

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

Civil Action # **HBC 349 of 2019**

BETWEEN: **RAVINAND**

PLAINTIFF

AND: **ANIL KUMAR**

1st DEFENDANT

AND: **REGISTRAR OF TITLES**

2ND DEFENDANT

AND: **THE OFFICE OF THE ATTORNEY GENERAL**

3RD DEFENDANT

Appearances:

Plaintiff – Mr. V. Kumar (Sunil Kumar Esquire).

1st Defendant – Mr. P. Niubalavu (Oceanica IP).

2nd & 3rd Defendant – Ms. S.G.L. Naigulevu (Office of the Attorney General).

Date of Hearing: 17th September 2024.

Ruling

A. Introduction

[1] The Plaintiff filed summons seeking to enter summary and/or default judgment on 22nd January 2024. It was filed with an affidavit of the Plaintiff. An affidavit in response of the 1st Defendant has been filed.

[2] The orders sought by the Plaintiff on the default of the Defendant serving an acknowledgement of service and defence are:

“a. *Judgment or an Order be made for such relief sought in the prayers from paragraphs 2 to paragraphs 6 of the Plaintiffs Statement of Claim hereto against the 1st Defendant; and*

b. *Leave be granted to enter Judgment or an Order be made for such relief sought in the prayers from paragraphs 3 to paragraph 6 of the Plaintiffs Statement of Claim hereto against the 2nd and 3rd Defendants.*

- c. *The Honorable court to assign a date in respect of prayers as per Paragraphs 7, 8, 9,10 and 11 of the Plaintiff's Statement of Claim for assessment of damages; and*
- d. *Cost of this application be paid by the Defendant."*

B. Brief History of the Matter

- [2] On 7th October 2019 the Plaintiff filed Writ of Summons. An ex-parte summons was also filed on the same day seeking interim injunction. On 14th October 2019, Justice Senivaratne interim injunction until 31st October 2019. On 31st October 2019 the orders were further extended until 28th November 2019. On 30th October 2019 the 1st Defendant filed an acknowledgement of service. The Attorney General's office filed an acknowledgement of service on 12th November 2019. The 1st Defendant filed a Statement of Defence on 13th November 2019. On 4th March 2020, Justice Senivaratne in dealing with the Interim Injunction struck out the summons and the orders that were sought were refused.
- [3] On 30th September 2020, the Plaintiff filed an amended Writ of Summons. A statement of Defence of the 1st Defendant was filed on 13th October 2020, together with an acknowledgement of service. A reply to the Statement of Defence was filed on 8th December 2020 and on the same day summons for directions was filed. On 8th February 2021, Justice Senivaratne made orders under the summons for directions. On 22nd April 2021 summons for further and better particulars was filed on behalf of the 1st Defendant. On 11th November 2021 change of Solicitors was filed for the Plaintiff. Sunil Kumar Esq replaced Tirath Sharma Lawyers.
- [4] On 16th June 2022, the Plaintiff's lawyers filed summons seeking joinder and amendment of writ of summons and statement of claim. On 9th August 2023 the application was granted. On 16th August 2023 the Plaintiff's Lawyers filed an amended writ of summons with an amended statement of claim. Acknowledgement of service was filed by the Defendants. On 22nd January 2024 the application I am dealing with was filed.
- [5] On 25th March 2024 the 2nd and the 3rd Defendants filed their statement of Defence. Reply to 2nd and 3rd Defendants Statement of Defence was filed on 26th March 2024. On 10th July 2024 filed notice of change of Solicitor for the 1st Defendant.

C. Determination

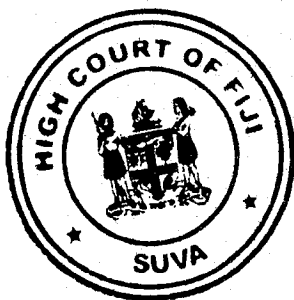
- [6] It is evident from the brief history of this matter that the Plaintiff amended his claim a couple of times. Having perused the last amendment I note that the Plaintiff's lawyers have not properly referred to the amendment that was made. The second amendment that was made is simply referred to as "Amended Writ of Summons". It should have been referred to as 2nd Amended Writ of Summons. The 1st amendment was marked in red, the 2nd amendment which is a successive amendment should be marked in green. The

Plaintiff has not properly amended its Writ of Summons. There is a reason the amendments are marked in colour. It is to distinguish the amendments that have been made in the Writ and the Claim. It will allow the Court and the parties to follow through the amendments.

- [7] The Plaintiff's application is dismissed. The Plaintiff is to promptly file and serve the 2nd Amended Writ of Summons in accordance with the Court's directions. Costs in cause.

D. Court Orders

- (a) Plaintiffs summons seeking to enter summary and/or default judgment is dismissed.
(b) Plaintiff to file and serve 2nd Amended Writ of Summons.
(c) Costs in cause.



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Chaitanya S. C. A. Lakshman

Puisne Judge
7th November 2024