IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 94 of 2014

BETWEEN: **IN THE ESTATE OF SOM SHARMA AKA SOM KISHORE SHARMA** (Deceased) by its Administratix **LEELA DEVI SHARMA** of Togobula, Nadroga.

Plaintiff

AND: **VINOD SHARMA, VIVITA NACEWA SHARMA** and **VEENA KIRAN SHARMA** Navutu, shopkeeper, Retired School Teacher and School Teacher.

First Defendants

AND: **REGISTRAR OF TITLES** appointed under the provisions of the Land Transfer Act with the office at Civic Tower, Suva.

Second Defendant

Before: Master U.L. Mohamed Azhar

Counsels: Ms. P. Mataika for the Plaintiff.
Mr. D.S. Naidu for the First Defendant.
Mr. J. Mainavolau for the Second Defendant.

Date of Ruling: 13th June 2018

RULING

01. This is the summons filed by the first defendant on 13.07.2016, pursuant to Order 25 rule 9 of the High Court Rules and the inherent jurisdiction of this court. The first defendant based this summons on the following grounds:

(i) That this action now constitutes an abuse of the process of this court,

(ii) That the default and the delay on part of the plaintiff to proceed with this action has been intentional and contumelious and that there has been no initiative on the part of the plaintiff to set the matter down for trial.

(iii) That there has been inordinate and inexcusable delay on the part of the plaintiff or its lawyer and that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in this action or is likely to cause or have caused serious prejudice to the first defendant.

(iv) *That the plaintiff has not taken any step in the matter for the last six months after filling tis Amended Writ of Summons.*

02. The plaintiff filed the affidavit in opposition, and it was, thereafter, replied by the first defendants. The second defendant, who is the Registrar of Titles, supported the summons filed by the first defendants, however, did not file any affidavit. At the hearing of the summons, both the counsels for the plaintiff and the first defendants made oral submission and tendered the written submission, and counsel for the second defendant was excused on his request as the second defendant is the nominal defendant in this case.

03. The facts of the case, albeit brief, are that, the original plaintiffs – the wife and the children of late Som Kishore Sharma - took out the writ of summons issued by this registry on 10.06.2014 against the defendants. The claim of the plaintiffs is that, the first named plaintiff's husband, the late Som Kishor Sharma, the first named defendant and their mother Lila Wati Sharma were the beneficiaries of the Estate of late Ashwani Kumar Sharma who died testate, making the first named first defendant an the sole executor and trustee. The Estate owned the Crown Lease 3991 over the state land marked Lot 1 on Plan No. 1651, Tugobula part in the Tikina of Maomalo in the Province of Nadroga. However, the first named first defendant, in breach of his fiduciary duty as the trustee and the executor of the Estate, had fraudulently and through a mortgaee's sale, transferred the entire property to the second named 1st defendant. Originally, the plaintiffs brought this action as the beneficiaries of the Estate of Som Kishor Sharma and later the Writ was amended after the plaintiff became the Administratrix of the Estate of late Som Kishor Sharma.

04. Upon service of the original writ, the 1st defendants filed their defence on 03rd November 2014 through their solicitors and entirely denied the claim. The second defendant (the nominal defendant) did not file the defence. However, the plaintiff failed to file the reply to the defence filed by the 1st defendants, and also failed to take any steps in the matter for more than six month. This prompted the 1st defendants to file this summons for striking out for want of prosecution under Order 25 rule 9 of the High Court Rules.

05. The Order 25 rule 9 provides for the jurisdiction of the court to strike out any cause or matter for want of prosecution or as an abuse of process of the court if no step has been taken for six months. The said rule reads;

> *"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.*
>
> *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".*

06. The court's power under the above rule has been discussed in many cases and the law, on striking out an action under this rule, is well settled now. This, therefore, does not warrant a lengthy discussion. However, for the benefit of the discussion in the instant case, I briefly point out the law as this court held in some other cases before. The grounds provided in the above rule are firstly, want of prosecution and secondly, abuse of process of the court. This rule was introduced to the High Court Rules for the case management purpose and is effective from 19 September 2005. The main characteristic of this rule is that, the court is conferred with power to act on its own motion in order to agitate the sluggish litigation (**see: *Trade Air Engineering (West) Ltd v Taga [2007] FJCA 9; ABU0062J.2006 (9 March 2007***). Even before the introduction of this rule, the courts in Fiji exercised this power to strike out the cause for want prosecution following the leading English authorities such as ***Allen v. McAlpine*** [1968] 2 QB 229;[1968] 1 All ER 543 and ***Birkett v. James*** [1978] AC 297; [1977] 2 All ER 801. Justice Scott, striking out of plaintiff's action in ***Hussein v Pacific Forum Line Ltd [2000] Fiji Law Report 24; [2000] 1 FLR 46 (6 March 2000),*** stated that;

> *"The principles governing the exercise of the Court's jurisdiction to strike out for want of prosecution are well settled. The leading English authorities are **Allen v. McAlpine** [1968] 2 QB 229;[1968] 1 All ER 543 and **Birkett v. James** [1978] AC 297; [1977] 2 All ER 801 and these have been followed in Fiji in, for example, **Merit Timber Products Ltd v. NLTB** (FCA Reps 94/609) and **Owen Potter v. Turtle Airways Ltd** (FCA Reps 93/205)".*

07. The Court of Appeal of Fiji in ***Trade Air Engineering (West) Ltd v Taga*** (supra) reiterated that, the new rule (Or 25 r 9) does not confer any additional or wider power to the court except the power to act on its own motion. It was held in that case that;

> *"In our view the only fresh power given to the High Court under Order 25 rule 9 is the power to strike out or to give directions of its own motion. While this power may very valuably be employed to agitate sluggish litigation, it does not in our opinion confer any additional or wider*

jurisdiction on the Court to dismiss or strike out on grounds which differ from those already established by past authority".

08. The above decision of the Court of Appeal made it abundantly clear that the principles set out in ***Allen v. McAlpine*** (supra) and ***Birkett v. James*** (supra) are still applicable to strike out any cause where no step is taken for six months, despite the introduction of new rule (Or 25 r 9). Lord Diplock, whilst articulating the principles for striking out the actions for want of prosecution and abuse of the court process in ***Birkett v. James*** (supra), explained the emerging trend of English courts in exercising the inherent jurisdiction for want of prosecution. His Lordship held that;

> *"Although the rules of the Supreme Court contain express provision for ordering actions to be dismissed for failure by the plaintiff to comply timeously with some of the more important steps in the preparation of an action for trial, such as delivering the statement of claim, taking out a summons for direction and setting the action down for trial, dilatory tactics had been encouraged by the practice that had grown up for many years prior to 1967 of not applying to dismiss an action for want of prosecution except upon disobedience to a previous peremptory order that the action should be dismissed unless the plaintiff took within a specified additional time the step on which he had defaulted.*
>
> *To remedy this High Court judges began to have recourse to the inherent jurisdiction of the court to dismiss an action for want of prosecution even where no previous peremptory order had been made, if the delay on the part of the plaintiff or his legal advisers was so prolonged that to bring the action on for hearing would involve a substantial risk that a fair trial of the issues would not be possible. This exercise of the inherent jurisdiction of the court first came before the Court of Appeal in Reggentin vs Beecholme Bakeries Ltd (Note) [1968] 2 Q.B. 276 (reported in a note to Allen v Sir Alfred McAlpine & Sons Ltd [1968] 2 Q.B. 229) and Fitzpatrick v Batger & Co Ltd [1967] 1 W.L.R. 706*
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> *The dismissal of those actions was upheld and shortly after, in the three leading cases which were heard together and which, for brevity, I shall refer to as Allen v McAlpine [1968] 2 Q.B. 229, the Court of Appeal laid down the principles on which the jurisdiction has been exercised ever since. Those principles are set out, in my view accurately, in the note to R.S.C, Ord. 25, R. 1 in the current Supreme Court Practice (1976).* ***The power should be exercised only where the court is satisfied either (1) that the default has been intentional and contumelious, e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the***

process of the court; or (2) (a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between each other or between them and a third party".(emphasis added)

09. As Lord Diplock clearly explained in his judgment, the above principles were set out in the notes to Order 25 rule 1 of Rules of Supreme Court 1976 which is equivalent to our Order 25 rule 1 (4) under the Summons for Directions. However those principles of prophesy had caused to the development of the new rule such as Order 25 Rule 9. The first limb in the above case is ***the intentional and contumelious default***. Lord Diplock in his wisdom did not leave the first limb unexplained, but, His Lordship gave two examples for that first limb. One is ***disobedience to a peremptory order of the court*** and the other is ***conduct amounting to an abuse of the process of the court.*** Thus the second ground provided in Order 25 Rule 9, which is 'abuse of the process of the court', is a good example for '***the intentional and contumelious default'*** as illustrated by Lord Diplock in ***Birkett v. James*** (supra). According to Lord Diplock abuse of the process of the court falls under broad category of '***the intentional and contumelious default'*** However, Lord Diplock did not explain what act does exactly amount to an abuse of the process of the court.

10. There is a latest judgment by the House of Lords in ***Grovit and Others v Doctor and Others (1997) 01 WLR 640, 1997 (2) ALL ER, 417***, where Lord Woolf held that, commencing an action without real intention of bringing to conclusion amounts to an abuse of the process of the court. It was held as follows;

> *"The court exists to enable parties to have their disputes resolved. To commence and to continue litigation which you have no intention to bring to conclusion can amount to abuse of process. Where this is the situation the party against whom the proceedings is brought is entitled to apply to have the action struck out and if justice so requires (which will frequently be the case) the courts will dismiss the action. The evidence which was relied upon to establish the abuse of process may be the plaintiff's inactivity. The same evidence will then no doubt be capable of supporting an application to dismiss for want of prosecution. However, if there is an abuse of process, it is not strictly necessary to establish want of prosecution under either of the limbs identified by Lord Diplock in **Birkett v James** [1978] A.C 297. In this case once the conclusion was reached that the reason for the delay was one which involved abusing the process of the court in maintaining proceedings where there was no intention of*

carrying the case to trial the court was entitled to dismiss the proceedings".

11. The Fiji Court of Appeal in ***Thomas (Fiji) Ltd –v- Frederick Wimheldon Thomas & Anor, Civil Appeal No. ABU 0052/2006*** followed the principles of ***Grovit and Others v Doctor and Others*** (supra) and held that;

> *"During the course of his careful and comprehensive ruling the judge placed considerable emphasis on the judgment of the House of Lords in **Grovit and Ors v Doctor** [1997] 2 ALL ER 417. That was an important decision and the judge was perfectly right to take it into account. It should however be noted that Felix Grovit's action was struck out not because the accepted tests for striking out established in **Birkett v James** [1977] 2 ALL ER 801; [1978] AC 297 had been satisfied, but because the court found that he had commenced and continued the proceedings without any intention of bringing them to a conclusion. In those circumstances the court was entitled to strike out the action as being an abuse of the process of the Court. The relevance of the delay was the evidence that it furnished of the Plaintiff's intention to abuse the process of the Court"*

12. Both, the ***The Grovit*** case and ***Thomas (Fiji) Ltd*** (supra) which follows the former, go on the basis that, *"abuse of the process of the court"* is a ground for striking out, which is independent from what had been articulated by Lord Diplock in ***Birkett v James*** (supra). However, it is my considered view that, this ground of *"abuse of the process of the court"* is part of '***the intentional and contumelious default'***, the first limb expounded by Lord Diplock. The reason being that, this was clearly illustrated by Lord Diplock in ***Birkett v. James*** (supra). For the convenience and easy reference I reproduce the dictum of Lord Diplock which states that; "***...either (1) that the default has been intentional and contumelious, e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court...***" (Emphasis added). According to Lord Diplock, the abuse of the process of the court, with its all forms, falls under broad category of '***the intentional and contumelious default'***. In fact, if a plaintiff commences an action and has no intention to bring it to conclusion it is an abuse of the process of the court. Thus the default of a plaintiff intending not to bring it to conclusion would be intentional and contumelious. Accordingly, it will fall under the first limb of the principles expounded in ***Birkett v. James*** (supra). This view is further supported by the dictum of Lord Justice Parker who held in ***Culbert v Stephen Wetwell Co. Ltd,*** *(1994) PIQR 5* as follows;

> *"There is however, in my view another aspect of this matter. An action may also be struck out for contumelious conduct, or abuse of the process of the Court or because a fair trial in action is no longer possible.*

Conduct is in the ordinary way only regarded as contumelious where there is a deliberate failure to comply with a specific order of the court. In my view however a series of separate inordinate and inexcusable delays in complete disregard of the Rules of the Court and with full awareness of the consequences can also properly be regarded as contumelious conduct or, if not that, to an abuse of the process of the court. Both this and the question of fair trial are matters in which the court itself is concerned and do not depend on the defendant raising the question of prejudice."

13. Sometimes, it is argued that, ***Birkett v. James*** (supra) deals with the ground of 'want of prosecution' only and not the ground of abuse of the process of the court. However, it is evident from the illustrations given in that case that, it deals with both the grounds of 'abuse of the process of the court' and 'want of prosecution' as well. In any event, the defendant is under no duty to establish the prejudice in order to strike out an action if he can prove the abuse of the process of the court. Suffice to establish plaintiff's inactivity coupled with the complete disregard of the Rules of the Court with the full awareness of the consequences.

14. The second limb of the ***Birkett v. James*** (supra) is (a) that there has been inordinate and inexcusable delay on part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants. In short, it is inordinate and inexcusable delay, which makes the fair trial impossible, or which is likely to cause or has caused prejudice to the parties.

15. Their Lordships the Justices of Fiji Court of Appeal in ***New India Assurance Company Ltd v Singh [1999] FJCA 69; Abu0031u.96s (26 November 1999)*** unanimously held that, *"We do not consider it either helpful or necessary to analyse what is meant by the words 'inordinate' and 'inexcusable'. They have their ordinary meaning. Whether a delay can be described as inordinate or inexcusable is a matter of fact to be determined in the circumstances of each individual case"*. However, in ***Deo v Fiji Times Ltd [2008] FJCA 63; AAU0054.2007S (3 November 2008)*** the Fiji Court of Appeal cited the meaning considered by the court in an unreported case. It was held that;

"The meaning of "inordinate and inexcusable delay" was considered by the Court of Appeal in ***Owen Clive Potter v Turtle Airways Limited v Anor*** *Civil Appeal No. 49 of 1992 (unreported) where the Court held that inordinate meant "so long that proper justice may not be able to be done between the parties" and "inexcusable" meant that there was no*

reasonable excuse for it, so that some blame for the delay attached to the plaintiff".

16. According to Order 25 Rule 9, the acceptable and or tolerable maximum period for inaction could be six months. The threshold is six months as per the plain language of the rule. It follows that, any period after six months would be inordinate and inexcusable so long that proper justice may not be able to be done between the parties and no reasonable excuse is shown for it. Therefore, whether a delay can be described as inordinate or inexcusable is a matter of fact, which to be determined in the circumstances of each and every case. As established by courts delay of itself, without being shown that the delay is seriously prejudicial to the defendant, is not sufficient to strike out of an action under the second limb of the ***Birkett v. James*** (supra). The Fiji Court of Appeal in ***New India Assurance Company Ltd v Singh [1999] FJCA 69; Abu0031u.96s (26 November 1999)*** has reaffirmed the burden of the defendant to establish that serious prejudice would be caused to it by the delay. It was held that;

> *"Where principle (2) is relied on, both grounds need to be established before an action is struck out. There must be both delay of the kind described and a risk of an unfair trial or serious prejudice to the defendants. In Department of Transport v Smaller (Transport) Limited [1989] 1 All ER 897 the House of Lords did not accept a submission that the decision in Birkett should be reviewed by holding that where there had been inordinate and inexcusable delay, the action should be struck out, even if there can still be a fair trial of the issues and even if the defendant has suffered no prejudice as a result of the delay. Lord Griffiths, after a review of the authorities and relevant principles, said at 903 that he had not been persuaded that a case had been made out to abandon the need to show that post-writ delay will either make a fair trial impossible or prejudice the defendant. He went on to affirm the principle that the burden is on the defendant to establish that serious prejudice would be caused to it by the delay".*

17. In ***Pratap v Christian Mission Fellowship [2006] FJCA 41; ABU0093J.2005 (14 July 2006)*** the Fiji Court of Appeal cited the dictum of Eichelbaum CJ in Lovie v. Medical Assurance Society Limited [1992] 2 NZLR 244. It was held in that case at page 248 by Eichelbaum CJ that;

> *"The applicant must show that the Plaintiff has been guilty of inordinate delay, that such delay is inexcusable and that it has seriously prejudiced the defendants. Although these considerations are not necessarily exclusive and at the end one must always stand back and have regards to*

the interests of justice. In this country, ever since NZ Industrial Gases Limited v. Andersons Limited [1970] NZLR 58 it has been accepted that if the application is to be successful the Applicant must commence by proving the three factors listed."

18. The above analysis of law on striking out of an action clearly shows that, the courts in Fiji had, before the introduction of Order 25 rule 9, exercised the jurisdiction to strike out following the principles expounded in ***Allen v. McAlpine*** (supra) and ***Birkett v. James*** (supra). Even after the introduction of the above rule the same principles apply, as confirmed by the superior courts. The ground of '*abuse of the process of the court* advanced by the recent case of ***Grovit v. Doctor*** (supra) too comfortably falls into the first limb of ***Birkett v. James*** as Lord Diplock cited *'the abuse of the process of the court'* as one of the two examples for the first limb expounded by him. The rationale is that, commencing an action without the intention of bringing it to conclusion amounts to an abuse of the process of the court and in turn it is an intentional and contumelious default. A series of separate, inordinate and inexcusable delays in complete disregard of the Rules of the Court, together with full awareness of the consequences can be regarded as contumelious conduct or an abuse of the process of the court under the second limb of Order 25 rule 9. On the other hand the inordinate and inexcusable delay together with the impossibility of fair trial or prejudice should be established in order to succeed in an application under first limb of Order 25 rule 9.

19. The plaintiff, in this case, did not take any step in the matter since filling of the statement of defence by the 1st defendant. The plaintiff should have filed the reply on or before 17th November 2014 and taken the summons for directions within one month of close of pleadings. The inactive period from the day of filling the statement of defence and the instant summons for striking out is more than eight months. The reason given by the plaintiff for this delay is that, she was waiting for the ruling of the case in a connected matter. It reveals from the affidavits of the parties that, the third named 1st defendant, initially, filed an application against the plaintiff in the high court under the section 169 of Land Transfer Act seeking for an order for eviction of the plaintiff from the subject matter of this action. The court, upon hearing the said application, by its judgment dated 20.05.2014 ordered the plaintiff to immediately hand over the vacant possession of the said property to the third named 1st defendant. It was after the said judgment, the plaintiff brought this action against the defendants. In fact, the plaintiff averred in her affidavit that, she appealed against the decision of the then Master dated 20. 05.2014 on the said application under section 169 of the Land Transfer Act.

20. The plaintiff just stated in her affidavit that she appealed against the decision on the said application under section 169 of the Land Transfer Act. Though, the plaintiff was mainly relying on the fact that, her delay, to take steps in this matter, was that she was waiting

for the ruling in her appeal, she did not give the details on it. However, 1st defendant had attached with his affidavit a copy of the ruling delivered in the said appeal claimed by the plaintiff in her affidavit. It reveals from the said ruling that, it was not an appeal, as averred by the plaintiff, but a summons filed by the plaintiffs on 10.06.2014, seeking leave for enlargement of time to appeal the judgment dated 20.05.2014 and leave to adduce fresh evidence in appeal. It further reveals that, this action also filed on the same day (10.06.2014) on which the said summons for enlargement of time for appeal was filed by the plaintiffs. The plaintiffs, by filling both this action and said summons for enlargement of time and leave to adduce fresh evidence, on the same day, was trying to get either of options whichever is successful. So this action was used by the plaintiff as an alternative in case of failure in her attempt to get enlargement of time for her appeal against the judgement of the then Master in the said application under section 167 of the Land Transfer Act. It, like 'forum shopping', amounts to an abuse of court process, which cannot be condoned. Furthermore, she was waiting for the ruling on the said summons and if it was successful, she was to give up this action. That is why; she did not take any steps in this matter as required by the rules. This clearly shows that, she did not have real intention to proceed with this matter. In ***Grovit and Others v Doctor and Others*** ***(supra)*** Lord Woolf held that, commencing an action without real intention of bringing to conclusion amounts to an abuse of the process of the court. It follows that, plaintiff's inaction falls under the first limb of the principles expounded in ***Birkett v. James*** (supra) as it is an intentional and contumelious default. The plaintiff's action could be struck out on this ground itself, without the defendants establishing the prejudice to them

21. As mentioned above, the acceptable inactive period is six months as the Rule sets the threshold at six months. Thus, any delay thereafter would be inordinate and inexcusable as long as proper justice may not be able to be done between the parties and no acceptable reason is adduced. The reason given by the plaintiff that, she was waiting for the ruling in her summons cannot be acceptable as it is not a barrier to take steps in this matter. Apart from this delay which prompted the 1st defendants to file the instant summons, there has been delay on part of the plaintiff even before that. As mentioned above, the original writ was filed on 10.06.2014. The plaintiff thereafter filed the amended writ after 17 months on 06 November 2015. This amendment was necessitated by the issuance of Letter of Administration to the plaintiff. Though, the Letter of Administration was issued on 18.02.2015, the amended writ was filed only on 06.11.2015. The 1st defendants filed their statement of defence on 03.11.2014. There was no necessity for them to file the amended statement of defence after the writ was amended, as the only amendment was in the capacity of the plaintiff after issuance of Letter of Administration. However, the document annexed with the affidavit of the plaintiff, which is an email marked as **"LDS 5"** and sent by her solicitor, shows that, her solicitor requested the comments from her regarding the statement of defence, only on

15.06.2016. This was after almost 18 months of filling the statement of defence. The proper justice may not be done with this long delay on part of the plaintiff, who is obliged to expeditiously prosecute her claim. This shows that, the delay on part of the plaintiff is inordinate and inexcusable.

22. The next question is the prejudice to the defendant. The Court of Appeal in ***New India Assurance Company Ltd v Singh*** **(supra)** stated that, prejudice can be of two kinds. It can be either specific, which is arising from particular events that may or may not have occurred during the relevant period, or general, which is prejudice that is implied from the extent of the delay. The prejudice that may be caused to a party, due to the long delay of the other party, was discussed in ***Biss v. Lambeth, Southwark & Lewisham Health Authority*** ***[1978] 2 All E.R. 125*** where Lord Denning stated at page 131 that:

> *"The prejudice to a defendant by delay is not to be found solely in the death or disappearance of witnesses or their fading memories or in the loss or destruction of records. There is much prejudice to a defendant in having an action hanging over his head indefinitely , not knowing when it is going to be brought to trial; like the prejudice to Damocles when the sword was suspended over his head at the banquet. It was suspended by a single hair and the banquet was a tantalizing torment to him. So in the President of India case, [1977] Court of Appeal Transcript 383, which we heard the other day. The business house was prejudiced because it could not carry on its business affairs with any confidence, or enter into forward commitments, whilst the action for damages was still in being against it".*

23. In this case, the prejudice to the 1st defendants is both specific and general. As admitted by the plaintiff, the plaintiff has been occupying the part of the premises, whilst the defendants paying the rental to the iTaukei Land Trust Board. In other words, the plaintiff is enjoying free occupation at the cost of the defendnats. The 1st defendants not only incurring cost by paying rent to the iTLTB, but also losing the prospective rental income from the premises occupied by the plaintiff. On top of that, the inordinate delay in prosecuting this case too has caused the general prejudice. The above analysis fortifies me to conclude that, the defendant have been prejudiced by the plaintiff's inordinate and inexcusable delay and contravention of rules of the court. This too, justifies the court in dismissing the plaintiff's case for want of prosecution.

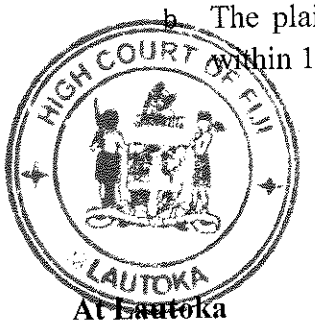
24. For the above mentioned reasons, I am fortified in my view that, this court should take stern measure and strike out the plaintiff's case, as it is within the jurisdiction of this court. Though the facts of the case do not warrant the indemnity cost, there should be

some reasonable cost for the 1st defendants for bringing this summons for the delay on part of the plaintiff.

25. Accordingly, the final orders are;

a. The plaintiff's action is struck out for want of prosecution and abuse of the process of the court, and

b. The plaintiff should pay a summarily assessed cost of $ 500 to the 1st defendants within 14 days from today.



U.L. Mohamed Azhar
Master of the High Court

At Lautoka
13/06/2018