

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 336 of 2023

BETWEEN:

MANOA MALANI aka MANOA LUTUNGA NADURUCOKO SAUMAIVERATA MALANI
VERONICA MALANI aka ADI VAKACEGU RAMANAKIWAI VERONICA RALOGAIVALU MALANI
RATU FILIMONE RAMARAMA RALOGAIVAU I
PLAINTIFFS

AND:

HAROON ALI
1ST DEFENDANT

AND:

THE CHAIRMAN OF BOARD OF BANK OF SOUTH PACIFIC
2ND DEFENDANT

AND:

SANJESH LAL
3RD DEFENDANT

AND:

AIYAZ SAYED KHAYUM
4TH DEFENDANT

BEFORE:

Acting Master L. K. Wickramasekara

COUNSELS:

Raikanikoda & Associates for the Plaintiffs
Messrs Neel Shivam Lawyers for the 1st, 2nd and 3rd Defendants
R. Patel Lawyers for the 4th Defendant

Date of Hearing:

By way of Written Submissions

Date of Ruling:

27th March 2025

RULING

The Current Application

- 01.** Solicitors for the 1st to 3rd Defendants have filed the current Amended Summons on 24/06/2024 seeking the following orders,
- “1. *That the First, Second, and Third Defendants be removed and struck out as parties to the within action.*
2. *That all proceedings hereunder be stayed until the hearing and determination of the First, Second and Third Defendant’s application.*
3. *Any other order as this Honorable Court deems just and expedient.*
4. *That the costs of this application be made in the cause.”*
- 02.** This Summons has been made pursuant to Order 15 Rule 2 (a) and Order 32 of the High Court Rules 1988. It is supported with an Affidavit of Sanjesh Lal¹ (herein after referred to as the Supporting Affidavit), the Third Defendant to the within proceeding, on behalf of himself and for the First and Second Defendants under their expressed authority.
- 03.** Before proceeding to examine the contents of the Supporting Affidavit, it shall be helpful to state the nature of the alleged dispute between the parties in this matter. The Plaintiffs’ are debtors of the Colonial Group of Bank and Life Insurance which is currently known as Bank of South Pacific (The Bank). They had been provided with several loan facilities by the Bank and partly coverage of these loans by way of mortgage insurance.
- 04.** Having failed to keep up with the due repayments, the Bank had moved to take steps to sell in auction the properties provided as securities by the Plaintiffs as against the said loan facilities in a separate action before the Court. The Plaintiffs’ appear to be seeking relief from such recovery actions in the current proceeding on various alleged causes of action (Court shall address the facts of the Statement of Claim under a separate heading later in this ruling).
- 05.** The Affidavit in Support, having summarized the facts regarding the ‘loan history’ of the Plaintiffs with the ‘Bank’ in the initial averments, proceeds to outline the grounds

¹ This Supporting Affidavit has been sworn and filed on 14/12/2023 with the original summons of the 1st to 3rd Defendants filed on 14/12/2023. It was duly allowed to be relied upon as the Supporting Affidavit for the Amended Summons filed on 24/06/2024 as per Court’s leave granted on 12/07/2024.

in support of the current application from paragraph 25 to 29 in the said Affidavit. I shall reproduce these paragraphs in this ruling for the sake of clarity.

25. *It is clear from the history of the dealings between the Plaintiffs and the Bank that any dealings purely stem from the loan facility and loan contracts.*
26. *Any decision, action or steps taken by the First or Third Defendant were always in their capacity as the officers/employees of the Bank.*
27. *The First and Second Defendant (s) have never acted in their personal capacities and therefore the within legal action personally instituted against them is improper and without legal reasoning. The legal action thus is an abuse of process.*
28. *The Plaintiffs have also added the chairman of the BSP Financial Group and BSP Life as a party. The chairman's role is to lead the Board and focus on strategic matters. The chairman is not involved in the day-to-day management decisions of those BSP bank's businesses or those that are managed by the local Country Head or the management team that reports to the Country Head.*
29. *By reason of the above matters the First, Second and Third Defendants are improperly and unnecessarily made parties to the within action and therefore they must be removed.*

Plaintiffs' Position

06. Plaintiffs have opposed the said Summons. As such, the Court on 12/07/2024 directed the Plaintiff's to file an Affidavit in Response.
07. The Plaintiff's solicitors on 22/07/2024 has filed a document themed 'Plaintiff's Response to the Amended Summons'². It is, however, not an Affidavit in Response, resulting in that there's no Affidavit evidence from the Plaintiff's in opposition to the Defendant's Summons filed on 24/06/2024.
08. This document contains three paragraphs and in fairness to the Plaintiffs the Court has decided to consider the said document, as long as it may not prejudice the Defendant's, since the contents in the said document is not sworn evidence before the Court. For clarity, I shall reproduce the contents of the said document in its entirety in this ruling.

² 'Plaintiff's Response to the Amended Summons' filed on 22/07/2024.

1. *That the three (sic) above defendants are still part of the BSP Bank who have breached their due process while being employed for BSP Bank and if they apply to struck out who is going to be accountable for those wrongdoing (sic).*
2. *Moreover, the Fourth Defendant was also employed by BSP Bank as its legal advisor, so he was acting on behalf of BSP Bank.*
3. *That the Plaintiffs maintain all Defendants are answerable to the Plaintiffs on all pleadings pleaded therein and to remove anyone of the Defendants will create a vacuum and will delay the litigation process of this matter and therefore removing any Defendant is not acceptable to the Plaintiffs.*

Written Submissions

09. Following the directions of the Court made on 12/07/2024, the solicitors for the 1st to 3rd Defendants has filed and served comprehensive written submissions on the current application before the Court.
10. The solicitors for the Plaintiffs, however, failed to file its written submissions on time and upon being granted further time to file, filed its written submissions on 06/11/2024. It is to be noted that the written submissions on behalf of the Plaintiffs' have been filed erroneously themed as 'Affidavit in Response to the First, Second and Third Defendants' Misjoinder Application'. This document is not a sworn Affidavit; therefore, the Court will treat the name of the document to be a typographical error.
11. Although not sworn as an Affidavit, the above document filed on behalf of the Plaintiffs' on 06/11/2024, attempts to submit purported evidence regarding the alleged role played by each of the Defendants which resulted in the Plaintiff's claim against them.
12. On the onset, it is to be noted that the manner in which the paragraphs in the written submissions of the Plaintiffs' are being numbered is ambiguous and leads to confusion. However, the Court identifies the alleged evidence as listed under the headings, '*Misconduct by Defendants*' at paragraph 3, '*Argument Against Removal and Stay*' at paragraph 3 (sic) and *Response to 6.1* and sub paragraph *Direct Involvement and Accountability* at paragraph 3 (sic), *Response to 6.2* and sub paragraph *Direct Involvement and Accountability* at paragraph 3 (sic), *Response to the 8.0 Conclusion Above* and sub paragraph *Direct Involvement and Accountability* at paragraph 3 (sic)³.
13. The Court cannot accept evidence given by a solicitor from the bar-table on contested issues. Evidence must be given in Court, either *viva voce* or as Affidavits deposed by

³ Please see Plaintiffs' Written Submissions as filed on 06/11/2024 and erroneously named as Affidavit in Response to the First, Second, and Third Defendant's Misjoinder Application.

relevant witnesses. This is a well-established legal norm in Fiji as well as in other Commonwealth legal systems.

14. Unfortunately, in the written submissions filed on behalf of the Plaintiffs, the solicitors for the Plaintiffs' are attempting to submit evidence contrary to this established legal norm. As such, the Court has no other option but to reject all purported evidence given in the written submissions of the Plaintiffs' and to strike out the same.

Plaintiff's Position

15. Having carefully considered the written submissions of the Plaintiffs, and its Response⁴ filed against the current Amended Summons, what the Court can deduce as the position of the Plaintiffs' with regard to the current application before this Court is, that the 1st to 3rd Defendants were acting for the Bank⁵ and that they were involved in providing the loan facilities and mortgage insurance to the Plaintiffs'. These Defendants', as employees of the Bank are now and acting against the Plaintiffs' for the recovery of such loan amounts.
16. The Plaintiffs' therefore holds that these Defendants, as employees of the Bank, are accountable to provide the relief as prayed for by the Plaintiffs in their Statement of Claim. The Plaintiffs' also appear to be of the firm view that unless the named Defendants in this matter are held accountable to provide the relief the Plaintiffs' have prayed for, there is no other that could be held responsible for the alleged loss caused to the Plaintiffs'.
17. Apart from the 1st to 3rd Defendants, the Plaintiffs' have further claimed, as per the 'Plaintiffs Response to the Amended Summons'⁶ that the 4th Defendant too was acting for the Bank and that '*...was employed by BSP Bank as its legal advisor so he was acting on behalf of BSP Bank*'⁷. It appears that the Plaintiffs' share the same grounds and basis for the claim against the 4th Defendant as cited against the other Defendants.

The Statement of Claim

18. Before commenting on the Plaintiffs' Statement of Claim, I find it prudent to cite the legal provisions relating to a pleading in the High Court of Fiji. Order 18 of the High Court Rules 1988 provides for nature and contents of pleadings. First and foremost, the manner in which a pleading to be drafted and the basic nature of such pleading must adhere to Order 18 Rule 6 of the High Court Rules. This rule reads as follows,

⁴ Supra at note (2) above.

⁵ Colonial Group of Bank and Life Insurance which is currently known as Bank of South Pacific.

⁶ Supra at note (2) above.

⁷ Paragraph 2 of the Plaintiffs Response to the Amended Summons (Supra at (2) above).

Facts, not evidence, to be pleaded (O 18, R 6)

- 6(1) *Subject to the provisions of this Rule, and Rules 9, 10 and 11, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his or her claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.*
- (2) *Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.*
- (3) *A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his or her pleading.*
- (4) *A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his or her pleading.*

- 19. The Statement of Claim in this matter, as annexed with the Writ of Summons filed on 06/11/2023 runs into 14 pages and 73 paragraphs in total. The issue lies not with the unusual number of paragraphs and the number of pages in the Statement of Claim. The current Statement of Claim is unnecessarily and arduously lengthy, is crammed with ambiguous facts, interpolated with alleged evidence and contains a multitude of personal opinions of the Plaintiffs'. Court therefore finds that the Statement of Claim is a total breach of the provisions in Order 18 Rule 6 of the High Court Rules.
- 20. Though it would be preferable to isolate and cite the paragraphs in the Statement of Claim that are in breach of the said High Court Rules in this ruling, I find it rather impossible to select only a few paragraphs in reference to my finding above, as almost all paragraphs in the Statement of Claim (except for a handful of paragraphs) are plagued with such defects and irregularities cited in the foregoing paragraph and they all stand in clear breach of Order 18 Rule 6 of the High Court Rules.
- 21. In the above unfavorable circumstance, suffice to state that the plain reading of the Statement of Claim shall, to any legal mind, convey the undeniable proof of the above finding of the Court. I state thus with much certainty since to state otherwise shall be factually wrong and would also compel this Court to unnecessarily reproduce the defective Statement of Claim in its entirety in this ruling.

22. In fairness to the Plaintiffs', the Court notes that the current Statement of Claim as filed along with the Writ of Summons on 06/11/2023 has been filed by the Plaintiffs' in person. However, that cannot be held as a justification for clear defects and violations of legal rules when filing a Statement of Claim.
23. The current solicitors for the Plaintiffs' have been engaged to represent the Plaintiffs' on 23/02/2024⁸. Although there had been ample time and opportunity for the Plaintiffs' to amend their Statement of Claim, from the time of engagement of their solicitors, there had been no attempt made to effect any amendments to the Statement of Claim.
24. Furthermore, the most startling issue with the Statement of Claim is the lack of any causes of action and/or particulars with regard to any of the named Defendants in the Statement of Claim. It appears that the majority of allegations of loss caused to the Plaintiffs' are made against the Bank⁹ and not against any of the named Defendants directly in their personal capacity.
25. Let me at this stage briefly explore what the definition of a cause of action is. The Fiji Court of Appeal in **Solanki v New India Assurance Company Ltd**; ABU0042.2014 (3 June 2016) examined the term, 'cause of action' in the following words.

*[29] The High Court Rules, 1998 do not define what a cause of action is. It defines 'cause' and 'action' separately which is not helpful to understand the concept of "cause of action". **Stroud's Judicial Dictionary of Words and Phrases** 6th Edition Volume 1 at page 375 states that "cause of action" is a broad concept denoting the factual or legal basis out of which a claim arose. Cause of action has been defined in different ways in several jurisdictions and one of them appealing to me is its definition as the wrong for the prevention or redress of which an action may be brought, including the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty, and the infliction of an affirmative injury. Similarly, a cause of action arises when one has a right and there is a denial or violation of that right by another. Jurisprudentially, for someone to have a right there must be a corresponding duty or obligation on another.*

26. Later in **Solanki v New India Assurance Company Ltd**; (Supra), the Court went on to comment on the 'cause of action' as follows,

*[33] The argument of the Respondent could also be dealt with having regard to the judicial pronouncements of what constitutes a cause of action. **Halsbury's Laws of England Fourth Edition Volume 37 Paragraph 20 at p. 27** states that from the earliest time the phrase 'cause of*

⁸ Notice of Appointment of Solicitors for the Plaintiff as filed on 23/02/2024

⁹ Supra at note (5) above.

action’ has been held to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which the defendant would have a right to traverse (per Breet J. in Cooke v Gill [1873] UKLawRpCP 3; [1873] LR 8 CP 107 at 116)

[34] In Cigna Insurance Asia Pacific Ltd v Packer [2000] WASCA 415 involving a Personal Accident Policy Malcom CJ citing several authorities in support declared “A cause of action accrues when all the facts have occurred which the plaintiff must prove in order to succeed.”. Pidgeon J. in the same case citing paragraph 63 in 19 Halsbury (1st edition) 42 said that it sets out the law that has long been applied on when a cause of action arises.

*‘A cause of action accrues, when there is in existence a person who can sue and another who can be sued and **when all the facts have happened which are material to be proved to entitle the plaintiff to succeed.**”*

“The words in bold are based on the authority of Cooke v Gill [[1873] UKLawRpCP 3; LR 8 CP 107.”

[35] In Coburn v Colledge [1897] UKLawRpKQB 62; [1897] 1 QB 702 Lord Esher said of the cause of action

“Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.”

27. His Lordship Justice Guneratne P. (as his Lordship then was), in Singh v Singh; ABU0089.2020 (28 July 2023) further expounded on the term ‘cause of action’ in the following words.

“What is “a cause of action?”

- the essential two elements-

[52] The first is “a right” claimed by a party and the second is the “the denial of that alleged right.”

28. In view of the above definitions of the term, it is my understanding that to establish a ‘cause of action’ a Plaintiff must demonstrate through material facts that there was a right available to the Plaintiff on such facts, which would form the basis of a dispute and that such right has been infringed by the actions/inactions of the alleged Defendants, which would form the basis to claim relief against such Defendants.
29. Having in my mind the above legal definitions on ‘cause of action’, I shall now proceed to examine the Plaintiffs’ Statement of Claim to ascertain what the Plaintiffs’ plead as causes of action in this matter in order to consider the question whether the named Defendants in this matter has been joined to the matter as proper parties or whether there’s an issue of a misjoinder.

30. Plaintiffs' in their Statement of Claim, under the heading '***Causes of Action***' has listed '***Bad Faith and Lender Liability***' as the first alleged cause of action. However, when reading the contents under this heading it is clear that this cause of action is pleaded only against the Bank and not against any of the named Defendants¹⁰.
31. The next alleged cause of action is listed under the heading '***Breach of Good Faith***'. This includes paragraphs 66 to 68 in the Statement of Claim. Though these paragraphs refers to the Defendants, there are no particulars of any acts committed by any of the named Defendants pleaded in any of these paragraphs. Further, a collective reading of these paragraphs hints that this cause of action is also pleaded against the Bank and not against any of the named Defendants in their personal and/or official capacity.
32. Then quite abruptly and irrationally the Statement of Claim lists a heading as '***Legal Grounds***' which contains one paragraph with four sub-paragraphs¹¹. Under this heading, the Plaintiffs' appear to plead '***Breach of Contract***', '***Negligence***', '***Breach of Fiduciary Duty***'. However, there are no particulars been pleaded under these headings. There are no facts been stated to implicate any actions/inactions by any of the named Defendants that falls under these headings.
33. Taking a further bizarre turn, the next heading in the Statement of Claim reads as '***Adequate Compensation for Breach of Good Faith***' and it contains one paragraph with five sub-paragraphs¹² which submit irrational statements under, what appears to be sub paragraphs, styled as '***Breach of Contract***', '***Bad Faith***', '***Unjust Enrichment***', and '***Unfair Practices***'. I cannot help but emphasize at this stage that the drafting of this Statement of Claim is a legal nightmare. It is not comprehensible whether the Plaintiffs' have pleaded the above as causes of action or as relief or as particulars. In any event, suffice to say that there are no particulars that have been pleaded under any of the above headings which would disclose a reasonable cause of action as against any of the named Defendants.
34. Next, the Statement of Claim takes a clearly absurd twist and lists a heading as '***Particulars of Damages***' which includes one paragraph with 08 sub-paragraphs¹³. However, incomprehensibly, without pleading any particulars under this heading, the Plaintiffs' have listed reliefs which appears to be illogical, incomplete and repetitive.
35. Although I have painstakingly gone through the Statement of Claim, I find it impossible to duly evaluate and comprehend what the Plaintiffs' are trying to plead as causes of actions against any of the named Defendants and to identify the particulars to support such causes of actions (if any).

¹⁰ Please see paragraphs 54 to 65 in the Statement of Claim filed on 06/11/2023.

¹¹ Please see paragraph 69 (i) to (iv) in the Statement of Claim filed on 06/11/2023.

¹² Please see paragraph 74 (sic) (i) to (v) in the Statement of Claim filed on 06/11/2023.

¹³ Please see paragraph 70 (sic) (i) to (viii) (wrongly numbered) in the Statement of Claim filed on 06/11/2023.

36. This Statement of Claim is unfortunately a textbook example of how not to draft a pleading. It is, however, perfectly clear to the Court that the Plaintiffs' have failed to outline a proper cause of action or any particulars regarding a live dispute between the Plaintiff and the named Defendants in this matter.
37. Perhaps it could be that the Plaintiffs' may have a cause of action against the Bank as the Plaintiffs' seems to complain that their alleged rights have been infringed by the actions and/or inactions of the Bank. Yet, it is for the Plaintiffs' to venture in such direction and to move to join the Bank in this proceeding if, and only if, the Plaintiffs' could duly identify a cause of action which could be supported with material facts as against the Bank. This would be an option available for the Plaintiffs' if they'd wish to duly consider the same.
38. However, in the current form, without any acceptable and unambiguous particulars being given, this Statement of Claim stands in total violation of Order 18 Rule 11 of the High Court Rules. For clarity, I shall reproduce Order 18 Rule 11 of the High Court Rules.

Particulars of pleading (O 18, R 11)

11(1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words—

- (a) particulars of any misrepresentation, fraud, breach of trust, willful default or undue influence on which the party pleading relies; and*
- (b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.*

(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served and, if so, when, or is to be served with the pleading.

(3) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his or her pleading, or in any affidavit of his or her ordered to stand as a pleading, or a statement of the nature of the case on which he or she relies, and the order may be made on such terms as the Court thinks just.

- (4) *Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of paragraph (3) the Court may, on such terms as it thinks just, order that party to serve on any other party—*
- (a) *where he or she alleges knowledge, particulars of the facts on which he or she relies; and*
- (b) *where he or she alleges notice, particulars of the notice.*
- (5) *An order under this Rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.*
- (6) *Where the applicant for an order under this Rule did not apply by letter for the particulars he or she requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.*
- (7) *Where particulars are given pursuant to a request, or order of the Court, the request or order shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.*
- 39.** In the above circumstances, it is the finding of this Court that the Plaintiffs' must have, at the least, submitted to the Court any applicable evidence in an Affidavit in Response to the Defendant's Amended Summons, to satisfy this Court that the Plaintiffs' may have a reasonable cause of action against the named Defendants in this matter.
- 40.** Such evidence (if available), would certainly have helped this Court to deduce a reasonable cause of action against the named Defendants and to decide whether the named Defendants are at all times, proper and necessary parties to a dispute between the Plaintiffs' and the Defendants and whether the presence of the named Defendants' shall be necessary to ensure that all matters in the cause be effectively and completely determined and adjudicated and/or whether there exist a question or issue arising out of relating to or connected with any relief or remedy which in the opinion of the Court it would be just and convenient to determine the parties.
- 41.** Unfortunately, the Plaintiffs' have failed to submit any such evidence or particulars to this Court.

Relevant Law and the Analysis

42. The Defendants (1st to 3rd) grounds for making this application is that the Defendants' have been improperly joined to this proceeding. It is submitted that there's no cause of action disclosed against them to be joined to this proceeding in their personal capacity and as such the Statement of Claim is an abuse of the process.
43. The current application has been made pursuant to Order 15 Rule 6 (2) (a) of the High Court Rules 1988. The said Rules reads as follows,

Order 15 Rule 6

6.-(1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of any party; and the Court may determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

*(2) Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either **of its own motion or on application**—*

(a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;

(b) order any of the following persons to be added as a party, namely—

(i) any person who ought to have joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

44. As already elaborated in the foregoing paragraphs of this ruling, the current Statement of Claim fails to disclose a reasonable cause of action and/or any particulars as against any of the named Defendants' in this matter.

45. Moreover, the Plaintiffs' have failed to disclose any applicable evidence or facts that would show that the named Defendants' are at all times, proper and necessary parties to a dispute between the Plaintiffs' and the Defendants' and whether the presence of the named Defendants' shall be necessary to ensure that all matters in the cause be effectively and completely determined and adjudicated and/or whether there exist a question or issue arising out of or relating to or connected with any relief or remedy which in the opinion of the Court it would be just and convenient to determine between the parties.
46. In the above circumstances, it is clear that the named Defendants' in the current proceeding have been improperly joined. If there is no cause of action disclosed as against a Defendant, and the Plaintiff fails to satisfy the Court by way of evidence, in an interlocutory proceeding such as the current application before the Court, that there is, in fact, a real dispute between the Plaintiff and such named Defendant, the only logical conclusion the Court can arrive at is that there's a clear misjoinder with regard to such a Defendant.

Conclusion

47. Having considered the failure by the Plaintiffs' to satisfy the Court by way of facts and evidence as discussed in the foregoing paragraphs of this ruling, it is the considered view of the Court that the Plaintiffs' have manifestly failed to satisfy the Court that any of the named Defendants' in this matter are, in fact, proper and necessary parties to the alleged dispute.
48. Further, it is the considered view of the Court that having painstakingly gone through the ambiguous Statement of Claim, that the alleged dispute by the Plaintiffs' involves the Bank as a legal entity and not the named Defendants in their personal and/or official capacity, as the case may be.
49. This Court accordingly concludes that all named Defendants in this matter have been improperly and unnecessarily being made parties to the action and that it is in the interest of justice that they are ordered to be ceased as parties in this matter forthwith.
50. It is to be noted that although the 4th Defendant had not made any application pursuant to Order 15 Rule 6 (2) (a), the Court having carefully considered the Statement of Claim of the Plaintiffs' and all material before this Court, shall exercise its discretion under Order 15 Rule 6 (2) (a), on its own motion as against the 4th Defendant, as the Court finds it expedient in the given circumstances and that it shall be in the interest of justice to do so.

Orders

51. In consequence, the Court makes the following final orders.

1. The Amended Summons filed by the 1st to 3rd Defendants on 24/06/2024 is hereby allowed subject to the following orders of the Court,
2. The named Defendants' from First to Fourth are to cease as Defendants in this matter forthwith.
3. The names of all current Defendants from First to Fourth are struck out from this matter pursuant to Order 15 Rule 6 (2) of the High Court Rules 1988.
4. The Plaintiffs' shall, within 14 days from today (That is by 02/06/2025), duly file and serve a proper application if they intend to maintain this cause.
5. In failure to comply with the above order number (4), the Plaintiffs' pleadings shall stand struck out and the cause shall stand struck out and dismissed forthwith.
6. Plaintiffs' shall pay a total of \$ 1500.00 to the First to Third Defendants, as summarily assessed by the Court as Costs of this proceeding, within 21 days from today. (That is by 10/06/2025).



**At Suva,
19/05/2025.**

**L. K. Wickramasekara,
Acting Master of the High Court.**