

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. **HBC 219 of 2024**

IN THE MATTER of an Application to remove the Plaintiff's father's name from the Plaintiff's Birth Certificate and to make corrections thereon. This Application is made pursuant to the Inherent Jurisdiction of the High Court of Fiji.

BETWEEN: **TAINA ROKOTABUAVUKICAKE** of 12 Goundar Road, Martintar, Nadi, Student.

PLAINTIFF

AND: **THE REGISTRAR OF BIRTHS, DEATHS AND MARRIAGES** of Level 1, Suvavou House, Victoria Parade, Suva.

1ST DEFENDANT

AND: **THE ATTORNEY-GENERAL OF FIJI** of Levels 7 to 9, Suvavou House, Victoria Parade, Suva, being sued pursuant to section 12(2) of the State Proceedings Act.

2ND DEFENDANT

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Valanitabua S.R.** for the Plaintiff
 Mr. Ram V. for the Defendant

DATE OF JUDGMENT: 12th June, 2025

JUDGMENT

[Removal correction and issuance of Birth Certificate]

Introduction

1. The Plaintiff filed an Originating Summons coupled with an Affidavit in Support and sought for the following orders:
 - (a) An Order that the Plaintiff's Birth Certificate be corrected by the 1st and 2nd Defendants, whether jointly and/or severally, by removing the name of the Plaintiff's father therefrom.
 - (b) An Order that the Plaintiff's Birth Certificate be corrected by the 1st and 2nd Defendants, whether jointly and/or severally, by amending the names of Plaintiff's mother's Yavusa and Mataqali in the Plaintiff's Birth Certificate.
 - (c) An Order that the 1st and 2nd Defendants, whether jointly and/or severally, prepare and issue a new Birth Certificate for and to the Plaintiff with the corrections and amendments made in accordance with Oder 1 and 2 above.
 - (d) An Order as to Costs.
 - (e) And any other Order this Honorable Court may deem just.

Plaintiff's Contention

2. The Plaintiff was born within Wedlock and not registered in Vola Ni Kawa Bula [VKB]. Neither in her late father's Vola Ni Kawa Bula [VKB] nor in her late mother's Vola Ni Kawa Bula [VKB]. She is an unregistered iTaukei.
3. However, the Plaintiff was registered at birth at the Registrar of Births, Deaths and Marriage with the parent's name and issued with a Birth Certificate No. 407241.
4. The Plaintiff was neither registered in her father's nor in her mother's respective VKBs. The Plaintiff was taken to her mother's village, and she never has been to her father's village and is unknown at her father's village by her relatives.
5. The Plaintiff sought that her father's name as it appears in the Birth Certificate be removed and mother's name only remains recorded in her Birth Certificate.
6. Therefore, the name of the Plaintiff's mother's Yavusa and mataqali and iTokatoka in the Plaintiff's Birth Certificate need to be corrected and amended to, 'Yavusa Nauluvatu', mataqali Tunidau and iTokatoka Tunidau."

Defendant's Contention

7. The application and orders are sought pursuant to the Inherent Jurisdiction of this Honorable Court.
8. The First and Second Defendants filed an affidavit in Response and deposed that;
 - (a) The Defendants does not have the powers to remove the Plaintiff's father's name from the Birth Certificate,
 - (b) That any changes to the Birth Certificate has to be in accordance with **Section 16 of the Birth, Deaths and Marriages Registration Act 1925** [BDM] [Letter withdraw this part of the submissions in terms of Section of 16 of BDM], and
 - (c) Any changes to the Plaintiff's mother's details (Yavusa, Mataqali and Tokatoka) can corrected subject to the provisions of the VKB Certificate.
9. Both parties to the proceedings filed their respective written submissions and argued the matter before this Court orally.

Analysis and Determination

10. In essence, three (3) Orders are sought for by the Plaintiff in her Originating Summons which can be summarized as follows:
 - (i) The Plaintiff's Birth Certificate be corrected by removing the name of the Plaintiff's father,
 - (ii) Amending the name of the Plaintiff's mother's Yavusa and Mataqali from the Plaintiff's Birth Certificate, and
 - (iii) Issue a new Birth Certificate to the Plaintiff with corrections and amendments accordingly.
11. **Section 28 of the Births, Deaths and Marriages Registration Act 1975** deals with the 'Correction of errors in registers,' and states as follows: -
 - (a) no alteration in any such register shall be made except as authorised by the provisions of this Act;
 - (b) an error of fact or substance in any register may be corrected by an entry in the margin (without any alteration of the original entry) by the Registrar on payment of the prescribed fee and on production to him by the person requiring such error to be corrected of a declaration in the prescribed form setting forth the nature of the error and the true facts of the case, and, in the case of a birth or a death, made by two persons required by this Act to give information

concerning the birth or death with reference to which the error has been made and in the case of a marriage, by the parties to the marriage with reference to which the error has been made, or, in the absence of any such persons, then by two credible persons to the satisfaction of the Registrar having knowledge of the truth of the case, and the Registrar shall sign such marginal entry and shall add thereto the day and month and year when such correction is made;

(c) where an error of fact or substance (other than an error relating to the cause of death) occurs in the information given to a registrar by a magistrate concerning a dead body upon which he has held an inquest, or in the case of any dead body in respect of which a burial or cremation order has been issued, the magistrate or the person who issued the burial or cremation order may, if satisfied by evidence upon oath or a statutory declaration that such error exists, certify under his hand to the Registrar the nature of the error and the true facts of the case as ascertained by him on such evidence, and the error may thereupon be corrected by the Registrar in the register by entering in the margin (without any alteration of the original entry) the facts as so certified by such magistrate or other person, and the Registrar shall sign such marginal entry and shall add thereto the day and month and year when such correction is made; and

(d) the Registrar shall forthwith upon making any correction in accordance with any of the provisions of this section in any register of births, deaths or marriages send to the appropriate divisional registrar particulars of such correction and the divisional registrar shall enter and sign an identical entry in the duplicate register of the birth, death or marriages with reference to which the correction has been made."

12. No doubt the Plaintiff was born within the Wedlock and the initial Birth Registration of the Plaintiff was done by the Plaintiff's mother, Mereoni Vacalebaca on 11th June 1974 at Lautoka and a true copy was extracted on 29th June 2023. The Birth Certificate carries full details of Applicants' Birth date, both names, information and registration respectively.
13. Upon Examination of the Plaintiff's Birth Certificate, it confirms that the information provided to the Registrar of Births, Deaths and Marriages for the registration of the Plaintiff's Birth was done in good faith in accordance with the law in order to provide for the registration and issuance of Birth Certificate accordingly.
14. It is now only an afterthought that the Plaintiff has decided to make this application and seek for the removal of the Plaintiff's father's name, amendment to the Plaintiff's mothers Yavusa and Mataqali and issuance of a new birth certificate to the Plaintiff with the amended information accordingly.
15. Upon a careful read of **Section 28 of the Births, Deaths and Marriages Act 1975**, that Section empowers the Registrar to correct errors upon receiving evidence and such amendments are only limited to clerical or factual errors, not discretionary changes based on preferences.

16. Further, any corrections to the mother's details in the Plaintiff's Birth Certificate shall be made by the Registrar, upon the Plaintiff satisfying the statutory declaration requirements with credible documentation and evidence, including in full the Vola Ni Kawa Bula [VKB] Certificate to the Registrar.
17. However, **Section 28 of the Births, Deaths and Marriages Act 1975** does not provide one way or the other for the removal of the father's names from the Plaintiff's for the Certificate as sought for herein in the current application.
18. If I may add, **Section 28** allows for the correction of error on the Birth Certificate and does not confer power on this Honorable Court in terms of the usage and application of its powers from the Inherent Jurisdiction in order to direct the Registrar to amend the Plaintiff's mothers Yavusa and Mataqali in the Plaintiff's Birth certificate.
19. Bearing above in mind and the operations and context of Section 28 of the Births, Deaths and Marriages Act, 1975.
20. I cannot accede to the application of the Plaintiff seeking for the Orders and relief therein.
21. I reiterate that the Registrar is powered under **Section 28 of the Births, Deaths and Marriages 1975** to carry out any corrections to errors limiting it to clerical or factual errors, not discretionary changes in nature based on preferences.
22. Further, upon satisfying the statutory requirements with credible evidence and documentations including the Vola Ni Kawa Bula [VKB] Certificate the Registrar is empowered to make any corrections to the Plaintiffs mother's details.
23. **Provisions of Section 28 of Births, Deaths and Marriages 1975** does not provide for the removal of the father's name from the Plaintiff's Birth Certificate, rather allows for the Corrections, clerical and/or factual and not otherwise.
24. Further any error or fact or substance in any Register at the Birth, Deaths and Marriage may be corrected by an entry in the margin (without any alteration of the original entry by the registrar.
25. With the exception of the authorization by the provisions of **Section 28 of Births, Deaths and Marriages Act 1975** with regards to the correction of error in Registrar of Birth, Deaths and Marriages, no alteration is permissible.
26. For the aforesaid rational, the Plaintiff's originating summons fails and is accordingly dismissed in its entirety.

Costs


27. The Plaintiff to pay the Defendants a sum of \$2,000 as summarily assessed costs since the application in the Originating Summons was heard and determined on the substantive written and oral submissions and arguments taking up Courts time.

Orders

- (i) The Plaintiff's Originating Summons is dismissed in its entirety.
- (ii) The Plaintiff to pay the Defendants summarily assessed costs of \$2,000 within 14 days' time frame.
- (iii) File is closed with orders intact.

Dated at **Suva** this **12th** day of **June** , 2025.




VISHWA DATT SHARMA
PUISNE JUDGE

CC: Ratumaiyale Esquire, Suva
Attorney General Chambers, Suva