

3. In the years that followed, the case would descend into a tangle of interlocutory clashes and procedural detours. These resulted in the following four rulings/judgments:

- (1) **Safari Lodge Fiji Ltd v Rosedale Ltd** [2008] FJHC 139; Civil Action 319.1999 (5 February 2008)
- (2) **Safari Lodge Fiji Ltd v Rosedale Ltd** [2008] FJCA 102; ABU0007.2008S; ABU0011.2008S (17 April 2008)
- (3) **Safari Lodge Fiji Ltd v Rosedale Ltd** [2009] FJHC 256; HBC319.1999 (13 November 2009)
- (4) **Safari Lodge Fiji Ltd v Rosedale Ltd** [2025] FJHC 40; HBC319.1999 (11 February 2025)

4. At this juncture, a trial date remains uncertain, as before me now are the following three interlocutory applications:

- (i) the defendants' application to strike out the plaintiff's statement of claim.
- (ii) the plaintiffs' application to amend the statement of claim.
- (iii) the plaintiff's application to strike out certain portions of an affidavit filed for and on behalf of the defendant.

5. Both Counsel argue that these applications are procedurally necessary.

6. Still, it is impossible to ignore that they mark yet another detour from a trial that has been awaited for twenty-seven years.

7. Madam Justice Scutt, in her Ruling of 5 February 2008, observed that this matter has had a rather long checkered history (as noted in paragraph [2] of FCA's Judgment of 17 April 2008)¹.

8. I note that all the pre-trial steps, including discoveries and the pre-trial conference, were already completed at the time of Scutt J's Ruling. However, the matter did not proceed to trial for one reason or another.

¹ As the Fiji Court of Appeal noted in paragraph [2] of its Judgment of 17 April 2008, the matter has a long history:

"...with repeated delays. Many of the delays were caused by the defendants. In February 2007 the matter was fixed for a 5 day hearing on 21 – 25 May 2007 with the file listing "priority".

9. It is trite that an application to amend pleadings is rarely refused (as per Bowen LJ in **Cropper v. Smith** (1884) 26 Ch. D. 700 p 710²; **National Bank of Fiji v Naicker** [2013] FJCA 106; ABU0034.2011 (8 October 2013).
10. Courts endeavor to maintain flexibility and fairness and will allow an amendment if it will enable a party to put his best foot forward so to speak, and thus help in clarifying the real issues in the case.
11. It is also well-established that an application to strike out a pleading is rarely allowed, as noted by Kirby J in **Len Lindon -v- The Commonwealth of Australia (No. 2) S. 96/005**³. Otherwise, a litigant would be too easily denied his day in court.

² Bowen LJ said:

Now, I think it is a well-established principle that the object of Courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. Speaking for myself, and in conformity with what I have heard laid down by the other division of the Court of Appeal and by myself as a member of it, I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or of grace

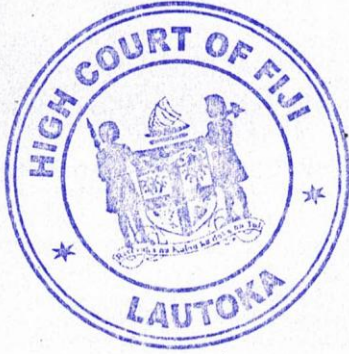
³ Kirby J said:


1. it is a serious matter to deprive a person of access to the courts of law for it is there that the rule of law is upheld, including against Government and other powerful interests. This is why relief, whether under O 26 r 18 or in the inherent jurisdiction of the Court, is rarely and sparingly provided.
2. to secure such relief, the party seeking it must show that it is clear, on the face of the opponent's documents, that the opponent lacks a reasonable cause of action ...or is advancing a claim that is clearly frivolous or vexatious...
3. an opinion of the Court that a case appears weak and such that it is unlikely to succeed is not, alone, sufficient to warrant summary termination.....Even a weak case is entitled to the time of a court. Experience teaches that the concentration of attention, elaborated evidence and argument and extended time for reflection will sometimes turn an apparently unpromising cause into a successful judgment.
4. summary relief of the kind provided for by O 26 r 18, for absence of a reasonable cause of action, is not a substitute for proceeding by way of demurrer..... If there is a serious legal question to be determined, it should ordinarily be determined at a trial for the proof of facts may sometimes assist the judicial mind to understand and apply the law that is invoked and to do so in circumstances more conducive to deciding a real case involving actual litigants rather than one determined on imagined or assumed facts.
5. if, notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it has failed to put in proper form, a court will ordinarily allow that party to reframe its pleadingA question has arisen as to whether O 26 r 18 applies to part only of a pleading
6. The guiding principle is, as stated in O 26 r 18(2), doing what is just. If it is clear that proceedings within the concept of the pleading under scrutiny are doomed to fail, the Court should dismiss the action to protect the defendant from being further troubled, to save the plaintiff from further costs and disappointment and to relieve the Court of the burden of further wasted time which could be devoted to the determination of claims which have legal merit.

12. Having said all that, there is also a need to consider matters from the viewpoint of case management.
13. It is generally true that justice may be served by allowing an amendment, or, in the rarest of cases, in the striking out of a pleading.
14. However, a case which is still tied up in such basic interlocutory matters twenty-seven years after commencement, with no trial date in sight, demands an approach which trumps case management, moving forward⁴.
15. This is the approach I adopt henceforth on this matter and with that in mind, I now make the following directions:
 - (i) this matter is to be fixed for a trial on a date (or dates) between May and August 2026. The parties are to confirm today their suitable dates.
 - (ii) I refuse to allow the defendants' application to strike out the statement of claim in accordance with the principles stated by Kirby J in **Len Lindon -v- The Commonwealth of Australia (No. 2) S. 96/005** (see footnotes).
 - (iii) I also refuse the plaintiff's application to amend the statement of claim, mindful that granting it would restart the interlocutory processes and trigger the inevitable disputes that accompany them.
 - (iv) I also refuse to strike out the parts of the affidavit in question which was filed on behalf of the defendants. However, I remain open at trial to hearing objections to its content, admissibility, probative value, or any other ground that may be raised, should the party concerned seek to rely on the affidavit in support of their case.
 - (v) the parties are to file fresh Affidavits Verifying Lists of Documents within twenty-one (21) days, i.e. by **07 April 2026**. Failure to comply with this direction will result in the striking out of the defaulting party's pleading in its entirety, together with appropriate ancillary orders in favour of the other party.

⁴ There are numerous case authorities under the current rules, which establish the position that, while case management is important, it cannot trump the fundamental right of a litigant to be heard.

- (vi) the parties are to convene and complete all discoveries and inspections within fourteen (14) days from 07 April 2026. i.e. by **21 April 2026**.
 - (vii) the parties are to convene and complete a Pre-Trial Conference within 14 days thereafter. Their Pre-Trial Conference Minutes are to be filed by **05 May 2026**.
 - (viii) the plaintiff is to file Copy Pleadings fourteen (14) days thereafter i.e. by **19 May 2026**.
16. This matter is adjourned to **08 April 2026** to check on compliance with the filing of Affidavits Verifying Lists of Documents.





Anare Tuilevuka
JUDGE

20 March 2026