

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 209 of 2009

BETWEEN : **KISHORE KUMAR, ABHIMANU & ASHOK KUMAR,** all
sons of Hari Prasad of Naikabula, Lautoka

Plaintiff

AND : **ITAUKEI LAND TRUST BOARD** a body corporate
established under Section 3 of the Itaukei Land Trust Act,
Cap 134, of 431 Victoria Parade, Suva

Defendant

Appearances:

No appearance for the Plaintiff

Mr Lutumailagi for the defendant

Date of Hearing : 18/08/14

Date of Final Order : 18/08/14

FINAL ORDER

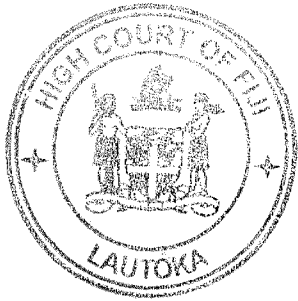
[1] This is a notice issued by the Registry at Lautoka High Court to strike out the matter for writ of possession. The notice has been issued pursuant to Order 25 r 9, of the High Court Rules (HCR), which reads:

*“(1) If **no step** has been taken in any cause or matter **for six months** then any party on application or the Court of its own motion may list the cause or matter for the parties **to show cause why it should not be struck out for want of prosecution** or as an abuse of the process of the Court.*

2) Upon hearing the application the Court may either **dismiss** the cause [or] matter on such terms as may be just or **deal with the application as if it were a summons for directions.**(Emphasis added)” .

- [2] Previously, 20 April 2011 the court had issued similar notice to strike the matter for want of prosecution. That occasion the plaintiff had failed to file reply to statement of defence (statement of defence was filed on 12 December 2009) and to take summons for direction. The court on 18 October 2011 having considered the affidavit filed by the plaintiff and his submission granted permission to proceed with the matter. The court accordingly granted 7 days to file and a reply to statement of defence and 14 days thereafter to file and serve summons for direction. Thereupon on 28 October 2011 the plaintiff filed the summons for direction; however he did not seal and serve the orders for summons for direction on the defendant. Afterwards on 30 November 2011 both parties defaulted in appearance, for the matter was struck out by the court. The plaintiff then applied for reinstatement and the court on 23 February 2012 made order reinstating the matter. It will be noted that there was no appearance by or for the plaintiff on the day when the matter was reinstated back to the cause list.
- [3] Following the reinstatement of the matter, the matter was finally adjourned to 4 September 2012 for Pre-trial minutes and copy pleadings. Thereafter the plaintiff did not take any step to progress the matter until the Registry issued the notice to strike out for want of prosecution on 31 July 2014.
- [4] The plaintiff did not take any step for about 1 year 11 months.
- [5] Once the notice is issued under Ord. 25, r.9, the Plaintiff should have shown cause why the matter should not be struck out for writ of possession. Whereas, he failed appear and show cause.
- [6] It appears from the conduct of the plaintiff that he had no intention to bring the matter into termination.

[7] I therefore dismiss and struck out the matter for want of possession but without cost.



At Lautoka

18/08/14

M H Mohamed Ajmeer

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M H Mohamed Ajmeer
Master of the High Court