

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 097 of 2024
[In the High Court at Suva Case No. HBC 323 of 2023]

BETWEEN : **ALL OCCUPIERS AND/OR TENANTS AND/OR FAMILY MEMBERS OF MAIMUN NISHA AKA MEHMUN NISHA** of 21 Nasilivata Road, Nadera, Suva, property described as Certificate of Title No. 17598 being Lot 21 on Deposit Plan No. 4257 situated in the District of Naitasiri on the island of Viti Levu.

Appellants
[Original Defendants]

AND : **MOHAMMED FAROOQ AKA MOAHMMED FAROOD** of 31 Greenmeadows Ave Manurewa, Auckland, New Zealand, Taxi Proprietor.

Respondent
[Original Plaintiff]

Coram : Prematilaka, RJA

Counsel : Ms. C. Naicker for the Appellants
Mr. Sunil Kumar for the Respondent

Date of Mention : 06 June 2025

Date of Ruling : 25 June 2025

RULING IN CHAMBERS

[1] This court has already made the following orders in its Ruling dated 14 April 2025¹:

- ‘[1] *The application by the appellant to withdraw/discontinue the appeal is allowed.*
[2] *Appeal is accordingly dismissed in terms of section 20(1)(h) of the Court of Appeal Act.*

¹**All Occupiers and/or Tenants and/or Family Members of Maimun Nisha v Farooq** [2025] FJCA 62; ABU097.2024 (14 April 2025)

- [3] *Appellant should pay \$1500.00 within a month from today as costs in the High Court to the respondent.*
- [4] *No costs ordered in these proceedings.*

- [2] By a letter addressed to the Court of Appeal Registry, the counsel for the respondent has pointed out that in Order [3] for costs of \$1500.00 to be paid to the respondent by the appellant is based on the wrong High Court Judgment – HBC 133 of 2017² attached to his affidavit by the appellant whereas the judgment the appellant had sought enlargement of time to appeal in these proceedings is HBC 323 of 2023³ which has not been submitted to this court.
- [3] Upon the perusal of the appellant's summons and the affidavit, I find that the caption in the summons and affidavit mentions the judgment sought to be appealed as HBC 323 of 2023 whereas the body of the summons is silent on the identity of the impugned judgment. Nor does the body of the affidavit identify the judgment except to say that the judgment being challenged is attached as 'MY1' which is a judgment dated 13 February 2024 in HBC 133 of 2017. In HBC 133 of 2017, the costs ordered is \$1000.00 whereas in HBC 323 of 2023 the costs ordered against the appellant is \$3000.00. The counsel for the appellant admitted this error in court on 06 June 2025 and agreed to pay \$3000.00 as costs in the High Court ordered to be paid to the respondent. Both counsel agreed that the costs could be paid in three months.
- [4] Thus, the appellant having carelessly attached a copy of the wrong judgment resulted in this court ordering only \$1500.00 as the costs in the High Court to be paid by the appellant to the respondent.
- [5] Therefore, I rectified the order [3] in the Ruling dated 14 April 2025 and directed the appellant that \$3000.00 should be paid to the respondent within 03 months from 06 June 2025. The following is the amended order [3] which should be deemed to be part and parcel


² **Farood v Nisha** [2024] FJHC 86; HBC133.2017 (13 February 2024)

³ **Farooq v All Occupiers and/or Tenants and/or Family Members of Maimun Nisha** [2024] FJHC 569; HBC323.2023 (24 September 2024)

of the Ruling on 14 April 2025. The order [3] in the Ruling dated 14 April 2025 is accordingly replaced by the amended order [3] below. There is no other change to the Ruling dated 14 April 2025 or other orders therein.

‘[3] Appellant should pay \$3000.00 within 03 months from today as costs in the High Court to the respondent.




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Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL

Solicitors:

Nambiar Lawyers for the Appellants
Sunil Kumar Esquire for the Respondent