

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA**

Civil Action 147 of 2007

BETWEEN : **MAINLINE HARVESTING (FIJI) LIMITED** a limited liability
its registered officer Road, Vitogo, Lautoka.

Plaintiff

AND : **FIJI SUGAR CORPORATION LIMITED** a duly incorporated
company having its registered office at Suva.

Defendant

R U L I N G

1. I have before me an application by the plaintiff to reinstate this action. The application was filed on 27 March 2012 pursuant to the inherent jurisdiction of this court. The plaintiff does not cite any particular provision of the High Court Rules 1988 to support his application.
2. This action was struck out by Master Udit on 10 February 2009 pursuant to Order 25 Rule 9 following a Notice To Show Cause dated 17 December 2008 which was duly served on the plaintiff, and on which the plaintiff had fallen short.
3. Notably, the plaintiff had failed twice to comply with three orders to file summons for directions. The first order was of Madam Justice Phillips on 13 July 2007, the second was on 28 September 2007, and the third was by Master Udit on 26 November 2012.
4. Following the striking out by Master Udit in February 2009, the plaintiff then waited for some two and a half years to apply to reinstate the matter.
5. That application was made on 12 August 2011. However, it was dismissed on 23 September 2011 for non-appearance of plaintiff's counsel.
6. The plaintiff then, through its counsel, filed a second application on 12 October 2011 to reinstate the Motion that was struck out on 23 September 2011. This second application was also dismissed on 03 November 2011 due to no appearance by plaintiff's counsel.
7. The third application was filed on 27 March 2012 to reinstate the Motion that was struck out on the last occasion. It is this third application which I am dealing with now.

8. The Fiji Court of Appeal has stated repeatedly that a decision to strike out a matter for want of prosecution pursuant to Order 25 Rule 9 must be appealed because the Court which dealt with it has no jurisdiction to reinstate it or to review its own striking out order (**Trade Air Engineering (West) Ltd v Taga** 2007 FJCA 9 ABU62J2006 (09th March 2007); **Indar Deo v The Fiji Times Limited** Civil Appeal No. AAUU0054 of 2007S (03rd November 2008)).
9. Accordingly, I must hold that all the applications filed by the plaintiff in this case have been rather misdirected.
10. If I might add, even if this court were to have jurisdiction, I would still have refused it because of the plaintiff's consistent disregard of Court directions and non-appearance. Furthermore, the affidavit filed in support of the plaintiff's application does not disclose why the plaintiff took so long to apply to reinstate the matter in August 2011.
11. In any event, there is material placed before me in the affidavit of Lawrence Fung, a solicitor in the firm of Munro Leys, that an Order to Wind Up the plaintiff company was made by Master Udit on 25 March 2009 in Winding Up Cause 64 of 2008. There is no evidence before me to indicate that the Official Receiver has consented to the plaintiff continuing this action.
12. After taking all the above into account, I dismiss, yet again, the plaintiff's application to reinstate the matter.
13. There is a submission before me that the defendant has already incurred \$7,749.90 in solicitor costs in defending these applications. I award costs to the defendant which I summarily assess at \$3,000 (three thousand dollars).



Anare Tuilevuka
JUDGE
11 May 2016.