

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION**

CIVIL ACTION No. HBC 48/2010

BETWEEN **THE FANTASY COMPANY OF FIJI LIMITED**, a limited liability
company having its registered office at Lot 16 SO 3958, Fantasy
Subdivision, Wailoaloa, Nadi
FIRST PLAINTIFF

AND **MASATOSHI KAYANO**, of Lot 22 & 23, Kayano Road, Fantasy
subdivision, Nadi, Shareholder & director.
SECOND PLAINTIFF

AND **JAI PRASAD** of Votualevu, Nadi, shareholder and director.
DEFENDANT

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Ms. N. Samantha- for the Plaintiff
Defendant absent and no appearance for him.

HEARING : By way of Affidavit Evidence filed on 26th August 2022 and 11th
October, 2022.

DATE OF DECISION : 31st March 2023.

RULING

A. INTRODUCTION:

1. This Ruling pertains to my assessment of damages further to the Judgment delivered in favor of the Plaintiffs on 14th July 2021 by Hon. Justice A. G. Stuart, as he then was, granting reliefs in the following terms, as per paragraphs 18 and 19 of the judgment.

18. Judgment is entered in favor of the first and second plaintiffs against the defendant in terms of O.19, r.7 on the claims of fraud (in case of the first and second plaintiffs) and breach of fiduciary duty (in relation to the first plaintiff only) by falsely asserting ownership of 30,000 shares in the first plaintiff company, for damages to be assessed.

19. Costs are reserved, Again, if the plaintiffs seek indemnity costs, they will need to explain why, noting my comments above about the extent of the defendant's wrongdoing as it appears from the material available.

2. Instead of leading oral evidence at the hearing, the plaintiffs' Solicitors opted to file following Affidavit evidence, along with the documents annexed thereto.
 - a. Affidavit of ABBAS ALI, being the Managing Director/ Shareholder of the first plaintiff Company, sworn on 23rd August 2022 and filed on 26th August 2022, with annexures marked from "AA-1" to "AA-36"
 - b. Affidavit of MASATOSHI KAYANO, the 2nd plaintiff, being the Director and Shareholder of the 1st Plaintiff Company, sworn on 24th August 2022, and filed on 26th August 2022, with annexures marked from "MK-1" to "MK-22".
 - c. Affidavit of POATE RAKANACE, retired Security Officer of the Plaintiff Company, sworn on 24th August 2022 and filed on 26th August 2022, together with annexures marked from "PR-1" to "PR-6".
 - d. Affidavit of ZAID MOHAMED, Accountant and Corporate Advisory Partner at HLB Mann Judd, sworn on 25th August 2022, and filed on 26th August 2022, along with annexures marked from "ZM-1" to "ZM3" and further annexures as A, B, and C, which consisted of number of documents.
 - e. Affidavit of KRESHMA DEVI, Accountant for the First plaintiff Company, sworn on 6th October 2022 and filed on 11th October 2022, along with annexures marked from "KD-1" to "KD-5".

B. THE FACTUAL BACKGROUND

3. The facts and circumstances that led the parties to the Court for this action are mentioned in detail in the Judgment dated 22nd March 2004, pronounced by His Lordship Anthony Gates, as his Lordship then was, in case No- **HBC- 00061 of 2001 L - ABBAS ALI and Others V Chaudhry and Others**, and in paragraphs 1 and 2 of the Judgment dated 14th July 2021, pronounced in this action by Hon. Justice A. G. Stuart, as he then was. Thus, I shall not reproduce those factual grounds.
4. As the liability of the defendant in this action has been decided by Hon. A. G. Stuart- J as aforesaid, the task before this Court now is to assess the quantum of damages payable by the defendant unto the first Plaintiff Company, and the damages, if any, to the second Plaintiff, Director cum shareholder of the first Plaintiff Company, on the evidence that has been led and the submissions that was to be filed as directed by Justice Stuarths, in paragraph 17 of his judgment. The Evidence for this purpose has been led before me by way of Affidavits as sated in paragraph 2 above, but no any sort of submission has so far been filed.

Service of the default judgment & Notice of Assessment of Damages:

5. The record reveals that the judgment against the defendant was entered under Order 19 rule 7 of the HCR, owing to the default on the part of the defendant to file his

statement of defence and the same was sealed and, reportedly, served by way of substituted service, with the leave being obtained for that purpose. Since there was no response, the Notice of Assessment of damages was also, reportedly, served in the same manner. As the defendant failed to appear and/or be represented on 17th May, 2022, this court decided to proceed with the hearing for the assessment of damages in his absence.

C. EVIDENCE:

Mr. Abbas Ali.

6. Mr. Ali, in his Affidavit evidence, having introduced him as the founding Managing Director and Shareholder of the Company, has given a lengthy narration about the commencement of the first Plaintiff Company in the year 1991, the gradual progress of it, with his passion and vision for the development of the Fantasy Island by inputting his share capital, dedication and hard work, which according to him was disrupted by the defendant and his allies (other minority shareholders) in February 2001, and finally having to be embroiled in number of costly and laborious litigations. According to him Mr. Ali, has had an illustrious career as a Teacher for 25 years before plunging into this venture in the year 1991.
7. He has annexed marked as “AA-5” the Fantasy Island Information Booklet, “AA-6” & “AA-7” which are aerial photographs of the Island, “AA-8” which is a newspaper article about the Company, in my view speak in volumes about the nature of the intended development project, the amount of money and hard work that would have gone in and the benefits it would have reaped, had it continued its operation as planned by him without the interruption caused by the defendant on 7th February, 2001, evidently being aided and abetted by his fellow minority shareholders.
8. Mr. Ali, in his Affidavit averred further as to how the relationship with the 2nd Plaintiff and the defendant started and how they got involved in the business by becoming Directors/ Shareholders and particularly the defendant becoming the Company secretary, in addition to being a Director and a minority shareholder.
9. He spoke about the set back in the year 2000 due to the Coup, which according to him compelled them to sell the lots at very low price like \$10,000.00. He also averred, about the defendant and his allies (other minority shareholders) asking for Land lots as Gift, about issuing of Notice by the defendant on 24th January, 2001 for Directors meeting, after settling the bank loan by him utilizing the loan given by the 2nd Plaintiff and particularly about the breaking into the office of the first Plaintiff on 7th February, 2001 by the defendant, along with his allies and about the removal of all the relevant files, the lease documents, the Account books and the office equipment.
10. Mr. Ali, averred that the attempt by the defendant to take over the control of the Company’s Management was a violent blow on the first Plaintiff Company and it had inflicted severe effect on the 1st Plaintiff’s business for several years thereafter and on

the 2nd plaintiff as well. Mr. Ali has also drawn the attention of the Court to a portion of the Judgment by Justice Gates, to show the extent of struggle the Plaintiffs had to face.

11. That during the Court proceeding, the First Plaintiff had gone through many hurdles in presenting its case to the Court in the absence of its documents, which were stolen by the defendant and his group.
12. That during the time material, there was a serious security issue, with attacks on the shareholders including him. As a result they had to increase the security guards on the Island and also had to hire the Guard Force to assist, incurring additional expenses.
13. That he had to face huge financial burden to meet the costs of litigation in retaining lawyers and for payments to Mr. William Crosbie, as accounting fees, which he claims kept mounting. He even had to transfer two prime blocks of lands to Mr. Suresh Maharaj and Mr. William Crosbie being settlement of their fees partly.
14. That the First Plaintiff has struggled, which would not have been caused, had it not been the fraud by the defendant. That if the events of 2001 did not take place, he as the Managing Director of the First Plaintiff was hopeful of getting paid a salary of \$120,000.00 per year as offered by the first Plaintiff, but unfortunately, he lost this salary due to the defendant's conduct and was paid only \$25,000.00 annually until now.

Mr. MASATOSHI KAYANO

15. Mr. Kayano, 18 paged Affidavit, among other things, states that he arrived at Fiji, with his family on Visitor's Visa, in July 1987, after nuclear Accident in Japan in the year 1986, with the intention of settling down in Fiji as Fiji proved to be an atomic pollution free Country and he found a job initially as a Japanese guide at a Travel Agent in Nadi.
16. He has averred in detail;
 - a. About his first meeting with Managing Director of the first Plaintiff Company Mr. Ali.
 - b. About the beginning of the first plaintiff Company and his joining it.
 - c. About his initial investment and buying of the shares worthy of \$10,000.00, that was initially allotted to the defendant, as he had no funds to pay,
 - d. About his relationship with other shareholders, as to how the first Plaintiff was financed, loan repayment of the first Plaintiff in a sum of \$22,000.00,
 - e. About the betrayal by the defendant, the emotional and physical sufferings, the false complaints against him by the defendant, the threat of violence and few subsequent incidents, particularly about the assault on him that took place on 18th March, 2004 and about conviction of the perpetrators of assault, namely Edward (a minority shareholder) and his wife Nirmala Thompson, in the year 2006 by the Magistrate's Court of Nadi.
17. His evidence is very clear, with no contradiction with his own evidence or that of Mr. Abbas Ali, on matters pertaining to the first Plaintiff and the events that occurred on 7th

February 2001 perpetrated by the defendant and his allies. Further, he has given detailed evidence as to what he and his family members had to undergo at the hands of the minority shareholders.

Mr. ZAID MOHAMED.

18. Mr. Zaid, being an Accountant by profession and a Corporate Advisory Partner at HLB Mann Judd (Fiji), in his Affidavit sworn on 25th August, 2022, apart from averring about his professional qualification, has spoken about his relationship with the first Plaintiff Company, events of 7th February, 2001 occurred at the first Plaintiff Company, and about his involvement thereafter, and given detailed evidence with facts and figures on the Legal Costs, Accounting and Secretarial Costs, loss of revenue, loans obtained, costs for reconstruction of records as well.
19. In order to substantiate his evidence, Mr. Zaid, has filed a detailed report under various heads, with the specific and actual amounts of Legal, Accounting costs and the expenses on provision of Security, incurred and paid for the period from the year 2001 to 2006. The report also accompanies supporting annexures marked as "A", "B", "C" and "D", which are self-explanatory. This evidence is convincing, except for the question that pops up in my mind why these already determined and paid amounts were not specifically pleaded and prayed for in the statement of claim of this action.

Mr. POATE RAKANACE

20. Mr. Poate, who was the Security Officer (now retired) of the first Plaintiff Company, has, with the authority from the first Plaintiff, sworn his Affidavit corroborating the evidence of Mr. Ali and Mr. Kayano, as to what occurred during the time material, particularly on 7th February, 2001. His evidence is supported by the annexures marked as "PR-3" to "PR-5", which includes his medical report and a photo image that shows as to how he had sustained injuries during the unfortunate event or thereafter.

Ms. KRESHMA DEVI.

21. Ms. Devi, who introduces herself as an Accountant of the First Plaintiff Company, after averring about her career history and the qualifications she possesses as an Accountant, has given the details of payments made so far to Messrs. A.K. Lawyers as their professional charges and the balance sum to be paid as at the date filing of her Affidavit on 22nd October 2022.
22. According to her evidence, a total sum of \$27,441.00 has been paid to Messrs. A. K. Lawyers, leaving a balance sum in a sum of \$ 4,408.19. This has been substantiated by the invoices marked as "KD3", the receipts marked as "KD4" and the statement marked as "KD5". She states that she gathered the necessary details from the records maintained by the first Plaintiff Company.

23. Her evidence does not disclose the amount that paid or should have been paid to Mr. Suresh Maharaj, former solicitor/ counsel of the plaintiff; on account of the filing of this action in the year 2010 and prosecuting it till his demise or till A.K. Lawyers came on record in the year 2015. No claim as legal costs has been made for the said period of time.

D. THE LAW IN RELATION TO ASSESSMENT OF DAMAGES:

24. What is the Role of the Court in making an Assessment of Damages?

Lord Diplock said in Mallet v McMonagle ((68) (1970) AC 166 at 176.):

“The role of the court in making an assessment of damages which depends upon its view as to what will be and what would have been is to be contrasted with its ordinary function in civil actions of determining what was. In determining what did happen in the past a court decides on the balance of probabilities. Anything that is more probable than not it treats as certain. But in assessing damages which depend upon its view as to what will happen in the future or would have happened in the future if something had not happened in the past, the court must take an estimate as to what are the chances that a particular thing will or would have happened and reflect those chances, whether they are more or less than even, in the amount of damages which it awards.”

25. In Malec V J.C. Hutton Pty. Ltd, (69) (1990) 169 CLR at 642 – 643.) Deane, Gaudron and McHugh JJ said:

“When liability has been established and a common law court has to assess damages, its approach to events that allegedly would have occurred, but cannot now occur, or that allegedly might occur, is different from its approach to events which allegedly have occurred. A common law court determines on the balance of probabilities whether an event has occurred. If the probability of the event having occurred is greater than it not having occurred, the occurrence of the event is treated as certain; if the probability of it having occurred is less than it not having occurred, it is treated as not having occurred. Hence, in respect of events which have or have not occurred, damages are assessed on an all or nothing approach. But in the case of an event which it is alleged would or would not have occurred, or might or might not yet occur, the approach of the court is different. The future may be predicted and the hypothetical may be conjectured.”

26. In the case of **Pacoil Fiji Ltd v Attorney General of Fiji [1999] FJHC 133 Pathik J** quoting from Salmond on the Law of Torts, 20th Edition, said:

“Here the plaintiff has pleaded both ‘special’ and ‘general’ damages. General damages are that kind of damage which the law ‘presumes to follow from the wrong complained of and which, therefore, would not be expressly set out in the plaintiff’s pleadings. Special damage on the other hand, is damage of such a kind that will not be presumed by the law and it must therefore be expressly allege in those pleadings so that the defendant may have due notice of the nature of the claim.”

27. In *Attorney General v Burnett [2012]*, *FJCA 15 (21 March 2012)* the Court of Appeal at paragraph 71 stated;

“71. The position was clearly stated by Diplock LJ in *Ilkiw –v- Samuels and Others [1963] 1 WLR 991 at page 1006*”

“Special damages, in the sense of a monetary loss which the Plaintiff has sustained up to the date of trial, must be pleaded and particularized... In my view, it is plain law – so plain that there appears to be no direct authority because everyone has accepted it as being the law for the last hundred years – which you can recover in an action only special damage which has been pleaded, and, of course, proved.”

28. It was held by Blackburne J in *Obagi v Stanborough (Developments) Ltd and Others* (1993, 15 December, *The Times Law Reports* 646) that:

“A plaintiff could recover damages in respect of a loss of profit which he might, but for the breach of contract by the defendant, have made, without proving, on a balance of probabilities, that he would have made it. But his chance of making it had to be a substantial one, more than a mere speculative possibility.” (Emphasis added)

E. SPECIAL AND GENERAL DAMAGES:

29. Before I proceed further, it is pertinent to identify what is generally accepted to be the distinction between special damages and general damages. Special damages relate to the past monetary expenses incurred and which stood precisely calculated at the date of the trial, whilst general damages relates to all other items of damages whether monetary or non- monetary and **need not be** pleaded with precision.
30. In case of general damages, the amount is not prescribed or particulars are not given in detail in the pleadings .The judge after finding the liability may decide the quantum on his/ her own or may delegate the task of assessment of such damages to the Master.
31. Special damages always refer to expenses already incurred monetarily, which the claimant should have actually incurred and the amount should have remained determined at the date of trial. The next condition is that those damages should have been specifically pleaded with details and/or made known to the opposing party by the time the matter comes up for the trial. This can be done by amendments to the pleadings or disclosures as well prior to the trial.
32. General damages can include any anticipated future losses as at the date of the trial and claims for any other past, present or future non- monetary damages or loses. In case of special damages, the claimant is expected to specifically plead and give particulars of it at the outset or when demanded, by way of amendments or disclosures prior to the trial. But, in case of general damages, usually the claimant is not expected to specifically plead or give particulars.

33. The above position was clearly stated as follows by Lord Diplock- LJ in *Ilkiw –V- Samuel and Others* [1963] 1WLR 991 at page 1006:

“Special damages, in the sense of monetary loss which the Plaintiff has sustained up to the date of trial, must be pleaded and particularized. ----- In my view, it is plain law – so plain that there appears to be no direct authority because everyone has accepted it as being the law for the last hundred years – that you can recover in an action only special damage which has been pleaded, and, of course, proved”

34. It is only when the damages ordered are general in nature; a Judge or a Master is usually called upon to perform the duty of assessment of damages. If the damages ordered are special in nature, such an exercise is not warranted as the quantum of damages always stands pleaded and subsequently decided in the judgment itself after the trial, however, subject to the proof of the amount so pleaded.

F. MY ASSESSMENT:

Loss of Income from the year 2001 to 2006;

35. I find that the evidence of Mr. Abbas Ali, Mr. Kayano and that of the retired Security guard, are un-contradictory and corroborating each other’s evidence as to how the first plaintiff company was commenced, operated and what events took place finally leading them to court. The evidences of these witnesses are of great assistance in my task of assessing the general damages. They were the eye witnesses and / or the persons who felt the brunt of the whole episode that unfolded from 7th February 2001, and what had befallen on the smooth operation and activities of the first plaintiff Company.
36. The first plaintiff Company, being creature of the Statute, was a brain child of Mr. Ali, who, along with his brother Seyyed Hussain, Mr. Kayano , had evidently given life to it as the Directors and majority shareholders, who controlled, managed and operated it to the level it was performing till 7th of February, 2001 . None can testify with regard to the affairs of the company, particularly on the unfortunate events that took place on the said date, better than they do.
37. It was when the Company was flourishing and apparently doing well, after settling the Bank Loan, with the generosity of the 2nd Plaintiff, the defendant had staged his well-orchestrated plan with the assistance of his allies, who were minority shareholders, to capture the management of the Company and to consolidate their position, which was defeated by the decision dated 22nd March, 2004, pronounced by His Lordship Anthony Gate on the material issue of shareholding.
38. The evidences of Mr. Ali, Mr. Kayano and the Security guard officer are trustworthy and can be accepted and acted upon, with no reservation, in order to fathom the extent of hardship the first Plaintiff had to undergo and the resultant losses and damages it had to suffer due to the despicable act of the defendant and his allies.

39. Fortunately, as a timely injunctive Order had been issued in the former action No. HBC-61 of 2001, the defendant could not dispose or alienate any block of land owned by the first plaintiff company. The Plaintiffs are not complaining about such an act by the defendant. Otherwise, grave loss would have been befallen on the Plaintiffs.
40. The witnesses are also not complaining of any other loss to the company, except for the disruption of the business and the removal of office equipment, files and important documents. No evidence on destruction and/ or removal of any other valuable properties or withdrawal of moneys from the Bank account or collection of any debts from the debtors by the defendant.
41. On the other hand, Mr. Zaid Mohamed, the Accountant representing M/s. Judd and Maan, in his evidence testifies with regard to the legal fees and costs paid to Mr. Suresh Maharaj, the former Solicitor of the Plaintiff and the fees paid to his Accounting firm , namely, M/s. Judd and Maan for the services rendered from the year 2001 till 2006 and the costs for provision of security services during the time material .
42. The Accountant of the first Plaintiff Company, Ms. Kreshma Devi, has given evidence about the fees of M/s. A. K. Lawyers, for the professional services rendered by them for the case at hand from the year 2015. She states that a part payment of \$27,441.00 has been settled and there is an arrears of \$4,481.90 still owed as per the invoices so far received on account of services rendered till the date of filing of her Affidavit on 11th October, 2022. The costs payable for the services rendered thereafter, till the final disposal of this matter, is yet to be assessed, which is the part of the task before this court.

Claim for recovery of costs & Expenses in the Former Action No. HBC-61 of 2001.

43. Once again, I shall remind myself that my pivotal duty hereof is to assess the general damages, which possibly could not have and had not been quantified in figures by the time the action taken up for the trial through the pleadings and prayers or by subsequent amendments or disclosures. Similarly, this Court also is at liberty to assess the Costs, if any, which too cannot be quantified or determined until the final disposal of the matter.
44. But, in the case at hand, I am at a loss to understand as to how the Plaintiffs' Solicitors can now move to recover by the subsequent action the expenses incurred on account of the Costs of the action, Accounting and Security services obtained for the period material to the former action No. HBC 61 of 2001, which was from the year 2001 to 2006, by this subsequent action. These charges and expenses described by Mr. Zaid Mohamed, through his Affidavit evidence should have been recovered through the former action.
45. Even if it is assumed, for the sake of argument, that the Plaintiffs had the liberty and right to recover the Legal and other expenses of the former action through the present action in hand, the fact that all the costs and expenses were already precisely quantified

and determined in figures, as depicted in the Report marked as “ZM-3”, stands as a bar to recover those expenses through the process of assessment, as those expenses fall within the category of special damages.

46. Since the said amounts of costs and expenses in the former action had already stood determined and fixed in figures, the Plaintiffs should have pleaded them as special damages in their Statement of Claim of the present action, so the defendant would have taken notice of it when he decided to contest the action or not. Alternatively, the Plaintiffs could have done this by subsequent amendment or disclosures, so that the defendant would have had a fair notice of these costs and expenses, if they are part of the pleadings.

47. Hence, my considered view is that since all the above Costs and expenses, disclosed by Mr. Zaid Mohammed’s Affidavit and annexures were already determined sums in relation to the former action, cannot be recovered through the present action, particularly in the absence of any specific pleadings in the present action.

a. The Claim for General Damages for loss of income to the First Plaintiff from 2001 to 2006:

48. Mr. Zaid Mohammed, in his report marked as “Z.M-3” annexed to his Affidavit, states that loss of the Company revenue due to project delays, and terminated sales is \$500,000 (Five Hundred Thousand Dollars). Mr. Zaid relies on annexures to his Affidavit, particularly, bundle of documents marked as “D”.

49. I shall take in to account the evidence of Mr. Ali and Mr. Kayano, the 2nd Plaintiff, as well in this exercise of assessment of general damages suffered by the first plaintiff. The record and the evidence show that it was after 10 years from the date of the commencement of the Company, by which time the Company had made a significant progress in their activities.

50. I am satisfied that the action of the defendant, supported by his allies, has had a severe blow on the first Plaintiff Company, which was evidently on its best of operation during that period. The Plaintiff as per paragraph 5 of the Prayer to the Statement of Claim has asked damages for loss of income only for 2 years only. The Court cannot grant relief for a period exceeding 2 years prayed for by the Plaintiffs.

51. The Plaintiffs by swiftly filing the former action no. HBC-00061 of 2001 L and obtaining the injunctive orders in their favor was able to consolidate their position in the subject matter land and in the Management of the first defendant Company to continue with the business as usual.

52. Mr. Zaid Mohamed, in the Report annexed to his Affidavit states that in his estimation the loss of income for the period from the year 2001 to 2006 is \$500,000.00. But as per the prayer to the statement of claim, the loss of income claimed is only for 2 years.

53. Thus, in fairness to the first Plaintiff, its Directors /Shareholders , who stood committed for the wellbeing of the first Plaintiff, I assess a sum of \$ 150,000.00 (One Hundred Fifty Thousand) being damages for loss of income suffered by the first plaintiff in the year 2001.

54. Also I assess a sum of \$100,000.00 (One Hundred Thousand) being the damages for loss of income for the 2nd year (2002) .I shall not assess any further damages for the years 2003 to 2006 on account of loss of income , which was not prayed for in the statement of claim. Hence, the total damages for loss of income for two years will be \$250,000.00 (Two Hundred Fifty Thousand). This amount is assessed, in relation to the relief granted by the judgment dated 14th July 2021 by A.G. Stuart-J, as prayed for in paragraph 5 of the prayer to the statement of claim.

b. Directors Time and effort in attending Court & Preparing Affidavits

55. Mr. Zaid, in his report supports a, purported, claim in a sum of \$ 150,000.00 for the Directors time and efforts in attending Court proceedings and preparing Affidavits. It is not clear for which period or in relation to which action this claim is moved for. However, there is no such a claim in the prayer to the statement of claim of this action. Accordingly, I decide to disallow the claim under this heading.

c. Costs of the Action at Hand:

56. Ms. Kreshma Devi, in her Affidavit evidence has given the details of the invoices raised by Messrs. A. K. Lawyers for the services rendered for the case at hand from the time they came in as Solicitors in the year 2015 till the date of filing her Affidavit in October 2022. According to her, the first plaintiff Company has paid and settled a sum of \$27,441.00 and the balance payable is shown as 4,408.19 making the total sum under this head as \$31,849.19. I accept this evidence and allow this claim as it is.

57. I add a further sum of \$ 3,500.00, being the summarily assessed costs payable for the period from 11th October, 2023 till today, thus bringing the total cost recoverable on account of legal fees in respect of this action, till today the 31st March 2023 as \$ 35,349.19.

d. General Damages for the 2nd Plaintiff:

58. In paragraph 6 of the prayer to the plaint, the 2nd Plaintiff has claimed general damages for mental agony, distress and sufferings. I find that the 2nd plaintiff has suffered immensely at the hands of Edward Thompson, a minority shareholder and his wife Nirmala Thompson, who were the supporters of the defendant hereof. The evidence shows that the defendant is the Mastermind behind all these tragedies.

59. The mental agony, distress and sufferings, as pleaded in paragraph 36 of the statement of claim, are in common to all the Directors and shareholders, who were supporting the Plaintiffs. However, I am mindful that the 2nd plaintiff was physically attacked and

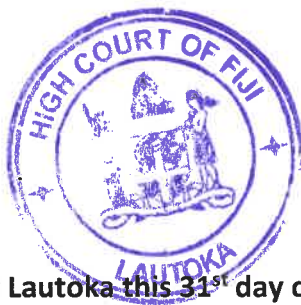
injured by Edward Thomson and his Wife, which is substantiated by the Magistrate's Court Sentencing Judgment marked "MK21" and the news item marked "MK22". This is not specifically pleaded in the statement of claim and even if it is pleaded, the claim could be barred by the relevant provisions of the Limitation Act of 1971. Hence, the claim of the 2nd plaintiff as prayed for in paragraph 6 of the prayers to the statement of claim is hereby declined.

Total Recoverable Amount as Damages & Costs:

60. Accordingly, the total amount that can be recovered from the defendant hereof as general damages for loss of income and Costs of the action, as assessed and shown under headings (a) and (c) above shall be in a sum of \$ 285,349.19 (Two Hundred Eighty Five Thousand Three Hundred Forty Nine Dollars and Cents Nineteen)

G. FINAL ORDERS:

1. The defendant is ordered to pay the first plaintiff a sum of \$250,000.00, being the general damages for the loss of income in respect the years 2001 and 2002.
2. The defendant is also ordered to pay the first plaintiff a sum of 35,349.19, being the Costs of litigation of this action.
3. The Plaintiff's claim for the assessment of costs for Legal, Accounting and Security services in relation to the former action no. HBC 00061 of 2001, from the year 2001 to 2006, is hereby declined.
4. The assessment for all the other claims by the first Plaintiff, which were not the part of the pleadings hereof, are also hereby declined.
5. The 2nd Plaintiff's claim for the assessment general damages, on account of his mental agony, distress and sufferings, is declined.
6. This ruling shall be sealed and served on the defendant.




A.M. Mohamed Mackie
Judge

At High Court Lautoka this 31st day of March, 2023.

SOLICITORS:

A.K. Narayan Lawyers, Nadi, solicitors for the plaintiffs
Defendant is absent and no representation.