

**IN THE HIGH COURT OF FIJI  
IN WESTERN DIVISION AT LAUTOKA  
IN EXERCISE OF ADMIRALTY JURISDICTION**

**ADMIRALTY ACTION NO. HBG 01 OF 2024**

**BETWEEN** : **NATAPOA LIMITED**, a limited liability company duly incorporated in Vanuatu, and having its registered office at International Building No-05, Wharf Road, port Villa, Vanuatu  
**PLAINTIFF**

**AND** : **PACIFIC BUILDING SOLUTION PTE LIMITED** who's registered office is located at -09 -12 Nukuwatu Street, Wailada Industrial, Lami, Fiji.  
**1<sup>ST</sup> DEFENDANT**

**AND** : **NOEL MACAMANAWAY** of Nadi, Fiji, Director.  
**2<sup>ND</sup> DEFENDANT**

**AND** : **DUMB BARGE "ENDEAVOUR"**, a Dumb Barge presently lying on Certificate of Title No- 27361 at Wailoaloa Bay in Nadi.  
**3<sup>RD</sup> DEFENDANT**

**BEFORE** : Hon. A.M. Mohamed Mackie-J

**COUNSEL** : Mr.Wainiqolo E. O/I for the Plaintiff.  
Mr. Narayan A. (Junior) for the 2<sup>nd</sup> Defendant.  
1<sup>st</sup> & 3<sup>rd</sup> Defendants – absent & not represented.

**HEARING** : 28<sup>th</sup> November 2025.

**WRITTEN SUBMISSIONS:** Filed by the Plaintiff on 27<sup>th</sup> December 2025.  
Not filed by the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Defendants.

**DATE OF RULING** : 24<sup>th</sup> March 2026.

**RULING**

**A. INTRODUCTION:**

1. This Ruling is pronounced pursuant to the hearing held before me on 28<sup>th</sup> November 2025 in relation to the SUMMONS ("**the application**") filed on behalf of the 2<sup>nd</sup> Defendant, namely, **NOEL McMANAWAY**, on 4<sup>th</sup> December 2024, seeking the following orders.

1. *The Plaintiff's Writ, Statement of claim and Inter-Parte Summons filed on 27<sup>th</sup> May 2024 be struck out and dismissed on the ground that there is no reasonable cause of action;*

2. *The Dumb Barge "Endeavour" be released to its lawful owner and / or authorised agents and/ or servants from the land comprised in Certificate of Title No 27361 located at Wailoaloa Beach, Nadi without any interference from the Plaintiff, its agents and/ or its servants.*
  3. *That the Costs of this application be paid by the plaintiff on a full solicitor/client indemnity basis; and*
  4. *Such other Order(s) as this Honorable Court deems just.*
2. This Application is made pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules 1988. Thus, no Affidavit Evidence in support was needed.

**B. BACKGROUND:**  
**Statement of Claim:**

3. The Plaintiff commenced the above styled action against the Defendants, purportedly, under admiralty Jurisdiction, claiming the following reliefs;
  - a. **A DECLARATION** that the Dumb Barge Endeavour was brought onto the Certificate of Title No- 27361 without lawful authority.
  - b. **A DECLARATION** that the Dumb Barge Endeavour has trespassed and remains unlawfully on the Plaintiff's land being Certificate of Title No- 27361 for over 586 days.
  - c. **A DECLARATION** that the daily rate of \$1,500.00 as mooring charges is a fair and reasonable rate to charge the Defendants for the unlawful mooring of the 3<sup>rd</sup> Defendant on the Plaintiff's Certificate of Title No-27361.
  - d. **AN ORDER** that the sum of **FJ\$ 879,000.00 (EIGHT HUNDRED AND SEVENTY-NINE THOUSAND FIJIAN DOLLARS)** be paid by the Defendants to the Plaintiff as compensation for illegally dry-docking of the Dumb Barge Endeavour on the Certificate of Title No-27361 since July 2022.
  - e. **AN ORDER** for the issue of a Warrant to Arrest the 3<sup>rd</sup> Defendant.
  - f. **AN ORDER** that the Plaintiff arranges a security Company under the supervision of the Admiralty Marshall to ensure the safety of the vessel during the arrest.
  - g. **AN ORDER** that Dumb Barge Endeavour be immediately sold with the proceeds of the sale be paid into Court and then later be distributed according to law.
  - h. **SUCH** further or other relief as this Honorable court deems just and sufficient in the circumstances.

**Ex-Parte Notice of Motion for Arrest**

4. Simultaneously, the Plaintiff also filed an Ex-parte Notice of Motion on 24<sup>th</sup> May 2024 seeking the arrest of the said Dumb Barge "**Endeavour**" that was allegedly lying on the Certificate of Title No-27361, which belongs to the Plaintiff situated at Wailoaloa Bay, Nadi.

5. After hearing the above Summons Inter-partes, this court by its Ruling dated **7<sup>th</sup> July 2025** dismissed the application for the arrest of the Dumb Barge “Endeavour”, and further ordered that the Plaintiff may proceed with the action for recovery of damages and losses, however **not under the admiralty Jurisdiction**, and subject to the survival of the action on the Strike Out Application preferred by the 2<sup>nd</sup> Defendant. Vide- **Natapoa Ltd v Pacific Building Solution Pte Ltd [2025] FJHC 404; HBG01.2024 (7 July 2025)**.

**Application for strike out:**

6. This Court has now been called upon to decide on the said application for Strike Out, for which I will consider the relevant Law and the submissions made by the counsel for the 2<sup>nd</sup> Defendant and the Plaintiff. The 1<sup>st</sup> and 3<sup>rd</sup> Defendant also said to be sailing with the 2<sup>nd</sup> Defendant in this Strike out move, but they did not participate at this hearing.

**C. LAW ON STRIKE OUT:**

7. The 2<sup>nd</sup> Defendant is seeking to strike out the action under Order 18 Rule 18 1(b) and (d) of the High Court Rules 1988, which reads as follows.

*Striking out pleadings and endorsements (O.18, r.18)*

*18.-(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; or*
- (b) it is scandalous, frivolous or vexatious; or*
- (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.*

*(2) No evidence shall be admissible on an application under paragraph (1)(a).*

*(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.*

8. **Footnote 18/19/3 of the 1988 Supreme Court Practice** reads;

*“It is only plain and obvious cases that recourse should be had to the summary process under this rule, per Lindley MR. in Hubbuck v Wilkinson (1899) 1 Q.B. 86, p91 Mayor, etc., of the City of London v Homer (1914) 111 L.T, 512, CA). See also Kemsley v Foot and Qrs (1952) 2KB. 34; (1951) 1 ALL ER, 331, CA. affirmed (195), AC. 345, H.L .The summary procedure under this rule can only be adopted when it can be clearly seen that a claim or answer is on the face of it obviously unsustainable “ (Att – Gen of Duchy of Lancaster v L. & N.W. Ry Co (1892)3 Ch 274, CA). The summary remedy under this rule is only to be applied in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process or the case unarguable (see per Danckwerts and Salmon L.JJ in Nagle v Feliden (1966) 2. Q.B 633, pp 648, 651, applied in Drummond Jackson v British Medical Association (1970)1 WLR 688 (1970) 1 ALL ER 1094, (CA)*

9. **Footnote 18/19/4 of the 1988 Supreme Court Practice** reads;

*“On an application to strike out the statement of claim and to dismiss the action, it is not permissible to try the action on affidavits when the facts and issues are in dispute (Wenlock v Moloney) [1965] 1. WLR 1238; [1965] 2 ALL ER 87, CA).*

*It has been said that the Court will not permit a plaintiff to be “driven from the judgment seat” except where the cause of action is obviously bad and almost incontestably bad (per Fletcher Moulton L.J. in Dyson v Att. – Gen [1910] UKLawRpKQB 203; [1911] 1 KB 410 p. 419).”*

10. In the case of **Electricity Corporation Ltd v Geotherm Energy Ltd [1992] 2 NZLR 641**, it was held;

*“The jurisdiction to strike out a pleading for failure to disclose a cause of action is to be sparingly exercised and only in a clear case where the Court is satisfied that it has all the requisite material to reach a definite and certain conclusion; the Plaintiff’s case must be so clearly untenable that it could not possibly succeed and the Court would approach the application, assuming that all the allegations in the statement of claim were factually correct”*

11. In the case of **National MBF Finance (Fiji) Ltd v Buli [2000] FJCA 28; ABU0057U.98S (6 JULY 2000)**, it was held;

*“The law with regard to striking out pleadings is not in dispute. Apart from truly exceptional cases the approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be proved. If a legal issue can be raised on the facts as pleaded then the courts will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention. It follows that an application of this kind must be determined on the pleadings as they appear before the Court”.*

12. In **Tawake v Barton Ltd [2010] FJHC 14; HBC 231 of 2008 (28 January 2010)**, Master **Tuilevuka** (as he was then) summarized the law in this area as follows;

*“The jurisdiction to strike out proceedings under Order 18 Rule 18 is guardedly exercised in exceptional cases only where, on the pleaded facts, the plaintiff could not succeed as a matter of law. It is not exercised where legal questions of importance are raised and where the cause of action must be so clearly untenable that they cannot possibly succeed (see Attorney General –v- Shiu Prasad Halka 18 FLR 210 at 215, as per Justice Gould VP; see also New Zealand Court of Appeal decision in Attorney –v- Prince Gardner [1998] 1 NZLR 262 at 267.”*

13. In **Paulo Malo Radrodro v Sione Hatu Tiakia & others, HBS 204 of 2005**, the Court stated that:

*“The principles applicable to Applications of this type have been considered by the Court on many occasions. Those principles include:*

- a. *A reasonable cause of action means a cause of action with some chance of success when only the allegations and pleadings are considered – Lord Pearson in Drummond Jackson v British Medical Association [1970] WLR 688.*
- b. *Frivolous and vexatious is said to mean cases which are obviously frivolous or vexatious or obviously unsustainable – Lindley LJ in Attorney General of Duchy of Lancaster v L.N.W Ry [1892] UK Law Rp Ch 134; [1892] 3 Ch 274 at 277.*
- c. *It is only in plain and obvious cases that recourse would be had to the summary process under this rule – Lindley MR in Hubbuck v Wilkinson 1898] UK Law Rp KQB 176; [1899] Q.B 86.*
- d. *The purpose of the Courts jurisdiction to strike out pleading is twofold. Firstly, is to protect its own processes and scarce resources from being abused by hopeless cases. Second and equally importantly, it is to ensure that it is a matter of justice; defendants are permitted to defend the claim fairly and not subjected to the expense inconvenience in defending an unclear or hopeless case.*
- e. *The first object of pleadings is to define and clarify with position the issues and questions which are in dispute between the parties and for determination by the Court. Fair and proper notice of the case an opponent is required to meet must be properly stated in the pleadings so that the opposing parties can bring evidence on the issues disclosed – ESSO Petroleum Company Limited v Southport Corporation [1956] A.C at 238” – James M Ah Koy v Native Land Trust Board & Others – Civil Action No. HBC 0546 of 2004.*
- f. *A dismissal of proceedings “often be required by the very essence of justice to be done” ..... – Lord Blackburn in Metropolitan – Pooley [1885] 10 OPP Case 210 at 221- so as to prevent parties being harassed and put to expense by frivolous, vexatious or hopeless allegation – Lorton LJ in Riches v Director of Public Prosecutions (1973) 1 WLR 1019 at 1027”*

**D. CONSIDERATION:**

14. The Plaintiff hereof filed its Writ of Summons and the Statement of claim seeking the substantive reliefs prayed for thereunder, following which an Ex-parte Notice of Motion (converted as inter-parte) was filed seeking to issue an arrest warrant of the 3<sup>rd</sup> Defendant Dumb Barge “Endeavour”. All those reliefs claimed in the substantive action and the Notice of Motion were moved, purportedly, under the Admiralty Jurisdiction of this Court.
15. As the reliefs sought by the Plaintiff were not caught up in the relevant section 20 (1) of the Supreme Court Act 1981, for this Court to exercise its power under the Admiralty jurisdiction, this Court by its Ruling dated 7<sup>th</sup> July 2025, having made some observations from paragraphs 18 to 36 thereof, while dismissing the Plaintiff’s Application for the arrest of the Dumb Barge “Endeavour” made further orders, *inter alia*,

“2. *The Plaintiff may proceed with the action for recovery of damages and losses, if any, **however not under the admiralty jurisdiction, and subject to the decision in the pending strike out Application made by the 2<sup>nd</sup> Defendant**”.*

16. The above Ruling remains intact not being subjected to any Appeal. The applicability of the **admiralty jurisdiction** in relation to the dispute before this Court has been completely ruled out. Hence, the prospect of recovering any damages or losses under admiralty jurisdiction as per the prayers to the statement of claim is out of question, and any further discussion on it is off the table.
17. The Plaintiff in its prayers to the Statement of claim moves for 3 declaratory reliefs. The 1<sup>st</sup> relief is for a declaration that the Dumb Barge “Endeavour” was brought on the Plaintiff’s Certificate of Title No-27361 without lawful authority. The second relief is also for a declaration that the said dumb Barge “Endeavour” has trespassed and remains unlawfully in the Plaintiff’s land in Certificate of Title No- 27361 for over 586 days. The 3<sup>rd</sup> relief is also for a declaration that a daily rate of \$1,500.00 (one thousand Five Hundred) as mooring charges is fair and reasonable rate to charge the Defendants for the unlawful mooring of the 3<sup>rd</sup> Defendant “Endeavour” on the Plaintiff’s Certificate of title 27361.
18. It is to be noted that the “Mooring charges” are fees paid to a marina, harbour, Pier or port for securing a vessel - such as a ship, a boat or yacht to a fixed, permanent location like a dock or buoy. (These time-based charges often cover services like electricity, water, security, and facility access (e.g., Restrooms.)
19. As I observed in my previous ruling dated 7<sup>th</sup> July 2025, the Dumb Barge “Endeavour” in question was not lying in the water, instead, it was parked on a dry-land claimed to be owned by the Plaintiff. Hence, the applicability of the admiralty jurisdiction was completely ruled out and as a result the plaintiff cannot seek declaratory reliefs as per prayers (a) (b) and (c) to the Statement of Claim, and an order for damages in a sum of FJ\$879,000.00 as prayed for in paragraph (d) of the prayers to the statement of claim.
20. Furthermore, the declarations sought as per paragraphs (a) and (b) are on account of the alleged trespassing of the Dumb Barge into the plaintiff’s dry-land and **not into a harbour, pier or port** owned by the Plaintiff. The contention of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is that there was consent given by the Plaintiff for that purpose. However, there is no any agreement / contract or a MOU between or among the parties for the recovery of such charges and for the plaintiff to have a declaratory relief in a sum of \$1,500.00 per day as prayed for in paragraph (c) of the prayers, and an order for the payment of total sum of \$879,000.00 as prayed for in paragraph (d) thereof. Further, the said sums have not been pleaded as special damages in the statement of claim.
21. Those reliefs for special damages and losses, if any, have to be duly and specifically pleaded with sufficient particulars in an ordinary action for such purpose, and not under the Admiralty jurisdiction as observed by this Court. Granting of damages and/ or losses of this nature have to be always by way of assessment of the evidence presented at a formal trial. The question of consent or any agreement for parking the Dumb Barge in the plaintiff’s land has to be gone into at a trial in an ordinary action claiming for damages and/or losses.

22. This action by the plaintiff hereof is founded under the admiralty jurisdiction. The court has found that no relief can be granted under admiralty jurisdiction. Though, the Order 18 Rule 18 (1) makes provisions to amend the pleadings, no amendment can be allowed that is bound to change the nature of the claim and the type of the action.
23. The only alternative available for the plaintiff is filing a fresh action for recovery of damages / losses, if any, in ordinary way by identifying the actual owner of the Dumb Barge "Endeavour". The 1<sup>st</sup>, 2<sup>nd</sup> Defendants do not make any claim / ownership for the 3<sup>rd</sup> Defendant Dumb Barge. Instead, the 2<sup>nd</sup> Defendant moves for the release of the same to the actual owner of it. The actual owner thereof is not divulged.
24. For the Plaintiff to file an appropriate action for the recovery of damages/ losses, if any, it should have the name and other details of the actual owner of the 3<sup>rd</sup> Defendant Dumb Barge "Endeavour", and cannot proceed with this action against current Defendants, who disclaim any right/ title or interest in the 3<sup>rd</sup> Defendant Dumb Barge.
25. Further, allowing the said Dumb Barge to remain in the Plaintiff's land as it is, would lead to the deterioration of its condition and finally would not fetch any commercial value. Accordingly, in the best interest of the subject matter dumb barge "Endeavour" and that of the Plaintiff, I decide to make order for the deputy registrar of this court to release the Dumb Barge "Endeavour" to its actual owner, however, after entering into a bond by the actual owner thereof to the value of it, upon submission of a valuation report by the actual owner.
26. For the reasons discussed above, I find that this action cannot be proceeded with as it is, and the Application by the 2<sup>nd</sup> Defendant for the strike out the plaintiff's writ and the Statement of claim should succeed, however by reserving the Plaintiff's right to file an appropriate action against the correct party / parties, if it decides to do so.

**E. COSTS:**

27. Circumstances hereof demand the imposition of a reasonable sum as the costs of this action against the plaintiff and in favor of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The plaintiff shall pay \$ 1,000.00 (One Thousand Dollars) to the 1<sup>st</sup> & 3<sup>rd</sup> Defendants, and \$2,000.00 (Two Thousand Dollars) to the 2<sup>nd</sup> Defendant as summarily assessed costs totaling to \$3,000.00 (Three thousand Dollars).
28. The said cost of \$3,000.00 shall be paid within 21 days from today, and non-payment of it will operate as bar for the Plaintiff to institute any further actions against the Defendants or any others for the recovery of damages or losses, however subject to the relevant provisions of the Limitation Act.
29. The bond entered into for the release of the dumb barge "endeavor" shall be in force till the determination of the new action, if filed, and if no new action is filed within the prescribed time period, the said bond will cease to exist.

**F. FINAL ORDERS:**

- a. The SUMMONS for strike out, filed by the 2<sup>nd</sup> Defendant on 4<sup>th</sup> December 2024, succeeds.
- b. The Plaintiff's statement of claim and the writ action filed, purportedly, under admiralty jurisdiction, are hereby struck out and dismissed.
- c. However, the plaintiff is at liberty to file a fresh action against the actual owner of the "Dumb Barge" and against any others, whom the Plaintiff wishes to make as a parties.
- d. The said 3<sup>rd</sup> Defendant – "Dumb Barge" shall be released forthwith unto the actual owner thereof upon signing of a bond for the value of it.
- e. The Plaintiff shall pay a sum of \$1,000.00 unto the 1<sup>st</sup> and 3<sup>rd</sup> Defendants, and a further sum of \$2,000.00 unto the 2<sup>nd</sup> Defendant, totaling to \$3,000.00 (Three Thousand Dollars) being the summarily assessed costs.
- f. The said costs shall be paid as a condition prior to the filing of a fresh action, if the plaintiff opts to do so.



  
A.M. Mohamed Mackie  
Judge

**At the High Court of Lautoka on this 24<sup>th</sup> day of March, 2026.**

**SOLICITORS:**

**For the Plaintiff**

**For the 1<sup>st</sup> & 3<sup>rd</sup> Defendants**

**For the 2<sup>nd</sup> Defendant**

**Messrs. Law Solutions – Lawyers & Legal consultants**

**Messrs. O'Driscoll & Co. Lawyers**

**Messrs. A.K. Lawyers – Barristers & Solicitors**