this Court to determine is 'whether the Appellant/Defendant's appeal dismissed on 5th August 2024 be set aside and reinstated to the list.
10. Both Counsels representing the parties to the proceedings furnished Court with their respective written submissions and relied on their respective affidavits for this Court to make a determination on the '**setting aside and reinstatement**'.
11. The possible orders that could be made in a '**setting aside and/or reinstatement**' application is to be either:
 - (a) Dismiss the application and/or
 - (b) Allow such application.'
12. In the current case, this Court dismissed the Appellant's/Defendant's Appeal for non-appearance of the Appellant's/ Defendant's and or its Counsel on 5th August 2024.
13. The Notice of Adjourned Hearing was served on both Counsels, Maisamoa & Associates and Law Solutions representing the parties to the proceedings. The Appellant/Defendant's Counsel was fully aware that a Court appearance was required on the returnable date of 5th August 2024 so that the Court is able to make further directions and determine the matter accordingly.
14. However, there was no appearances either of the Appellants/Defendants and/or Counsel representing and further there being no counsel instructed to appear and represent the Appellants/Defendants, this Court had no alternative but proceed to Dismiss the Appellant's/Defendant's Appeal.
15. However, the power vested with the Court to '**Set aside the order and reinstatement**' and action is discretionary. The principles to be applied to the exercise of the judicial discretion to '**set aside the order and reinstate**' an action are:
 - (a) Adequate reasons must be given for non-appearance;
 - (b) The application to reinstate be made promptly, and
 - (c) Prejudice.

(a) Reasons for non-appearance

16. It cannot be disputed that it is well established that parties to the proceedings have a duty to prosecute their claims diligently and appear when required to do so upon the assigned returnable Court dates.

17. It must be borne in mind that seeking for '**re-instatement**' is not automatic and must be supported clearly and with compelling reasons.
18. The Appellants affidavit in support deposed at paragraphs 7, 9 and 11 filed on 16 August 2024 states:
 - '7 - By the time the NOAH was sent to my solicitor, he told me that he noted the date 5th August 2024 was clashing with one of his hearing, which was already set well before my date 5th August 2024 was issued.'
 - '9 - I thought our appeal would be called in the same Court Room, waited till 10 am and left.'
 - '11 - Later told that my Solicitor instructed lawyer Sitiveni Raikanikoda to appear also on his behalf, but he was late by one minute.'
19. The explanations and reasons provided in the affidavit of the Appellant are extremely unsatisfactory and reasonable for non-appearance specially when the Counsel representing is doing double booking and instructed a Solicitor who would appear late to the Court. The Counsel had enough time to make necessary arrangements for the current case if he had a double booking, however he failed to do so.

(b) Length of delay

20. The Reinstatement application was filed two weeks after, on 16 August 2024. However, the delay is not inordinate but the reinstatement application ought to have been made much earlier to show the concern and the urgency of the Appeal at hand.

(c) Prejudice

21. Prejudice can be of two kinds. It can be either '**specific**' that is arising from particular event that may or may not occur during the relevant period or '**general prejudice**' that is implied from the Extent of delay.
22. If the Appellant/Counsel appeared then the Court would have moved the matter further to determine the substantive appeal rather than delaying, resulting in the Plaintiff's/ Respondents prejudiced by the drag on and delay. If the Appellants/ Defendants and Counsel representing and were serious about the prosecution of their Appeal and successfully obtained the relief as sought in their prayers in the re-instatement application, then, they would have appeared and sought for the relief, however, there was no appearances made even when Court had given a returnable date on their Appeal application.

In Conclusion


23. The Magistrates Court heard and determined the injunction application whereby the Plaintiff/ Respondents claimed that the Defendants/ Appellants dispute their ownership of the land in question and they have taken over the land in question and threatened the Plaintiffs/Respondents with cane knives, stones and sticks.
24. The Court accordingly made the injunctive orders befitting the circumstances and for the *status quo* to remain.
25. I find that there are no rational and circumstances on which I can proceed to set aside my orders of 5th August 2024 and grant a Reinstatement sought by the Appellants/ Defendants herein. Whenever returnable dates are assigned on the application filed in Courts, the party moving the Court must ensure that they are ready to prosecute their case at anytime rather than sleepover it and delay the proceedings.
26. The application of the Appellants/ Defendants fails accordingly.
27. The setting aside of the order of the 5th August 2024 and reinstatement application is refused and accordingly dismissed.

Orders

- (i) The Appellants/Defendants Summons and Affidavit in Support seeking for Setting Aside of Court orders of 05th August 2024 and Reinstatement of the Appeal to the cause list dismissed in its entirety.
- (ii) The Appellant/ Defendants to pay the Respondents/ Plaintiffs a summarily assessed costs of \$500 within 14 days timeframe.
- (iii) The file is closed with orders intact and remitted to the Senior Court Officer Magistrates Court Civil Registry accordingly.

Dated at **Suva** this **23rd** day of **October** , **2025**.




VISHWA DATT SHARMA
PUISNE JUDGE

**CC: Law Solutions Lawyers and Legal Consultants, Suva
Maisamoa & Associates, Rakiraki**