

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

CIVIL ACTION NO.: HBC 362 of 2017

**BETWEEN : INISE TOGANIYASAWA, ADI MARIA LOSALINI
RAVUCAKEMATANA, ANA LISA
QEREQERETABUA, LEILANI WAQABACA,
MARIA TAULEKA, ANAISI BALEWAI,
MAKERETA BULOOU, SENIROSI YALIDOLE AND
ESTATE OF LATE AMANDA QOROYA.**

PLAINTIFFS

AND : VISHAL MANI

FIRST DEFENDANT

: GRAND PACIFIC HOTEL LIMITED

SECOND DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr. D Singh [Daniel Singh Lawyers]
FIRST DEFENDANT : Mr. K Chang [Legal Aid Commission]
SECOND DEFENDANT : Mr. P Kumar [Patrick Kumar Lawyers]
RULING BY : Acting Master Ms Vandhana Lal
DELIVERED ON : 21 February 2022

RULING

The Application

1. On 29th October 2018, a Order 25 Rule 9 notice was issued by the Court for the parties to show cause why the matter should not be struck off for want for prosecution or as an abuse of process of the court.
2. The Plaintiffs filed their affidavit showing cause on 18th December 2018 which is sworn sworn by one Kinisimere Raiqiso.
3. The Second Defendant filed its affidavit on 19th February 2019, whilst the First Defendant filed his affidavit on 07th June 2019.

Background of the Proceeding

4. On 07th December 2017, the Plaintiffs through their solicitors filed a writ of summons.
5. As per the affidavit of service filed on 15th December 2017, the Writ was served on the insurance company.
6. Thereafter no further action was taken up by the Plaintiffs hence the Order 25 Rule 9 notice was issued by the Court.

Preliminary Issue Regarding Affidavit Sworn By The Plaintiffs' Solicitor's Law Clerk

7. The First Defendant's solicitors in their written submission at paragraph 6.0 raised objection to the use of the affidavit sworn by Kinisimere Raiqiso, a law clerk with Plaintiffs' solicitors.
8. In **Paul v Director of Lands & Others, a Fiji Supreme Court Civil Appeal No. CBV 0018 of 2019** Kumar CJ. has outlined a guideline for signing of affidavit by third parties including law clerks, legal executives and litigation clerks and these are:
 - (i) *Authority in writing for third party to depose affidavits;*

- (ii) *Reasons to be stated why the party and if a company why its director or authorized officer cannot depose the said affidavit;*
- (iii) *Must not depose affidavit on basis of information or belief but depose facts the deponent has knowledge of with exception to the following cases:*
- *affidavit filed in application for summary judgment;*
 - *affidavit verifying facts in respect to action for specific performance pursuant to Order 86 of the High Court Rules only if directed by Court to do so;*
 - *affidavit verifying evidence of facts during trial when directed by Court to do so pursuant to Order 38 Rule 3.*
- (iv) *Can depose affidavit in case of interlocutory application but must do so on the basis of information received which they believe to be true and must disclose the source of such information or beliefs in addition facts that is within their personal knowledge.*

9. There is no authority annexed to the said affidavit stating Kinisimere Raiqiso has authority of the Plaintiffs to depose the said affidavit.
10. Neither does the affidavit state out reasons why the Plaintiffs cannot depose an affidavit.
11. Hence, I allow the objection raised by the First Defendant and strike out the affidavit sworn by Kinisimere.

Have the Plaintiffs shown cause why the action should not be struck out?

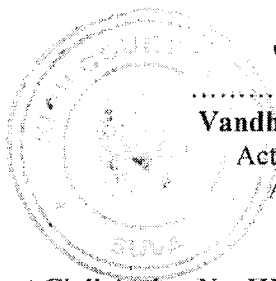
12. Even if I am to allow the affidavit of Kinisimere, the same briefly outlines the following:
- *Paragraphs 2 and 3 outlines when the claim was filed and documents served.*

- *That on 18th December 2017, the Principal of law firm received a letter from Sun Insurance rejecting insurance third party claim.*
- *On 12th January 2018, the Principal received a letter from Lateef and Lateef stating claim should have been under workmen compensation claim.*
- *The Plaintiff's solicitors had prepared interlocutory judgment when it was served with an Order 25 rule 9 notice.*

13. No sufficient reasons are outlined for the delay and why no action was taken after service of the claim and why no interlocutory judgment was entered when no notice of intention to defend or defence was filed by the Defendants.
14. Hence, I find the Plaintiffs have failed to show sufficient cause under Order 25 Rule 9.

Orders

15. As mentioned earlier with no authority from the Plaintiffs provided, I find the affidavit of Kinisimere ought to be struck out from the records.
16. And with no sufficient cause is shown by the Plaintiffs, the action is struck off in term of Orde 25 rule 9 of the High Court Rules.
17. Parties to bear own costs.



[Handwritten Signature]
.....
Vandhana Lal [Ms]
Acting Master
At Suva.

TO:

1. **Suva High Court Civil Action No. HBC 362 of 2017;**
2. **Daniel Singh Lawyers, Solicitors for the Plaintiffs;**
3. **Legal Aid Commission, Solicitors for the First Defendant;**
4. **Patrick Kumar Lawyers, Solicitors for the Second Defendant.**