

**IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA, FIJI
EXERCISING CIVIL JURISDICTION**

CIVIL ACTION NO. HBC 280 OF 2021

BETWEEN : **MOHINI LATA** of Varadoli, Ba, Medical Employee
PLAINTIFF

AND : **MOHAMMED KHAZIM** t/a Khazims Security Services of Vitogo,
Lautoka.
DEFENDANT

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

COUNSEL : Mr. Naidu D.S. - For the Plaintiff.
Mr. Nand S. with Mr. Ram. A - For the Defendant.

TRIAL : Held on 1st September 2025. .

W. SUBMISSIONS : Filed by the Defendant on 22nd December 2025.
No submissions filed by the Plaintiff.

DATE OF JUDGMENT : 26th January 2026.

JUDGMENT

A. Introduction.

1. The plaintiff, by way of her writ of summons and the Statement of claim, filed this action against the Defendant on 02nd December 2021, seeking the following reliefs;
 - a. *Judgment against the Defendant for the sum of \$40,000.00 (FORTY THOUSAND DOLLARS).*
 - b. *Interest \$ 6,406.00 (SIX THOUSAND FOUR HUNDRED AND SIX DOLLARS) (@ 13.5% from 24th September 2020 until 1st December 2021)*
 - c. *Further interest of 13.5 % until payment.*
 - d. *Damages for loss of use of the monies limited to \$15,000.00 (FIFTEEN THOUSAND DOLLARS)*
 - e. *Costs on a Solicitor / Client indemnity basis.*
2. Initially, though a default judgment was entered against the Defendant on 17th January 2022, subsequently on 21st July 2022, the same was set aside by consent on payment of \$300.00 as costs, and the Defendant was granted leave to file his Statement of Defence.
3. Accordingly, the Defendant filed his statement of Defence on 24th August 2022 moving for the dismissal of the Plaintiff's action with costs on Solicitor /Client indemnity basis,

on which the Plaintiff filed her Reply to Statement of Defence on 19th September 2022 moving for the dismissal of the same and for reliefs as per her Statement of claim.

B. Statement of Claim:

4. The Plaintiff in her Statement of Claim, inter alia, averred **THAT;**

1. *At the request of the Defendant **lent** and advanced the sum of \$40,000.00 (Forty Thousand dollars) to the Defendant in September 2020 in two (2) installments of \$20,000.00 each as follows.*
 - a. *By depositing a sum of \$20,000.00 on 11th September 2020 into the Defendant's bank Account bearing number 82203471 held at the Bank of South Pacific.*
 - b. *By depositing a sum of \$20,000.00 on 24th September 2020 into the Defendant's bank Account bearing number 82203471 held at the Bank of South Pacific.*
2. *The Defendant obtained the loan from the plaintiff on the pretense that he required a short term (bridging) loan as his Bank had agreed to provide funding for his business operations, if there was sufficient equity held by him.*
3. *The Defendant promised that the sum of \$40,000.00 would be repaid within 30 days with interest of 13.5%.*
4. *Despite verbal and written requests, the Defendant failed/ refused / neglected to refund the monies owed.*
5. *The Plaintiff has suffered loss and damages due to the Defendant's actions as she had obtained \$20,000.00 loan from a third party, and incurred loss of funds for personal use, loss of interest and benefits, and legal and bailiff fees on notice and litigation in s sum of \$2,000.00.*

C. Statement of Defence:

5. The Defendant in his Statement of Defence, *inter alia*, averred THAT.

1. *He admits that he had **borrowed** the sum of \$40,000.00 from the Plaintiff in two installments deposited into his Bank Account.*
2. *The Plaintiff is his mother-in-law and he had **borrowed** money from her for the purpose of paying his wife's (Plaintiff's Daughter's) Surgery, and it was mutually agreed that there would be no legal intentions and no interest would be accumulated on the monies **loaned**. (Emphasis mine)*
3. *He admits the paragraph 4 of the claim to the extent that the Plaintiff made requests to him and on numerous occasions he tried to talk to the plaintiff with regard to repayment and has also gone to the extent of engaging a solicitor to respond to the Plaintiff. But the Plaintiff has initiated an action in court.*
4. *The Plaintiff's claim falls within the jurisdiction of the Magistrate's Court.*
5. *Save as herein before expressly admitted, denies each and every allegation contained in the Statement of Claim.*

D. Agreed facts & Issues

6. As per the Pre-Trial Conference Minutes (PTC), parties recorded two (2) agreed facts as follows.

Agreed facts.

1. The plaintiff at the request of the Defendant lent and advanced the sum of \$40,000.00 (Forty Thousand Dollars) to the Defendant in September 2020 in two (2) installments of \$20,000.00 each.
2. The plaintiff made verbal and written requests to the Defendant.

Agreed issues.

7. The parties also recorded 20 issues to be tried at the trial, which I shall not reproduce here, as I find that the certain terms, such as **“Borrow”, “Lent” & “Loaned”**, used in the averments of the pleadings (particularly in the Statement of Defence) and in the issues alone are sufficient to arrive at the decision on the question of alleged liability of the Defendant, with no necessity to go deep into the evidence.

E. Trial:

8. At the one- day trial held on the 1st September 2025, the Plaintiff MOHINI LATA gave evidence for and on her behalf by referring to annexures in tabs No-1 to 11 in the plaintiff’s Agreed Bundle of Documents, which are enumerated as follows;

1. Copy of the medical appointment details for **Ms. Sanjeshini Goundar** (Defendant’s Partner) at Oceania Hospital PTE Ltd dated 18th July 2020. (Tab-1)
2. Copy of the prescription dated 22nd July 2020 issued by Oceania Hospital for Ms. S. Goundar. (Tab-2)
3. Copy of the Radiology request dated 24th July 2020 from Oceania Hospital for Ms. S. goundar. (Tab-3)
4. Copy of Western- Union Receipt dated 23rd July 2020 for a sum of \$3,899.60. (Tab-4)
5. Copy of Western- Union Receipt dated 25th July 2020 for a sum of \$1000.00. (Tab-5)
6. Copy of Western- Union Receipt dated 25th July 2020 for a sum of \$1001. 83. (Tab-6)
7. Copy of the deposit slip dated 11th September 2020 into the defendant’s account for a sum of \$20,000.00. (Tab-7)
8. Copy of the deposit slip dated 24th September 2020 into the defendant’s account for a sum of \$20.000.00. (tab-8)
9. Copy of the Discharge Report dated 08th October 2020 issued by Oceania Hospital for Ms. S. Goundar. (Tab 9)
10. Copy of the letter of Demand dated 13th April 2021 sent by Messrs. PILLAI NAIDU & ASSOCIATES unto the Defendant. (Tab-10).
11. Copy of the reply letter dated 29th April 2020 from Messrs. S. Nand Lawyers addressed to Messrs. Pillai Naidu & Associates. (Tab-11).

9. The Defendant also gave evidence for and on his behalf by referring to the following documents, which are numbered as Tab No- 1 to 4 of the Defendant’s Bundle of documents.

1. *Copy of the tax invoice dated 7th September 2020 from Zen’s Medicals Centre Ltd for a sum of \$62.00. (Tab-1)*

2. *Copy of the tax invoice dated 8th October 2020 from Zen's Medicals Centre Ltd for a sum of \$ 168.50. (Tab-2)*
 3. *Copy of the transaction history of Khazim's Security Services from 09th Sep 2020 to 09th November 2020. (Tab-3)*
 4. *Copy of an annexure from **Oceania Hospitals pte Ltd** showing the breakdown for a sum of \$490.00. (Tab-4)*
10. I shall not reproduce any part of the evidence hereof as the principal issue hereof can be conveniently adjudicated in the light of the Pleadings and the admitted facts recorded hereof. The evidence hereof, in my view, will be playing a minimal role, parts of which I will highlight only if necessity arises.

F. Analysis:

11. As per the agreed fact No-1 above, the Defendant does not dispute the plaintiff's position that she on the request of the Defendant lent and advanced the sum of \$40,000.00 (Forty thousand Dollars) to the Defendant in September 2020 in two (2) installments.
12. The above agreed fact is emanating from the Defendant's unequivocal admission in paragraph 1 of his Statement of Defence, wherein he has averred, inter alia, that he **borrowed** the sum of \$40,000.00 (Forty Thousand Dollars) from the Plaintiff in two (2) installments as averred in the statement of Claim.
13. Going another step further, the Defendant in paragraph 2 of his statement of defence states that the Plaintiff is his mother-in-Law and he **borrowed money** from the Plaintiff for the purpose of paying his wife's Surgery bill. He also states that it was mutually agreed between them that there would be no legal intentions and no legal interest would be accumulated.
14. It is to be observed that nowhere in his Statement of Defence and/ or in his evidence the Defendant specifically averred that there was no any intention to re-pay the said sum of money to the plaintiff and it had been indicated to the plaintiff that it will not be paid back.
15. Further, if it was a contribution by the Plaintiff towards the surgical expenses of her daughter, as per the stance taken by the Defendant, the term such as "**Borrowing**" need not have been used by the Defendant in his statement of Defence. In the Agreed fact No-1 above too, the Defendant has admitted that the Plaintiff at the request of him "**lent and advanced** "the sum of \$40,000.00 unto him.
16. As per the agreed fact No-02, the parties also admit that the Plaintiff made verbal and written requests to the Defendant with regards to the re-payment of the monies so lent and advanced by the Plaintiff. If there was no intention of repayment, there need not have been such requests made by the plaintiff from the Defendant and the defendant also need not have tried to speak to the plaintiff.
17. Further, by his averments in paragraphs 2 and 3 of the Statement of Defence, the Defendant states that it had been mutually agreed and understood that there would be no interest for the monies loaned (Borrowed) by him from the Plaintiff. This averments too clearly demonstrate that the Defendant had actually borrowed the monies from the Plaintiff by promising that it would be paid back. However, I don't

see any evidence to the effect that the parties had agreed for any interest to be paid on the monies so loaned and advanced.

18. Moreover, in paragraph 4 of his Statement of Defence, the Defendant has conceded that he had tried on numerous occasions to talk to the plaintiff with regard to the re-payment and had gone to the extent of engaging a Solicitor to respond to the plaintiff. This is reflected in agreed facts No-02 above.
19. The Defendant, who has admitted the borrowing of money from the Plaintiff and subsequently on numerous occasions tried to talk to the plaintiff with regard to the re-payment of it, now cannot be heard to say that there was no any legal intention on it for him avoid paying it back.
20. The Defendant, in his Statement of Defence has, in no uncertain terms, admitted that he borrowed the sum of \$40,000.00 from the plaintiff. As per the Oxford Learner's Dictionaries, **borrowing (noun) refers to the act of taking and using something that belongs to someone else with the intention of returning it, or taking money from a bank/person with the agreement to pay it back.**
21. Nowhere in his pleadings or evidence, the Defendant referred to the said amount of Money received by him as a gift or some other form of payment with no obligation to pay back, and as a help to ease his burden of paying the Hospital Bills on account of his De-facto wife Ms. Sanjeshini Gondar's Surgery.
22. When the Defendant has admitted the borrowing the said sum of \$40,000.00 from the Plaintiff as per his pleadings and agreed facts, the questions as to what was the source of money for the Plaintiff and on what purpose it was spent by the Defendant are immaterial.
23. The 'purported' defence that the said sum of \$ 40,000.00 was spent on his de-facto wife's Surgery, is not supported by any evidence. It is observed that the said sum of \$40,000.00, as evidenced by the deposit slips bearing tabs No's 7 and 8 exhibited by the plaintiff and the Defendant's tab No-3 (Transaction History Listing) , was credited to his account on 11th and 24th September 2020. The Medical bill No-1 submitted by the Defendant from Zen's Medical is dated 7th September 2020 only for a nominal sum of \$ 62.00, while the Medical Bill No-2 dated 8th October 2020 is only for a nominal sum of \$162.00. If the Defendant had spent this \$40,000.00 for the Surgery, he should have been able to produce some proof by way of documentary evidence and/ or calling witnesses from the respective Hospitals.
24. Further, careful perusal of the Defendant's tab No- 03 (the Transaction history) clearly shows that the said sum of \$40,000.00 has been withdrawn by way of 2 different cheques on the same day the deposits were made. The Defendant has not proffered any documentary evidence to show that the said sums of monies or a substantial part of it was spent on the surgery of Ms. S. Gounder (His de-facto partner).
25. On careful perusal of the whole evidence, the conclusion that can be safely arrived at is that the Defendant has utilized the said sum of \$40,000.00, admittedly, borrowed by him from the plaintiff, not for the surgery of his de-facto partner, but for his business purposes as averred by the Plaintiff. The Plaintiff's evidence that the expenses for her daughter's surgery in a sum of around \$9,000.00 was met by the

monies sent by her relatives as evidenced by the plaintiff's tabs Nos-5, 6 and 7, cannot be disregarded.

26. The issues Nos 3 and 4 need not be an issues at all in view of the clear admission by the Defendant in paragraphs 1 of his Statement of defence that he in fact borrowed the money from the plaintiff.
27. The Defendant failed to demonstrate that he spent the said sum of \$40,000.00 on his De-facto partner's surgery. The dates of deposit / withdrawal and the pattern of withdrawal of the said sum of money, along with the Plaintiff's evidence, clearly demonstrate that the said money was not utilized for the surgery as averred by the Defendant in his evidence. Thus, the issue No-5 can be safely answered in favor of the plaintiff.
28. As far as issue No-06 is concerned, the fact that the Plaintiff is the mother-in-law of the Defendant is not disputed as he was in de-facto relationship with the Plaintiff's daughter Ms. S. Gounder. The 2nd part of this issue is whether the money was spent on surgery. As observed above, the Defendant has not proved that the said money was spent on the surgery. Hence this part of the issue cannot be answered in the Defendant's favor. The Defendant has also not proved that it was mutually agreed between the parties not to have any legal implications. There is no evidence to demonstrate that they had agreed not to pay back the money borrowed by the Defendant and to charge interest on the said money. Hence, the Plaintiff cannot claim for interest on the said sum of money.
29. In view of the above findings, the issue No- 7 to the effect "Whether the loan advanced was for the usage in the Defendant's shop?" Can be answered in favor of the Plaintiff. The issue number 8 need not arise at all in the light of the agreed fact no-02.
30. Statement of defence and evidence show that the Defendant had agreed and promised to pay the money back, as submitted on behalf of the Plaintiff. The Defendant, who, admittedly tried to negotiate with the plaintiff on repayment of the said loan, despite several request verbally and in writing by the Plaintiff, has failed to pay it back. The issue No-10 can attract an answer favorable to the Plaintiff. The Issue No- 11 need not arise in view of the admission of the contents thereof.
31. The Defendant in his evidence and when cross examining the Plaintiff took a position that the plaintiff had paid the said sum of money for the surgery of her own daughter, which is contrary to his pleadings in the statement of Defence. However, the plaintiff under her examination in chief and cross examination maintained her stern position that the money was paid not for surgery or medical expenses, but for the Defendant's business purposes.
32. However, the plaintiff has not proffered sufficient evidence to show that she has suffered considerable loss and damages due to the Defendant's action. In any event, she should be entitled to recover the said sum of \$40,000.00 (Forty thousand) with statutory interest at the rate of 4% on the said sum from the date of this judgment.
33. This Plaintiff filed this action in the year 2021 on account of the money lent by her in September 2020. The Defendant has duly submitted him-self to the jurisdiction of this Court. However, the total amount recoverable exceeds the monetary jurisdiction of

the Magistrate's Court. The Defendant, who has not adduced any tangible defence, cannot be allowed to take up jurisdictional issue at this stage. The Defendant, who admitted the borrowing of money from the plaintiff cannot be allowed to escape from his liability.

34. On the preponderance of evidence adduced by the Plaintiff, this court stands convinced that the Plaintiff's action should succeed and the Defendant should be ordered to pay back the said sum of \$40,000.00 (Forty Thousand) together with statutory interest at the rate of 4% from the date of judgment till the total sum is fully paid and settled.
35. The defence adduced by the Defendant cannot withstand the Plaintiff's oral and documentary evidence and this Court has no alternative but to dismiss the defence and hold with the Plaintiff.
36. Considering the circumstances, this Court order that the Plaintiff should also be entitled to recover a sum of \$2,000.00 (Two Thousand Dollars) as summarily assessed costs of this action.

G. Final Orders:

- a. Plaintiff's action succeeds.
- b. The Plaintiff is entitled to recover the sum of \$40,000.00 (Forty thousand dollars) from the Defendant, and a judgment is accordingly entered in favor of the Plaintiff for the said sum.
- c. The Plaintiff is also entitled to recover the statutory interest of 4% on the said sum of \$40,000.00 from the date of this judgment till the total sum is fully paid and settled.
- d. The Defendant shall pay the Plaintiff a sum of \$2,000.00 (two thousand dollars) being the summarily assessed costs of this action.




A.M. Mohamed Mackie
Judge

At the High Court of Lautoka on this 26th day of January, 2026.

SOLICITORS:

For the Plaintiff

For the 1st Defendant

Messrs. Pillai Naidu & Associates- Barristers & Solicitors

Messrs. S. Nand Lawyers – Barristers & Solicitors