

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 216 of 1997

BETWEEN : SAMISONI TUI BALE also known as TUIMASI LUTU t/a General Food Marketing
Fiji Limited now of Rawai, Suva, Businessman.

1ST PLAINTIFF

AND : NATIONAL BANK OF FIJI

1ST DEFENDANT

AND : NBF ASSET MANAGEMENT BANK

2ND DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSELS: Mr. Maisamoa for the Plaintiff
Mr. Jamnadas for the Defendants

Date of Hearing: 30th January, 2017

Date of Ruling: 09th March, 2017

RULING

[Notice of Motion filed by the Plaintiff pursuant to Order 8 of the High Court Rules, 1988]

APPLICATION

1. The **Defendants** filed a Notice of Motion and an Affidavit in Support on 21st October, 2016 and sought for the following orders-
 - (a) That this action be restored to the list and be restored unconditionally;
 - (b) Such further orders as seems just and proper; and
 - (c) Costs of this action to be borne in the cause.
2. The application is made pursuant to *Order 8 of the High Court Rules 1988*.
3. Both parties to the proceedings filed their respective Written Submissions on this application and argued their cases accordingly.

THE LAW

APPLICATION (O.8, R.1)

4. The provisions of this Order apply to all motions subject, in the case of originating motions of any particular class, to any special provisions relating to motions of that class made by these Rules or by or under any Act.

PLAINTIFF'S CASE

5. The Plaintiff's contention is that the Plaintiff's Case was **taken off the list** and not **struck out** by this Court on 12th October, 2016.
6. That the Plaintiff did not comply with the Court order for the payment of Costs to the Defendant and the Court activated the '**Unless Order**' that was imposed against the Plaintiff accordingly.
7. Therefore, the Plaintiff's actions ought to be restored to the Court list.

DEFENDANT'S CASE

8. The Plaintiff's case is that this Court dismissed the Plaintiff's joinder application and ordered \$500 costs to be paid to the Defendant and the Reserve Bank of Fiji within 14 days and that an unless order was imposed upon the Plaintiff's non-compliance of the Costs order.

9. When the matter was next called on the 12th October, 2016, for further directions, the Court was informed that the Costs Order had not been complied with and therefore the unless order had taken effect, to which the Court agreed, meaning that the Plaintiff's statement of Claim had been struck out.
10. The Plaintiff opposes the Defendants application seeking an order to restore the Case to the Court list.

ANALYSIS and DETERMINATION

11. The issue before this Court is whether the Plaintiff's Statement of Claim should be restored to the Court List?
12. On 19th May, 2016, the Plaintiff filed an application to join the Reserve Bank of Fiji (RBF) as a party to this proceeding. The Court upon hearing the application delivered a Ruling on 20th September, 2016. The following orders were made-
 - (a) *That the Plaintiff's joinder application is dismissed;*
 - (b) *Costs is summarily assessed at \$500 to the Defendant and the Reserve Bank of Fiji (RBF), a total of \$1,000 to be paid within 14 days;*
 - (c) *An 'Unless Order' is imposed on the Plaintiff and upon default or non-compliance of the costs order, the unless order would be activated accordingly;*
 - (d) *The matter stands adjourned to 12th October, 2016 at 9 am for further direction.*
13. It has now become essential and appropriate to peruse the Court record of 12th October, 2016 and find out what transpired and the final orders that were made.

Mr Jamnadas stated

- *Costs of \$500 each were not paid to NBF and RBF;*
- *Unless order to take effect;*
- *Matter to be taken off the list; and*
- *We will decide what needs to be done.*

Mr Bulisea stated

- *Cost was not paid; and*
- *Order was not sealed.*

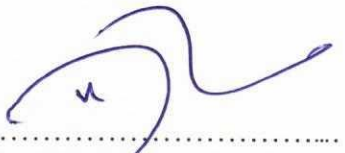
Upon hearing both Counsels, this Court then proceeded to make the following Orders-

- *Costs not paid;*
- *Matter taken off the list; and*
- *Defendants to take appropriate action with the Counter-Claim.*

14. It can now be easily ascertained and understood from the above Court Record that the Defendants Counsel himself sought for the case to be taken off the Cause list. He did not at any time inform Court that the Plaintiff's action be struck off for the default and or non-compliance of the Costs order of \$1,000.
15. Therefore, in the result I have no other alternative but to restore the Plaintiff's Action to the Cause List and will make further directions for compliance by the parties to the proceedings accordingly.
16. There will be no order as to Costs at the Discretion of the Court.

DATED at Suva on 09th March, 2017




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MR VISHWA DATT SHARMA
Master of High Court, Suva

cc: *Vakaloloma & Associates, Suva*
Jamnadas & Associates, Suva