

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 49 of 2020

BETWEEN : **ROHIT SINGH** of Belinda Avenue, Auckland, New Zealand

APPELLANT

AND : **COCA-COLA AMATIL (FIJI) LIMITED** having its registered office at Ratu Dovi Road, Laucala Beach Estate, Nasinu in the Republic of Fiji.

RESPONDENT

Coram : **Banuve, J**

Counsels : **L. Ratuniyata, Reddy, Nandan Lawyers, for the Applicant**
R. Singh and S. Kumar, Munro Leys Lawyers, for the Respondent.

Date of Hearing : **12 December 2025**

Date of Ruling : **17 December 2025**

RULING

A. Introduction

1. This matter was struck off by the Master pursuant to Order 25, Rule 9 of the *High Court Rules 1988* on 3 February 2025,¹ on these terms;

UPON READING the Plaintiff's Submissions To Show Cause Why the Matter Should Not Be Struck Out for Want of Prosecution (Order 25 Rule 9 Notice) filed herein on 20th December 2024 and the Defendant's Submissions in Support of Striking Out filed herein on 10th January 2025.

AND UPON HEARING Ms Kumar, Y Counsel for the Plaintiff and Mr Low. T with R. Singh of Counsel for the Defendant.

IT IS HEREBY ORDERED AS FOLLOWS that:

1. *Matter is struck off for want of prosecution pursuant to Order 25, Rule 9 of the High Court Rules.*
2. *Plaintiff to pay Defendants costs summarily assessed at \$1,000.00 within 14 days*
2. The Applicant filed a Notice of Motion on 14 April 2025 seeking that the matter be reinstated on the cause list, upon grounds set forth in the Affidavit of Kristin Kumar filed together with the Notice of Motion.
3. The Motion for Re-instatement was opposed by the Respondent in an Affidavit in Opposition filed on 4 August 2025, with the Applicant filing an Affidavit in Response on 8 October 2025.
4. Both parties have filed written submissions to clarify their respective positions.

¹ The order was issued by the Acting Master on 3 February 2025 but sealed on 11 February 2025.

B. BACKGROUND

5. On 6 February 2020, the Plaintiff filed a Writ of Summons and Statement of Claim and had it served on the Defendant on 31 March 2020.
6. On 15 December 2020, the Plaintiff sealed an interlocutory judgement as the Defendant did not file a Statement of Defence or an Acknowledgment of Service.
7. On 11 January 2021, the Defendant filed an application to set aside the interlocutory judgement which was granted by the High Court on 13 June 2022, with the following directions on the filing of;
 - (a) an amended statement of claim;
 - (b) the statement of defence; and
 - (c) the reply to the Defence
8. On 9 August 2022, the Defendant filed an amended statement of claim with the Defendant filing a Defence on 1 September 2022.
9. No further steps were taken by the Plaintiff and on 23 September 2024, more than 2 years later, the Court issued a notice to the Plaintiff under Order 25, Rule 9 of the *High Court Rules 1988*.
10. On 27 September 2024 the Plaintiff filed a notice of intention to proceed and on 9 October 2024 filed an affidavit to show cause why the matter should not be struck out for want of prosecution.
11. After further filing and exchange of affidavits, and written submissions by the parties, on the issue of striking off for want of prosecution, pursuant to Order 25, Rule 9, the learned Master struck off the proceedings on 3 February 2025, as outlined earlier.

C. ANALYSIS

12. It is necessary to set out the basis for having a matter struck off pursuant to Order 25, Rule 9 of the *High Court Rules 1988*. The Court is indebted to the Acting Master

for collating recent authorities and discussing reform in the procedure governing striking off for want of prosecution pursuant to Order 25, Rule 9 - Kumar v Exotic (Fiji) Pte Ltd & Anor-Civil Action No HBC 358 of 2023. These may be summarized;

- (i) Should the Court issue an order under Order 25, Rule 9, the Plaintiff in response ought if it wishes to proceed with the matter after a period of 6 months file a Notice, under Order 3 Rule 5, *however, as occurred in this case, this does not preclude the Court, from acting under Order 25, Rule 9*, as the Master did on 3 February 2025 as the Court has the absolute discretion to enter a judgment, order, or directions or perform any act in the proceeding.²
- (ii) Order 25 Rule 9, provides for the Court to strike out any cause or matter for want of prosecution, or as an abuse of process of the Court, if no steps has been taken for a span of six months. The power to strike out for want of prosecution is settled in this jurisdiction see Allen v McAlpine [1968] 2 QB 299; [1968] 1 All ER 543, Hussein v Pacific Forum Line Ltd [2000] Fiji Law Report 2 [2000] 1FLR 46 and Trade Air Engineering (West) Ltd v Taga [2007] FJCA 9; ABU 0062J 2006, however, Order 25 Rule 9 gives the High Court a fresh power³ to strike out or give directions of its *own motion*.
- (iii) The principles in Birkett v James [1978] AC 297; [1977] 2 All ER 801 are still applicable to strike out applications where no steps have been taken for six months, despite the introduction of Order 25 Rule 9;

“ The power should be exercised only where the court is satisfied either (1) that the default has been intentional and contumelious, eg disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court or (2) 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 likely to cause or to have caused serious prejudice to the defendants either as between themselves and the Plaintiffs or between each other or between then and a third party”

² Paragraph 28 Exotic (Fiji) Pte Ltd

³ See Trade Air Engineering

(iv) Where a Notice has been issued under Order 25 Rule 9, by the Court under its *own motion*,⁴ the Defendant bears no obligation to establish prejudice nor is it a prerequisite for the Court to consider prejudice to the Defendant, when determining whether to strike out an action under this Rule. It suffices to be judiciously determined by the Court, that the Plaintiff has displayed persistent inactivity and a disregard of the Rules of the Court, including non-compliance with a peremptory order of 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 as exemplified in the first limb of *Birkett v James* as constituting abuse of process.⁵

Consequence of Striking Off

13. A striking out order pursuant to Order 25 Rule 9, is by nature a *final* order although it is issued without a consideration on the merits of the cause.⁶ The *finality* of the strike out order is premised on the contumelious conduct of litigation, or abuse of process by the Court, or because a fair trial is no longer possible as stated in Culbert v Stephen Wetwell Co Ltd (1994) PIQR 5
14. As the strike out order is final in nature an aggrieved party would be required to *appeal* against such an order *vis-à-vis* an application to reinstate the matter. This restriction, is amplified by there being no provision in the High Court Rules that grants the court the power to reinstate an action struck out in these circumstance.
15. In Samat v Qeলেখলাই [2012] FJHC 844; HBC Civil Action No 201 of 2020⁷ the Court emphasized that the proper procedure to follow a strike out order for want of prosecution, was an *appeal* of the decision striking out the matter, and *not* an application for reinstatement, as the Plaintiff seeks to do in this instance. As the Court clarified in that case;

“Unless orders that are made in the exercise of inherent powers of the court and solely for the purpose of compelling parties on procedural compliance are not made on merits. Therefore in my mind, an unless order made either by a Master, a Magistrate or a Judge

⁴ 28 September 2024

⁵ Paragraphs 41-42 –*Exotic (Fiji) Pte Ltd*

⁶ *Samat v Qeলেখলাই* [2012] FJHC 844 as considered by Brito-Mutunayagam, J in *Lal v Khan* [2023] FJHC 321

⁷ Per Wickramasinghe, J. The Court gratefully adopts the submissions of the Defendant on the position at law.

exercising original or appellate jurisdiction can reinstate their own orders without appeal, and the court is not functus officio.

This however would be in contrast to a ruling made by the Master in exercising the statutory powers under O.25 r.9, where matters would be struck out for want of prosecution. A decision made by the Master considering the objections placed before him on a show cause notice under O.29,r.5 is final in nature although not considered on the merits of the cause. Therefore an aggrieved party would be required to appeal against such an order vis-à-vis an application to reinstate.

16. The position is settled by the Court of Appeal in Trade Air Engineering (West) Ltd v Taga [2007] FJCA 9; ABU0062J.2006⁸
17. Given the settled position at law, the Plaintiff's application for reinstatement by way of Notice of Motion filed on 14 April 2025 is procedurally flawed and cannot succeed and is accordingly dismissed. There is no need, given this finding, to consider further submissions provided by the Plaintiff or indeed the Defendant in response, on the merits or otherwise, of reinstatement.

Costs against the Plaintiff's solicitors

18. The Court has considered the chronology of this case and the cause of the delay in its prosecution and finds that the Plaintiff's lawyers are equally to blame for the costs that the Defendant is being exposed to.
19. As the Defendant submits;⁹
 - (a) The Plaintiff has failed to follow the proper procedure for appeal of the order and therefore the Plaintiff's Application is procedurally defective.
 - (b) Due to the Plaintiff and his lawyers lack of diligence and compliance with the Rules the Defendant has incurred unnecessary and unreasonable legal costs which it should be compensated for.

⁸ Generally, a party's only remedy following the striking out of its action is appeal. Exceptions to this general rule such as O.13 r 10, O 14r 11, O24 r17 or O32 r 6 have no application to Order 25

⁹ Paragraph 44 'Defendant's Submissions Opposing the Application to Reinstate' filed on 4 December 2025

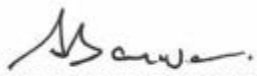
20. Order 62 rule 11 of the *High Court Rules 1988*, states that the Court may order that the legal representative indemnify such other party against costs payable by them, where it appears to the Court that costs have been incurred unreasonably or improperly in any proceedings or wasted by failure to conduct proceedings with reasonable competence and expedition. The Court is of the view that this is such a case where costs are warranted.

FINDINGS:

1. The relief sought in the Notice of Motion filed by the Plaintiff on 14 April 2025 is refused and dismissed.
2. Costs payable equally by the Plaintiff and his solicitors summarily assessed at \$1,000.00 each, (totaling \$2,000.00) to be payable to the Defendant within 14 days of this Ruling.

Dated this 17th day of December 2025




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Savenaca Banuve
Judge