

IN THE HIGH COURT OF SOLOMON ISLANDS
Civil Jurisdiction

Civil Case No. 258 of 2025

BETWEEN:	TIKILA MACFARLANE	First Claimant
AND:	ROBERT MACFARLANE	Second Claimant
AND:	LYDIA SOGABULE	Defendant

Date of Hearing: 28 January 2026

Date of Ruling: 28 January 2026

Counsel:

Ms T Aisa for the First and Second Claimants

Mr R Dive for the Defendant

Nott PJ

Ruling on Application to Strike Out

Background

1. On 4 July 2025, the claimants, who are the respondents in these proceedings, commenced these proceedings by filing a Statement of Claim arising out of the provision of a loan to the defendant, who is the applicant in this matter.
2. The parties are blood relatives, the respondent being the applicants' niece. The Statement of Claim pleads that in April 2015 the applicant informed the respondents that she had an opportunity to work in New Zealand but lacked sufficient funds. She requested financial assistance for her visa application, promising to repay the money once she had settled overseas. The respondents advanced SBD 25,000 for that purpose.
3. On 20 October 2015, the applicant again sought financial assistance, this time in the amount of SBD 50,000, assuring the respondents that she would repay all amounts once her permanent residency was approved. It is alleged that to date only SBD 5,000 has been repaid. Despite repeated requests, no further repayments have been made.

4. On 17 October 2025, the applicant filed an application to strike out the claim on the basis that it is statute-barred pursuant to s 5 of the **Limitation Act 1984** and constitutes an abuse of the Court's process.

Legislative Framework

Limitation Act 1984

5. Section 5 of the **Limitation Act 1984** provides a general statutory limitation in the following terms: "Except as otherwise provided in this Act, no action shall be brought, nor any arbitration shall commence, after the expiration of six years from the date on which the cause of action accrued."
6. Section 19 of the Act provides that where a contract of loan:
 - a. *does not provide for repayment of a debt on or before a fixed or determinable date;*
or
 - b. *does not make the obligation to repay the debt conditional upon demand or upon the occurrence of some other event,*

the cause of action to recover the debt is deemed to accrue on the date a demand for repayment is made, or on the date the relevant event occurs.

Courts (Civil Procedure) Rules 2007.

7. Rule 9.75 of the **Courts (Civil Procedure) Rules 2007** empowers the Court to summarily bring proceedings to an end where the nature of the claim does not warrant continuation. In particular, where it appears to the Court that:
 - a. *the proceedings are frivolous or vexatious;*
 - b. *no reasonable cause of action is disclosed; or*
 - c. *the proceedings constitute an abuse of the process of the Court,*

The Court may order that the proceedings be dismissed in whole or in part.

8. The rule reflects the Court's inherent responsibility to ensure that its processes are used efficiently, proportionately, and for proper purposes and provides a structured mechanism for disposing of plainly unmeritorious or untenable claims.

Parties' Submissions

Applicant's Submissions

9. The applicant seeks an order striking out the claim on the basis that it is statute-barred under s 5 of the **Limitation Act 1984** and therefore discloses no viable cause of action.
10. The applicant submits that the claim concerns a straightforward money-lending arrangement entered into in or about October 2015, under which the applicant received funds from the respondents on the understanding that the monies would be reimbursed. It is common ground that the applicant was unable to repay the loan at the relevant time because her visa application was unsuccessful and she was not employed.
11. The applicant contends that a clear demand for repayment was made on or about 3 November 2015, at which point the cause of action accrued. Only a single partial repayment of SBD 5,000 has been made and no further payments followed. Proceedings were not commenced until July 2025, almost ten years after the demand and well outside the six-year limitation period prescribed by s 5.
12. While acknowledging the existence of s 39 of the **Limitation Act**, the applicant submits that the respondents are not entitled to discretionary relief. The delay is said to be substantial and unexplained in any legally sufficient manner, there is no basis for postponing accrual, and permitting the claim to proceed would undermine the purpose of the limitation regime. Further, the Applicant contends that the respondent has not filed any evidence in support of their section 39 submission and in those circumstances they should be given no weight.

Respondent's Submissions

13. The respondent accepts that the proceeding may be prima facie out of time under s 5 of the **Limitation Act 1984** but submit that the Court should exercise its discretion under s 39 to permit the action to proceed.
14. They argue that the delay in commencing proceedings was caused primarily by the applicant's conduct. The loans were informal family arrangements, and the applicant repeatedly promised to repay the money once her circumstances improved, particularly following the grant of permanent residency overseas. The respondents submit that they relied on those assurances and refrained from commencing proceedings out of trust and a desire to preserve family relationships.
15. The respondent contends that the applicant's partial repayment of SBD 5,000 in 2022 constitutes an acknowledgment of the debt and demonstrates that the obligation to repay remained ongoing. They submit that striking out the claim would permanently deprive them of money that the applicant admits was borrowed.

16. In addressing s 39(2), the respondents submit that:

- a. *although the delay was lengthy, it is explained by the applicant's repeated promises;*
- b. *the delay has not caused evidentiary prejudice, as the loan transactions are documented and the applicant admits receipt of the funds;*
- c. *the applicant's post-accrual conduct contributed to the delay; and*
- d. *legal advice was not sought earlier due to the familial relationship and reliance on the applicant's assurances.*

17. Reliance is placed on ***Liligeto v Commissioner of Lands*** [1997] SBHC 98 in support of the submission that the Court should exercise its equitable discretion under s 39.

Reasons

Accrual of the Cause of Action

18. The loans advanced in April and October 2015 were informal personal arrangements between family members, unsupported by any written agreement and containing no fixed or objectively determinable repayment date. While such arrangements are not uncommon in family contexts, informal expectations do not establish a legally certain time for repayment for the purposes of the ***Limitation Act 1984***.

19. In these circumstances, s 19 governs accrual. The evidence suggests that an initial request for repayment may have been made in or around November 2015. However, a later email annexed to the sworn statement of Robert McFarlane dated 10 April 2016 expressly sought repayment of the outstanding SBD 75,000.

20. Given the uncertainty surrounding the earlier request, and adopting the later written demand in fairness to the respondent, the Court treats the email of 10 April 2016 as the operative demand. It is therefore that date which fixes the accrual of the cause of action.

Expiry of the Limitation Period

21. Section 5 imposes a six-year limitation period running from the date of accrual. In this case, the Court has adopted the later of the possible dates on which a demand for repayment may have been made, namely 10 April 2016, notwithstanding evidence suggesting that an earlier demand may have occurred. On that basis, the limitation period commenced on 10 April 2016 and expired in or around April 2021.

22. Any proceeding commenced after that date is prima facie statute-barred, unless a recognised statutory basis exists for postponement or extension. No such basis is engaged on the evidence before the Court.

Purpose of Limitation Periods

23. Limitation periods serve important and well-established purposes. They promote finality and legal certainty, protect defendants from stale claims and ensure that disputes are resolved while evidence remains reasonably available and reliable. The expiry of a limitation period is not a mere technicality, but a reflection of a deliberate legislative balance.
24. Counsel for the applicant referred me to *Kirite'e v Ome* as appellate guidance on the proper approach to limitation issues. While that case concerned the discretionary operation of s 39, the Court of Appeal emphasised that the statutory limitation provision is always the necessary starting point and should not be displaced by impressionistic notions of fairness. Where no statutory basis exists for extension, the Court is bound to give effect to the limitation bar.
25. Counsel for the respondent relied on *Liligeto v Commissioner of Lands* [1997] SBHC 98; HCSI-CC 166 of 1996 (24 January 1997) CC 166 96 HC in support of the submission that the Court should exercise its discretion under s 39 of the *Limitation Act*. I accept that authority directly addressing the operation of s 39 in this jurisdiction is limited and that *Liligeto* is one of the few reported decisions in which the provision was considered.
26. Properly understood, however, *Liligeto* turned on its own particular facts. It concerned a claim for rectification of the Land Register involving customary land, where the Court identified an arguable continuing wrong and was satisfied, on sworn evidence, that the plaintiffs had acted promptly once they became aware of the true legal position. The exercise of discretion under s 39 in that case was informed by a detailed consideration of the statutory criteria and the absence of prejudice arising from the delay.
27. The present proceeding is materially different. It concerns a personal loan; the relevant facts were known to the respondents from the outset and the evidentiary foundation required to engage the balancing exercise under s 39(2) has not been laid. In those circumstances, *Liligeto* does not provide persuasive guidance for the exercise of discretion in this case.
28. In the present case, the threshold for the exercise of the discretion under s 39 is not met. The delay between accrual and commencement of proceedings is substantial and while explanations are advanced based on familial relationships and informal assurances, no cogent evidentiary foundation has been laid addressing the matters the Court is required to consider under s 39(2). In particular, there is no sworn material explaining the full

to consider under s 39(2). In particular, there is no sworn material explaining the full period of delay in a manner that permits a judicial balancing of prejudice, nor any basis upon which the Court could conclude that it would be equitable to disapply the statutory bar. In those circumstances, s 39 does not provide a proper foundation for permitting the proceeding to continue.

29. I acknowledge the personal and familial context in which these arrangements arose and the evident reluctance of the respondents to commence proceedings against a close family member. Difficulties of this kind are not uncommon in informal financial arrangements within families, and the Court does not underestimate the practical and emotional complexity such circumstances may present. However, those considerations cannot displace the statutory requirements governing the commencement of proceedings, nor relieve the Court of its obligation to apply the limitation regime enacted by Parliament.
30. Having identified the date of accrual and found no statutory basis for postponement or extension, the consequence is that the proceeding is statute-barred and discloses no viable cause of action.
31. For the avoidance of doubt, this decision is confined strictly to the operation of the **Limitation Act**. The Court makes no finding, and expresses no view, as to whether a debt exists, whether any contract was formed, whether the applicant is liable to repay any money, or as to the merits or quantum of the claim asserted. Those matters have not been adjudicated.
32. The sole issue determined is one of timing. The cause of action accrued outside the statutory limitation period and no statutory basis exists for disapplying or extending that period. The proceeding is therefore statute-barred as a matter of law.

Orders

1. **The proceeding is dismissed pursuant to r 9.75(b) of the *Courts (Civil Procedure) Rules 2007* on the basis that it discloses no reasonable cause of action, the claim being statute-barred under s 5 and 19 of the *Limitation Act 1984*.**
2. **This file is to be closed.**

By the Court

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Hon. Justice Gina Maree Nott
Puisne Judge

