

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 097 of 2024
[In the High Court at Suva Case No. HBC 323 of 2023]

BETWEEN : **ALL OCCUPIERS AND/OR TENANTS AND/OR FAMILY MEMBERS OF MAIMUN NISHA AKA MEHMUN NISHA** of 21 Nasilivata Road, Nadera, Suva, property described as Certificate of Title No. 17598 being Lot 21 on Deposit Plan No. 4257 situated in the District of Naitasiri on the island of Viti Levu.

Appellants
[Original Defendants]

AND : **MOHAMMED FAROOQ AKA MOAHMMED FAROOD** of 31 Greenmeadows Ave Manurewa, Auckland, New Zealand, Taxi Proprietor.

Respondent
[Original Plaintiff]

Coram : **Prematilaka, RJA**

Counsel : **Ms. C. Naicker for the Appellants**
Mr. V. Kumar for the Respondent

Date of Mention : **10 April 2025**

Date of Notice of Discontinuance : **10 April 2025**

Date of Ruling : **14 April 2025**

RULING IN CHAMBERS

[1] Mr. Mohammed Yunus as the appellant (original defendant) had filed summons in person seeking enlargement of time to appeal against the High Court judgment delivered on 13 February 2024¹.

¹ **Farood v Nisha** [2024] FJHC 86; HBC133.2017 (13 February 2024)

[2] On the first call date (27 January 2025) the respondent was absent and unrepresented and the counsel for the appellant said that she was not sure whether summons had been served on the respondent. On the next day (05 February 2025), both the appellant and the respondent were absent and unrepresented. After that date on 18 February 2025 summons had been served on the respondent by the appellant. On 06 March 2025, Ms. C. Naicker appeared for the appellant and moved to withdraw the appeal but no notice of discontinuance had been filed. There was no appearance for the respondent on that date. On 10 March 2025, Ms. Naicker was ready with the notice of discontinuance but the respondent (original plaintiff) had refused to sign it whose counsel demanded that the appellant pays \$3000.00 as costs in the High Court for the respondent to consent to the withdrawal of the appeal. However, I find that the impugned High Court judgment had offered only \$1000.00 as costs against the appellant. Time was granted for both parties to discuss the matter of cost. On 24 March 2025 the appellant was absent and unrepresented. The counsel for the respondent insisted on cost of \$3000.00. On 10 April 2025, Ms. Naicker again appeared and she was directed by this court to file the notice of discontinuance under the name of Nambiar Lawyers. Accordingly, the notice of discontinuance had been filed in the Registry on the same day by Nambiar Lawyers without the signature of Mr. V. Kumar for the respondent

Orders of the Court:

- [1] *The application by the appellant to withdraw/discontinue the appeal is allowed.*
- [2] *Appeal is accordingly dismissed in terms of section 20(1)(h) of the Court of Appeal Act.*
- [3] *Appellant should pay \$1500.00 within a month from today as costs in the High Court to the respondent.*
- [4] *No costs ordered in these proceedings.*




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Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL

Solicitors:

Nambiar Lawyers for the Appellant
Sunil Kumar Lawvers for the Respondent