

In the High Court of Fiji  
At Suva  
Civil Jurisdiction

Companies Action No. HBC 14 of 2021

IN THE MATTER OF NAWI ISLAND PTE LIMITED

Nawi Island Pte Limited

Plaintiff

v

FUJI Xerox Business Centre Fiji (Pte) Limited

Defendant

Counsel: Mr M. Chand for the plaintiff  
Mr H. Robinson with Ms A. Sumer for the defendant  
Date of hearing: 13<sup>th</sup> May, 2022  
Date of Ruling: 7<sup>th</sup> July, 2022

**Ruling**

1. The plaintiff, in its originating summons seeks that the statutory demand served on the plaintiff be set aside.
2. On 14<sup>th</sup> June, 2022, the Master had made Order as follows: (1)By consent, defendant's counsel to file notice of appointment by close of business;(2) defendant to file and serve its answering affidavit,(AA) on or before 23/6/21;(3) a reply, if necessary, by 07/07/21;(4)...: and, (5) written submissions to be filed and served on or before 26/7/21.

3. In this summons, the plaintiff seeks that the AAs filed by the defendant be struck out and expunged on the grounds that :
  - a. the AA of 23 June, 2021, is defective, not an original affidavit and was served late by registered post to the plaintiff on 2 July, 2021, and received on 8 July, 2021.
  - b. the defendant did not obtain leave to file the AA of 6 July, 2021, which has not been served on the plaintiff.

***The determination***

4. The affidavit in support of the summons filed by an in-house counsel of the plaintiff states that the AA filed by the defendant in the Registry on 23<sup>rd</sup> June, 2021, was sent late to the plaintiff by registered post on 2 July, 2021. An uncertified “*purported*” AA was received on 8<sup>th</sup> July, 2021. The defendant has not provided any reasons for delaying for 10 days to serve the AA on the plaintiff by registered post, contrary to directions given by Court. It is also contended that the AA filed is a tempered document containing computer print outs and photocopies of annexures. In July, 2021, the defendant filed an “*original*” AA in opposition without explanation and leave of Court. A copy was not served on the plaintiff. The plaintiff “*refused to accept late service (because that shortened (their) time to file a reply and submissions) and .advised Ms. Sumer.. to seek the Court’s directives to serve their affidavit late*”.
5. The affidavit in opposition filed by a clerk of the defendant’s solicitors states that on 23<sup>rd</sup> June, 2021, Ms Sumer, counsel for the defendant asked Mr Chand, counsel for the plaintiff if she could email a copy of the AA filed. Mr. Chand requested to be served on the island. Ms Sumer tried to effect service on 26<sup>th</sup> June, 2021, at the Savusavu marina, as the bailiff or any personal service was not allowed on Nawi Island, registered office of the plaintiff. Mr Chand refused late service and service had to be effected by registered post. The plaintiff was never prejudiced. Ms Sumer consented to the late filing of the plaintiff’s reply.
6. The plaintiff’s riposte is that the defendant did not try to effect service at the Savusavu Marina. There is no correspondence, sms, or call log in that regard nor evidence that Ms Sumer tried to effect service. The defendant’s solicitors, Gibson & Co. had approval to enter Nawi Island to serve documents and still do. The plaintiff never refused to accept service.

7. The reply filed on behalf of the plaintiff states that on 14<sup>th</sup> June, 2021, the Master did not allow the defendant to file a scanned copy of the AA nor was such an arrangement agreed to.
8. I reproduce an excerpt from the transcript of the recording of the proceedings of 14<sup>th</sup> June, 2021:  

*Master* : *Ms. Sumner are you able to file an answering affidavit within 7 days?*

*Ms. Sumner* : *Madam I can try because we have to send our documents to Suva.. and CDP is taking delay.. but we can try within 7 days*

*Mr. Chand* : *Madam if it helps I have no issues if they can file a softcopy in an annexing affidavit and as the original arrives they can file, there's no issue*
9. The reasons given by the plaintiff for the delay in service are disputed. Contrary to Ms Sumer's contention, I am informed that there were no Covid restrictions for delivery of documents by CDP to Labasa.
10. Be that as it may, in my view, the issue is whether the plaintiff has been prejudiced by the delay in service. The only reason given by the plaintiff is that it has not been able to file a reply due to the unexplained delays and defects in the AA.
11. I do not find that the plaintiff has been prejudiced. The plaintiff can be given time to file its reply.
12. The plaintiff contends that the defendant has not filed an Acknowledgment of Service or Notice of Intention. I find that an Acknowledgment has been filed
13. The plaintiff's summons is declined with costs.
14. I make order that the defendant serve the affidavit in opposition filed in Court on 1 July, 2021, by registered post to the defendant on or before 28th July, 2022.

15. **Orders**

- a.* The plaintiff's summons of 13<sup>th</sup> July, 2021, is declined.
- b.* The defendant shall serve the affidavit in opposition filed in Court on 1 July, 2021, to the plaintiff by registered post on or before 28th July, 2022.
- c.* This matter is to be called before the Master thereafter on a date for further directions.
- d.* The plaintiff shall pay the defendant costs summarily assessed in a sum of \$ 750.00 within 15 days of this Ruling.



*A.L.B. Brito-Mutunayagam*  
A.L.B. Brito-Mutunayagam  
JUDGE  
7<sup>th</sup> July, 2022