

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

Civil Action No. HBC 257 of 2022

Between: **BIDESI & SONS PTE LIMITED** a limited company having its registered office at 255 Waimanu Road, GPO Box 63, Suva, in the Republic of Fiji.

Plaintiff

And: **PACIFIC UROLOGY CENTRE PTE LIMITED** a limited company having its registered office at 20 Yohan Place, Bayview Heights, Suva.

First Defendant

And: **SIRELI KALOUCAVA** c/o Epworth Clinic, 254 Waimanu Road, Suva, Medical Practitioner.

Second Defendant

Representation:

Plaintiff: Mr. R Singh & Mr. T. Low (Munro Leys)

Defendants: Ms. D. Raj (Toganivalu Legal)

Date of Hearing: 16th October 2025.

Ruling

A. Introduction

[1] The Defendants filed summons pursuant to *Order 14 Rule 11* of the High Court Rules 1988 to set aside summary judgment entered against the 1st Defendant by the Plaintiff on 19th February 2024. They also sought that the Plaintiff's claim be stayed on the ground that the Defendants be allowed to file amended statement of defence. An affidavit of Sireli Kaloucava supports the summons.

[2] An affidavit in opposition of Atish Chandra Bidesi was filed for the Plaintiff. Subsequently an affidavit in reply of Sireli Kaloucava was filed.

B. Background

[3] The Plaintiff's instituted proceedings by way of writ of summons. The Defendants filed acknowledgement of service. The defendants then filed their statement of defence. Reply

to statement of defence was then filed. The Plaintiff's then filed summons for summary judgment. This was opposed. A reply to the opposition was filed.

- [4] Master Lal heard the summary judgment application. Both parties were represented. She then on 19th February 2024 delivered a ruling granting summary judgment in Plaintiff's favour against the 1st Defendant in the sum of \$217,727.50 (plus costs). On 21st August 2025 an application to set aside was made.

C. Submissions

- [5] The submission for the Defendant is that summary judgment is irregular and should be set aside. They argue that the court in granting summary judgment ruled that COVID 19 could not be relied upon as an act of god and struck out the Defendant's defence. They further submit that such a conclusion involves complex legal determination, involving interpretation of the contract terms, analyzing the legal meaning of "Act of god" in Fijian common law, application of principle of force majeure, frustration and public policy.

- [6] The submission for the Plaintiff is that the Defendants have relied on Order 14 Rule 11 to seek setting aside. The rule only applies when summary judgment is given against an absent party.

D. Determination

- [7] Order 14 rule 11 of the High Court Rules 1988 provides that:

"Any judgment given against a party who does not appear at the hearing of an application under rule 1 or rule 5 may be set aside or varied by the Court on such terms as it thinks just."

- [8] The summary judgment was heard by Master Lal following a hearing, where both parties were represented. The Defendants were represented by Toganivalu Lawyers. The summary judgment was not entered against the Defendants in their absence for that reason the Defendants cannot invoke Order 14 rule 11 of the High Court Rules 1988.

E. Court Orders

- [9] The summon seeking to set aside summary judgment is dismissed. The Defendants are to pay the Plaintiff \$2000.00 as costs within 30 days. The costs have been summarily assessed.

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Hon. Justice Chaitanya S. C. A Lakshman
Puisne Judge



12th November 2025