IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 196 of 2023

BETWEEN:

GIANT WHALE PROPERTY PTE LIMITED
PLAINTIFF

AND:

DEEPAK CHAND and BIMAL CHAND
1ST DEFENDANTS

AND:

HOME FINANCE COMPANY PTE LIMITED t/a HFC BANK
2ND DEFENDANT

BEFORE:

Acting Master L. K. Wickramasekara

COUNSELS:
Toganivalu Legal for the Plaintiff
KS Law for the 1st Defendants
Lajendra Lawyers for the 2nd Defendant

Date of Hearing:
By way of written submissions

Date of Ruling:
27th November 2025

RULING

(COURTS' NOTICE UNDER ORDER 25 RULE 9)

01. Court has issued a Notice on its own motion on 08 October 2025 pursuant to Order 25 Rule 9 of the High Court Rules 1988 on the Plaintiff to show cause as to why this matter should not be struck out for want of prosecution or as an abuse of the process of the Court due to the failure of the Plaintiff to take any steps in the matter for over 06 months.

02. The said Notice has been duly served on the Plaintiff's solicitor on 13 October 2025 by the Court Sheriff and a copy of the Notice as acknowledged by the Plaintiff's solicitor has been duly filed of record.

03. Having been duly served with the Court's Notice, the Plaintiff filed, on 20 October 2025, a Notice of Intention to Proceed and an Affidavit to Show Cause (which is erroneously termed as Affidavit in Support of the Notice of Intention to Proceed) sworn by Jone Vakaroronalevu Tawake, a solicitor employed by the Plaintiff's solicitors, in accordance with the Court's directive.

04. Following the filing of the aforementioned documents by the Plaintiff, on 03 November 2025, an Affidavit in Opposition on behalf of the 2nd Defendant as sworn by Abdul Hakim, the Manager of Operations for the 2nd Defendant was filed whereas on 20 November 2025, an Affidavit in Opposition on behalf of the 1st Defendants, as sworn by Bimal Chand was filed.

05. Pursuant to further directions from the Court, the Plaintiff has filed its written submissions on 17 November 2025 whereas the 2nd Defendant had filed its written submissions on 14 November 2025. All parties agreed that the Court's ruling would be based on the affidavits and written submissions filed.

06. Having carefully considered the affidavit evidence and the written submissions of the parties, the Court now proceeds to deliver its ruling in accordance with Order 25, Rule 9 of the High Court Rules, as follows.

07. The Writ and Statement of Claim were filed on 29 June 2023. In the Statement of Claim, the Plaintiff asserts that the Defendants made misrepresentations and lured the Plaintiff into buying a property belonging to the 1st Defendants over a loan facility provided by the 2nd Defendant in collusion with the 1st Defendants for an inflated price which caused loss and damages to the Plaintiff.

08. The Plaintiff contends that he was not allowed by the Defendants to seek independent legal advice and valuation of the property as the Defendants claimed that the 1st named 1st Defendant is a lawyer and that he was looking after the interests of the Plaintiff. It is also alleged that the Plaintiff never visited the property prior to the sale and transfer of the said property.

09. The 2nd Defendant had filed its Statement of Defence on 25 July 2023. In its Statement of Defence, the 2nd Defendant has denied the Plaintiff's allegations, asserting that it provided a loan facility to the Plaintiff on the application and supporting documents submitted by the Plaintiff and denies any collusion with the 1st Defendants.

10. The 1st Defendants filed their Statement of Defence on 13 December 2023. In their Statement of Defence, the 1st Defendants have denied the Plaintiffs allegations of misrepresentation and collusion with the 2nd Defendant. It is alleged that the property was independently viewed and upraised by the Plaintiff and the 1st Defendants had not influenced or prevented the Plaintiff from seeking independent legal advice.

11. It is also to be noted at this juncture that the Plaintiff sort injunctive orders by way of a Motion filed on 03 July 2023 as against the 2nd Defendant to prevent it from taking any adverse steps regarding the subject property. By a judgment delivered on 22 September 2023, Justice Amaratunga had refused the said application, and no injunctive orders were granted.

12. The Plaintiff failed to file any Reply to the Statements of Defence of both the Defendants. Since the filing of the 1st Defendants Statement of Defence on 13 December 2023, the matter was left idle and the Plaintiff failed to take any steps from that day onwards till 08 October 2025, when the Notice under Order 25 Rule 9 was issued by the Court.

13. Pursuant to the High Court Rules 1988, the Plaintiff had 14 days from the date of service of a Statement of Defence to file and serve its Reply to Statement of Defence, which, in this case, would have expired by end of December 2023 and this date shall be considered the date of close of pleadings (Order 18 Rule 19 of the High Court Rules).

14. Thereafter, the parties should have engaged in discovery of documents process (pursuant to Order 24 of the High Court Rules) and within 14 days from the date of close of pleadings filed a Summons for Discovery (pursuant to Order 25 Rule 1of the High Court Rules). Plaintiff is therefore in breach of a series of mandatory rules in the High Court Rules to proceed the matter forward and the total period the matter was left idled comes to 30 months from the date of close pleadings to the date the Court issued the Order 25 Rule 9 Notice (08 October 2025).

15. In the Plaintiff's Affidavit to Show Cause, it is alleged that the delay in proceeding forward with this matter was due to the sudden changes in the administration of the Plaintiff's firm of solicitors. It alleges that three of its principal lawyers had to leave the law firm due to being appointed to public office and some of the staff had also passed away and/or left the firm.

16. I find this reason to be without merit. Firstly, there is no information revealed as to which solicitor in particular had carriage of this matter. Further, the administrative changes in a law firm are not justifiable grounds for leaving a matter unattended and neglected for 30 months. Secondly, it is unclear as to whether the Plaintiff itself was interested to proceed with the mater, as no information was revealed as to what the Plaintiff was doing within this 30-month period, if it had a genuine interest in proceeding with its claim.

17. Thirdly, it is evident that the Plaintiff failed to take any steps to proceed with its claim despite being in breach of series of provisions in the High Court Rules as discussed in the foregoing paragraphs. The Affidavit filed on behalf of the Plaintiff categorically fails to reasonably explain the lengthy delay of almost two years and six months in these proceedings, which would render the delay inordinate, inexcusable and contumelious.

18. I will now examine the relevant law concerning Order 25 Rule 9 of the High Court Rules. This rule confers upon the Court, the jurisdiction to strike out any cause or matter for want of prosecution or on the grounds of abuse of process, where no step has been taken in the matter for a period of six months. The relevant provision reads as follows,

Order 25 Rule 9

> *9 (1) If no step has been taken in any cause or matter for six months then any party on application or the court of its own motion may list the cause or matter for the parties to show cause why it should not be struck out for want of prosecution or as an abuse of the process of the court.*
>
> *(2) Upon hearing the application, the court may either dismiss the cause or matter on such terms as maybe just or deal with the application as if it were a summons for directions".*

19. The grounds provided in the above rule are firstly, want of prosecution and secondly, abuse of the process of the Court. This is a rule that was introduced to the High Court Rules for case management purposes and was effective from 19 September 2005.

20. The main characteristic of this rule is that the Court is conferred with power to act on its own motion in order to agitate the unduly lethargic litigation (**see; *Trade Air Engineering (West) Ltd v Taga*** *[2007] FJCA 9; ABU0062J.2006 (9 March 2007*). Well before the introduction of this rule, the Courts in Fiji have exercised this power to strike out the cause for want of prosecution following the leading English authorities such as ***Allen v. McAlpine*** *[1968] 2 QB 299;[1968] 1 All ER 543* and ***Birkett v. James*** *[1978] AC 297; [1977] 2 All ER 801*. Justice Scott, striking out the Plaintiff's action in ***Hussein v Pacific Forum Line Ltd*** *[2000] Fiji Law Report 24; [2000] 1 FLR 46 (6 March 2000)***,** stated that,

The principles governing the exercise of the Court's jurisdiction to strike out for want of prosecution are well settled. The leading English authorities are ***Allen v. McAlpine*** *[1968] 2 QB 299;[1968] 1 All ER 543 and* ***Birkett v. James*** *[1978] AC 297; [1977] 2 All ER 801 and these have been followed in Fiji in, for example,* ***Merit Timber Products Ltd v. NLTB*** *(FCA Reps 94/609) and* ***Owen Potter v. Turtle Airways Ltd*** *(FCA Reps 93/205).*

21. The Court of Appeal of Fiji in ***Trade Air Engineering (West) Ltd v Taqa*** (supra) held,

In our view the only fresh power given to the High Court under Order 25 rule 9 is the power to strike out or to give directions of its own motion. While this power may very valuably be employed to agitate sluggish litigation, it does not in our opinion confer any additional or wider jurisdiction on the Court to dismiss or strike out on grounds which differ from those already established by past authority.

22. Pursuant to the above decision of the Court of Appeal, it is clear that the principles set out in ***Birkett v. James*** (supra) are still applicable to strike out any cause where no step is taken for six months, despite the introduction of a new rule (Or 25 R 9). Lord Diplock, in ***Birkett v. James*** (supra), explained the emerging trend of English Courts in exercising the inherent jurisdiction for want of prosecution. His Lordship held that,

Although the rules of the Supreme Court contain express provision for ordering actions to be dismissed for failure by the plaintiff to comply timeously with some of the more important steps in the preparation of an action for trial, such as delivering the statement of claim, taking out a summons for direction and setting the action down for trial, dilatory tactics had been encouraged by the practice that had grown up for many years prior to 1967 of not applying to dismiss an action for want of prosecution except upon disobedience to a previous peremptory order that the action should be dismissed unless the plaintiff took within a specified additional time the step on which he had defaulted.

To remedy this High Court judges began to have recourse to the inherent jurisdiction of the court to dismiss an action for want of prosecution even where no previous peremptory order had been made, if the delay on the part of the plaintiff or his legal advisers was so prolonged that to bring the action on for hearing would involve a substantial risk that a fair trial of the issues would not be possible. This exercise of the inherent jurisdiction of the court first came before the Court of Appeal in ***Reggentin vs Beecholme Bakeries Ltd (Note)*** *[1968] 2 Q.B. 276 (reported in a note to* ***Allen v Sir Alfred McAlpine & Sons Ltd*** *[1968] 2 Q.B. 229) and* ***Fitzpatrick v Batger & Co Ltd*** *[1967] 1 W.L.R. 706*

The dismissal of those actions was upheld and shortly after, in the three leading cases which were heard together and which, for brevity, I shall

> *refer to as Allen v McAlpine [1968] 2 Q.B. 229, the Court of Appeal laid down the principles on which the jurisdiction has been exercised ever since. Those principles are set out, in my view accurately, in the note to R.S.C, Ord. 25, R. 1 in the current Supreme Court Practice (1976).* ***The power should be exercised only where the court is satisfied either (1) that the default has been intentional and contumelious, e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court; or (2) (a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between each other or between them and a third party***.(emphasis added)

23. The first limb in the above case is ***the intentional and contumelious default***. Lord Diplock gave two examples for that first limb in the above judgment. One is ***disobedience to a peremptory order of the Court,*** and the other is ***conduct amounting to an abuse of the process of the court.*** Thus, the second ground provided in Order 25 Rule 9, which is 'abuse of the process of the Court', is a good example for '***the intentional and contumelious default'*** as illustrated by Lord Diplock in ***Birkett v. James*** (supra). According to Lord Diplock abuse of the process of the Court falls under broad category of '***the intentional and contumelious default.'***

24. House of Lords in ***Grovit and Others v Doctor and Others*** ***(1997) 01 WLR 640, 1997 (2) ALL ER, 417,*** held that, commencing an action without real intention of bringing to conclusion amounts to an abuse of the process of the Court. It was held as follows,

> *The Court exists to enable parties to have their disputes resolved. To commence and to continue litigation which you have no intention to bring to conclusion can amount to abuse of process. Where this is the situation the party against whom the proceedings are brought is entitled to apply to have the action struck out and if justice so requires (which will frequently be the case) the courts will dismiss the action. The evidence which was relied upon to establish the abuse of process may be the plaintiff's inactivity. The same evidence will then no doubt be capable of supporting an application to dismiss for want of prosecution. However, if there is an abuse of process, it is not strictly necessary to establish want of prosecution under either of the limbs identified by Lord Diplock in* ***Birkett v James*** *[1978] A.C 297. In this case once the conclusion was reached that the reason for the delay was one which involved abusing the process of the court in maintaining proceedings where there was no intention of carrying the case to trial the court was entitled to dismiss the proceedings.*

25. The Fiji Court of Appeal in ***Thomas (Fiji) Ltd –v- Frederick Wimheldon Thomas & Anor, Civil Appeal No. ABU 0052/2006,*** followed the principles of ***"Grovit and Others v Doctor and Others"*** (supra) and held that,

> *During the course of his careful and comprehensive ruling the judge placed considerable emphasis on the judgment of the House of Lords in* ***Grovit and Ors v Doctor*** *[1997] 2 ALL ER 417. That was an important decision, and the judge was perfectly right to take it into account. It should however be noted that Felix Grovit's action was struck out not because the accepted tests for striking out established in* ***Birkett v James*** *[1977] 2 ALL ER 801; [1978] AC 297 had been satisfied, but because the court found that he had commenced and continued the proceedings without any intention of bringing them to a conclusion. In those circumstances the court was entitled to strike out the action as being an abuse of the process of the Court. The relevance of the delay was the evidence that it furnished of the Plaintiff's intention to abuse the process of the Court.*

26. Master Azhar, as His Lordship then was, in the case of ***Amrith Prakash v Mohammed Hassan & Director of Lands; HBC 25/15: Ruling (04 September 2017)*** has held,

> *Both the* ***The Grovit*** *case and* ***Thomas (Fiji) Ltd*** *(supra) which follows the former, go on the basis that, "abuse of the process of the court" is a ground for striking out, which is independent from what had been articulated by Lord Diplock in* ***Birkett v James*** *(supra). However, it is my considered view that, this ground of "abuse of the process of the court" is part of '****the intentional and contumelious default',*** *the first limb expounded by Lord Diplock. The reason being that this was clearly illustrated by Lord Diplock in* ***Birkett v. James*** *(supra). For the convenience and easy reference, I reproduce the dictum of Lord Diplock which states that; "...****either (1) that the default has been intentional and contumelious, e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court…"*** *(Emphasis added). According to Lord Diplock, the abuse of the process of the court falls under broad category of '****the intentional and contumelious default'****. In fact, if a plaintiff commences an action and has no intention to bring it to conclusion it is an abuse of the process of the court. Thus, the default of a plaintiff intending not to bring it to conclusion would be intentional and contumelious. Accordingly, it will fall under the first limb of the principles expounded in* ***Birkett v. James*** *(supra). This view is further supported by the dictum of Lord Justice Parker who held in* ***Culbert v Stephen Wetwell Co. Ltd,*** *(1994) PIQR 5 as follows,*

> > *"There is, however, in my view another aspect of this matter. An action may also be struck out for contumelious conduct, or abuse of the process of the Court or because a fair trial in*

> *action is no longer possible. Conduct is in the ordinary way only regarded as contumelious where there is a deliberate failure to comply with a specific order of the court. In my view however a series of separate inordinate and inexcusable delays in complete disregard of the Rules of the Court and with full awareness of the consequences can also properly be regarded as contumelious conduct or, if not that, to an abuse of the process of the court. Both this and the question of fair trial are matters in which the court itself is concerned and do not depend on the defendant raising the question of prejudice.*

27. Pursuant to the first limb of the test formulated in ***Birkett v James*** (supra) it is incumbent upon the Plaintiff to demonstrate that the delay was not ***intentional and contumelious*** to justify the continuation of the proceedings. In my understanding of the context in ***Birkett v James*** (supra), in an instance where the Notice pursuant to Order 25 Rule 9 of the High Court Rules was issued by the Court on its own motion, the Court need not look for the satisfaction of the second limb of the test if the first limb has been duly established to the satisfaction of the Court.

28. This view is fortified by the sentiments expressed by Lord Woolf MR in ***Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd*** *[1998] 1 WLR 1426; [1998] 2 All ER 181* where it was held,

> *While an abuse of process can be within the first category identified in* ***Birkett v James*** *it is also a separate ground for striking out or staying an action (see* ***Grovitt v Doctor****, 642 H to 643 A) which does not depend on the need to show prejudice to the defendant or that a fair trial is no longer possible. The more ready recognition that wholesale failure, as such, to comply with the rules justifies an action being struck out, as long as it is just to do so, will avoid much time and expense being incurred in investigation questions of prejudice, and allow the striking out of actions whether or not the limitation period has expired.*

29. Conversely, where a Notice under Order 25 Rule 9 of the High Court Rules was issued by the Court on its own motion, the Defendant bears no such obligation to prove prejudice nor is it a prerequisite for the Court to consider prejudice to the Defendant when determining whether to strike out an action under Order 25 Rule 9 of the High Court Rules 1988.

33. It suffices to be judiciously determined by the Court that the Plaintiff has displayed persistent inactivity and a flagrant disregard for the Rules of Court, including non-compliance of a peremptory order issued by the Court, with full knowledge of the attendant consequences, when the Court on its own motion has issued a Notice under Order 25 Rule 9 of the High Court Rules. As exemplified in the first limb of ***Birkett v***

James (supra), such conduct may also constitute an abuse of process. Accordingly, in such an instance, it is within the Court's discretion to strike out the action *suo motu* pursuant to Order 25 Rule 9 of the High Court Rules, without a need for the Defendant to establish any prejudice to its case.

34. The burden of proof in determining the matters under Order 25 Rule 9 of the High Court Rules may fall as a "negative burden of proof" on the Plaintiff itself. Master Azhar, as His Lordship then was, in ***Amrith Prakash v Mohammed Hassan & Director of Lands*** (Supra) further held,

> *If the Court issues a notice, it will require the party, most likely the Plaintiff, to show cause why his or her action should not be struck out under this rule. In such a situation, it is the duty of the Plaintiff to show to the Court negatively that, there has been no intentional or contumelious default, there has been no inordinate and inexcusable delay, and no prejudice is caused to the Defendant. This is the burden of negative proof. In this case, the Defendant does not even need to participate in this proceeding. He or she can simply say that he or she is supporting court's motion and keep quiet, allowing the plaintiff to show cause to the satisfaction of the court not to strike out plaintiff's cause. Even in the absence of the defendant, the court can require the plaintiff to show cause and if the court is satisfied that the cause should not be struck out, it can give necessary directions to the parties. Generally, when the notice is issued by the court, it will require the defendant to file an affidavit supporting the prejudice and other factors etc. However, this will not relieve the Plaintiff from discharging his or her duty to show cause why his or her action should not be struck out. In the instant case, it was the notice issued by the court on its own motion. Thus, the Plaintiff has the burden of negative proof and or to show cause why his action should not be struck out for want of prosecution or abuse of the process of the court.*

35. The second limb of the test as expounded in the case of ***Birkett v. James*** (supra) is twofold. The two components of the second limb is as follows,

    (a) that there has been inordinate and inexcusable delay on the part of the Plaintiff or his lawyers, and,
    (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants. In short, inordinate, and inexcusable delay and the prejudice which makes the fair trial impossible.

36. Fiji Court of Appeal in ***New India Assurance Company Ltd v Singh*** ***[1999] FJCA 69; Abu0031u.96s (26 November 1999),*** unanimously held that,

> *We do not consider it either helpful or necessary to analyse what is meant by the words 'inordinate' and 'inexcusable'. They have their ordinary meaning. Whether a delay can be described as inordinate or inexcusable is a matter of fact to be determined in the circumstances of each individual case.*

37. However, in ***Deo v Fiji Times Ltd*** *[2008] FJCA 63; AAU0054.2007S (3 November 2008)* the Fiji Court of Appeal cited with approval the meaning considered by the Court in an unreported case. It was held in this case,

> *The meaning of "inordinate and inexcusable delay" was considered by the Court of Appeal in* ***Owen Clive Potter v Turtle Airways Limited v Anor*** *Civil Appeal No. 49 of 1992 (unreported) where the Court held that inordinate meant "so long that proper justice may not be able to be done between the parties" and "inexcusable" meant that there was no reasonable excuse for it, so that some blame for the delay attached to the plaintiff.*

38. In considering whether a period of delay to be inordinate and contumelious pursuant to Order 25 Rule 9 of the High Court Rules, Master Azhar, as His Lordship then was, in ***Amrith Prakash v Mohammed Hassan & Director of Lands*** (Supra) went on to hold,

> *Order 25 Rule 9 by its plain meaning empowers the Court to strike out any cause either on its own motion or an application by the defendant if no steps taken for six months. The acceptable and/or tolerable maximum period for inaction could be six months. The threshold is six months as per the plain language of the rule. It follows that any period after six months would be inordinate and excusable so long that proper justice may not be able to be done between the parties and no reasonable excuse is shown for it. Therefore, whether a delay can be described as inordinate or inexcusable is a matter of fact which (is) to be determined in the circumstances of each and every case.*

39. In light of the foregoing authorities, it is clear that, since the Notice was issued by this Court on its own motion pursuant to Order 25 Rule 9 of the High Court Rules, the onus is on the Plaintiff to establish sufficient cause why the action should not be struck out under that provision. Any argument to the contrary is legally unsustainable and may, in itself, amount to an abuse of the Court's process.

40. Having carefully examined the history of the proceedings, the Court observes that the Plaintiff and/or its solicitors have contravened the rules of the Court by failing to take any substantive steps to advance the matter for a period exceeding six (6) months from the date of the closure of the pleadings.

41. Pursuant to Order 25 Rule 9 of the High Court Rules, the Plaintiff has clearly failed to diligently prosecute the matter within a period of six (6) months. As discussed in the

preceding paragraphs of this ruling, the Court finds the reasons for the delay, as set forth in the Plaintiff's Affidavit filed on 20 October 2025, to be without merit. Accordingly, the Court dismisses the asserted reasons and concludes that the delay remains unexplained and/or unsubstantiated.

42. Further to the above discussed reasons as submitted by the Plaintiff, it is also submitted that there is a pending connected matter between the parties, HBC 368 of 2023, where the Plaintiff in this matter is the Defendant and the 2nd Defendant in this matter is the Plaintiff. The Affidavit of the Plaintiff alleges that the Plaintiff had been compliant of all directives and orders of the Court in that matter, which would be reflective of its intention to proceed with this current matter. However, this appears to be a deliberate attempt to mislead the Court, as would be discussed in the following paragraph of the ruling.

43. As noted in the authorities discussed above, the Defendant bears no burden to demonstrate prejudice resulting from the delay where the Order 25 Notice was issued by the Court *sua sponte*. Nevertheless, in its Affidavit in Opposition filed by the 2nd Defendant on 03 November 2025, the 2nd Defendant has submitted that the Plaintiff in HBC 368 of 2023 had obtained a Default Judgment against the Defendants in that matter on 26 February 2025 (Copy of the said Default Judgment annexed as 'B' with the 2nd Defendant's Affidavit). Further, that the Defendant in HBC 368 of 2023 had filed an application to set aside the said Default Judgment, which was dismissed by Justice Sharma on 27 March 2025 by way of a Judgment (Copy of the said Judgment annexed as 'C' with the 2nd Defendant's Affidavit). It is also submitted that there was no appeal made as against the Judgment of the Court made on 27 March 2025. Thus, it is clear that the Plaintiff's submission regarding HBC 368 of 2023 is clearly false and a deliberate attempt to mislead the Court.

44. Additionally, the first named 1st Defendant's alleges that he is a businessman, and he has been adversely affected due to the lethargic prosecution of this case by the Plaintiff as he has been denied any loan facilities by commercial banks due to this case which is prejudicial against the first Defendants. It is also alleged that the Plaintiff has failed to demonstrate any genuine interest in prosecuting this matter.

45. Although the first Defendants have not furnished additional particulars regarding the prejudice and adverse effects, it is evident that, given that almost two and a half years have elapsed since the initiation of this matter to date, such delay could certainly be prejudicial to the defendants. In any event, it is reiterated that the Defendant bears no onus to establish prejudice when the Order 25 Notice is issued by the Court *sua sponte*.

46. Based on the Court's findings detailed in the foregoing paragraphs of this ruling, the delay in these proceedings is solely attributable to the Plaintiff and remains unexplained and/or unsubstantiated. The delay, combined with the Plaintiff's failure to comply with

the High Court Rules as outlined above, renders such conduct both intentional and contumelious, and the delay inordinate and inexcusable.

47. As held in ***Amrith Prakash v Mohammed Hassan & Director of Lands*** (supra), the legally acceptable period for inaction in a civil cause in Fiji is 06 months as embodied in Order 25 Rule 9 of the High Court Rules 1988.

48. Any delay beyond such acceptable period must be adequately explained by the party responsible. The Plaintiff's failure to provide a reasonable explanation for the delay may be construed as evidence of lack of genuine intention to conclude the proceedings within a reasonable time from the outset.

49. In this context, it is pertinent to reiterate the words of Lord Justice Parker in ***Culbert v Stephen Wetwell Co. Ltd,*** *(1994) PIQR 5,* where it was held,

> *There is however, in my view another aspect of this matter. An action may also be struck out for contumelious conduct, or abuse of the process of the Court or because a fair trial in action is no longer possible. Conduct is in the ordinary way only regarded as contumelious where there is a deliberate failure to comply with a specific order of the court. In my view however a series of separate inordinate and inexcusable delays in complete disregard of the Rules of the Court and with full awareness of the consequences can also properly be regarded as contumelious conduct or, if not that, to an abuse of the process of the court. Both this and the question of fair trial are matters in which the court itself is concerned and do not depend on the defendant raising the question of prejudice.* (Emphasis added).

50. In light of the foregoing discussion and findings, the Court concludes that, despite initiating this action, the Plaintiff's conduct evidences a clear lack of genuine intention to resolve the proceedings within a reasonable timeframe. Such conduct constitutes contumelious behaviour and amounts to an abuse of the Court's process.

51. The House of Lords in ***"Grovit and Others v Doctor and Others" (1997) 01 WLR 640, 1997 (2) ALL ER, 417,*** held that, commencing an action without real intention of bringing to conclusion amounts to an abuse of the process of the Court. It was held as follows,

> *The Court exists to enable parties to have their disputes resolved. To commence and to continue litigation which you have no intention to bring to conclusion can amount to abuse of process. Where this is the situation the party against whom the proceedings is brought is entitled to apply to have the action struck out and if justice so requires (which will frequently be the case) the courts will dismiss the action. The evidence which was relied upon to establish the abuse of process may be the plaintiff's inactivity. The same evidence will then no doubt be capable of supporting an application to*

dismiss for want of prosecution. However, if there is an abuse of process, it is not strictly necessary to establish want of prosecution under either of the limbs identified by Lord Diplock in ***Birkett v James*** *[1978] A.C 297. In this case, once the conclusion was reached that the reason for the delay was one which involved abusing the process of the court in maintaining proceedings where there was no intention of carrying the case to trial the Court was entitled to dismiss the proceedings.*

52. At this juncture, I would reiterate a point frequently observed in previous rulings of this Court, that in litigation, some parties may deliberately engage in sporadic pursuit or default, with the intent to prolong proceedings and leave the matter pending against the opposing party, thereby avoiding a final resolution.

53. Courts must not permit such practices. Such conduct should be promptly disallowed, as it constitutes an abuse of the Court's processes and causes an undue and inefficient consumption of the Court's limited time and resources.

54. In ***Singh v Singh*** (supra) it was held,

The more time that is spent upon actions which are pursued sporadically, the less time and resources there are for genuine litigants who pursue their cases with reasonable diligence and expedition and want their cases to be heard within a reasonable time.

55. Such practices also infringe upon the fundamental rights guaranteed under Sections 15(2) and 15(3) of the Constitution, which provide, respectively,

(2) Every party to a civil dispute has the right to have the matter determined by a court of law or if appropriate, by an independent and impartial tribunal.
(3) Every person charged with an offence and every party to a civil dispute has the right to have the case determined within a reasonable time.
(Emphasis added)

56. In this regard, recent developments within the English Courts demonstrate a broader and more holistic approach to the interest of justice, emphasizing the overall fairness of proceedings. Courts are increasingly likely to dismiss spurious or unnecessary claims that do not contribute to the substantive finality of the matter.

57. In the case of ***Securum Finance Ltd v Ashton [2001] Ch 291 (Securum Finance Ltd)*** it was held,

[30] the power to strike out a statement of claim is contained in CPR r 3.4. In particular, rule 3.4 (2) (b) empowers the court to strike out a statement of case … if it appears to the court that the statement of case is an abuse of the court's process … In exercising that power the

court must seek to give effect to the overriding objective set out in CPR 1.1: see rule 1.2 (a). The overriding objective of the procedural code embodied in the new rules is to enable the court "to deal with cases justly": see rule 1.1 (1). Dealing with a case justly includes "allotting to it an appropriate share of the court's resources, while taking into accounts the need to allot resources to other cases".

*[31] In the **Arbuthnot Latham**[1] case this court pointed out in a passage which I have already set out that:*

> *In **Birkett v James** the consequence to other litigants and to the courts of inordinate delay was not a consideration which was in issue. From now on it is going to be a consideration of increasing significance.*

58. In ***Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd*** (supra), Lord Woolf, MR, expressed the above sentiments in clear and unequivocal terms.

> *In **Birkett v James** the consequence to other litigants and to the courts of inordinate delay was not a consideration which was in issue. From now on it is going to be a consideration of increasing significance. Litigants and their legal advisers, must therefore recognise that any delay which occurs from now on will be assessed not only from the point of view of the prejudice caused to the particular litigants whose case it is, but also in relation to the effect it can have on other litigants who are wishing to have their cases heard and the prejudice which is caused to the due administration of civil justice. The existing rules do contain time limits which are designed to achieve the disposal of litigation within a reasonable time scale. Those rules should be observed.*

59. Such sporadic and contumelious conduct can cause significant prejudice to the opposing party, as the effective administration of justice is undermined when a matter remains pending without substantive steps being taken to reach towards finality.

60. Furthermore, after careful consideration of the Plaintiff's claim, and without prejudice, the Court finds that it appears to be exaggerated, and to some extent incredible, given the fact that it was in fact, the Plaintiff itself that had applied for a loan facility to purchase the alleged property and the fact that being a limited liability company that it was not able to get independent legal and financial advise due to the Defendants influence is highly questionable.

61. Accordingly, the Court concludes that proceeding further with this matter would be contrary to the interests of justice, especially given the contumelious conduct and the unacceptable delay in the proceedings.

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[1] ***Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd [1998] 1 WLR 1426; [1998] 2 All ER 181***

62. Accordingly, the Court is of the considered opinion that the interests of justice would not be served by allocating further time in prosecuting this action, as it manifestly appears that the Plaintiff lacks a *bona fide* intention to bring these proceedings to a conclusion within a reasonable period and as such it would be contrary to the interests of due administration of justice, as expounded in the case of ***Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd*** (supra).

63. Lord Woolf MR in ***Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd*** (supra) further held,

> *Whereas hitherto it may have been arguable that for a party on its own initiative to in effect "warehouse" proceedings until it is convenient to pursue them does not constitute an abuse of process. When hereafter this happens, this will no longer be the practice. It leads to stale proceedings which bring the litigation process into disrespect. As case flow management is introduced, it will involve the courts becoming involved in order to find out why the action is not being progressed.* ***If the claimant has for the time being no intention to pursue the action this will be a wasted effort. Finding out the reasons for the lack of activity in proceedings will unnecessarily take up the time of the court. If, subject to any directions of the court, proceedings are not intended to be pursued in accordance with the rules they should not be brought.*** *If they are brought and they are not to be advanced, consideration should be given to their discontinuance or authority of the court obtained for their being adjourned generally. The courts exist to assist parties to resolve disputes, and they should be used by litigants for other purposes.* (Emphasis added)

64. The Court accordingly finds that the Plaintiff has failed to establish any valid cause why the action should not be struck out for abuse of process and/or for want of prosecution. Consequently, the Court orders that the Writ of Summons and the Statement of Claim be struck out pursuant to Order 25, Rule 9 of the High Court Rules.

65. Consequently, the Court makes the following final orders,

1. Plaintiff's Writ of Summons and the Statement of Claim filed on 29 June 2023 is hereby struck out pursuant to Order 25 Rule 9 of the High Court Rules subject to a cost of $ 2000.00, as summarily assessed by the Court, to be paid to each of the Defendants independently within 30 days from the date of this Ruling. The total costs payable shall accordingly be $ 4000.00.

2. The Cause is accordingly struck out and dismissed, and the file is closed.

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

At Suva

27/11/2025.