

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CIVIL JURISDICTION

HBC 184 of 2021

BETWEEN:        ALL ENGINEERING a limited liability company having its registered office at 6 Ravouvou Street, Lautoka.

PLAINTIFF

A N D:            MOTOREX (FIJI) LIMITED a limited liability company having its registered office at Rams Law Solicitors, 215 Manji Jadavji Building, Nadi Town, P O Box 2139, Nadi having principal place of business at Nadi Back Road.

DEFENDANT

Appearances:        Ms. Devi S. for the Plaintiff  
                             Ms. Radhia and Ms. Chand for the Defendant

Ruling on Submissions

Date of Ruling:      20 February 2026

## R U L I N G

1. I have been asked to determine whether or not to award indemnity costs of \$10,000 to the defendant as a result of an Amended Statement of Claim filed by the plaintiff on 17 September 2025.
2. The plaintiff was originally represented by Faiz Khan Lawyers. The plaintiff's claim and the defendant's counter-claim were first set for trial on 03 and 04 July 2023.
3. However, the trial did not proceed as the plaintiff had withdrawn its instructions to Faiz Khan Lawyers on the eve of trial. I did grant **\$3,500 (three thousand and five hundred dollars)** in costs in favour of the defendant.
4. On 09 November 2023, the matter was called for trial. The proceedings commenced with the examination-in-chief of the plaintiff's first witness.

5. However, the trial was aborted midway through examination in chief to allow Ms. Devi time to obtain the original of the invoices and other documents from the plaintiff company.
6. On 12 December 2023, the trial resumed briefly with the examination in chief of the plaintiff's first witness. However, it was again aborted upon the plaintiff's request. Costs in the sum of **\$2,500 (two thousand and five hundred dollars)** was awarded to the defendant.
7. The plaintiff did file a Supplementary AVLD on 11 March 2024.
8. On 02 April 2024, when the trial resumed, the defendant's counsel raised issues concerning the plaintiff's failure to disclose documents contained in the Supplementary AVLD. The examination-in-chief of the plaintiff's first witness recommenced the following day. However, was not completed. The matter was thereafter adjourned to 11 and 12 November 2024 for continuation of trial, if not settled in the interim.
9. The trial did not proceed on 11 and 12 November 2024 because the plaintiff company's director had to travel to New Zealand for some urgent medical procedure.
10. The matter was again fixed for trial on 14 to 16 April 2025 but this was adjourned by consent. Mr. Sudhakar appeared for the first time for the plaintiff and advised the Court that his firm, Krishna & Company, had just been instructed by the plaintiff and that the firm had in fact filed a Notice of Change of Solicitors on 11 April 2025.
11. On 21 July 2025, Krishna & Company filed a Summons pursuant to Order 20 Rule 5 to seek leave to amend the statement of claim.
12. In the affidavit of Basant Raj Bantal filed in opposition on 14 August 2025, it is deposed at paragraph 4 that the amended statement of claim constitutes a complete overhaul of the original pleading and introduces a new cause of action.
13. At the call over on 03 September 2025, Mr. Sudhakar acknowledged that the amendment would require a fresh trial. The amended statement of claim was filed on 17 September 2025.

14. I agree that the plaintiff's withdrawal of instructions on the eve of trial, followed by the filing of an Amended Statement of Claim after trial had commenced, is conduct that would prejudice any defendant. Combined with the plaintiff's reticence and limited approach to disclosure and discovery of its supporting documents, this conduct is totally unsatisfactory. The only issue to discuss is whether or not the defendant should be entitled to indemnity costs.
15. I assessing costs, I take into account the following:
- (i) the plaintiff's failure to organize, produce and discover its original documents.
  - (ii) the withdrawal of instructions on the eve of trial.
  - (iii) the late filing of an Amended Statement of Claim after the trial had commenced.
  - (iv) the constant changing of solicitors (from Faiz Khan Lawyers to Falcon Chambers to Krishna & Company).
  - (v) the concession by Mr. Sudhakar that a new trial will have to be convened – but also considering that the examination in chief of the plaintiff's first witness is not even completed.
  - (vi) this is hardly a complicated case. The undisputed fact is that the plaintiff did render some service to install a fuel tank in a service station owned by the defendant and for which the plaintiff has not been paid. The claim is barely over \$120,000.
  - (vii) the defendant has, to date, not filed an Amended Statement of Defence or Counter-Claim.
  - (viii) costs of \$3,500 and \$2,500 were previously awarded in favour of the defendant.
16. I am inclined to assess costs on a global scale at this time. Taking all the above into account, I consider a further sum of **\$5,500 (five thousand and five hundred dollars only)** to be appropriate as costs in favour of the defendant and I do so order accordingly.

## ORDERS

17. I make the following Orders:

- (a) the plaintiff is to settle the costs of **\$5,500 -00 (five thousand and five hundred dollars)** promptly within fourteen (14) days by paying the amount into the trust account of Nexus Legal.
- (b) the defendant is to file and serve its amended statement of defence and counter-claim within fourteen (14) days from today (**i.e. by 06 March 2026**).
- (c) the plaintiff is to file and serve its Reply to Amended Statement of Defence fourteen (14) days thereafter (**i.e. by 20 March 2025**).
- (d) the matter is adjourned to **Tuesday 24 March 2026 at 10.30 a.m.** for directions.



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Anare Tuilevuka  
**JUDGE**

20 February 2026