

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 45 of 2023

BETWEEN : **LEWENI SERIA WAQA**
First Plaintiff/First Applicant

: **WASALIWA PTE LIMITED**
Second Plaintiff/Second Applicant

AND : **JAYKAM TELLU TAVANAVANUA**
First Defendant/First Respondent

: **KOKOMO SERVICES PTE LIMITED**
Second Defendant/Second Respondent

: **PACIFIC LINE PRODUCTION PTE LIMITED**
Third Defendant/Third Respondent

Counsel Applicants : **Mr I Fa (Jnr) for 1st & 2nd Plaintiff/1st & 2nd Applicants**
Mr J Liganivai for 2nd Defendant/2nd Respondent
Mr H Nagin for 3rd Defendant/3rd Respondent

Hearing Date : **23 October 2025**

Judgment : **15 December 2025**

JUDGMENT

(on an application for leave to appeal from the Master's decision)

- [1] The first and second applicants seek leave to appeal from the learned Master's decision dated 11 August 2025 striking out their claim.
- [2] The second and third respondents oppose the application while the first respondent has taken no interest in the proceedings.

Background

- [3] It is important to begin with an explanation of the party's relationship to each other.¹ The third respondent, Pacific Line Production Pte Limited (**PLP**) is in the business of filming productions. It films the French Survivor series in Fiji. Its cast and crew are accommodated at Kadavu Island. The second respondent, Kokomo Services PTE Limited, (**Kokomo**), established facilities for use by PLP. The facilities are situated on iTaukei land owned by Mataqali, Korovou. The facilities were constructed in 2018, and contained accommodation, a restaurant, a bar, a laundry and other related facilities. It is known as Buliya Base Camp.
- [4] The first applicant, Ms Leweni Waqa, and the first respondent, Mr Yaykam Tavanavanua, are related. They are members of the Mataqali, Korovou. The applicants plead that Ms Waqa and Mr Tavanavanua incorporated the Second Plaintiff, Wasaliwa Pte Ltd (**Wasaliwa**), on 5 April 2018 in order to operate a bar at the base camp. They were equal shareholders and each a director of Wasaliwa.

¹ The facts are taken from the pleadings, in particular the applicant's statement of claim.

[5] A liquor license was granted to Wasaliwa to operate the bar at the base camp. According to the statement of claim, the company also obtained '*all approvals necessary, to conduct business to operate a bar*' at the base camp.² What is not pleaded is whether there was any agreement between Wasaliwa and Kokomo (or PLP) to operate the bar at the base camp. What is also not pleaded is the nature of the arrangement between Kokomo and the Mataqali to use the iTaukei land – did Kokomo have a lease over the land where the base camp was situated?

[6] Nevertheless, the applicants plead that Mr Tavanavanua deceived them by registering his own business in his own name, known as Nukurama Bar, and operated this bar at the base camp '*under the guise of the 2nd plaintiff*'. It is also pleaded that Kokomo and PLP knew of Mr Tavanavanua's '*actions by promoting [Mr Tavanavanua] to operate Nukurama bar from Buliya Base Camp*' - it is unclear what actions Kokomo and PLP are said to have known.

[7] That is the extent of the facts pleaded. The causes of action against the respondents are in respect to deceptive and misleading conduct contrary to section 75 of the Fijian Competition and Consumer Commission Act 2010 (**FCCC Act**). The applicants plead that the deceptive and misleading conduct by Mr Tavanavanua against them was as follows:

- i. Operating his own private business at the base camp instead of Wasaliwa.
- ii. Failing to disclose to Ms Waqa that he was operating his own bar.
- iii. Deceiving Ms Waqa into believing that Mr Tavanavanua was operating Wasaliwa at the base camp, and doing so without a valid liquor licence.
- iv. Depriving Ms Waqa of the profits.

² Paragraph 10 of applicants' Statement of Claim.

[8] With respect to Kokomo and PLP, the allegations of their deceptive and misleading conduct allegedly include:

- i. Conspiring with Mr Tavanavanua against Ms Waqa to operate Nukurama bar without a lawful liquor license instead of Wasaliwa.
- ii. Depriving Ms Waqa of the profits that would have been made if Wasaliwa had been operating the bar.

The present proceedings

[9] The applicants' writ of summons was filed on 9 February 2023. The relief sought by the applicants are declarations that the conduct of the respondents was deceptive and misleading contrary to section 75. They seek orders compelling Mr Tavanavanua to provide an account of the profits from Nukurama bar and they claim damages and costs.

[10] Mr Tavanavanua has shown little interest in this proceeding. He acknowledged service of the proceedings on 24 August 2023, indicating that he intended to contest the proceeding. However, he has not filed a statement of defence and does not appear to have attended any of the court dates. PLP filed a defence in December 2023, whilst Kokomo filed its defence in January 2024. PLP claimed that it knew nothing about the matters pleaded in the statement of claim while Kokomo referred to the fact that Wasaliwa had been deregistered on 1 January 2022.

[11] There followed a summons for directions on 5 July 2024 and the filing of affidavits verifying lists of documents by the parties (with the exception of Mr Tavanavanua) between November 2024 and January 2025. In February 2025, the applicants filed Copy Pleadings and an Order 34 Summons that the proceeding was ready to be set down for trial.

[12] On 3 March 2025, Kokomo filed a strike out application with two supporting affidavits. The applicants filed an affidavit in opposition on 16 May 2025. The application was heard before the Master on 18 June 2025. The Master issued a ruling on 11 August 2025, striking out the plaintiff's statement of claim. The learned Master determined that the deregistration of Wasaliwa was fatal. The company itself ceased to exist on deregistration. Ms Waqa's interest in the proceeding, by virtue of her 50% shareholding in the company was also extinguished by the deregistration. The learned Master also considered the relevant provisions in the FCCC Act, noting that there did not appear to be any contractual agreement between Wasaliwa and Kokomo (or PLP) and questioned whether the applicants were consumers under that FCCC Act – as is required.

[13] On 25 August 2025, the applicants filed a summons for leave to appeal from the decision of the Master, along with a supporting affidavit. The grounds for the appeal are as follows:

- i. In addition to being a shareholder and director of Wasaliwa, Ms Waqa has also brought this proceeding in her personal capacity as a member of the Mataqali, Korovou.
- ii. Wasaliwa is simply a nominal party in this proceeding.
- iii. Only Ms Waqa seeks relief in these proceedings, and not Wasaliwa.

[14] Kokomo filed two affidavits in opposition on 24 September 2025 and PLP filed an affidavit in opposition on 1 October 2025. It is deposed that the summons for leave was not served on their solicitors until 9 September 2025.

Decision

[15] I am content, for the purposes of the present application, to adopt the test for the grant of leave to appeal as advanced for the applicants.³ The applicants argue that they simply need demonstrate that there is a realistic prospect of their appeal succeeding and that it suffices for them to show ‘*on a prima facie basis, that the intended appeal is not patently unmeritorious or clearly unarguable*’.⁴ It is trite that the determination must be made on the basis that the pleadings and the statement of claim are taken as accepted. It is not for the court at this juncture to embark on an assessment of disputed facts.

Ground 2

[16] The second ground of the proposed appeal pertains to the inclusion of Wasaliwa as a party in these proceedings. The applicants argue that Wasaliwa is nominal and that the purpose of including the company is to ensure that all matters in dispute can be determined in this proceeding.

[17] It is not disputed between the parties that Wasaliwa was deregistered in 2022, well before these proceedings were filed. Pursuant to section 605(1) of the Companies Act 2015, a company ceases to exist on deregistration. The words cannot be clearer. On the deregistration of Wasaliwa Pte Ltd on 1 January 2022 it no longer existed. The company could no longer be sued and it was no longer able to sue.

[18] The applicants argue that the inclusion of Wasaliwa is not fatal and that a distinction can be drawn in cases where the deregistered company is a nominal party or its

³ The respondents argue that the threshold for the grant of leave to appeal is higher than advocated by the applicants; ie only granted where it is shown that the Master’s decision is clearly wrong and that there will be a substantial miscarriage of justice as a consequence of the Master’s decision unless an appeal is permitted.

⁴ Paragraph 9 of applicant’s written submissions dated 20 October 2025.

factual existence, albeit now historical, is relevant for the context of the claim.⁵ The applicants provide no authority to support this proposition. The existence of Wasaliwa Pte Ltd is not simply part of the factual matrix but central to the dispute in this proceeding. In terms of the case law, Kokomo relies on the following passage from the House of Lords in *Lazard Bros & Co v Midland Bank Ltd* (1933) AC 289 at 296-297:⁶

*...it is clear law, scarcely needing any express authority, that a judgment must be set aside and declared a nullity by the Court in the exercise of its inherent jurisdiction if and as soon as it appears to the Court that the person named as the judgment debtor was at all material times at the date of writ and subsequent non-existent: such a case is a fortiori than the case which Lord Parker referred to in *Daimler Co v Continental Tyre...*(1) There the directors, being all alien enemies, could not give a retainer. Lord Parker said: 'But when the Court in the course of an action becomes aware that the plaintiff is incapable of giving any retainer at all, it ought not to allow the action to proceed'. In such a case, the plaintiff cannot be before the Court. In the present case, **if the defendants cannot be before the Court, because there is no law no such person, I think by parity of reasoning the Court must refuse to treat these proceedings as other than a nullity...**⁷*

[19] Clearly, Wasaliwa Pte Ltd should not have been included as a party to this proceeding and must be removed. They cannot be a party, nominal or otherwise. With the removal of Wasaliwa as a party to the proceedings, the question that arises is what remains of Ms Waqa's interest in the proceeding and can the proceedings survive the removal of Wasaliwa?

Grounds 1 and 3

⁵ Paragraphs 11 to 15 of applicants Further Submissions dated 3 November 2025.

⁶ Paragraph 32 of second respondent's written submissions dated 13 October 2025.

⁷ My emphasis.

- [20] What is Ms Waqa’s standing to bring these proceedings against the three respondents in her own right in respect to the two causes of action for breaches of deceptive and misleading conduct under section 75 of the FCCC Act?
- [21] Ms Waqa’s locus is pleaded at paragraph 1 of the statement of claim as being a 50% shareholder of Wasaliwa. That cannot be so as the company does not exist. Ms Waqa now contends that her locus is in respect to her capacity as a member of the Mataqali, Korovou upon which the base camp was situated and where the bar was to operate. She claims a customary interest in this proceeding – described as being a ‘*communal customary connection to the land...independent...and...exist quite apart from her role in the company [Wasaliwa]*’.⁸ The applicants argue that the learned Master ought, at most, to have removed Wasaliwa from the claim but permitted Ms Waqa to amend her pleadings.
- [22] It is necessary to scrutinize the pleadings in more detail to ascertain the true nature of the claim and whether there exists on the pleadings a basis to maintain the proceedings in light of the deregistration of Wasaliwa Pte Ltd.
- [23] In my view, two questions arise at this point; firstly, on what basis is Ms Waqa able to bring a claim for breach of section 75 of the FCCC Act against the three respondents in her capacity as a member of the mataqali on which the base camp is situated. Secondly, turning to the relief sought in the pleading, how is Ms Waqa able to seek the orders for loss of profit and what is her loss as a member of the mataqali?
- [24] The statement of claim alleges deceptive and misleading conduct by Mr Tavanavanua in operating his own private business instead of the company with which he and Ms Waqa established for the same purpose. The allegation is that Mr Tavanavanua was

⁸ Paragraphs 23 and 24 of applicant’s written submissions.

seeking to benefit at the expense of the company and in contravention of the business arrangement between him and Ms Waqa.

[25] The second cause of action against Kokomo and PLP allege deceptive and misleading conduct in that the two respondents allegedly conspired with Mr Tavanavanua against Ms Waqa to allow Mr Tavanavanua to operate his business rather than Wasaliwa. The applicants do not plead that there was ever an agreement between Wasaliwa and Kokomo and PLP for Wasaliwa to operate a bar at the base camp. In the absence of any agreement what, if any, obligations do Kokomo and PLP have to Ms Waqa (or Wasaliwa) in respect to the operation of a bar at the base camp. More particularly, in light of Ms Waqa's new claim that she has a customary interest at stake, how is that interest affected by Kokomo and PLP allowing Mr Tavanavanua to operate his own bar at the base camp. If the concern is that the bar did not have a liquor license then that is a matter Ms Waqa could have brought to the attention of the relevant authorities. It is not a basis for her bringing civil proceedings against the respondents for misleading and deceptive conduct under the FCCC Act.

[26] Placing a broader lens on the matter, it is plain that the dispute is a commercial one specifically between Ms Waqa and Mr Tavanavanua. Indeed, in my view the pleadings are misconceived. They pertain to a breach of section 75 which protects the public from certain bad practices and behaviour by commercial operators. Section 75 is enacted to protect a 'consumer'. Ms Waqa was not – on the pleadings as framed - a consumer of any of the respondents.

Procedural issue

[27] Kokomo and PLP claim that the applicants' summons for leave to appeal has been improperly brought as that the summons was served out of time and the applicants ought to have filed an application for an extension of time.

[28] Order 59 rule 11 requires an applicant to file and serve the summons for leave within 14 days of the Master’s decision. The decision was delivered on 11 August 2025 and the 14 days expired on 25 August 2025. The summons was properly filed in time on 25 August 2025 as evidenced by the date stamp from the civil registry. However, the summons was not served until 9 September 2025. The applicants should have filed an application for an extension of time but have not done so.

[29] The applicants argue that the requirement for service within 14 days is ‘*directory rather than mandatory*’.⁹ In any event, the applicants say that there was good reason for the lateness being that the summons was not released by the registry until 9 September 2025 and the court has inherent jurisdiction to extend time even in the absence of any formal written application. There may well be a valid reason for the late service which would have resulted in the court extending the time, but a party must still file the requisite application for an extension in order to permit the court jurisdiction to extend the time.

[30] Although the applicants have not properly complied with the procedural requirements, the larger problem for the applicants concern the merits of any appeal from the learned Master’s decision.

Conclusion

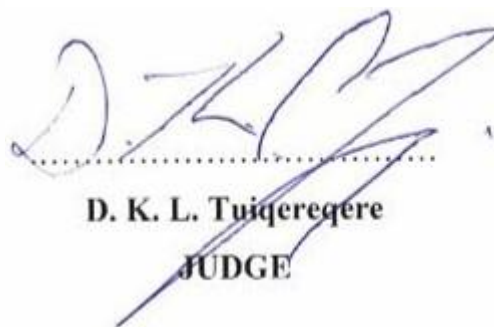
[31] I am satisfied that the learned Master was entirely correct to strike out the present proceedings and, as such, any appeal does not have a realistic prospect of success. The proceeding is misconceived in several respects. Wasaliwa Pte Ltd cannot be a party to the proceeding and Ms Waqa has no standing in respect to any claim for

⁹ Paragraph 3 of applicants Further Submissions dated 3 November 2025.

deceptive and misleading conduct under section 75 of the FCCC Act. The application for leave is dismissed.

[32] The applicants also seek a stay in respect to the award of costs. In light of my decision on the application for leave to appeal, there is no need to consider the stay.

[33] The respondents are entitled to costs which I summarily assess in the amount of \$750.00 each for the Second and Third Respondents (a total of \$1,500), payable by the first applicant within three (3) calendar months.



D. K. L. Tuiqereqere
JUDGE

Solicitors:

Fa & Company for the First and Second Applicants

Munro Leys for the Second Respondent

Sherani & Co for the Third Respondent