IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

CIVIL ACTION NO. HBC 118 OF 2022

BETWEEN	:	**JONATHAN MICHAEL JOSEPH** of Velovelo, Lautoka, as the Administrator of the Estate of ABRAHAM **JOSEPH** late of Velovelo, Lautoka, Builder, Deceased.
		PLAINTIFF
AND	:	**ABDUL IFRAZ** of Velovelo, Lautoka.
		DEFENDANT
BEFORE	:	**Master P. Prasad**
Counsels	:	Mr. R. Singh for Plaintiff
		Ms. A. Degei for Defendant
Date of Hearing	:	24 September 2024
Date of Ruling	:	14 March 2025

RULING

1. The Plaintiff has filed 2 applications in this matter (i) a Summons for Summary Judgment pursuant to Order 14 Rule 1 of the High Court Rules 1988 (**HCR**) supported by the Plaintiff's Affidavit; and (ii) Summons to Strike Out the Defendant's Counter-Claim pursuant to Order 18 Rule 18 (1) (a) of the HCR.

2. The Defendant has objected to both Summons and has filed an Affidavit in Opposition.

3. The Plaintiff filed an Affidavit in Reply thereafter and both the Summons were heard on 24 September 2024.

4. As per Court directives, both parties filed comprehensive submissions on the hearing date and made oral submissions. The Defendant filed supplementary submissions on 4 November 2024 with the Plaintiff filing his reply on 10 December 2024.

5. Pursuant to the Plaintiff's Statement of Claim (**SOC**) filed on 20 April 2022, the Plaintiff holds an Agreement for Lease (**AFL**) over iTaukei Land Trust Board (**TLTB**) reference number 4/7/4932 being Lot 3, land known as Velovelo ML, in the Tikina of Vuda, in the Province of Ba, containing an area of 851 square meters (**subject land**). The Plaintiff states that the Defendant, without consent and without any colour of right is residing on and holding on to possession of the subject land and that the Defendant should vacate the same.

6. The Defendant filed a Statement of Defence (**SOD**) on 16 May 2022 with a complete bare denial of the SOC and filed a Counter-Claim stating that the Defendant had been residing on the subject land from 2012-2013 and that the Defendant had initially entered into a tenancy agreement with one Faizal who was apparently the intended purchaser of the AFL. The Counter-Claim further stated that eventually on 11 July 2018, the Defendant entered into a 'Purchase Agreement' and a 'Tenancy Agreement' with the Plaintiff. The Defendant further stated that he attended to renovations of the house on the subject land which the Plaintiff was aware of. The Defendant then claimed as follows:

    a. for an order restraining the Plaintiff from obtaining an order for vacant possession of the subject land.
    b. an order for Plaintiff to comply with the terms of the Purchase Agreement.
    c. an order that the Plaintiff pay all of the Defendant's costs for payment of land rentals to TLTB amounting to $4, 748.01.
    d. an order than Plaintiff pay the Defendant for the renovations and construction of driveway on the subject land in the sum of $24,500.00.
    e. costs and any other relief.

7. The Plaintiff in his Defence to Counter-Claim has relied on Section 12 of the iTaukei Land Trust Act 1940 (**Act**) to state that any purported dealing between Faizal and the Defendant was illegal as it was without the prior consent of TLTB. The Plaintiff further stated that the Purchase Agreement between the Plaintiff and the Defendant was terminated as the Defendant had failed to execute the same and the Defendant was also unable to secure funds to purchase the AFL. The Plaintiff further stated that the Defendant had failed to take any action to indicate his interest to purchase the AFL and had also stopped the Plaintiff and his/or his agent to access the subject land to carry out improvements.

8. In his Affidavit in Support and Reply, the Plaintiff has annexed: a copy of Letters of Administration granted to him as the Administrator of the Estate of Abraham

Joseph; a copy of the AFL granted to Abraham Joseph for a period of 50 years with effect from 1 January 1992; Notice to Vacate dated 24 January 2022; Defendant's reply to the Notice to Vacate dated 11 February 2022; a12 July 2018 e-mail and acknowledgment between Micheal Joseph and Faizal stating that the agreement between them was null and void; and a Tenancy Agreement between the Plaintiff and Defendant executed on 11 July 2018 by the Defendant only.

9. The Defendant in his Affidavit in Opposition has annexed: a 5 July 2018 e-mail from the Plaintiff to the Defendant making reference to an attached sale agreement for execution if the Defendant was happy with the same; a 10 July 2018 e-mail from the Plaintiff to the Defendant asking the Defendant to pay the TLTB land rates; a 11 July 2018 e-mail from Plaintiff to Defendant attaching two agreements (one for purchase of the said land and one for tenancy) and requesting the Defendant to execute and send the same to the Plaintiff and also to pay the TLTB land rates; and finally a copy of the executed Purchase Agreement of 11 July 2018, executed by both the Plaintiff and the Defendant (**Purchase Agreement**).

10. It is pertinent to note that the executed Purchase Agreement annexed as "*AI-5*" is the most crucial document in this case.

11. I will now review the relevant legal provisions and case authorities pertinent to this application. Summary judgment is a swift procedure in civil litigation aimed at resolving cases without a full trial. An applicant is eligible for a summary judgment if there is no defence or dispute regarding the key facts of the case. The goal of summary judgment is to achieve a quick ruling in cases where there is clearly no defence, thus avoiding unnecessary trials and conserving the court's limited resources and reducing costs.

12. Order 14 of the HCR provides as follows:

> ***Application by plaintiff for summary judgment (O.14, r.1)***
>
> ***1.*** *(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that the defendant has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.*
>
> *(2) Subject to paragraph (3), this rule applies to every action begun by writ other than –*
>
> *(a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment.*
>
> *(b) an action which includes a claim by the plaintiff based on an allegation of fraud.*

(3) This Order shall not apply to an action to which Order 86 applies.

Manner in which Application under Rule 1 Must be made (O.14, r2)

2. *(1) An application under rule 1 must be made by summons supported by an affidavit verifying the facts on which the claim, or the part of a claim to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the cause may be, or no defence except as to the amount of any damages claimed.*

(2) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

(3) The summons, a copy of the affidavit in support and of any exhibits referred to therein must be served on the defendant not less than 10 clear days before the return day.

Judgment for Plaintiff (O.14, r.3)

3. *(1) Unless on the hearing of an application under rule 1, either the Court dismisses the application or the defendant satisfies the Court with respect to the claim, or the part of a claim, to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the claim or part as may be just having regard to the nature of the remedy or relief claimed.*

(2) The Court may by order, and subject to such conditions if any, as may be just, stay execution of any judgment given against a defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action.

Leave to Defend (O.14, r.4)

4.*-(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.*

(2) Rule 2 (2) applies for the purposes of this rule as it applies for the purposes of that rule.

(3) The Court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(4) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity-

(a) to produce any document;

(b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

13. The principles governing the application of summary judgment rules are extensively discussed in numerous cases, both domestic and international. The said principles were clearly and concisely explained by Master Azhar (as His Lordship then was) in his ruling in the case of ***Subamma v ARK Co Ltd & Others*** [2022] FJHC 315; HBC173.2015 (24 June 2022), which I graciously adopt and reproduce as follows:

"06. The principles that govern the application of these rules are discussed in many cases both foreign and local, and no reference is needed to all the cases. The court's duty, when an application for summary judgment is filed, is to ascertain whether there is a triable issue and no arguable defence to the claim. If there is an arguable issue to be tried and there are matters of facts to be resolved, which can only be resolved in a trial, the court should not allow the application for summary judgment, but should grant leave to defend the matter in a full and proper trail, no matter how strong the plaintiff's case would be. The law and procedure for summary judgment can be summarized as follows, based on the decisions under Order 14:

a. The plaintiff may, after the notice of intention to defend the action has been filed, apply for summary judgment against the defendant on the ground that the defendant has no defence to the claim or part of the claim included in the Writ except the amount of damages: rule 1 (3). This application must be by way of summons supported by an affidavit with the assertion of facts and the belief of the deponent that there is no defence to the claim. This summons to be served on the other party to be heard inter parte: rule 2.

b. The procedure under Order 14 rule 1 is applicable to every action begun by a Writ. However, it cannot be invoked for an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment and for an action which includes a claim by the plaintiff based on an allegation of fraud : rule 1 (2). Likewise, this Order is neither applicable to summary judgment in specific performance under Order 86 nor does affect the provisions of Order 77 which applies for the proceedings against the state: rules 1 (3) and 12.

c. The power to grant summary judgment should be exercised with care and should not be exercised unless it is clear there are no real issues to be tried: Fancourt v Mercantile Credits Ltd (1983) HCA 25; (1983) 154 CLR 87 at 99; Theseus Exploration NL V Foyster ([1972] HCA 41; 1972) 126 CLR 507. It would be difficult to obtain summary judgment when there is an array of defences. However an application for summary judgment should not be refused

for raising seemingly difficult issues to blot out otherwise simple cases: Hibiscus Shoppingtown Pty Ltd v Woolworths [1993] FLR 106*; Territory Loans Management v Turner* [1992] NTSC 82*;* (1992) 110 FLR 341.

d. The legal burden of proof is borne by the plaintiff throughout the application, however, when he has established a prima facie right to an order, a "persuasive" or "evidential" burden shifts to the defendant to satisfy the court that judgment should not be given against him: Australian & New Zealand Banking Group v David (1991)105 FLR 403. Although the onus is upon the plaintiff there is upon the defendant a need to provide some evidential foundation for the defences which are raised. If not, the plaintiff's verification stands unchallenged and ought to be accepted unless it is patently wrong: Australian Guarantee Corporation (NZ) Ltd v McBeth [1992] NZLR 54.

e. The defendant may show cause against a plaintiff's claim on the merits. It is generally incumbent on a defendant resisting summary judgment, to file an affidavit which deals specifically with the plaintiff's claim and states clearly and precisely what the defence is and what facts are relied on to support it: 1991 The Supreme Practice Vol 1 pages 146,147,152 and 322. Mere raising of a defence that is complicated or difficult will not of itself result in a refusal to grant summary judgment: Civil & CIVIC Pty Ltd v Pioneer Concrete (NT) Pty Ltd [1991] NTSC 3; (1991) 103 FLR 196.

f. If a point of law is raised which the Court feels able to consider without reference to contested facts simply on the submissions of the parties, then it will see whether there is any substance in the proposed defence. If it concludes that, although arguable, the point is bad, then it will give judgment for the plaintiffs: Sethia Liners Ltd v State Trading Corporation of India (1986) 1 Lloyds Rep. 31.

g. There has to be a balancing between the right of the defendant to have his day in Court and to have his proper defences explored and examined in details and the appropriate robust and realistic approach called for by the particular facts of the case: Bibly Dimock Corporation Ltd v Patel [1987] NZCA 193*;* (1987) 1 PR NZ 84*; Cegami Investments Ltd v AMP Financial Corporation (NZ) Ltd (11990) 2 NZLR 308; Australian Guarantee Corporation (NZ) Ltd v McBeth* [1992] NZLR 54.

14. I have considered the Plaintiff's Affidavits in Support and in Reply and the documents annexed therein. I find that the Plaintiff's cause of action against the Defendant is duly supported to the satisfaction of the Court and the Plaintiff has successfully established a *prima facie* case against the Defendant.

15. The burden now shifts to the Defendant to satisfy the court that judgment should not be given against him and to provide some evidential foundation for the defences which are raised.

16. The Defendant submits that that he has a defence and counter-claim in this matter. He relies on the Purchase Agreement to state that he has a right to remain on the subject land. The Defendant's counsel re-iterated the same in her submissions and further submitted that there are triable issues in this matter and the Defendant needs to give evidence at trial as to the loss he has suffered and the alleged breach of the Purchase Agreement by the Plaintiff. The Defendant's counsel relied on the case of ***Blueshield (Pacific) Insurance Ltd v Fiji Bank Employees Union*** [2002] FJHC 58; Hbc0312d.1998s (12 July 2002) wherein the defendant was given leave to defend even though they had filed a bare denial to the statement of claim.

17. Although it is submitted on behalf of the Plaintiff that since the Defendant has filed a bare denial in his Statement of Defence and such defence should not be considered, I find it is open for the Court to consider the same despite that such defence being not pleaded in the Statement of Defence.

18. In this regard I agree with Master Wickramasekara in ***Pacific Energy (South West Pacific) Pte Ltd v Shah*** [2024] FJHC 572; HBC34.2021 (25 September 2024) where he had held that "*pursuant to Order 14 of the High Court Rules, an application for Summary Judgment can be made even if there is no Statement of Defence being filed and a Defendant is required only to show cause on affidavit 'that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part'.*"

19. The Plaintiff's Affidavit in Reply states that the Defendant had failed to execute the Purchase Agreement. The Plaintiff did not provide any further evidence to rebut the copy of the executed Purchase Agreement copy which was annexed to the Defendant's Affidavit in Opposition.

20. I therefore find that the Defendant is allowed to refer to the mentioned defences even though he has not currently included it in the Statement of Defence at this point.

21. The Plaintiff has further pleaded in his Reply to Defence and made submissions on the fact that pursuant to section 12 of the Act, the consent of TLTB was neither obtained prior to the execution of any agreement between the Defendant and Faizal nor prior to the Purchase Agreement, which renders both the said agreements null and void.

22. The issue of consent has been discussed clearly in the recent Supreme Court decision of ***Naicker v Chand*** [2024] FJSC 11; CBV0002.2023 (26 April 2024), that dealt with section 13 of the State Lands Act 1945, which is the equivalent provision for State Land as section 12 of the Act is for iTaukei land. Hon. Justice Brian Keith JSC held as follows:

"22. The enforceability of the agreement. The grounds of appeal are difficult to follow. For the most part, Mr Naicker's solicitors rely on the unfairness of the outcome without stating where things went wrong. However, the one argument which they clearly advance for restoring the order for specific performance is that the Director of Lands' consent was not a precondition for the enforceability of an agreement for the transfer of a lease. I do not agree. The absence of consent meant that the agreement could not take effect. It could only take effect when consent to the transfer of the lease had been obtained. Putting it in another way, its enforceability was subject to a condition subsequent, namely the grant of consent for the transfer. The agreement could not be enforced until then. How could you enforce an agreement which required consent when that consent had not been obtained? Suppose the Director of Lands would not have given his consent to the transfer of the lease to Mr Naicker, could Mr Naicker really have avoided that outcome by arguing that the agreement for the transfer of the lease to him could be enforced nevertheless? So I entirely agree with the Court of Appeal that the order for specific performance sought by Mr Naicker – which ignored the need for the Director of Lands' consent to the transfer – could not be made.

23. ***However, that does not mean that a suitably worded order for specific performance could not have been made. If the order for the transfer of the lease had been made subject to the prior consent of the Director of Lands to its transfer having been obtained, there could have been no objection to it****. As I have said, it may be that that was what Ajmeer J had in mind. It is unfortunate that he did not spell out his thinking on the topic in both his judgment and the order he made. The lesson to be learned is that when a court makes an order for specific performance, it must spell out in clear and precise language what it is that the defendant is being required to do. The failure to do that in this case has resulted in an appeal which might otherwise have been avoided****. For these reasons, I would make an order which has the effect of resurrecting the order for specific performance made by Ajmeer J, but making it clear that it can only take effect once the Director of Lands has given his consent to the transfer of the new lease to Mr Naicker, and I would order Mr Chand to take all steps necessary to enable the Director of Lands to give that consent.***

24. I have not overlooked the argument that the absence of consent made the agreement to transfer the lease not merely unenforceable, but null and void. Had it been null and void, the subsequent consent of the Director of Lands to the transfer of the lease could not have saved the agreement. This argument tracks the actual language of section 13 which is that

"any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void."

The mere fact that the consent of the Director of Lands to the transfer had not been obtained could not on its own have

rendered the transfer null and void. *As the Privy Council said in Chalmers v Pardoe [1963] 1 WLR 677, a decision of the Privy Council on appeal from the Court of Appeal of Fiji concerning section 12 of the iTaukei Land Trust Act 1940 (which was the equivalent provision for iTaukei land as section 13 of the State Lands Act is for State land)*

" ... ***it would be an absurdity to say that a mere agreement to deal with land would contravene Section 12, for there must necessarily be some prior agreement in all such cases. Otherwise there would be nothing for which to seek the Board's consent."***

25. Moreover, in Kulamma v Manadan [1968] AC 1062, the Privy Council said that the parties "should be presumed to contemplate a legal course of proceeding rather than an illegal [one]". Neither Mr Chand nor Mr Naicker ever contemplated that the transfer of the lease would take effect without the Director of Lands' consent as the agreement for the transfer of the lease was in the very document in which the Director of Lands' consent to the transfer was being sought. There was, therefore, no question of the proposed transfer being null and void simply because the Director of Lands' consent to the transfer had not been obtained earlier. That is the effect of a series of cases including the decision of the Court of Appeal in Jai Kissun Singh v Sumintra (1970) 16 FLR 165, the decision of the Court of Appeal in D B Waite (Overseas) Ltd v Wallath (1972) 18 FLR 141, and the decision of the Supreme Court in Reggiero v Kashiwa [1998] FJSC 8.

26. Could it be said that there had been some other "dealing" with the land which had had the effect of rendering the agreement for the transfer of the lease null and void because consent to the transfer had not been obtained – for example, the various things which Mr Naicker had done to improve the land? In my view, such an argument cannot succeed. The judge made no findings, one way or the other, whether the improvements which Mr Naicker had made to the land had been made for himself in anticipation of the lease being transferred to him, or for Mr Chand pursuant to the power of attorney and in his capacity as the caretaker of the farm. In any event, what constitutes "dealing" with land within the meaning of section 13 is not spelled out in the State Lands Act, but however wide it is, I do not believe that what Mr Naicker did can be regarded as the sort of dealing with the land which required the prior consent of the Director of Lands." [Emphasis mine].

23. In light of the above, the Plaintiff's argument that the lack of prior consent of TLTB renders the Purchase Agreement unenforceable fails. Whether or not to grant an order for specific performance of the Purchase Agreement is for the trial Court to decide at the substantive trial of this matter.
24. The Defendant has satisfied the Court that in this case there is an issue or question in dispute which ought to be tried, and that issue revolves around the Purchase Agreement. While the Plaintiff have denied there being such an agreement executed by the Defendant, the Defendant has provided a copy of

the Purchase Agreement which is executed by both the Plaintiff and the Defendant on 11 July 2018.

25. Having already decided on the Summons for Summary Judgement, I will now discuss the Summons for Strike Out filed by the Plaintiff to strike out the Defendant's Counter-Claim pursuant to Order 18 Rule 18 (1)(a).

26. Order 18 Rule 18 (1)(a) provides:

> *"18 (1)The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that –*
> *(a) it discloses no reasonable case of action or defence, as the case may be;..."*

27. The following excerpts from the 1997 Supreme Court Practice provide the scope of the rule together with guiding factors when dealing with an application for the strike out of a pleading.

28. Footnote 18/19/3 of the 1997 Supreme Court Practice reads:

> *"Striking out or amendment—The rule also empowers the Court to amend any pleading or indorsement or any matter therein. If a statement of claim does not disclose a cause of action relied on, an opportunity to amend may be given, though the formulation of the amendment is not before the Court (CBS Songs Ltd v. Amstrad [1987] R.P.C. 417 and [1987] R.P.C. 429). But unless there is reason to suppose that the case can be improved by amendment, leave will not be given (Hubbuck v. Wilkinson [1899] 1 Q.B. 86, p.94, C.A.). Where the statement of claim presented discloses no cause of action because some material averment has been omitted, the Court, while striking out the pleading, will not dismiss the action, but give the plaintiff leave to amend (see "Amendment," para. 18/12/22), unless the Court is satisfied that no amendment will cure the defect (Republic of Peru v. Peruvian Guano Co. (1887) 36 Ch.D. 489)."*

29. Footnote 18/19/7 of the 1997 Supreme Court Practice reads:

> *"Exercise of powers under this rule—It is only in plain and obvious cases that recourse 18/19/7 should be had to the summary process under this rule, per Lindley M.R. in Hubbuck v. Wilkinson [1899] 1 Q.B. 86, p.91 (Mayor, etc., of the City of London v. Horner (1914) 111 L.T. 512, C.A.). See also Kemsley v. Foot [1951] 2 K.B. 34; [1951] 1 All E.R. 331, C.A., affirmed [1952] A.C. 345, H.L. It cannot be exercised by a minute and protracted examination of the documents and facts of the case, in order to see whether the plaintiff*

really has a cause of action (Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.)."

30. Footnote 18/19/11 of the 1997 Supreme Court Practice on no reasonable cause of action or defence reads:

> *"Principles—A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered (per Lord Pearson in Drummond-Jackson v. British Medical Association [1970] 1 W.L.R. 688; [1970] 1 All E.R. 1094, C.A.). So long as the statement of claim or the particulars (Davey v. Bentinck [1893] 1 Q.B. 185) disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out (Moore v. Lawson (1915) 31 T.L.R. 418, C.A.; Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.);..."*

31. The legal principles regarding striking out pleadings are clear and widely understood. The Court of Appeal in ***National MBF Finance v Buli*** [2000] FJCA 28 determined the principles for strike out. In ***Attorney-General v Shiu Prasad Halka*** 18 FLR 210 at 214 Justice Gould V.P. in his judgment expressed *"that the summary procedure under O.18, r.19 is to be sparingly used and is not appropriate to cases involving difficult and complicated questions of law."*

32. Justice Winter (as his Lordship then was) in ***Ah Koy v Native Land Trust Board*** [2005] FJHC 49 aptly stated:

> *"The practice in Fiji of preemptively applying to strike out a claim is wrong and must cease. Counsels ability to overlook the purpose of this summary procedure is astounding. The expense to the administration of justice, let alone clients, is a shameful waste of resources....*
>
> *Apart from truly exceptional cases the remedy should not be granted. The approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be provided at trial. If a legal issue can be raised on the facts as pleaded then the courts will not strike out a pleading and will certainly not do so upon a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of such a factual contention....*
> *The rule of law requires the existence of courts for the determination of disputes and that litigants have the right to use the court for that purpose. The courts will be alert to their processes being used in a way that results in an oppression or injustice that would bring the administration of justice into disrepute. However, the court cannot and must not deny proper access to justice by the glib use of a summary procedure to pre-emptorily strike out an action no matter*

how weak or poorly pleaded the Statement of Claim supporting the case is....

It is not for the court in deciding whether there is a reasonable cause of action to go into the details of the issues that are raised by the parties. This summary jurisdiction of the court was never intended to be exercised by a detailed examination of the facts of the case at a mini hearing to see whether the plaintiff really has a good cause of action merely a sufficient one. This is not the time for an assessment of the strengths of either case. That task is reserved for trial. The simple fact that these parties engaged in argument by opinion over statutory interpretation must bring into existence a mere cause of action raising some questions fit to be decided by a judge."

33. The clear and unambiguous wording of Order 18 Rule 18 indicates that the power to strike out pleadings is discretionary rather than obligatory.

34. For an application made pursuant to Order 18 Rule 18 is (1) (a) – no reasonable cause of action, the Court may only conclude an absence of a reasonable cause of action on the pleadings itself with no evidence being admissible. His Lordship Chief Justice Mr. A.H.C.T. Gates (as His Lordship then was) held in **Razak v Sugar Corporation Ltd** [2005] FJHC 720 that:

"To establish that the pleadings disclose no reasonable cause of action, regard cannot be had to any affidavit material [Order 18 r.18(2)]. It is the allegations in the pleadings alone that are to be examined: Republic of Peru v Peruvian Guano Company [1887] UKLawRpCh 186; (1887) 36 Ch.D 489 at p.498".

35. In essence, the Defendant's Counter-Claim is that the Defendant and the Plaintiff had executed the Purchase Agreement as well as a Tenancy Agreement. The Defendant claims that he has failed to comply with the terms of the Purchase Agreement due to the clause in the said Agreement which states that "*the owner agrees to notify the date of settlement upon acquiring the title for the above lease. In the meantime, the Tenancy Agreement between the buyer and seller effective*." The Defendant seeks that the Plaintiff comply with the terms of the Purchase Agreement.

36. Based on this the Defendant claims that the Plaintiff be restrained from seeking an order of vacant possession of the subject land and for an order that the Plaintiff comply with the Purchase Agreement. The Defendant is also seeking for payment in the sum of $4, 748.01 for payments made to TLTB and $24,000.00 for maintenance and renovation.

37. For the application under Order 18 Rule 18 (1) (a), the Plaintiff's counsel has submitted that the Purchase Agreement is not enforceable pursuant to section 12 of the Act and for this reason the Defendant's Counter-Claim discloses no

reasonable cause of action, is scandalous frivolous, vexatious and an abuse of the court process.

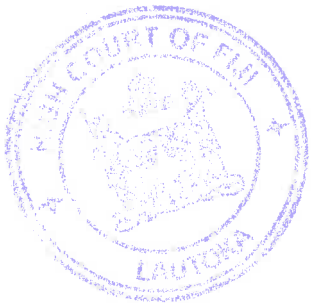
38. I have already considered and discussed the application of section 12 of the Act to this case in paragraphs 22 and 23 hereinabove.

39. Therefore, I hold that the Defendant has in his Counter-Claim provided sufficient background facts and particulars regarding the Purchase Agreement and the breakdown of costs he is claiming for, which constitute a valid cause of action.

40. Accordingly, I make the following orders:

    (a) Both the applications for Summary Judgment and Strike Out are hereby dismissed, and

    (b) Costs of this action summarily assessed at $2,000.00 to be paid by the Plaintiff within 28 days.



P. Prasad
Master of the High Court

At Lautoka
14 March 2025