

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

**Civil Action No. 49 of 2016**

BETWEEN:

JAMES WELDON BANDY aka JIM BANDY  
and KYOKO BANDY both of “Also Island”

PLAINTIFFS

AND:

THE COMMISSIONER OF POLICE  
FIRST DEFENDANT

THE ATTORNEY-GENERAL  
SECOND DEFENDANT

Before:

Hon. Chief Justice Kamal Kumar

Solicitors:

Plaintiffs in Person

Mr J. Pickering for the Defendants

Date of Judgment:

11 November 2022

**JUDGMENT**

**Introduction/Chronology of Events**

1. On 29 August 2016, Plaintiffs in person, filed Writ of Summons with Statement of Claim claiming the damages for alleged breach of constitutional obligations and negligence.
2. On 8 September 2016 and 29 December 2016 the Defendants filed Acknowledgement of Service and Statement of Defence respectively.
3. On 7 February 2017 the Plaintiffs filed Reply to Defence.

4. On 1 November, 2017 the Plaintiffs filed Summons for Directions and on 27 November 2017, being returnable date of Summons for Direction, Order in terms of Summons for Direction was made.
5. On 1 December 2017 the Plaintiffs filed Affidavit Verifying List of Documents **(AVLD)**.
6. On 11 December 2011 the Defendants filed AVLD.
7. On 2 March 2018, Plaintiffs filed Summons to Enter Action for Trial.
8. On 12 March 2018 the Plaintiffs were directed to file Copy Pleadings with Supplementary AVLD and this matter was adjourned to 19 March 2018.
9. On 12 March 2018 the Plaintiffs filed Copy Pleadings and Supplementary AVLD.
10. On the same day the Defendants filed Supplementary AVLD.
11. On 19 March 2018, this matter was adjourned for trial on 21 and 22 June 2018.
12. On 13 June 2018 the Plaintiffs filed Supplementary AVLD.

### **Background Facts**

13. The Plaintiff being Fiji Citizens operated business under the name of 'Also Island' a grocery shop, sold fish in Labasa produced virgin coconut oil and were boat builders.
14. The Plaintiffs employed one Saiyad Rizwan as driver sales and purchase agent.
15. The Plaintiffs alleged that during his term of employment from 2006 to 2010, Sayad Rizwan:-
  - (i) Failed to pay lease rental for motor vehicle registration No. DV 407 amounting to \$19,995.00.
  - (ii) Stole \$1 of every kg of fish sold amounting to \$31,636.98.
  - (iii) Stole \$20.00 from the Plaintiffs, whenever he bought 'sukhi' for them amounting to approximately \$1490.00.
  - (iv) Withdrew \$1,705.00 for his own use and benefit from the Plaintiffs bank account.
16. On or about 4 August, 2010, the Plaintiffs lodged a complainant against Sayad Rizwan at Labasa Police Station and on 4 and 5 August 2010 gave their statement to the Police.

17. The Plaintiffs complaint was registered under No. 232/2010 at Labasa Police Station.
18. Northern Regional Command Center wrote to the Plaintiffs (undated letter) informing the Plaintiff's that their complaint was being registered and investigations are being handled by Regional Investigations Unit.
19. On 10 August 2010, letter was written by Regional Investigator North to the Firstnamed Plaintiff requesting for certain information.
20. On 7 October 2010, the Investigation Officer wrote to the Plaintiffs informing them that they took statements from certain people and the investigation is continuing.
21. On 26 January 2011, the Director Discipline and Ethics Division wrote to Secondnamed Plaintiff in respect to her letter dated 30 September 2010, informing her that investigation is underway and for her to liaise with Inspector Lomani.
22. In 2011, the Plaintiff's filed civil claim in Labasa Magistrates Court against Sayad Rizwan and on 6 October 2015, obtained judgment against Sayad Rizwan in the sum of \$19,995.00.

### **Documentary Evidence**

23. By consent documents listed in Agreement Bundle of Documents dated and filed on 13 March 2018, excluding item No. 22 were listed as Exhibit 1 to 25.

### **Plaintiffs Case**

24. The Firstnamed Plaintiff gave evidence himself and did not call any other witness.
25. Since, the Plaintiffs claim relate to alleged breach of duty care against the Investigation Officers in relation to complaint lodged against Sayad Rizwan and subject to Police Docket No. 232/2010, it is prudent evidence after lodgment complaint be referred to in this Judgment.
26. The Firstnamed Plaintiff during examination in chief gave evidence that:-
  - (i) In 2010, he lodged complaint against Sayad Rizwan with Police with evidence and documents including overstated sale of fish, overstated cash for purchase of sukhi with unauthorized use of float account for Rizwan's use and benefit.

- (ii) The First Defendant filed charges against Rizwan in 2016, after a lapse six (6) years for only 2 counts in relation to keeping money given to him for purchase of sukhi.
- (iii) Rizwan should have been charged for 23 counts for keeping parts of money given to him to purchase sukhi, 70 counts of keeping money from sale of fish and withdrawing money from the Plaintiffs float account for Rizwan's use and benefit.
- (iv) Police Officers were negligent in not investigating complaint for above transactions.
- (v) Fact that, Police charged Rizwan for two (2) counts in relation to Sukhi, shows that Lomani documents were not with them.
- (vi) First Defendant was negligent in not pursuing complaint regarding fish transactions and withdrawal of monies from float account and there is no record showing investigation being carried on in respect to these transactions.
- (vii) He gave evidence in Police case and at that time he realized that the Prosecutor did not have Lomani's documents at that time.
- (viii) He learned about filing of criminal charges when he received 1<sup>st</sup> and 2<sup>nd</sup> Defendants Bundle of Documents in this case.
- (ix) For better part of six (6) years with no evidence of any investigations leads him to believe that documents with Lomani had been lost.
- (x) DCO (Northern) instructed Inspector Iowane to conduct a thorough investigation and Rizwan told him that docket to lay charges against him were docket created by Iowane.
- (xi) There is no evidence in Police Register to show that original complaint was investigated fully.
- (xii) Inspector Iowane was doing a good investigation to the point of asking Rizwan for his bank account statements.
- (xiii) In 2015 or 2016 Sala was appointed Divisional Crime Officer Northern when Secondnamed Plaintiff went to her and shared her story.
- (xiv) He was invited to meet DCO – Northern and he went to meet her three (3) times during which time she could not produce Lomani docket.
- (xv) Secondnamed Plaintiff went with Kawai to meet DCO – Northern and provided copies of analyses of sukhi, fish and details of bank account.
- (xvi) He fails to understand why Iowane did not follow up with obtaining Rizwan's bank statement and if DCO, Northern was primarily interested in thorough investigation then why she did not ask Iowane to follow up.
- (xvii) Until Secondnamed Plaintiff came to congratulate DCO – Northern on her appointment his case was closed and buried.
- (xviii) Inspector Lomani told him that he left the docket on his table when he retired.
- (xix) All dockets were not forwarded to Office of Director of Public Prosecution

27. During cross-examination the Firstnamed Plaintiff:-

- (i) Stated that Rizwan was a trusted employee.
- (ii) Stated that him and the Secondnamed Plaintiff went to Labasa Police Station (**LPS**) on 4 and 5 August 2010 to lodge report about discrepancies in Sukhi purchase, fish sale and use of money from their float account.
- (iii) Stated that when they sold fish to Richard Duda, Gold Hold, he would issue receipts, but when they sold to others no receipts was issued.
- (iv) Stated that he could recall Rizwan giving him receipt for sale of fish when it was sold to Gold Hold.
- (v) Stated that trip sheets were drawn up in comparison to what Rizwan said and he received and what was paid by Gold Hold.
- (vi) Stated that as for Sukhi, the Secondnamed Plaintiff and Rizwan purchased it from Faiyaz who during investigation stated that he never charged more than \$70 per kg.
- (vii) In reference to Exhibit 22 stated that Rizwan entered the amount.
- (viii) Stated that Exhibit 23 has Rizwan's signature (1<sup>st</sup> page) and Rizwan's handwriting.
- (ix) Agreed that Magistrates Court Judgment (Exhibit 19) was in their favour and stated that Rizwan paid only \$700 which resulted in bankruptcy action.
- (x) Stated that he received letter dated 10 August 2010 (Exhibit 21 – page I) which was relevant to his complaint.
- (xi) Stated that he could not confirm receiving letter dated 7 October 2010 but could have received it.
- (xii) When it was put to him that it was correct to say he was advised of the progress of the case he stated that he received letter on 7 October, 2010.
- (xiii) Stated that he was advised that his complaint was being looked at.

### **Defendants Case**

- 28. Defendants called William Lomani of New Town, Matei, Taveuni, Retired Police Officer as their First Witness (**DW1**).
- 29. DW1 during examination in chief gave evidence that:-
  - (i) He had been in Police Force for thirty seven (37) years, in 2010 was in Labasa as Sergeant and acted as Inspector for several years prior to his retirement.
  - (ii) He recalled complaint in respect to PEP 232/10 and that the complaint was lodged by the Plaintiffs.
  - (iii) The initial complaint was about Rizwan driving their vehicle, having an accident and failing to pay fee as per the contract.
  - (iv) Plaintiffs were advised that the complaint was of civil nature when Plaintiff's stated that they have other complaints.
  - (v) Firstnamed Plaintiff wrote statement in three or four statement forms.

- (vi) After file PEP 232/10 was lodged he carried out investigations about complaints relating to sukhi sales and fish sale with continuous complaints.
- (vii) Plaintiffs complained that Rizwan was selling fish at one price and telling them another prize and he recalls taking statement from Richard and fish buyer.
- (viii) Plaintiffs provided documents prepared by them and when asked to provide receipt issued by Rizwan, Plaintiffs did not do so.
- (ix) According to Firstnamed Plaintiff, Rizwan should have received the market price for fish in the market.
- (x) According to Richard, fish price is not controlled and he buys fish at price he determines to be the right price.
- (xi) Secondnamed Plaintiff, who used to come to the Station was advised of this.
- (xii) Secondnamed Plaintiff was asked to provide receipt but she did not do so.
- (xiii) Firstnamed Plaintiff provided spreadsheet for sukhi, fish and other things.
- (xiv) Plaintiffs were advised about progress in respect to the complaint by letter dated 10 August 2010, 7 October 2010 and when Secondnamed Plaintiff visited the Police Station.
- (xv) Before his retirement he took the docket to the DCO – Northern and based on advise received by Divisional Prosecution Officer – Northern (**DPO**) he briefed DCO – Northern that there was insufficient evidence to lay charges.
- (xvi) After the briefing, DCO – Northern ASP Salaseini closed the file.
- (xvii) He could not recall as to when he took advice from DPO.
- (xviii) When files are closed, it is taken to archives by the staff.
- (xix) Dockets get converted to Crime Register after someone is charged.
- (xx) Agreed that Exhibit 25 is copy of Crime Register for Labasa Police Station which is shown that docket was converted in 2016 after he retired.
- (xxi) He could not recall if he personally advised the Plaintiffs that PEP 232/10 was filed away.

30. During cross-examination DWI:-

- (i) Stated when files are closed, they are taken to the archives by the Registry.
- (ii) Stated that when investigation is carried out, DCO would analyze the dockets to see if matter is to proceed or is to be closed.
- (iii) Stated that he did not have the authority to terminate or close a case.
- (iv) Stated that DCO – Northern at that time was ASP Salaseini.
- (v) When asked what made him believe file was closed, he stated that when he retired in 2014, file was closed and that when a file is closed it can be re-opened if new evidence comes about.
- (vi) Stated that he investigated the case and after discussing the case with DPO he recommended to DCO – Northern to close the file which she did.
- (vii) Stated that once file is closed staff stamps it for DCO – Northern to sign.

- (viii) Stated that he retired on 14 June 2014 and according to him suspect was interviewed who denied the allegation, he then discussed with DPO before finally recommending to DCO – Northern to file away the case.
  - (ix) Stated that after his retirement Inspector Iowane approached him saying that they were looking for PEP 232/10 which could not be located.
31. Defendants second witness was Iowane Cadriva of Savusavu, Police Officer **(DW2)**.
32. During examination in chief DW2 gave evidence that:-
- (i) He has been in Police Force for twenty nine (29) years and is a Corporal.
  - (ii) He was the Investigating Officer in respect to PEP 232/10.
  - (iii) He recalls that in 2014 about complaint from Plaintiffs about PEP 232/10 and according to PEP/10 the complaint was about misuse of money by Rizwan, fish sales and sukhi.
  - (iv) Plaintiffs gave Trip Sheets (Exhibit P22) and he was informed by the Firstnamed Plaintiff that they were Trip sheets prepared by him or Rizwan and not receipts.
  - (v) He could not make as to who was the author of the Trip Sheets.
  - (vi) He was instructed by DCO – Northern to open an investigation after complaint was received by the Plaintiffs.
  - (vii) He sent the documents and caution interview through DCO – Northern to the Director of Public Prosecutions for his sanction.
  - (viii) He prepared Minute Sheets to DCO (Northern) with Summary of Facts who then sent docket for DPP’s sanction. (Exhibit 21 pages 24 – 26).
  - (ix) They received communication from ODPP who advised them to lay charges against Rizwan for two (2) counts of theft in respect to Sukhi.
  - (x) Thereafter Rizwan was arrested and on 9 November 2016, was charged with 2 counts of theft.
  - (xi) On 27 July 2015, Rizwan was caution interviewed (Exhibit 21 page 13) and he denied the charges.
  - (xii) He has no idea if PEP 232/10 went missing.
  - (xiii) He can recall that statement was recorded for PEP 232/2010.
- 33 During cross-examination DW2:-
- (i) Stated that he did not at any time see PEP 232/20 docket created by Lomani.
  - (ii) Stated that he prepared his docket based on information/docket given to him by DCO – Northern and from the file.
  - (iii) Agreed that documents he gave to DCO – Northern contained plenty Trip Sheets.
  - (iv) When asked as to when he had plenty Trip Sheets why only 2 count he explained that:-
  - (v) Incident went back to 2008 – 2009.

- (vi) People were reluctant to give statements because they had forgotten or for other reasons.
- (vii) One sukhi seller gave statement
- (viii) Stated that information he had, obtained were information on fish transactions and float account.
- (ix) Stated that file was sent to DPP and result was they had to charge for two (2) counts.
- (x) Recalled notifying Kawai and Secondnamed Plaintiff and then giving her summary sheet of Sukhi, Fish and Float Account.
- (xi) Stated that was what charges were to be laid for and he gave his findings only.
- (xii) Stated that he obtained statement from Faiyaz and he was the person selling sukhi.
- (xiii) Stated that he began his investigations after Kawai and Secondnamed Plaintiff saw him.

34. Defendants Third Witness was Viliame Sogari of Waiqele Labasa, Inspector of Police **(DW3)**:-

35. During examination in chief DW3 gave evidence that:-

- (i) He is stationed at Labasa Police Station as Inspector of Police and in 2010 was Acting Divisional Prosecuting Officer – Northern;
- (ii) He recalls PEP 232/10 which was in relation to complaint lodged by Plaintiffs for use of vehicle, sale of fish, purchase of sukhi and misuse of funds by Rizwan.
- (iii) He recalled that the complaint was investigated by Lomani and during this course of investigation Lomani approached him to seek advice in relation to evidence be obtained.
- (iv) After he perused the file he advised Lomani that the case is more of civil nature as there was an Agreement and dealing between two (2) parties.
- (v) The particular file was handled by Lomani and he was responsible as to what happened to the complaints.
- (vi) In 2010, the Secondnamed Plaintiff approached him at DPO's office about the case when he advised her that case is more of civil nature and she took the advice and filed civil case in Labasa.
- (vii) In 2015, he was transferred to Savusavu Police Station as Crime Officer and in 2016 he was transferred back to Labasa as Officer in Charge of Fraud Unit, Labasa.
- (viii) That is when DCO – Northern gave instructions to re-open the investigations in respect to PEP 232/10 and he believe that it was after Plaintiff made complaint against Investigating Officer to Police Complaint Department.
- (ix) He was given the duplicate file.
- (x) Duplicate is endorsed after the original file goes missing or is misplaced and duplicate file in most cases are created from disclosure or documents obtained from the complainant.



- (xi) According to the Crimes Register (Exhibit 25) the file was sent to DPP for his sanction and ODPP instructed them to charge the accused in relation to the sukhi.
- (xii) He initially assessed evidence in file and gave advise to Lomani but when he came into Fraud Unit he saw Trip Sheets in the file.
- (xiii) He could not identify the author of the Trip Sheets.
- (xiv) No receipt was given for fish sales and that's why they could not lay charges as the suspect completely denied the allegations and they had no supporting document to lay charge.
- (xv) He believes that Plaintiffs were informed of this as it was IO's responsibility. However he was always approached by the Secondnamed Plaintiff in his office and he formally informed her as to what was happening with investigation.
- (xvi) He informed Secondnamed Plaintiff orally (face to face) as most of the time she would go to his office.
- (xvii) Police Department did not withhold information about Plaintiffs complaint and nothing was done by Fiji Police Force to hide or hinder the complaints.
- (xviii) Kavai who is assisting Firstnamed Plaintiff with Courts approval was part of Investigation Team and recorded the interview.

36. During cross-examination DW3:-

- i. Stated that second docket was necessary because the first docket was missing.
- ii. Stated that in 2015, it was discovered that the docket was missing.
- iii. When asked as to why there is no record of activities from 2010 to 2015 in the Register (Exhibit P25) he stated that action taken is recorded in the docket and not in Crimes Register.
- iv. When it was put to him that since Lomani's docket was lost there is nothing to prove that any action taken between 2010 to 2015 he stated that it was recorded in Lomani's docket which was brought to him when he advised that matter is of civil nature and such advise he could only give after citing documents in the file / docket.
- v. When asked if complaint for financial advantage by deception would be civil or criminal he stated that alleged incidents occurred prior to 2009 when we had Penal Code which did not make provision for such offence but after 2009 we have Crimes Act which makes it an offence.

**Whether First Defendant owed Duty of Care to the Plaintiffs.**

37. In *Hill v Chief Constables of West Yorkshire* ([1988] 2 ALLER 238 Lord Keith of Kinkel at page 240 (paragraph g to h) states as follows:

“The question of law which is opened up by the case is whether the individual members of a police force, in the course of carrying out their functions of controlling and keeping down the incidence of crime, owe a duty of care to individual members of the public who may suffer injury to person or property through the activities of criminals, such as to result in liability in damages, on the ground of negligence, to anyone who suffers such injury by reason of breach of that duty.

There is no question that a police officer, like anyone else, may be liable in tort to a person who is injured as a direct result of his acts or omissions. So he may be liable in damages for assault, unlawful arrest, wrongful imprisonment and malicious prosecution, and also for negligence. Instances where liability for negligence has been established are *Knightley v Johns* [1982] 1 ALL ER 851, [1982] 1 WLR 349 and *Ribgy v Chief Constable of Northamptonshire* [1985] 2 ALL ER 985, [1985] 1 WLR 1242. Further, a police officer may be guilty of criminal offence if he wilfully fails to perform a duty which he is bound to perform by common law or by statute: see *R v Dytham* [1979] 3 ALL ER 641, [1979] QB 722, where a constable was convicted of wilful neglect of duty because, being present at the scene of a violent assault resulting in the death of the victim, he had taken no steps to intervene.

By common law police officers owe to the general public a duty to enforce the criminal law: see *R v Metropolitan Police Comr, ex p Blackburn* [1968] 1 All ER 763, [1968] 2 QB 118. That duty may be enforced by mandamus, at the instance of one having title to sue. But as that case shows, a chief officer of police has a wide discretion as to the manner in which the duty is discharged. It is for him to decide how available resources should be deployed whether particular lines of inquiry should or should not be followed and even matters as such as no reasonable chief officer of police would arrive at that someone with an interest to do so may be in a position to have recourse to judicial review. So the common law, while laying on chief officers of police an obligation to enforce the law, makes no specific requirements as to the manner in which the obligation is to be discharged. That is not a situation where there can readily be inferred an intention of the common law to create a duty towards individual members of the public”.

38. This statement was adopted and applied in *Devi v Nadan & Ors* (2013) HBC 30 of 2012 (23 August 2013).
39. There is no doubt that Police Officers do owe a duty to members of the public to enforce the Criminal Law and how that duty is to be discharged is subject to the wide discretion of the First Defendant as the Commissioner of Police Force (**Hill Case**) and / or his delegated representative.
40. In this instance once the complaint was lodged to the Police Officers they were

required to conduct certain investigations and assess the evidence to see if charges could have been laid against the suspect.

**Whether Defendants were Negligent and Breached the Duty of Care Owed to the Plaintiffs.**

41. This court accepts what is stated in **Hills case** in respect to the exercise of wide discretion bestowed on the First Defendant as to how the resources will be employed and whether certain investigations should be followed.
42. To assist the First Defendant and his Officers, there is a guideline in respect to instituting criminal cases and prosecuting it.
43. Guidelines 5.1, 5.2 and 5.3 of Prosecution Code provide as follows:-

*“5.1 The test for prosecution: No person in Fiji shall be prosecuted unless there is sufficient evidence and it is in the public interest to prosecute...”*

*“5.2 The First step is to be sure that there is a reasonable prospect of a conviction. This is an objective test, which includes an assessment of the reliability of evidence, and the likely defence case. The test is whether a court, [properly] directed in accordance with the law is more likely than not, to convict the accused of the charge alleged. ...*

*“5.3 Prosecutors should not ignore evidence because they are not sure whether it can be used or is reliable. They should examine it closely when deciding if there is a reasonable prospect of conviction.”*

*5.15 New Zealand Prosecution Guidelines which is similar to our Prosecution Code was subject to discussion by Supreme Court of New Zealand in **Osborne v Worksafe New Zealand** [2018] 1 NZLR 444. The Court stated as follows:-*

*“[28] The Guidelines provide that prosecutions should be initiated or continued only if the “test for prosecution” is met. There is provision for review of the charges before trial to determine whether the charges should be prosecuted or, among other things, withdrawn.*

*[29] The Guidelines describe the “test for prosecution” as being met if:*

*5.1.1 The evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction – the Evidential Test; and*

*5.1.2 Prosecution is required in the public interest – the Public Interest Test.*

*[30] The Guidelines require each test to be “separately considered and satisfied before a decision to prosecute can be taken”. They are to be considered in sequence, with the evidential test being satisfied before consideration of the public interest test.*

***[31] The evidential test is met where “there is credible evidence which the prosecution can adduce before a court and upon which evidence an impartial jury (or Judge), properly directed in accordance with the law, could reasonably be expected to be satisfied beyond reasonable doubt that the individual who is prosecuted has committed a criminal offence”. Credible evidence is evidence which is “capable of belief”. The Guidelines provide that only evidence which is or reliably will be available and legally admissible can be taken into account in reaching a decision to prosecute. This evidence must be capable of meeting the criminal standard of proof. What is required by the evidential test is that “there is an objectively reasonable prospect of a conviction on the evidence”. (emphasis added)***

44. DW1’s (William Lomani) evidence which this Court has no reason to doubt was that the Plaintiffs initially lodged a complaint against the suspect in respect to contract they had with the suspect in relation to motor vehicle registration no. DV 704.
45. This is confirmed by statements given by the Plaintiffs to the Labasa Police Station on 4 and 5 August 2010 (Exhibit’s 1 and 2).
46. Once DW 1 and DW 3 informed the Plaintiffs that the case was of civil nature, Plaintiffs then lodged a complaint about the suspect keeping monies for himself from sale of fish, purchasing sukhi at prices lower than that the Plaintiffs were told to be the price and withdrawing monies from Plaintiffs floating account for his own use and benefit.
47. Plaintiffs did institute civil proceedings against Rizwan in Magistrates Court Labasa in respect to vehicle contract and obtained Judgment in the sum of \$19,995.00 (Exhibit 20).
48. Police Docket PEP 232/10 was created and investigation was conducted by Regional Investigation Unit / Northern.
49. The Plaintiffs were kept informed about the progress of the investigation and there is evident from the evidence of DW 1 and DW 3 which this court accepts as credible evidence and is also supported by Exhibit P21 (Pages 1 to 5).
50. Court accepts Lomani’s evidence that after he carried out the investigation and discussed the evidence with Divisional Prosecuting Officer – Northern (DW 3) after which he recommended closure of the docket PEP 232/10 due to insufficient evidence to the Divisional Crime Officer Northern who accepted his recommendation and closed the file.
51. This evidence is corroborated by DW 3 the then DPO, Northern.

52. This Court finds that DW 1 (Lomani) and DCO – Northern ASP Salaseini were in no way negligent when they closed the file for lack of sufficient evidence.
53. It is DW 1's evidence that once a file is closed it can be re-opened if further evidence is available.
54. PEP 232/10 was re-opened after the Secondnamed Plaintiff who according to Firstnamed Plaintiff was actually involved in promoting women's events went to meet and congratulate DCO Northern ASP Salaseini Vakaturagani on her appointment.
55. In December 2014 or thereabout DW2 was appointed as the Investigating Officer.
56. The original docket PEP 232/10 could not be located and as such the investigating team had to create duplicate file from documents given to them by the Plaintiffs and fresh statement taken from Faiyaz Jawan and Mohammed Abdul.
57. DW2 also interviewed the suspect Rizwan.
58. DW2 through DCO Northern submitted all the document to Director of Public Prosecutions for his sanction and advice (Exhibit 21 (pages 24 – 26)).
59. ODP upon perusal of documents presented to them advised DCO – Northern to lay charges for two counts relating to purchase of sukhi.
60. Based on facts and evidence obtained during the investigation after PEP 232/10 was re-opened, the First Defendant and / or his officers acted justly and fairly.
61. Based on DW3's evidence that Secondnamed Plaintiff would mostly call into his Office, this Court dismisses Plaintiffs allegations that they were not informed of action taken by the investigating team at Labasa Police Station.

### **Damages**

62. Even if this Court would have found that the First Defendant's Office was negligent no damage would be awarded to the Plaintiffs for the fact that they failed to provide particulars of damage in their Statement of Claim or failed to provide any tangible evidence as what damages Plaintiffs had actually suffered.
63. The Miscellaneous Court finds the action of Firstnamed Plaintiff and Kawai Vunidogo to be dubious and unconsiderable for the following reasons:-
  - i. Kawai Vunidogo was employed by Fiji Police Force when the Plaintiffs complaint was being investigated.
  - ii. Kawai Vunidogo after leaving Fiji Police Force started working for the Plaintiff and gave certificate in respect to complaint lodged by Plaintiffs (Exhibit 10).
  - iii. The Firstnamed Plaintiff sought Court's leave for Kawai Vunidogo to assist him in conducting the trial without informing the Court that he was part of the investigating team.
  - iv. This Court in good faith and in consideration of the Firstnamed Plaintiffs age permitted Kawai Vunidogo to assist the Firstnamed Plaintiff.

- v. Kawai Vunidogo's involvement in the investigating team was only brought to the Court's attention at the end of DW3's evidence.

**Conclusion**

64. This Court is of the view that the Plaintiff's claim be dismissed and struck out on the grounds that Plaintiffs have failed to establish that Defendants acted negligently.

**Cost**

65. This court takes into consideration that trial lasted for two (2) days, parties filed Agreed Bundle of Documents to shorten trial time and filed submissions.

**Orders**

66. This Court makes the following orders:-
- i. Plaintiffs claim is dismissed and struck out;
  - ii. Each party bear their own costs of this action.

.....  
**K. Kumar**  
**CHIEF JUSTICE**

**At Suva**

**Solicitors**

Plaintiffs in Person

Office of the Attorney-General of Fiji for the Defendants