

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO: HBC 202 OF 2020

BETWEEN: **ERONI BILO AND AISAKE KAUNISELA aka TUSAKI**
KAUNISELA TRADING AS SASAGA BULA SEA
FOOD ENTERPRISE LIMITED registered office at Lami Koro,
P. Bo. Box 964, Suva

PLAINTIFFS

A N D: **MINISTER FOR FISHERIES AND FOREST**

1ST DEFENDANT

A N D: **THE PRIME MINISTER** of the Republic of Fiji **THE HONOURABLE**
JOSAIA VOREQE BAINIMARAMA aka FRANK BAINIMARAMA
as also Minister responsible for Fijian Affairs and Home Affairs then

2ND DEFENDANT

A N D: **THE ATTORNEY GENERAL OF FIJI** as legal representative
of the Republic of Fiji Government and Minister for Economy
also Minister Responsible for Customs and exercise

3RD DEFENDANT

Counsel: Mr. M. Naivalu for the Plaintiffs
 Ms. C. Mangru for the Defendants

Date of Hearing: 12th November 2025

Date of Judgment: 18th March 2026

RULING

Introduction

1. The Plaintiffs issued this writ of summons on 4th July 2020, along with their statement of claim, seeking damages (compensation for actual loss of business and loss of business opportunities) against the Minister for Fisheries and Forest as the first Defendant and the Prime Minister of the Republic of Fiji as the second Defendant.
2. Following the filing of the Statement of Defence by the Defendants and the subsequent reply, the case proceeded to the hearing. The Defendant then, on 22nd September 2025, filed this Summons to Strike Out pursuant to Order 18 Rule 18 (a), (b), and (c) of the High Court Rules, as well as Section 4 of the Limitation Act, claiming that the Plaintiffs' statement of claim discloses no reasonable cause of action, that the claim is vexatious and an abuse of the court process, and that the claim is statute-barred under Section 4 of the Limitation Act. The Summons to Strike Out was accompanied by an Affidavit of Mr. Apete Bauleka, outlining the factual background of this application.
3. The Plaintiffs opposed the Summons to Strike Out by submitting an affidavit from Mr. Eroni Bilo, one of the Plaintiffs, outlining the Plaintiffs' objections. The hearing of this Summons took place on 2nd January 2026, during which the Court heard brief oral submissions from the Learned Counsel for the Defendants and the Plaintiffs, as both Counsel preferred to submit written submissions outlining their positions.
4. Having considered the affidavits and submissions of the parties, I now pronounce the ruling on this Summons to strike out as follows.

Order 18 Rule 18 of the High Court Rules

5. Order 18 Rule 18 of the High Court Rules states:

“(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that—

a) it discloses no reasonable cause of action or defence, as the case may be;

b) it is scandalous, frivolous or vexatious;

c) it may prejudice, embarrass or delay the fair trial of the action; or

d) it is otherwise an abuse of the process of the Court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be”.

Factual Background

6. The Plaintiffs assert that they operated a business of purchasing bycatch fish from offshore fishing vessels and subsequently selling them in the local market under the name Sasaga Bula Sea Food Enterprise Limited. They stated that, in accordance with the “Native affirmative blueprint,” the Director of Fisheries, Mr. Peni Kunatuba, informed them in writing on 1 July 1994 that the offloading of bycatch fish was reserved for local people, specifically native Fijians. On 10 August 1998, the Acting Permanent Secretary for Fisheries approved the Plaintiffs to offload deep-sea bycatch fish, an authorization that was extended to all foreign fishing vessels in January 1999. In December 1999, the Permanent Secretary of the Fisheries Ministry, Mr. Saimoni Tuilaucala, approved the uploading of bycatch fish as part of an affirmative action for local businesses.

7. On 10 January 2010, the Permanent Secretary of the Fisheries Ministry permitted fish processing factories to apply for permits to offload bycatch. The Statement of Claim states that on 4 June 2012, a cabinet paper was prepared by the Ministry of Fisheries, stating that the offloading of bycatch fish from foreign fishing vessels to indigenous Fijians in the fishing sector. The Plaintiffs claim that, contrary to the said cabinet paper, the Permanent Secretary

of the Fisheries Ministry authorized the shipping agents and fish processing factories to apply for permits to offload bycatch fish, which affected the Plaintiffs' business.

8. The Plaintiffs argued that the decision by the Permanent Secretary of the Fisheries Ministry conflicted with the government's affirmative action policy and allowed shipping agents and fish processors to offload bycatch and export it, thereby marginalizing the Plaintiffs, who were intended to benefit from the affirmative action blueprint.
9. Having stated that, the Plaintiffs asserted that their business suffered losses and eventually went bankrupt. The Plaintiffs claimed that the second defendant, as the Prime Minister of Fiji, had the responsibility to ensure timely decisions for the effective functioning of government.
10. On that basis, the Plaintiffs seeks \$ 5,050,000 in compensation for the actual loss suffered and a further \$ 4, 950,000 for the loss of business, together with the costs of this action.

Nature of the Claim

11. As outlined in the Statement of Claim, it is clear that the Plaintiffs seek damages for the actual loss of their business as well as for lost business opportunities caused by the decision made by the Permanent Secretary of the Fisheries Ministry in 2012. This decision permitted fishing agents and fish processing companies to apply for permits to offload bycatch from offshore fishing vessels, which breached the cabinet paper issued by the Ministry of Fisheries that same year. The Plaintiffs are claiming damages from the second Defendant for failing to make a timely decision to ensure the effective functioning of the government as the Prime Minister of Fiji.
12. This is an action brought under private law to recover damages from a public authority rather than an action under public law to ensure the proper performance of a public authority's duties. One of the *locus classicus* explaining the scope of private law claims available against public bodies and authorities is the well-known judgment of Lord Browne-Wilkinson in **X**

and others (minors) v Bedfordshire County Council; [1995] 3 All ER 353, where His Lordship outlined four categories of private law claims for damages against public bodies and authorities, viz, actions for breach of statutory duty simpliciter (i.e., regardless of carelessness), actions based solely on careless performance of a statutory duty in the absence of any other common law right of action, actions based on a common law duty of care arising either from the imposition of the statutory duty or from performing it, and misfeasance in a public officer (i.e., the failure to exercise, or the exercise of, statutory powers either with the intention to injure the plaintiff or with the knowledge that the conduct is unlawful).

13. The Plaintiffs have not specifically claimed any statutory duties imposed on the first and second Defendants by any Act or Statute. Their claim rests on the allegation that the Permanent Secretary of the Fisheries Ministry in 2012 acted in breach of the policy known as the "Native affirmative blueprint," as well as the cabinet paper prepared by the Ministry of Fisheries in accordance with the policies outlined in the said Native affirmative blueprint.
14. Furthermore, the Plaintiffs' claim is not based on any allegation of intentional or deliberate conduct by the Defendants that caused financial harm. Therefore, it appears that the Plaintiffs argued the two Defendants owed them a common law duty of care, which was breached when the Permanent Secretary of the Fisheries Ministry made the policy decision in 2012 to allow fishing agents and fish processing companies to apply for permits to offload bycatch from offshore fishing vessels.

Analysis

15. Having examined the nature of the Plaintiffs' claim, I now proceed to determine whether the Defendants owed a common law duty of care to the Plaintiffs when the Permanent Secretary of the Fisheries Ministry made the policy decision in 2012 to allow fishing agents and fish processing companies to apply for permits to offload bycatch from offshore fishing vessels.
16. None of the parties provided the Court with any case authorities that have recognized such a common law duty of care as outlined above in this jurisdiction. The New Zealand Supreme

Court in **North Shore City Council v Attorney-General (2012) 3 NZLR 341** set out the appropriate methodology for determining whether a duty of care exists in a novel situation. Blanchard J, delivering the judgment of himself, McGrath and William Young JJ, examined the two-stage test adopted by **Anns v Merton London Borough Council (1978) AC 728**, and then the three-stage approach enunciated by Lord Bridge in **Caparo Industries Plc v Dickman (1990) 2 AC 605**, and the application of Anns and Caparo principles in Canada, Australia and New Zealand. Having done so, Blanchard J found in **North Shore City Council v Attorney-General (Supra)** that:

“(156) As to that framework, it seems to us that it must amount to the same thing whether stated as having two stages (one of which has two parts) or as three stages. The important insight found in Canadian and New Zealand cases is that when a court is considering foreseeability and proximity, it is concerned with everything bearing upon the relationship between the parties and that, when it moves to whether there are policy features pointing against the existence of a duty of care - that is, whether it is fair, just, and reasonable to impose a duty - the Court is concerned with externalities - the effect on non-parties and on the structure of the law and on society generally. But, as already remarked, aspects of some matters may require to be considered more than once.”

17. Tuilevuka J in **Vunivutu v Permanent Secretary, Ministry of Works [2018] FJHC 955; HBC82.2011 (3 October 2018)**, referring to the Fiji Supreme Court judgment in *Lautoka City Council v Ambaram Narsey Properties Ltd [2014] FJSC 20; CBVo010.2014 (26 November 2014)*, found that the two-tiered test in *Anns v Merton London Borough Council (supra)* is the applicable law in Fiji.
18. As Blanchard J observed in **North Shore City Council v Attorney-General (supra)**, whether the Court adopts a two-tiered test or a three-stage test, it must consider all aspects of the relationship between the parties when examining foreseeability and proximity before addressing the externalities, i.e. whether imposing a duty of care is fair, just, and reasonable.

19. In this matter, for convenience, let the Court assume the existence of foreseeability and proximity between the parties, then proceed to consider whether imposing a duty of care on the two Defendants is fair, just, and reasonable.
20. It is evident that the decision made by the Permanent Secretary of the Ministry of Fisheries was a policy decision based on several factors, including social, political, and economic considerations. When public bodies make such policy decisions, they aim to balance efficiency and cost-effectiveness across the planning and implementation phases. These decisions are typically influenced by financial, economic, social, and political constraints (*See: Todd on Torts, 9th Edition, at pg. 380*).
21. In **X and others (minors) v Bedfordshire County Council (supra)**, Lord Browne-Wilkinson held that there is no common law duty of care concerning decisions made under statutory discretion on policy issues, where His Lordship outlined:

“From these authorities I understand the applicable principles to be as follows. Where Parliament has conferred a statutory discretion on a public authority, it is for that authority, not for the courts, to exercise the discretion: nothing which the authority does within the ambit of the discretion can be actionable at common law. If the decision complained of falls outside the statutory discretion, it can (but not necessarily will) give rise to common law liability. However, if the factors relevant to the exercise of the discretion include matters of policy, the court cannot adjudicate on such policy matters and therefore cannot reach the conclusion that the decision was outside the ambit of the statutory discretion. Therefore, a common law duty of care in relation to the taking of decisions involving policy matters cannot exist”.

22. Applying the above dictum of Lord Browne-Wilkinson to this matter *mutatis mutandis*, it is my view that the two Defendants owe no common law duty of care to the Plaintiffs when the Permanent Secretary of the Fisheries Ministry made the policy decision in 2012 to allow fishing agents and fish processing companies to apply for permits to offload bycatch from

offshore fishing vessels. Therefore, I find that the writ of summons and the statement of claim of the Plaintiffs disclose no reasonable cause of action against the Defendants.

Limitation Act

23. The Permanent Secretary of the Fisheries Ministry made this policy decision in 2012; therefore, any tortious action related to that decision must be commenced within six years from the date of the decision (*see: section 4 of the Limitation Act*). The Plaintiffs issued this writ of summons on 4th July 2020, which is after the six-year period had expired. Consequently, this cause of action is barred by statute under Section 4 of the Limitation Act.

24. In conclusion, I made the following orders:

- a) The Plaintiffs' Writ of Summons, Statement of Claim and the proceedings against the Defendants are hereby dismissed as disclosing no cause of action.
- b) The Plaintiffs are ordered to pay costs of \$2000 (summarily assessed) to the Defendants.



A handwritten signature in black ink, appearing to be "R. D. R. T. Rajasinghe".

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Hon. Mr. Justice R. D. R. T. Rajasinghe

At Suva

18th March 2026

Solicitors:

Law Naivalu for Plaintiffs.

Office of the Attorney General for the Defendants.