

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

**CIVIL ACTION NO.: HBC 304 of 2019**

**BETWEEN : SKYLARK INVESTMENT LIMITED**  
**PLAINTIFF**

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

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**APPEARANCES/REPRESENTATION**

**PLAINTIFF** : Mr. T. Sharma [Tirath Sharma Lawyers]  
**DEFENDANT** : Ms. Suveinakama [Legal Services Department, iTaukei Land Trust Board]  
**RULING BY** : Master Ms Vandhana Lal  
**DELIVERED ON** : **12 April 2023**

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**RULING**

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1. On 12<sup>th</sup> September 2019, the Plaintiff filed a claim against the Defendant concerning a lease agreement it had entered with Mataqali Nasevou of Lami Village for land known as Naikotokoto TLTB Ref: 4/16/10386. The said lease was executed on 9<sup>th</sup> December 2015 ~~with the Defendant.~~
2. The Defendant via its application dated 04<sup>th</sup> November 2019 seeks to have the said claim struck out pursuant to Order 18 Rule 18 (1)(a), (b) and (d) of the High Court Rules.
3. The Defendant submits that there was a previous claim filed by the Plaintiff in 2016 with the same litigious issues.

The 2016 claim was struck out on a striking out application by the Defendant.

4. The 2016 action by the Plaintiff was a Suva Civil action HBC 294 of 2016, where the Plaintiff claimed damages regarding the lease agreement for land known as Naikotokoto TLTB Ref: 4/16/10386 signed on 09<sup>th</sup> December 2015 with ITLTB.
5. In that proceeding the Defendant also made an application for striking out of the claim pursuant to Order 18 Rule (7), (11), and 18 of the High Court Rules.
6. Upon hearing the parties, this court made following findings:
  6. *The Plaintiff has failed to itemised how it arrived at a figure of \$10million as cost of suffering, damages to Plaintiff's rights to obtained lease.*
  7. *Neither has the Plaintiff outline what the cause of action is.*

*All that is stated in paragraph 16 of the claim is as follows:*

*“That despite the Plaintiff being fully complying with the requirements of the said Lease Agreement and putting all efforts and funds to keep the momentum of the said development of the said land, an undated letter received on the 4<sup>th</sup> November send by the Defendant halt everything and divert the Plaintiff's attention in trying to fulfil the objectives of developing the said land on time for the demand for the said development is quite high which result in loss of intended revenue to the Plaintiff and the Landowners as well”.*
  8. *There is nothing disclosed about the Defendants liability to be sued.*
7. The Court found the action to be an abuse of process and hence struck out the claim wholly.
8. The said claim was not dismissed after hearing on merits but rather on technical grounds for non-compliance of rules.
9. In the current proceeding, the Plaintiff has outlined the cause of action against the Defendant which is for breach of contract and why they are claiming a sum of \$10,000,000 on damages and I refer to paragraphs 4 – 17 of the claim.

10. I find there to be a cause of action for determination at trial that is, was there a breach of contract by the Defendant and if so, is the Plaintiff is entitled to damages claimed.
11. The Defendant states that the Plaintiff ought to have appealed the decision in HBC 294 of 2016.
12. Again, I state that HBC 294 of 2016 was struck out on grounds of non-compliance of rules and not on merits after trial.
13. The Plaintiff agrees it had not fully complied with the requirements of law in HBC 294 of 2016, hence the claim was struck out. Accordingly, I do not find the Plaintiff was thus required to appeal that decision.
14. The Defendant further allege that the Plaintiff declined the Defendant's offer for alternative site and the board refunded the Plaintiff \$94,830.50.
15. Again, this is a matter for trial whether or not the Defendant had breached the agreement; or how was the agreement terminated and what damages if any is the Plaintiff entitled to.
16. Based on the affidavit evidence, I cannot make findings that the claim is scandalous, frivolous or vexatious.
17. Neither I do not find the current claim to be an abuse of process as HBC 294/2016 was not determined on merits but struck out for non-compliance of orders.

#### **Orders**

18. The Defendant's application dated 04<sup>th</sup> November 2019 fails and is dismissed.
19. The Defendant is directed to pay to the Plaintiff cost summarily assessed at \$1,500 and to be paid in 14 days from date of delivering of this ruling.

20. The Defendant is granted an extension of time to file/serve it's Statement of Defence by 12 noon on 26 April 2023.
21. Should the statement of defence not be filed the Plaintiff is entitled to enter an interlocutory judgment with damages to be assessed.
22. And should a defence be filed, then the Plaintiff is to file and serve a reply to defence by 12 noon on 3<sup>rd</sup> April 2023 followed by a summon for direction under the rules.



12 April 2023

TO:

1. Suva High Court Civil File No. HBC 304 of 2019;
2. Tirath Sharma Lawyers, Solicitors for the Plaintiff;
3. Legal Service Department, iTaukei Land Turst Board, Solicitors for the Defendant.