

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

CIVIL ACTION NO.: HBC 321 of 2016

BETWEEN : **RATU JOSEVA VATUNITU aka RATU
JOSEVA SAMUDUNATUA VATUNITU**
FIRST PLAINTIFF

: **MANASA NAIVALUVOU VATUNITU**
SECOND PLAINTIFF

: **MANASA NAIVALUVOU NAVUTEVUTE**
THIRD PLAINTIFF

AND : **ITAUKEI LAND TRUST BOARD**
FIRST DEFENDANT

: **SGV PACIFIC PROPERTIES GROUP**
SECOND DEFENDANT

: **AVOSER LIMITED**
THIRD DEFENDANT

: **GULF INVESTMENTS FIJI LIMITED**
FOURTH DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFFS : Mr. A Matebalavu [Esesimarm & Co]

FIRST DEFENDANT : Ms. Suveinakama [Legal Service Department, iTaukei Land Trust Board]

SECOND DEFENDANT : No Appearance Made [Aman Ravindra Singh Lawyers]

THIRD & FOURTH DEFENDANTS : Matter Discontinued

RULING BY : Acting Master Ms Vandhana Lal

DELIVERED ON : 15 February 2022

INTERLOCUTORY RULING

Application

1. On 31st October, 2018, the Court on its own motion caused an Order 25 Rule 9 notice to be issued asking the parties to this proceeding to show cause why the action should not be struck out for want for prosecution or as an abuse of the process of the court.

Brief Chronology of the File

2. A writ of summons indorsed with a statement of claim was filed on 21st December 2016.
3. On or about 06th January 2017, the Third and Fourth Defendants sought orders for the claim to be struck out against them.
4. On 23rd January 2017, an amended writ of summon was filed.
5. The First Defendant's defence was filed on 24th January 2017.
6. On 10th February 2017, a notice of discontinue was filed whereby the Plaintiff discontinued the action against the Third and Fourth Defendants.
7. On 25th April 2017, a summon for direction was filed.
8. Later on, 03rd May 2017 the Plaintiff made an application seeking leave to enter judgment against the Second Defendant in default of a defence.
9. On 07th August 2017, an order was made on the Plaintiff's summon for direction.
10. On 23rd November 2017, following orders were made:
 1. *Order granted for interlocutory judgment against the Second Defendant;*

2. *For pre-trial conference with the Plaintiff and First, Third and Fourth Defendant.*
3. *Formalise pre-Trial conference by 05th February 2018 at 9am.*

11. On 28th September 2018, a notice of change of solicitors was filed on behalf of the Plaintiffs.
12. The Plaintiffs' solicitors on 28th September 2018, filed a notice of intention to proceed.

Determination

13. The Plaintiffs in their affidavit to show cause have failed to inform why they could not file their affidavit verifying list of documents; complete discovery and convene a pre-trial conference and move the matter towards trial.
14. The orders on the summon for direction are pending since 07th August 2017.
15. The Plaintiffs inform that they are ready to file their affidavit verifying list of documents and have annexed a draft of the same.
16. I note there has been inordinate and intentional delay and hence I find that the circumstances warrant for an unless order to be made to ensure the Plaintiffs proceed with the matter towards trial earliest.

Orders

17. Following orders are made on the Order 25 rule 9 notice dated 31st October 2018:
 - i. The Plaintiff to file and serve its affidavit verifying list of documents by 4pm 22 February 2022;
 - ii. The First Defendant to file and serve its affidavit verifying list of documents by 4pm 04 March 2022;

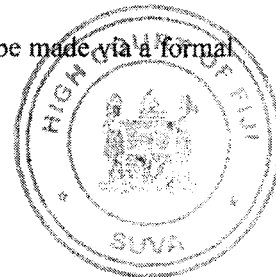
- iii. If the respective affidavit verifying list of documents are not filed by as above, the concerned party may not adduce documentary evidence without the leave of the court;
- iv. A pre-trial conference is to be convened and a minute be filed by 4pm on 18 March 2022.

If dates are not agreed upon, Plaintiffs' solicitors are to file and serve a notice requesting pre-trial conference by 4pm 04 March 2022;

- v. Should the pre-trial conference minute not be filed as above, the pre-trial conference shall be deemed to be dispensed with;
- vi. In any event, the Plaintiff should file an Order 34 summon, copy pleadings and agreed bundle of documents (if any) by 4pm 01 April 2022.;
- vii. Unless the Plaintiff complies with (vi) above the matter shall stand struck out;
- viii. Matter will be called for mention on 11 April 2022 at 12 noon to check on compliance and should the matter stand struck out, than on issue of costs if any.

- ix. Any application for extension of time is to be made via a formal application.

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Vandhana Lal [Ms]
Acting Master
At Suva.



TO:

1. **Suva High Court Civil Action No. HBC 321 of 2016;**
2. **Esesimarm & Co, Solicitors for the Plaintiffs;**
3. **Legal Service Department, iTaukei Land Trust Board, Solicitors for the First Defendant;**
4. **Aman Ravindra Singh Lawyers, Solicitors for the Second Defendant.**