

4. It is upon the above circumstances that the Claimants are seeking orders that the 1st Defendant gives vacant possession of the subject land to them. They further seek an order to the effect that any buildings constructed on the subject land being permanent fixtures are to remain part of the land and are owned by them. They also claim mense profit, damages and indemnity cost against the 1st and 2nd Defendants.
5. The 2nd Defendants have filed their defence to the Claimants' claim. The crux of their defence is that acquisition process was alleged to be flawed. They assert that a determination was made on the 28th January 2010. Ordinarily the appeal period should have lapsed on the 28th April. It was alleged that the form was altered to show that the appeal period was allowed to run until the 28th June 2010.
6. Further to the above, it was alleged by the 2nd Defendant that the purchase price was tampered with and or manipulated by unknown persons after the Lease Agreement was signed. The initial purchase was not an amount of \$10,000,000.00. Such were the reasons why the acquisition process was not finalised by the 2nd Defendant. The 2nd Defendant have raised the issues with the landowners and the Ministry of Mines and Mineral Resources but they were not addressed until the filing of this proceeding. The Claimants joins issue on the 2nd Defendant's defence
7. The 1st Defendant also filed their defence. They assert that the filing of a Category A Claim by the Claimants is an abuse of the court's process. The proper cause and remedy for the Claimants would have been an action for specific performance against the 2nd Defendant. They were unable to do that because of the operation of section 18 of the Crown Proceedings Act (Cap 8) and section 5 of the Limitation Act (Cap 18).
8. The 1st Defendant in defence stated that in accepting the initial payment of \$4,000,000.00, the Claimants have accepted, permitted and authorised them to enter the land and build 75 homes and laid infrastructure. The Claimants therefore have consented or acquiesced to the development on the subject land. Consequently, the Claimants are estopped from suing them. They further assert that any claim of trespass and vacant possession of the Claimants is statute barred under section 5 of the Limitation Act. In reply, the Claimants say that the 1st Defendant could have stepped forward and complete the purchase price. That would be in their best business interest. The issue of time limitation under s. 5 of the Limitation Act was not addressed in the Claimants reply.
9. I have perused and noted on file that the initial directions to have the matter progressed to trial was made by the court on the 26th September 2023. By the 8th December 2023, the Claimant has yet to file their sworn list of documents. An unless was made by the court to have all orders of the 26th September complied with by the 22nd January 2024 otherwise the Claimant's claim will be dismissed.

10. I was indisposed from January 2024 until about June. The proceeding was called for mention on the 23rd July 2024. On that date, parties advised the court that they were in the process of negotiating the issue for settlement. Upon that basis, the unless order was set aside. On the same date, parties were directed to complete disclosure by the 26th July. Further sworn statements were to be filed by the 16th August. Agreed facts and issues to be filed by 30th August. Agreed index by the 13th September and filing of the court book was to be done by the 4th October. The matter was listed for Pre-Trial Conference on the 8th October.
11. On the 8th October, none of the orders of the 23rd July were complied with. PTC was vacated. The matter was adjourned to the 30th October. Also on the date, no one appeared for the Claimants and the court directed Mr Rano to appear when the matter was next called on the 5th November.
12. On the 5th November and upon hearing explanation from parties, the court vacated orders of the 23rd July. Orders for interrogatories and answers were made and matter was further adjourned to the 11th February 2025. The matter was however called again on the 18th February. On that date, the 2nd Defendant had yet to file their answers. They were given until the 4th March to comply and the proceeding was adjourned to the 1st April.
13. The court was on circuit commencing the 1st April and matter was further adjourned to the 15th April. On that date, counsel for the Claimants asked for 7 days to peruse the answers from the 2nd Defendant and matter was further adjourned to the 6th May.
14. On the 1st May, the Claimants filed another application for summary judgment against the 1st Defendant. The matter was not called on the 6th May. It was called again on the 12th June. Direction orders to progress the application to a hearing were made on that date. The directions included filing of response and submissions by the respective parties. The Claimants were required to file and serve their submissions by the 10th July. Response submissions were due on the 24th July and the application was listed for hearing on the 4th August.
15. When the matter was called on the 12th June, the court indicated and enquired of the Claimants whether or not their application for summary judgment against the 1st Defendant would affect the 2nd Defendant's position. Mr Rano who appeared for the Claimants mentioned in court that the Claimants shall discontinue their claim against the 2nd Defendant and indicated they will file notice of discontinuance.
16. It is noted that the Claimants did not file any submissions as directed. There was also no notice of discontinuance filed in respect of their claim against the 2nd Defendant. In any event and having received no submissions from the Claimants, the 1st Defendant filed their submission on the 30th July. The hearing did not proceed as listed and matter was further adjourned to the 22nd August. Matter was not called on that day. It was further listed for the 29th September.

17. On the 29th, the court was informed that the Claimants no longer wish to file a notice of discontinuance against the 2nd Defendant. They further state that they will withdraw their application for summary judgment against the 1st Defendant. Cost was ordered against them. Further directions were then made on that date to progress the matter to trial again.
18. The orders included the filing of agreed facts and issues, the agreed index to the court book and the filing of the court book by the 24th November. The matter was listed for further PTC on the 26th November. On that date, none of the direction orders were complied with by the Claimants. No court book was filed and PTC did not proceed as scheduled.
19. The court enquired of Ms Kilua as to the reasons for non-compliance. No reasons were advanced except to say, it was an oversight. She also said she was unaware of the direction orders. The orders of the 29th September were not filed by counsel. The court enquired further as to whether or not Ms Kilua had checked their file before the 26th. She informed the court, she checked file on the 17th September. She was further asked if she had logged into the e-filing system on that date in order to see what was required of them to be done. She replied in the negative. The court was further informed by counsel that she sent a draft index to the court book before coming to court.
20. Such is the history in this proceeding since its commencement. It is obvious that the Claimants have not been vigorously pursuing their claim. The court previously made an unless order against them which was later set aside upon good reasons shown. Instead of further pursuing matter to trial, they filed two applications. One was sorted upon intervention of the court and the other was withdrawn also upon comments made by the court on the possible effect on the 2nd Defendant's position. The applications had further contributed to the delay in the finalising of the matter.
21. The court indicated to Ms Kilua who appeared for the Claimants in relation to the court's discretion under rule 8.19 of the Solomon Islands Courts (Civil Procedure) Rules 2007. From her explanation, the court is unable to find a reasonable excuse for the non-compliance of orders dated 29th September.
22. The 1st and 2nd Defendants' respective view was that the court has the discretion to use the provision of rule 8.19 of the CPR. They will also claim cost against the Claimants.
23. The 1st and 2nd Defendants have raised the issue of time limitation. The Cause of action complained of by the Claimants hinge on the acquisition determination of the 28th January 2010. Their claim was filed on the 31st March 2023. There is time lapse of about 13 years. There is no explanation why the Claimants have waited for that long before the filing of their claim.
24. Also of essence is whether or not the Claimants' claim is an abuse of the process of the court. They have pleaded in paragraph 5 of their statement of case as read with paragraph 4 that there was part payment of the purchase price. Their remedy in my view is to sue the 2nd Defendant for specific performance. They did not utilise that avenue. In any case, they are

prohibited to sue for specific performance except to make declaratory order declaring the rights of parties. The provision is also subject to s. 5 of the Limitation Act to be made within 6 years.

25. Upon the discussions in paragraphs 23 and 24 above, I am also entitled to use my discretion to dismiss this proceeding on my own initiative under rule 9.75 of the CPR. Upon perusing and noting the Claimants Claim, the defences of the 1st and 2nd Defendants and the Claimants replies, I am of the view that the Claimants' claim could be seen to be an abuse of the process of the court under r. 9.75 of the CPR. However at this instant, I will not make orders in regard to that provision.
26. Having considered the above history in this proceeding and having noted rule 8.19 of the CPR, I hereby strike out the Claim of the Claimants filed on the 31st March 2023 with cost.
27. The orders of the court are as follows:
- i) The Claimants' claim is struck out pursuant to rule 8.19 of the Solomon Islands Courts (Civil Procedure) Rules 2007.
 - ii) Cost against the Claimants to be taxed if not agreed.

