

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

**CIVIL ACTION NO.: HBC 322 of 2019**

**BETWEEN : EPELI ROKOTUIBETE and TEMALESI  
DAWAINAKALI  
PLAINTIFFS**

**AND : GOUNDAR SHIPPING LIMITED  
DEFENDANT**

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**APPEARANCES/REPRESENTATION**

**PLAINTIFFS : Mr. Valenitabua [Toganivalu & Valenitabua Lawyers]**

**DEFENDANT : Ms Kirti with Ms Begg [Reddy and Nandan Lawyers]**

**RULING BY : Acting Master Ms Vandhana Lal**

**DELIVERED ON : 18 March 2022**

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**RULING**

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1. The Defendant seeks orders to have the claim against it struck out on the grounds "*that it is scandalous, frivolous or vexatious, may prejudice, embarrass or delay the fair trial of the action and/or is otherwise an abuse of the court process*".
2. According to the Defendant, the Plaintiff had earlier filed a proceeding with the Suva Magistrate Court being Civil Action No. 227 of 2014.

The proceeding was based on the same transaction and facts as in the current proceedings.

On 04<sup>th</sup> December 2017 the Magistrates Court action was struck out.

On 17<sup>th</sup> May 2018 the Plaintiff filed application for reinstatement and later on 18<sup>th</sup> September 2019 the application was struck out due to lack of instruction by the Plaintiff to its solicitors.

The Defendant further states that the Plaintiff is guilty of abuse of court process and laches as the matters being raised herein was raised in the Magistrate Court.

The Defendant claims to be prejudiced if the action is not struck out.

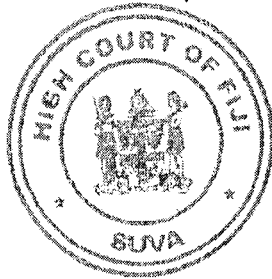
3. In the current proceeding a claim was filed on 24<sup>th</sup> September 2019 claiming damages for losses and damages suffered by Plaintiffs severally and/or collectively when their motor vehicle a 2-tonne carrier registration No. RSL 483 was crushed beyond repair in the MV Lomaiviti Princess 1 between 22<sup>nd</sup> and 23<sup>rd</sup> December, 2013 when another vehicle registration No. DJ 591 a 5-tonne truck overturned and landed on RSL 483 crushing the same.
4. I had called for the Magistrate Court file record and make following observation of the proceedings held at Magistrates Court:
  - *The Plaintiffs are same as in the current proceedings;*
  - *The Second Defendant in the Magistrates Court proceeding is the Defendant in current proceeding;*
  - *The owner of vehicle DT 591 was named as the First Defendant in the Magistrates Court proceeding but is not sued in the current proceeding;*
  - *The claim was for \$17,020 plus general damages from the same incident as outlined in the current proceedings;*

- *On 27<sup>th</sup> March 2015, the claim was struck out for non-appearance of the Plaintiffs and/or their solicitors;*
- *On 24<sup>th</sup> August 2015, the Plaintiffs solicitors filed for reinstatement of the matter;*
- *The records are not clear when the matter was reinstated;*
- *Court records from 25<sup>th</sup> August 2015 till 13<sup>th</sup> November 2015 shows the Defendants were objecting to the application and were to file response.*
- *From 06<sup>th</sup> January 2016 the matter was adjourned for the defence to be filed;*
- *Later on 05<sup>th</sup> February 2016 the Plaintiffs solicitors filed an application seeking orders that statement of defence and counterclaim of the First Defendant be dismissed;*
- *The Court on 19<sup>th</sup> August 2016 delivered its ruling dismissing the said application and also striking out the claim for non-appearance by the Plaintiff;*
- *On 17<sup>th</sup> May 2018 the Plaintiff filed an application for reinstatement of the matter;*
- *On 18<sup>th</sup> September 2019, the application was withdrawn and the Court struck out the motion and had closed the file.*

5. The Plaintiffs have failed to explain why they did not have the Magistrates Court Action reinstated and why they withdrew their application for reinstatement. Neither has the

Plaintiff explained why instead of pursuing with the Magistrates Court Action they have initiated proceedings in the High Court.

6. I agree with the Defendant that the claim is indeed an abuse of the court process.
7. Hence the Writ filed on 24 September 2019 is struck out pursuant to Order 18 Rule 18(1)(d) of the High Court Rules with cost against the Plaintiffs summarily assessed at \$850 and to be paid within 14 days from to-date.



  
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**Vandhana Lal [Ms]**  
Acting Master  
At Suva.

**TO:**

1. **Suva High Court Civil Action No. HBC 322 of 2019;**
2. **Toganivalu & Valenitabua Lawyers;** Solicitors for the Plaintiffs;
3. **Reddy and Nandan Lawyers,** Solicitors for the Defendant.