

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

**Civil Action HBC No.85 of 2011**

**BETWEEN** : **RUSIATE NAULIVOU** Manager of Namara, Vuda. **PLAINTIFF**

**AND** : **JOSUA MALI** Villager of Namara Village, Namara. **1<sup>ST</sup> DEFENDANT**

**AND** : **NAPOLIONI TAVATU** Villager of Namara Village, Namara. **2<sup>ND</sup> DEFENDANT**

**AND** : **SAKARAIA N TUINASAU** Villager of Namara Village, Namara. **3<sup>RD</sup> DEFENDANT**

**AND** : **ULAIASAI RABUA** Villager of Namara Village, Namara. **4<sup>TH</sup> DEFENDANT**

**AND** : **SEVANAIA TUINAMATAYA** Villager of Namara Village, Namara. **5<sup>TH</sup> DEFENDANT**

**AND** : **NATIVE LAND TRUST BOARD** A body corporate of 431 Victoria Parade, Suva. **6<sup>TH</sup> DEFENDANT**

**AND** : **BANK OF THE SOUTH PACIFIC/COLONIAL NATIONAL BANK** a commercial Bank of Suva Central, Cnr Renwick and Pratt Street, Suva. **7<sup>TH</sup> DEFENDANT**

**R U L I N G**

1. The background to this case is set out in an interlocutory ruling I handed down on 25 April 2014 which is reported in pacii (**Naulivou v Mali** [2014] FJHC 282; HBC85.2011 (25 April 2014).
2. In the above ruling, I had dismissed the 01<sup>st</sup> to 5<sup>th</sup> defendants' application to strike out the statement of claim.
3. What is before me now is the 7<sup>th</sup> defendant's application to strike out the claim against it.

4. Mr. Krishna has rather painstakingly taken this court through every single paragraph in the statement of claim to show that there is absolutely no allegation in the claim against the 7<sup>th</sup> defendant.
5. The background to this case might be stated shortly. The plaintiff sues on his own behalf and on behalf of the members of his mataqali. They are aggrieved about how the proceeds from the lease of Vomo Islands are being distributed by the defendants.
6. Vomo Islands are freehold estates of which two certain *yavusas* are tenants in common, each holding 50% interest each (as per Mr. Justice Gates (as the Honourable Chief Justice was then) judgement in **Naulivou v Native Land Trust Board** [2003] FJHC 341; HBC0069.1994L (12 November 2003)).
7. The Fiji Court of Appeal while affirming Gates J's judgement, would later order that the proceeds from the lease of the islands be distributed equally to all registered members of the two co-owning *yavusas*.
8. The plaintiff (and his supporters) are members of a certain mataqali in one of the two co-owning *yavusas*. They are aggrieved that they have not received a single cent from the lease monies. They allege that the 1<sup>st</sup> to 5<sup>th</sup> defendants had created a Deed of Trust purportedly on behalf of the two *yavusas*, and had opened a BSP Bank Account into which the lease monies were paid. The allegation is that the monies paid into the BSP Account has dissipated and remain unaccounted for, and that the plaintiff and his supporters have not received a single cent out of it, which was *prima facie*, contrary to the FCA's orders.
9. BSP, admittedly, is only named as a party because the account in question was kept at the said bank.

10. I agree there is no single allegation against the BSP. It appears to me that BSP is being sued only in a nominal capacity because of the said Bank Account. However, the statement of claim does not say that the BSP is being sued only in a nominal capacity.
11. I think the plaintiffs should have clarified that in the intituling and also in the statement of claim.
12. If I were to exercise my discretion to Order the plaintiff to amend his pleading as well as the intituling on the writ to reflect the position that the 7<sup>th</sup> defendant is being sued nominally, I would be caught in embarrassment if it were to later turn out that the plaintiffs had amended their pleadings to plead a cause of action.
13. The claim against the 7<sup>th</sup> defendant is struck out. Case adjourned to Wednesday 02 November 2016 for mention between the plaintiff and the other defendants.



25 October 2016.

Anare Tuilevuka  
**JUDGE**  
Lautoka