

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

CIVIL ACTION NO. HBC 193 OF 2020

BETWEEN : **JUXTA BEACH (FIJI) PTE LIMITED**, a limited liability company having its registered office at Lot 17, Ellis Place Fantasy Subdivision Wailoaloa Nadi

PLAINTIFF

AND : **HASRAT BEGG T/A HASRAT RASHIDUN FAUZAN INVESTMENTS (HRF INVESTMENT CO.)** having their principal place of business of registered office at Lot 2, SO4308, Nasou, Meigunyah, Nadi

DEFENDANT

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Mr. Narayan. A. (snr) with Ms. Lata, for the Plaintiff
Ms. Tunikula J, for the Defendant

DATE OF TRIAL : 4th & 5th July, 2023.

WRITTEN SUBMISSIONS: On 1st August 2023 closing submissions by the Plaintiff.
On 21st August 2023 closing submissions by the Defendant.
On 18th September 2023 reply submissions by the Plaintiff.

DATE OF JUDGMENT : 17th May 2024.

JUDGMENT

A. INTRODUCTION:

Statement of Claim.

1. The Plaintiff, Juxta Beach (Fiji) Pte Limited, in its writ of Summons and the Statement of Claim (SOC) filed on 19th August 2020, averred, *inter alia*, that on or about 29th April 2019, its Director Mr. Abbas Ali, and the Defendant Mr. Hasrat Begg, trading as Hasrat Rashidun Fauzan Investments (HRF Investments), entered into a contract part in oral and part in writing for the supply of gravel and execution of earth moving works by the Defendant unto the Plaintiff, in consideration of payment of the sum of \$50,000.00 (Fifty Thousand Dollars) by the Plaintiff.
2. The Agreement was for the supply of approximately 2,500 cubic meters of gravel of a proper engineering standard, which are recommended for road works, at the Plaintiff's site in Meigunyah, Nadi, at the rate of \$20.00 per cubic meter, within 2 months from 29th April

2019 and the full payment to be made in advance, which was duly paid by the Plaintiff through a cheque and received by the Defendant on 29th April 2019.

3. The Plaintiff alleges that in breach of the Agreement, the Defendant failed to perform the Agreement, did not supply and/or deliver any gravel to the Plaintiff or undertake any earth works as agreed and there has been a total failure of consideration for the payment made by him, notwithstanding the requests to perform or to refund the payment.
4. Accordingly, the Plaintiff prayed for the following reliefs;
 1. *Judgment in the sum of FJ\$50,000.00 (Fifty thousand dollars) representing the payment in paragraph 2 above;*
 2. *Judgment for the difference in price of gravel in the sum of \$601.87 and pursuant to paragraph 5 (ii) above;*
 3. *interest at the rate 13.5% per annum on the sum of FJ\$50,000.00 (Fifty thousand dollars) from 30th June 2019 to the date of satisfaction of the amount in full under the Law Reform (Miscellaneous Provisions) (Death and Interest) Act for loss of use of the money;*
 4. *General damages for breach of contract in the sum of \$22,530.00 pursuant to paragraph 5 (iii) above;*
 5. *Compensation under section 147 or any other provision of the Fijian Competition and Consumer Act 2010 as this Honourable Court deems just;*
 6. *Costs of this action on a full Solicitor/Client indemnity basis;*
 7. *Such further or other relief as the Honourable Court deems fit, just and expedient.*

Statement of Defence:

5. The Defendant in his Statement of Defence (SOD) filed on 24th September 2020, by denying the contents of paragraphs 1(i) - (v), 3, 4, 5, 6,7 & 8 of the SOC, put the Plaintiff for strict proof of the contents therein and moved for the dismissal of the Plaintiff's action.

Counter Claim:

6. As per the paragraph 2 of the SOD, having admitted the receipt of \$50,000.00 from the Plaintiff on 29th April 2019, the Defendant took up a position that he had done "**excavation works and leasing of heavy vehicle machinery**" unto the Plaintiff to the value of total sum of **\$92,597.00** and after giving credit to the said payment of **\$50,000.00** by the Plaintiff on 29th April 2019, a sum of **\$42, 622.00** remained due from and owed by the Plaintiff to him and he accordingly issued the invoice **No-623** dated **20th May 2020**, which is pleaded his counter claim.
7. As per paragraph 14 of the SOD, the Defendant claims that he performed the aforesaid excavation works and leasing of machineries to the Plaintiff from 16th April 2019 to 20th May 2019. The particulars of the, purported, values and periods of the works, he claims to have performed, are as follows.

- a. *From 16th April 2019 to 1st May 2019 -----\$ 21,657.00.*
- b. *From 2nd May 2019 to 11th May 2019\$ 28,620.00.*

c. From 11th May 2019 to 20th May 2019..... \$ 42,320.00.

Total

\$ 92,597.00.

8. The Defendant has also averred, that from the remaining sum of \$42,662.00, a further sum of \$10,000.00 was also paid by the Plaintiff, through a cheque on 23rd May 2019, and it was paid only on admission of the liability by the Plaintiff for the said sum of \$42,622.00. He alleged that the payment for the said cheque was stopped by the Plaintiff on the allegation that the Defendant had stopped work from 8th May 2019. The Defendant added further that the said sum was demanded by his Solicitors in their letter of demand dated 11th July 2019 sent to the Plaintiff's Solicitors, namely, A. K. Lawyers (Vide document #13 in 1st Agreed Bundle).
9. Notably, though the Defendant had pleaded a counter claim as aforesaid for the sum of \$42,622.00, he did not move for any relief in his prayer to the SOD on his purported counter claim, except for moving for the dismissal of the Plaintiff's action
10. In its reply to Defence and Defence to Counter Claim filed on 21st October 2020, the Plaintiff averred, *inter alia*, that prior to this Agreement on 29th April 2019, by a separate Agreement it had hired the Defendant for the excavation works and leasing of machinery at **Meigunyah on 28th January 2019**, and when it required the Defendant's services, it had contracted with the Defendant in similar manner for around 6 years in the past for various projects. The Plaintiff added further that on account of Excavation works and for the leasing of vehicles and Machinery, the Defendant had issued three (3) invoices bearing Nos; 603, 605 & 608 dated 17th April 2019, 2nd May 2019 and 8th May 2019 respectively and those were duly paid after deducting the advance payments he had made for the fuel in a sum of \$5,000.00 on 28th January 2019 and \$10,000.00 on 17th April 2019.
11. The Plaintiff also averred that **no** excavation works were carried out by the Defendant since 8th May 2019, the, purported, invoice number **623 dated 22nd May 2019** was never issued, it is a fabricated one, no invoice was issued by the Defendant for \$50,000.00 as well, and by 8th May 2019 it had paid the Defendant on 3 invoices a total sum of \$46,713.00 for excavation works and leasing of Machineries as agreed on 28th January 2019.
12. The Plaintiff reiterated that the advance payment of \$50,000.00 on 29th April 2029 was for the supply of gravel and it was paid in advance to assist the Defendant with the deposit to purchase a Cane Harvester for the Defendant from India. Further, as the Defendant had requested for another advance of \$20,000.00 on 21st May 2019 stating that his Bulldozer had broken down, though he had initially declined to give, subsequently a cheque was drawn only for \$10,000.00 and released to the Defendant's wife on 23rd May 2019. However, the payment for the said cheque was stopped as the Defendant had already stopped excavation work on 8th May 2019.
13. The plaintiff averred further, that the letter of demand dated 11th July 2019 for the payment of \$42,622.00 was received from the Defendant's Lawyers (Lal Patel & Bale

Lawyers) only after the Plaintiff's Lawyers (AK Lawyers) issued a Demand Notice on 3rd July 2019 for the said \$50,000.00. (Vide document # 12 & 13 in the 1st Agreed Bundle of Document). Accordingly, the Plaintiff moved to dismiss the statement of Defence and the Counter claim filed by the Defendant.

14. In his Reply to the Plaintiff's Defence to the Counter claim filed on 9th November 2020, the Defendant has taken up the position, inter alia, that it was after he issued the invoice No-623 dated 20th May 2020 for the sum of \$42,622.00, and in admission of the said arrears, the Plaintiff made a part payment vis a cheque for the sum of \$10,000.00, which was dishonored and as a result he ceased from doing further works.

B. PTC MINUTES:

15. As per the Pre-Trial Conference Minutes, parties recorded the following agreed facts and issues:

Agreed Facts

1. *The Plaintiff paid the sum of \$50,000.00 to the Defendant on 29th April 2019.*
2. *The Plaintiff hired the service of the Defendant on or about January 2019 for excavation works.*

Agreed Issues

16. Out of 47 Agreed issues, most issues appear to be redundant. Hence, I shall not reproduce the whole issues here, except for highlighting those pivotal issues in a separate paragraph below.

C. THE TRIAL:

Witnesses:

17. At the trial held on 4th & 5th July 2023, the Managing Director, namely, **Mr. Abbas Ali**, of the Plaintiff Company, **Mr. Mohamed Faroon** - the Operation Manager of the Plaintiff Company, **Ms. Sunita Ben Raniga**, Supervisor from the Bank of Baroda- Nadi Branch, **Mr. Krishan Avikash Pillay** - Business Analyst from Bread Bank, and **Mr. Avneet Avneel Kant**- Relationship and Sales Officer from Fiji Development Bank - Nadi Branch, gave evidence for and on behalf of the Plaintiff as "**PW-1**" to "**PW-5**" respectively. The Defendant **Mr. Hazrat Beig**, **Mr. Umesh Gounder**- former Driver and Forman under the Defendant gave evidence for and on behalf of the Defendant as DW-1 & DW-2 respectively.

Exhibits Marked

18. On behalf of the Plaintiff, exhibits from "PEX-1" to "PEX-14" (PEX-14 consisting of 4 invoices, including the disputed invoice No-623) were marked through the respective witnesses, while the exhibits "DEX-1" and "DEX-2" were marked through the Defendant.

The Agreed Bundles:

19. Parties had submitted two (2) Agreed Bundles of Documents, the 1st one comprising of 14 documents enumerated bellow.

1. *Company Registration of Juxta Beach (pte Limited (the Plaintiff Company)*
2. *Company Registration of HRF Investment Co. (The Defendant)*
3. *HRF Investment Co Invoice No- 603.*
4. *Copy of HFC Bank Cheque No-777167 from Juxta Beach (fiji) Pte Limited to HRF.*
5. *Copy of payment Voucher issued by Juxta beach pte Ltd to HRF investment Co for \$50,000.00.*
6. *Copy of HRF Investment Co. Invoice No. 605.*
7. *Copy of payment Voucher issued by Juxta beach Pte Ltd to HRF investment Co for a sum of \$18,453.00.*
8. *Copy of HRF Investment Co Invoice No-608.*
9. *Copy of payment Voucher issued by Juxta Beach (fiji) Pte Limited to HRF Investment Co for \$13,260.00.*
10. *Copy of HFC Bank Cheque No-777195 from Juxta Beach (fiji) Pte Limited to HRF Investment Co.*
11. *Copy of payment Voucher issued by Juxta Beach (fiji) Pte Limited to HRF Investment Co for \$10,000.00.*
12. *Copy of Demand Notice from AK Lawyers to Investment Co dated 3/07/20219.*
13. *Copy of Demand Notice from Lal Patel Bale Lawyers to AK Lawyers dated 11th July 2019.*
14. *Copy of Statutory Demand to Juxta Beach (fiji) Pvt limited*

The 2nd Agreed Bundle of Document had three (3) exhibits as follows.

1. *Affidavit in support of Originating summons in Action No- HBM 29 of 2019 filed on 24.07.2019.*
2. *Affidavit in Reply in Action No- HBM 29 of 2019 filed on 13.08.2019.*
3. *Affidavit of Abbas Ali in Response in Action No; HBM 29 of 2019 filed on 17.09.2019.*

Notice to Produce & Subpoena.

20. Prior to the trial that stood fixed for 3rd, 4th & 5th of July 2023, the Plaintiff's Solicitors on 22nd June 2023 had caused to issue a SUBPOENA DUCES TECUMS on the Defendant and 3 Banks, in which the Defendant maintains his Accounts. Further, a NOTICE TO PRODUCE was also issued requiring the Defendant and/ or his Solicitors to produce several documents, files, and correspondence, such as Tax Invoice Books (including the invoice bearing Nos - 603,605,608 and 623), Copies of Vat Returns, Sales Register, Financial Statement, Details of Purchase/ Financing & Registration of the Cane Harvester, and Bank Statements from 3 different Banks, all in relation to the Defendant's Business trading as "Hasrat Rashidun Fauzan Investments" (HRF Investments Co).

21. Accordingly, when the matter came up for trial on 3rd July 2023, counsel for the Defendant raised preliminary issue whether or not the Defendant could be forced to produce the documents enumerated in the said Notice to produce. The Court, having heard both the counsel on this issue, by ruling dated 4th July 2023, overruled the objection and ordered

the Defendant to produce the documents mentioned in paragraphs 1,2,3,4 & 5 of the Notice to produce. However, in compliance of the Order, the Defendant produced only the relevant Invoice Book, which contained, among others, the carbon copies of Invoice Nos. 603, 605, 608 & 623, with which the Plaintiff's Counsel was agreeable to proceed with the trial, without the other documents being produced.

22. In order to avoid the production of those documents at the trial, the Defence Counsel put forward several reasons such as that the documents were initially inspected by the Plaintiff's Counsel Ms. N. Samantha, and no request was made for the production or disclosure at that time, those documents are voluminous, those are not pleaded and the Defendant has already issued the originals of the Invoices to the plaintiff. I found none of those reasons were sustainable to be excused from producing those documents.
23. I also found that the documents that were called to be produced at the trial were crucial for the ascertainment of the truth at the trial, Particularly, when the Defendant had taken up a position, in paragraph 14 of the SOD, that during the time material, he had rendered services for a total sum of \$92,597.00, for which sums, according to the Plaintiff, no Invoices had been issued. It was also important to have those documents before the Court when the plaintiff had taken up a stern position that the, purported, Invoice No-623 dated 22nd May 2019 was a fabricated one, it was never ever issued at all and the counter claim made relying on it was only an afterthought by the Defendant.
24. The production of the relevant Bank Statements by or on behalf of the Defendant, or alternatively calling the relevant witnesses from the respective Banks to give evidence by producing relevant particulars from the bank books was also warranted for an impartial determination of the claim and the counter claim advanced by the Plaintiff and the Defendant respectively.
25. I found that no prejudice would be caused to the Defendant due to the production of the particular invoice book, which had the carbon copies of 3 actual invoices, admittedly, issued, that of the disputed invoice No-623, which the Defendant claimed that he has issued. The relevant Bank statements also could not have taken the Defendant by surprise or caused any prejudice to him as he was privy to those documents and his Counsel was at liberty to cross examine the Bank Witnesses, through whom those were to be produced.
26. The documents sought to be produced through the Notice to produce were "**Pex-11**" Statement from Bank of Baroda, "**Pex-12**" Statement from Bread bank, "**Pex-13**" Statement from Fiji Development Bank, all in relation to the Defendant's Business trading as "HRF Investments", and the Invoice Book marked as "**Pex-14**", which contained the pink and yellow copies of the Invoices bearing No- 603 dated 17th April 2019, No- 605 dated 02nd May 2019, No-608 dated 8th May 2019 and the disputed Invoice No-623 dated 22nd May 2019.
27. When I made the Ruling on 4th July 2023, I found that, it is the disputed invoice number 623 dated 22nd May 2019, that would play the crucial role at the trial in deciding the propriety of the Defence and the Counter claim advanced by the Defendant. Thus, I now,

by giving the above reasons, justify my ruling dated 4th July 2023, made directing the Defendant to produce those documents and to call those witnesses.

D. ANALYSIS:

28. I find that the parties have recorded two (2) agreed fact in the PTC minutes to the effect that the Plaintiff paid a sum of \$50,000.00 unto the Defendant on 29th April 2019, and the Plaintiff had hired the services of the Defendant on or about January 2019 for the excavation works, which is, undisputedly, distinct from the supply of gravel agreed upon on 29th April 2019.
29. Careful perusal of the Defendant's pleadings, omissions (as highlighted in paragraph 10.1 & 10.2 of the Plaintiff's written submissions), his evidence in chief and answers under cross examination clearly show that number of other facts also are not in dispute, which has boiled down the number issues to be tried hereof. Those undisputed fact, inter alia, are;
- A. *The parties had an existing relationship based on works carried out by the Defendant for the Plaintiff in its various projects since 2012.*
 - B. *The Defendant was engaged by the Plaintiff for excavation works to form a road in the Plaintiff's Meigunyah sub division in or around January 2019.*
 - C. *There was no written contract for this agreement and it was based on the trust and business relationship.*
 - D. *The Plaintiff would advance payment for fuel costs in carrying on excavation works.*
 - E. *The Defendant would issue invoices after services are rendered and the Plaintiff would make payments thereafter.*
 - F. *The excavation works were delayed due to bad weather and the Defendant began work only on or about 17th April 2019.*
 - G. *The Defendant was paid an advance of \$15,000.00 (\$5,000.00 + \$10,000.00) on 28th January 2019 and 17th April 2019 respectively.*
 - H. *The said advance of \$15,000.00 was offset from the Defendant's Invoice Nos. 603 and 605 that was issued to the Plaintiff.*
 - I. *The Plaintiff paid the total sum in respect of the invoices Nos. 603, 605 and 608.*
 - J. *The Defendant signed the letter of Understanding dated 29th April 2019, which was prepared at the Plaintiff's office.*
 - K. *The Defendant had requested for a further advance of \$20,000.00 from the plaintiff.*
 - L. *The HFC Bank Cheque dated 21st May 2019 payable to the Defendant was subsequently cancelled by the Plaintiff.*
30. Thus, the total number of 47 issues raised as per PTC minutes, have now been reduced to 10 issues as follows;
- i. *Whether the payment of \$50,000.00 made by the Plaintiff on 29th April 2019 was in respect of;*
 - a) *the agreement to supply 2500 cubic meters of gravel as claimed by the Plaintiff? or*
 - b) *the excavation works and leasing of heavy machineries as claimed by the Defendant?*
 - ii. *Did the Defendant stop works on the site on or about 8th May 2019 or did he continue working on the site until 22nd may 2019?*
 - iii. *Whether the invoice no. 623 in the sum of \$42,622.00 was issued and owed by the Plaintiff?*

- iv. *If not, whether invoice no. 623 was fabricated and falsified by the Defendant?*
- v. *Whether the sum of \$10,000.00 paid to the Defendant on 21st May 2019 (and later cancelled) was an admission of monies owing to the Defendant?*
- vi. *Whether the Defendant's failure to supply the gravel resulted in a total failure of consideration and breach of the agreement dated 29th April 2019?*
- vii. *Whether the Plaintiff entitled to the reliefs claimed? If so, to what extent?*
- viii. *Whether the Plaintiff is entitled to costs? If so, on what basis?*
- ix. *Whether the Defendant is entitled to any relief? If so, to what extent?*
- x. *Whether the Defendant is entitled to costs? If so, on what basis?*

31. It was not in dispute that the said excavation works that was agreed upon between the parties on 28th January 2019 included the clearing of the vegetation in the said property, demolition of an old house therein, and excavation of the high ground to the ground level to form an access road. It was also not disputed that the said “**excavation works**” agreed upon on 28th January 2019, and the “**supply of gravel**” agreed upon on 29th April 2019, as per the “Letter of Undertaking” marked as “Pex-7”, were two different jobs that were to be performed during different periods of time, on prices understood and/or agreed upon between the parties.
32. The burden of proof hereof is on preponderance of evidence. The substantial relief sought by the Plaintiff is for the refund of \$50,000.00 (Fifty Thousand Dollars), admittedly, paid by Mr. Abbas Ali, the “PW-1” unto to the Defendant on 29th April 2019. The basis for the Plaintiff's claim is that the Defendant failed to supply the Gravel that he agreed as per the “Letter of Undertaking” marked as “Pex-7”.
33. Conversely, the Defendant's position, as per paragraph 2 of the SOD, is that the said sum of \$50,000.00 was paid to him by the Plaintiff, as a part payment against the total sum of \$92,597.00 being the charges for the “excavation works and the leasing of heavy vehicle Machinery” (the 1st job) for the Plaintiff from 16th April 2019 to 20th May 2019, and after deducting the said \$50,000.00, a sum of \$42,622.00 remained to be paid unto him by the Plaintiff.
34. The stern position taken up by the Defendant in paragraph 1 (i) to (iv) of the Statement of Defence was that there was no contract for the stipulated works, no agreement on the contract price, no fixed agreed rate per cubic meter and no fixed agreed amount of gravel required to be delivered. This position of the Defendant is no more an issue now, in view of the undisputed facts stated in paragraph 26 above and in the light of the unchallenged oral and documentary evidence led, wherein the Defendant has directly and / or tacitly admitted that he worked for the Plaintiff in several projects and got paid for including the excavation works agreed upon do on 28th January 2019.
35. Mr. Abbas Ali's evidence in page 10 of the transcript, to the effect that the Defendant was engaged for various works from the year 2012 till 9th May 2019, the total value of those works was in a sum of **\$607,975** as evidenced by “Pex-2”, and the relevant amount was duly paid to him, are not disputed. In page 79 of the transcript towards the end of his examination in chief, the Defendant has admitted to have duly received the payments for the same.

36. Mr. Abbas Ali also testified that on 22nd January 2013, he advanced a sum of \$55,148.76 to the Defendant, as evidenced by “Pex-4”, in order to help the Defendant to import an Excavator from New Zealand and for that purpose took the Defendant to New Zealand, and for other foreign trips on his own expenses. This evidence remained unchallenged.

Issue No- i.

37. Turning towards the disputed matters, I find that the issue No-1 hereof, which is in relation to the admitted payment of \$50,000.00 by the Plaintiff unto the Defendant on 29th April 2019, poses two questions as to whether the said sum was paid for the “**supply 2500 cubic meters of gravel**” as claimed by the Plaintiff, or as a part payment for the “**excavation works and leasing of vehicles & Machineries**” as claimed by the Defendant.
38. Mr. Abbas Ali (PW-1), in his evidence in chief, from page 18 to 27 of the transcript, has given extensive and convincing evidence as to **when, For what purpose, How, Why in advance and under what circumstances** the payment of \$50,000.00 was made to the Defendant. The Plaintiff’s Exhibit marked as “Pex-7”, namely, “Letter of Undertaking” dated 29th April 2019, admittedly, signed by the Defendant, clearly states that the said sum was paid, in advance on his request, to carry out earthworks and for the supply of approximately 2500 cubic meters of gravel at the rate of \$20.00 per cubic meter, for the road works in “Makalesi” Nadi subdivision. It also states that the said sum shall be deducted from invoices for the supply of gravel during 2 months from the date thereof.
39. I can do no better than reproducing the page 18 of the transcript, which contains the crucial parts of Mr. Abbas Ali’s (PW-1) evidence on the above points.

Q. Now, there is a sum of \$50, 00.00 that you paid to the Defendant, you gave it to him. Could you tell His Lordship, how it came about that the Company paid the Defendant \$50,000.00?

A: It’s something that is not simple to express because this is not part of the whole contract

Q: Document No.4?

A: It was actually not meant to be paid but circumstances are those where I was more like compel to make the payment on behalf of my Company to the Defendant. These arouse from a long story and actually he was buying a cane harvester and the Company that was supplying from India, an employee of that Company came over to Fiji and he came to collect the money from the Defendant from that machine so when I heard about this Company in India, I asked the Defendant if he could arrange for the tractor that my Company was looking forward to buy, so he said oh, that company manufacturers tractors as well. I thought it was a good moment to meet this gentleman who was already from India and came to Hasrat to collect the money from the harvester. So, Hasrat brought that man, his name is Bas Karan, I think, so he came to the office with the Defendant and then we talked about it, then he gave me a brochure of the tractor and then told me that he would arrange when he goes back to India, he would arrange for this tractor but then 2 days after she came alone, not with Hasrat, and she said that he had a problem and I asked him what was it and he said, now the bank is declining the loan that Hasrat was supposed to get from this cane harvester and then he said that was

a short fall of \$50,000 that the bank wantsbefore they could release the whole loan amount to him so he said he is Bosses would not be happy if he returns home empty handed. So, I felt sorry for this gentleman, Hasrat, who was trying to help me to get a tractor and also sorry for my long-time friend, Hasrat. So, I called Hasrat, I said, come to the office, Hasrat is here. So, after about 1 hour or so he came and I asked him what was the problem with the bank and he revealed everything. He said he is in a bad financial problem and the bank wants \$50,000 before the bank did not inform him, then he called this gentleman from India to come and take the money, so I said; don't worry about it, I can advance you \$50,000 but you have to do some work for me. He said he can supply gravel because we needed gravel for roading. So, that when this whole thing started and I wrote a cheque on the same day and I gave it to him...

Q: Could you have a look at this document?

A: Yes, this is a letter of undertaking, dated 29th of April and it's his letterhead but this was typed in my office because we were all in the office and I thought he could sign this, so this is what he had signed that he will be supplying gravel for that \$50,000 advance that I was giving him.

Q: And that Signature?

A: Those are the Signature.

Q: When you said we were in the office who was we?

A: All the three of us the and Hasrat and myself.

40. There is no dispute that the said sum of \$50,000.00 was paid by way of cheque bearing No-777167 dated 29th April 2019 on the same dated payment voucher both found in ABD as document No-4 and 5 respectively. The annexure marked as "Pex-8" being the Plaintiff's HFC Bank Statement depicts that the said for \$50,000.00 has been duly debited from Plaintiff's account at the said Bank.
41. The above evidence shows that it was in a bid to help the Defendant in importing his Cane Harvester from India, the Plaintiff paid in advance the total sum of \$50,000.00 agreed for the gravel supply, as his bank had required to deposit such an amount. This evidence was not challenged by the Defendant under cross examination or by adducing evidence in contrary.
42. Mr. Abbas Ali (PW-1) in page 23 of the transcript answering the 5th question, has categorically stated that the Defendant neither offered to refund the \$50,000.00 nor delivered the gravel that he needed and further testified that after his Solicitors , A.K. Lawyers, sent the letter of Demand dated 3rd July 2019 (the document #12 in the ABD) to the Defendant , in response, they received the letter of Demand dated 11th July 2019 from Defendant's Solicitors , namely, Messrs. Lal Patel Bale Lawyers claiming \$42,622.00 .
43. It is to be noted that the said letter of Demand dated 11th July 2019 from Defendant's Solicitors, does not specify as to how the amount therein became payable by the Plaintiff unto the Defendant. The Plaintiff also vehemently denied the work being done by the Defendant as pleaded in paragraph 14 of the SOD and, the \$50,000.00 he paid was to be deducted from said \$92,597.00 to leave the balance of \$42,622.00. He also denied the receipt of any invoice for the said amount 20th May 2019, particularly after receiving the

final and actual invoice No-608 on 8th May 2019. His evidence in this regard as per page 25 of the transcript, reproduced bellow, is also convincing and has remained unchallenged.

Q: Now coming to the defendant's Defence I have to put some matters to you, the defendant alleges that you owe, your company owes him \$42,622. Does your company owe any money to?

*A: **No sir.***

Q: Now the defendant says that total amount of work that he contracted for you or your company was valued at \$92,597, is that correct?

*A: **No sir.***

Q: And then he says that you had paid \$50,000 of that which was the money you said for the gravel, then you paid that leaving the balance of \$42,622, is that correct?

*A: **No sir.***

Q: The defendant also says it gave you or rendered an invoice dated 20th of May 2019, did you ever receive any invoice?

*A: **No sir.***

Q: In fact, did you receive any invoice after the 8th, the one dated 8th of May being number 608?

*A: **No sir.***

Q: The defendant also says that he rendered you three invoices after the additional works, one covering the period from 16th April to the 1st of May 2019, is that correct?

A: They were three invoices raised for that job and all those three invoices were paid to him so the three invoices which she is showing in his affidavit that's incorrect because the dates don't match with the ones that's incorrect because the dates don't match with the ones that we received.

Q: Statement of Defence and counter claim actually any mentions an amount \$21,657, were there any invoice given to you or rendered?

A: No sir nothing apart from the three invoices and my company pays up front on the date of the invoice. Some companies delay it for 30 days or 60 days payment but we understand the problems contractors face while carrying out the particular job. They need money for fuel, for laborer's cost. Now sir so we don't want to put them in any such predicament. And we just pay the amount right. We don't need to hold back payments.

Q: So the three invoices you refer to are the ones that you earlier refer to this honorable Court?

A: Yes sir.

44. The "PW-1" testifying further in page 26 of the transcript, reiterated that once he paid for all 3 invoices bearing No- 603,605 & 608, his company was clear of any debt, and apart from those 3 invoices, there was no other invoice issued or received.

45. At the commencement of the cross examination, counsel for the Defendant was heard to be questioning the PW-1 to the effect that there was no explicit contract as to the price of a cubic meter of the gravel, quantity of it to be supplied and the time period for the completion thereof, which was in relation to the 2nd contract for the supply of gravel. This line of questioning was irrelevant as his Defence was totally revolving around the 1st contract agreed upon on 28th January 2019 for excavation and leasing of vehicles / machineries and the payments connected thereto.

46. Mr. Abbas Ali's answer under his cross examination to the question No-1 in page 16 of the transcript, as to on what basis the first agreement for excavation and leasing of machinery was entered into on 28th January 2019, is very clear. For the sake of easy reference relevant portion of evidence is reproduced as follows;

Q: *Yes. Now, if you have a look at that invoice, you would tell his Lordship, that in the invoice it's written, machine hired – machinery. Did your company in that on the 28th of January engaged the Defendant for that small partner or in that bigger subdivision? Were you contracted to pay separately for vehicles and separately for moving the job that you were supposed to do, excavate or all that, or was it all that's it?*

A: *No, it was not like that. Actually, the contractors when they take over a job or when they are given a job to do, normally there is a contract, a written contract and the important part of the contract is the amount of money like, whether it's an hourly they use the machine hire, or whatever the way the job is done and the payment is made. So, obviously, there will be a fixed price work by the contractor. He will look at the job and then assess how much would be the amount but, in this case, there was nothing like that. He was just given a job to do and in good faith I thought I would just make him a payment for any claims he would make on the invoice. So, he raises the Invoice, he does the work, there was no tally man, there was no a clerk of works, nobody to keep our record, how many hours the machine worked, how many days the work continued so there was and I didn't even go to the site more often to inspect what was happening.*

Q: *Would you agree that this was like, you took him on his honour?*

A: ***Obviously, that was gentleman's contract and we thought that just as a friend that he would do his duty and I will do my duty by paying him whatever he claims. It was a bit not, this was a bit of orthodox method but because***

Q: *You took his word on those invoices?*

A: *Yes.*

Q: *Would that be correct? And you paid them?*

A: *Yes Sir.*

47. The first Agreement for excavation works was entered on 28th January 2019, with an advance payment of \$5,000.00. Admittedly, the commencement of that work was delayed due to various reasons, and it was commenced only on 16th April, 2019, subsequent to which on 17th April 2019, while submitting the first Invoice No-603 for a sum of \$7,580.00, the Defendant obtained another sum of \$10,000.00 as advance. These advance sums have been subsequently deducted when payments were made on the subsequent invoices.

48. When the sums mentioned in the said 3 actual invoices are carefully examined, it is obvious that all those sums, being odd sums such as \$ 7,580.00, \$ 25,873.00 and \$ 13,260.00, have been arrived at after calculation of the price/ cost either on time or piece basis. Those are not round figures. If those sums were paid as advance for fuel or any other purpose those sums could not have been in odd sums. The stance taken up by the Defendant that those sums were paid as advance for fuel, cannot be accepted and has to be necessarily rejected.
49. Another stance taken up by the Defendant was that there was no any agreed rate for the supply of gravel. As far as the rate and conditions for supply of gravel are concerned, the document marked as "Pex-7" clearly stipulates the rate and other conditions thereto. In case of the rates for the excavation and machinery works are concerned, the fact that the amounts in 3 invoices have been decided on some basis, as I observed above, is sufficient to negate the argument of the Defence counsel in her written submissions. The uncontroverted evidence of Mr. Abbas Ali shows that he was not particular or concerned about the rate for the excavation works. In his own words, he treated it as a "Gentlemen Agreement". Neither an acceptable contrary was proved by the Defendant nor even suggested on his behalf.
50. However, the terms and conditions for the supply of gravel, as per the "Letter of Undertaking" marked as "Pex-7" signed on 29th April 2019, were clearly in black and white, which was not objected to when tendered and marked in evidence through "PW-1". It was when the Defendant giving evidence, there was an attempt on the part of the Defence to attack the "Pex7" on the, purported, ground that it was prepared on a letter head created by the Plaintiff in his Office and not on his real letter head. This was a belated and frivolous objection. However, when queried by Court from the Defendant when he was giving evidence, vide page 77 of the transcript, as to whether he signed it, he confirmed that he signed it.
51. Mr. Abbas Ali's oral evidence on the initial Agreements, entered into on 28th January 2019 for the excavation works & leasing of machineries, which resulted the issue of actual invoice Nos.603, 605 & 608 dated 17th April 2019, 2nd May 2019 and 8th May 2019 respectively and the evidence on due payment for those invoices were duly substantiated by the relevant documentary evidence too, and his evidence remained unchallenged by the Defence.
52. When Mr. Abbas Ali's evidence in relation to the 2nd Agreement for supply of gravel was subjected to cross examination by the learned Defence Counsel, neither a single question, nor even a suggestion was put to the "PW-1" to the effect that the said sum of \$50,000.00 was in fact paid in settlement of dues for the excavation works, and it was not for the supply of gravel.
53. It is very clear that, when the Defendant had been duly paid and settled for the Excavation works and leasing of machineries, on the aforesaid invoices bearing Nos 603,605 & 608, as per the payments vouchers marked as "Pex-5", "Pex-6", and subsequent payment vouchers bearing Nos. 7 and 9 in the BOD, it was not open for the Defendant to raise anymore invoices to make further claim for the excavation works, and setoff the advance he had

received on account of the subsequent contract entered on 29th April 2019 for the gravel supply.

54. The Defendant, despite receiving the total payments for the excavation works as aforesaid by raising his final invoice bearing No-608 dated 8th May 2019, raised a bogus claim for a sum of \$92,597.00 as per paragraph 14 of his SOD, purporting to be the total charges for his excavation works. This was done for the sole purpose of avoiding the supply of gravel as per his second contract entered into on 29th April 2019 or the repayment of the said sum of \$50,000.00 to the Plaintiff.
55. There was no a single invoice issued for the, purported, 3 different sums mentioned in his Counter claim, namely, \$21,657.00, \$ 28,620.00 and \$ 42,320.00, being the charges for the work carried out from 16th April 2019 till **20th May 2019**. The actual 03 invoices for the works done from 16th April 2019 to 8th May 2019 had been already issued by the Defendant and duly paid by the Plaintiff on time. There cannot be any further claim on it.
56. No necessity was there for further invoices to have come up in relation to the excavation works, after the issuance of the final invoice No-608 dated 8th May 2019, by which date the Defendant had ceased work as proved by the PW-2 in his evidence.
57. In view of the above, I stand firmly convinced that the payment of \$50,000.00 by the Plaintiff unto the Defendant on 29th April 2019, was for none other than the supply of gravel by the Defendant unto the Plaintiff as per the terms contained in the "Letter of Undertaking" dated 29th April 2019 and marked as "Pex-7".

ISSUES NO- ii , iii & iv.

- ii. *Did the Defendant stop works on the site on or about 8th May 2019 or did he continue working on the site until 22nd may 2019?*
- (iii). *whether the invoice no. 623 in the sum of \$42,622.00 was issued and owed by the Plaintiff?*
- (iv) *If not, whether invoice no. 623 was fabricated and falsified by the Defendant?*

58. The Defendant in paragraph (4 b) of his **Reply to Defence to counter Claim** filed on 9th November 2020, had taken up the position that as the Cheque for \$10,000.00 given by the Plaintiff, allegedly, for the part payment of the remaining debt, was dishonored, and as it amounted to the breach of contract, he ceased from conducting further works for the Plaintiff. THIS POSITION OF THE Defendant does not hold water. The reason being, the said cheque was in fact was issued dated 21st May 2021 and it was collected by the Defendant's wife from the Plaintiff's Office only at early hours of 23rd May 2019. When it was presented for payment to the Bank on the same day, the payment for this had been stopped by the Plaintiff, by giving instructions from New Zealand, as he had heard while he was at Nadi Airport on 23rd Morning that the Defendant had ceased his work on 8th May 2019. The evidence of the Plaintiff on this stood unchallenged.
59. So, if the actual reason for the stoppage of work, was the retuning of cheque in question, the Defendant should have continued with the work at least till afternoon on the 23rd May

2019. As per paragraph 14 (iii) of his SOD, the Defendant's last date of work was 20th May 2019, which contradicts with his position in Reply to Defence to counter Claim.

60. The "PW-2", Mohamed Faroon, the Operation Manager of the Plaintiff Company, gave uncontradicted and unchallenged evidence to the effect that when he visited the site on 23rd May 2019 on the instruction of "PW-1", he observed that all the machineries had been removed and there were no signs of any excavation work being done for several days in the recent past. He also confirmed that he spoke to the Defendant about the work, only to be told that he had stopped work as he had some issues with Mr. Abbas Ali, "PW-1". The "PW-2" also had found later on inquiry that the Defendant had no permit to supply gravel as substantiated by "Pex-10". I don't find any reason to disbelieve his evidence, which can be accepted and acted upon.
61. Further, it is observed that the last actual invoice tendered by the Defendant was bearing No-608 dated 8th May 2019 for a sum of \$13,260.00. The Defendant claims that he issued the Invoice No-623 dated 22nd May 2019 for a sum of \$42,622.00. When the time gap between the invoices bearing Nos 603, 605, and 608 issued by the Defendant and the amounts therein are closely analyzed, it is highly doubtful whether an Invoice bearing No 623 dated 22nd May 2019 for such a large sum of \$42,622 .00 could have been raised.
62. It is clear that it was with the motive of justifying the disputed invoice number 623 dated 22nd May 2019, the Defendant tried to maintain his position that the work continued till 20th May 2019. Had he continued work till 20th May 2019, he would, undoubtedly, have handed over the, purported, invoice on 21st May 2019 unto the Plaintiff or left it at the Plaintiff's office, when the Defendant went to see the Plaintiff on 21st May 2019.
63. A pertinent question that arises here is why only invoice No- 623 dated 22nd May 2019 should be prepared (which was never issued) for the purported remaining amount of \$42,622.00, while there were two other sums as per the Counter claim for further 2 invoices to be raised. My irresistible conclusion is that no such an invoice No-623 was raised and handed over to the Plaintiff with the relevant tally sheets, if any were available. The Defendant's bad motive was immensely conspicuous through his evasive answers and refusal to answer, when he was under cross examination by the Plaintiff's learned Counsel on the Defendant's failure to disclose the invoices and tally sheets for the purported sums claimed by him. This was not disclosed prior to trial compelling the Plaintiff's Solicitors to take out the Notice for production. The Defendant finally produced the invoice book "Pex-14" which contained the disputed invoice No-623.
64. The most pertinent question that begs answer is, as to why the disputed invoice No-623 was backdated to 22nd **May 2019**, when the previous invoice number 622 on the same book had been issued on 2nd July 2019. The Defendant during his evidence could not give any plausible explanation for backdating the disputed invoice number 623, which is a reprehensible act on the part of the Defendant, of which the Solicitors for the Defendant should have taken a serious notice and advised the Defendant accordingly. This was a clear forgery and fabrication to evade the payment of \$50,000.00 obtained for the Gravel supply.

65. The evidence shows that, it was after receiving the letter of Demand dated 3rd July 2019 from the Plaintiff's Solicitors on 6th July 2019, the Defendant, has sought for a way-out in order to avoid the payment of \$50,000.00, and prepared the backdated invoice No. 623 dated 22nd May 2019 on the same invoice book marked as "Pex-14", which amounts to an act of falsifying evidence.
66. As far as the above issues No-(ii), (iii) & (iv) are concerned, the conclusion that can be safely arrive at is that the Defendant, having stopped the excavation works & leasing of machineries to the Plaintiff on 8th May 2019, for the sole purpose of avoiding the supply of gravel or the repayment of the \$50,000.00 advanced for it, fabricated the disputed invoice No- 623 dated 22nd May 2019 and held it without issuing and disclosing to the plaintiff. Thus, the aforesaid issues should necessarily attract answers in favour of the Plaintiff and are answered accordingly.

ISSUE NO-v

V. whether the sum of \$10,000.00 paid to the Defendant on 21st May 2019 (and later cancelled) was an admission of monies owing to the Defendant?

67. The answer to the above issue, with no doubt, should be "No". The reason being, inter alia, that there has been a longstanding dealing between the parties from the year 2012. The value of the works performed by the Defendant from 2012 till 09th May 2019 as evidenced by "Pex-2" was around \$607, 975.00. This was not disputed by the Defendant. There was no complain of non-payment or underpayment for those works. The Defendant did not substantiate that there was any debt payable by the Plaintiff.
68. The Plaintiff has given clear evidence to the effect that when the Defendant requested for \$20,000.00 on 21st May 2019, purportedly, for the repair of the Bulldozer, though he initially refused to give, subsequently being felt for him, made arrangement to pay only \$10,000.00 out of it, and paid it by way of a cheque, which was uplifted by the Defendant's wife in the early hours of 23rd May 2019. However, subsequently, on being made aware about the Defendant's withdrawal from work site, he got the payment for it stopped through the "PW-2".
69. After issuing the invoice NO-608 on 8th May 2019, there was no need at all for another invoice to be issued. Had there been any arrears in relation to excavation and leasing of machineries, the Defendant would, undoubtedly, have issued another invoice when he went to see the Plaintiff on 21st May 2019 or at least would have brought it to the notice of the Plaintiff. The Plaintiff appeared to be speaking truth in this regard and his evidence was corroborated by the evidence of "PW-2". Thus, I decide that, when issuing the cheque for the said \$10,000.00 on 21st May 2019, there was no any debt owed by the Plaintiff payable to the Defendant in this regard for the Plaintiff to admit as alleged by the Defendant. Thus, answer to this issue also should be in favour of the Plaintiff.

ISSUE NO-(vi)

vi. *Whether the Defendant's failure to supply the gravel resulted in a total failure of consideration and breach of the agreement dated 29th April 2019?*

70. By entering into Agreement on 29th April 2019, the Defendant, having obtained a sum of \$50,000.00 from the Plaintiff on 29th April 2019, had promised and committed himself to supply gravel to the Plaintiff in terms of the Letter of undertaking marked as "Pex-7". But, subsequently, with no fault on the part of the Plaintiff, the Defendant failed to supply gravel as agreed, which finally resulted breach of the agreement for the supply of gravel.
71. The Defendant initially took up the position that there was no any contract for the supply of gravel and with regard to the rate, number of cubic meter and on other conditions thereto. However, his, purported, position did not survive, owing to his own pleadings, omissions and direct & tacit admissions, particularly on the strength the overwhelming oral and documentary evidences adduced on behalf of the Plaintiff. It was a total failure on the Defendant's part , as a result of which, the plaintiff was deprived of his consideration by way supply of gravel.

ISSUE No-(vii).

vii. Whether the Plaintiff entitled to the reliefs claimed? If so, to what extent?

72. This is not a mere breach of the agreement that was entered into on 29th April 2019. The past history shows that the Plaintiff had placed immense trust in the Defendant and on his performances. The Plaintiff in his projects had given contracts to the Defendant from the year 2012 till the agreement in question was entered into on 29th April 2019, of which the undisputed total value was around \$607,975.00 as evidenced by "Pex-2".
73. Though, the excavation works concerned was to be performed by another contractor, the evidence shows that it was on the request of the Defendant from the Plaintiff, it was cancelled and given to the Defendant on 28th January 2019 in order to assist him to come up. The Defendant was also financially assisted by the Plaintiff for the purchase of an Excavator from New Zealand in the year 2013, as evidenced by "Pex-4" and annexures thereto, for which purpose the Plaintiff took the Defendant to New Zealand on his own expenses.
74. Further, having come to know that the Defendant was in financial difficulties in importing a Cane Harvester from India, called him to his office and advanced \$50,000.00, with the hope of having the supply of gravel executed through the Defendant in terms of the Agreement "Pex-7". The Plaintiff also advanced money for fuel in January 2019. When the Defendant on 21st May 2019 requested for another advance of \$20,000.00, purportedly, to repair the Bulldozer, though the Plaintiff, initially, refused to give, subsequently, having felt for the Defendant, issued a cheque for \$10,000.00, being unaware of the fact that the Defendant had already withdrawn from the site on 8th May 2019. None of the above were disputed by the Defendant.
75. Having derived all the above benefits from the Plaintiff, the Defendant finally breached the agreement for the supply of gravel and chose to deprive the Plaintiff of his due

consideration for the money paid by going to the extent of fabricating the, purported, invoice No- 623 dated 22nd May 2019 and finally caused damages, loss of his money & profit and unnecessary expenses on account of this litigation. The Defendant, who should have been aware that he had no any Defence, proceeded to contest this matter by adding a counter claim on top of it, which had no any prospect of success.

76. Hence, this Court has no alternative, other than entering a judgment in favour of the Plaintiff, granting him a sum of \$50,000.00 as prayed for in paragraph 1 of the prayer to the Statement of claim.

Other Reliefs:

77. The Plaintiff has relinquished his reliefs prayed for in terms of paragraphs 2 and 4 of the prayer to its Statement of Claim. However, as per paragraph 5 thereof, it moves for compensation under section 147 of the Fiji Competition and Consumer Commission (FCCC) Act for misleading and deceptive conduct.
78. The Plaintiff becoming aware of the Defendant's financial difficulties in importing the Cane Harvester from India, in order to assist him as he had done in the past in numerous ways, advanced the total sum of \$50,000.00 being the consideration for supply of gravel he needed, which the Defendant accepted by agreeing to supply in terms of the letter of undertaking marked "Pex-7".
79. At the time of undertaking the task of supplying the gravel and obtaining the money for the same, the Defendant knew or ought to have known that he did not have a license for the Gravel extraction. Knowing very well that he was under obligation to supply it within 2 months' time from that date, he did not divulge the fact that he did not have the license to supply or it was likely to take some time for the supply.
80. All what he wanted was to obtain the money for furtherance of his own business at the expenses of the Plaintiff. Neither gravel was supplied nor was any justifiable reason for his failure given. The Defendant, who withdrew from the work site on 8th May 2019, when met the Plaintiff on 21st May 2019 at his office did not mention anything about any issue in the impending gravel supply. But still he wanted to obtain money from the Plaintiff for his bulldozer repair as well.
81. This shows that the Defendant clearly engaged in misleading and deceptive conduct and fraudulently obtained money from the Plaintiff, with no intention of supplying the gravel that the Plaintiff needed.

In ***Vuluma v Merchant Finance & Investment Company Ltd [2017] FGHC 902***; the High Court found that the defendant upon failing to deliver the intended equipment, instead and forced the Plaintiff to accept a different equipment in which the Defendant had a personal interest. The High court held;

[41] The 1st plaintiff was a customer of the defendants. The defendants in their trade conducted deceptively against COMC 75. Their conducts were unconscionable in dealing the trade with the 1st plaintiff which violated COMC 76.

[42] The defendants' conducts are calculated to make a profit from their wrongs. I, therefore, find both defendants are liable to pay exemplary damages.

[43] I quantify general damages at \$20,000.00 and exemplary damages at \$30,000.00 totaling \$50,000.00.

82. The Plaintiff moves for \$25,000.00 as compensation for the Defendant's misleading and deceptive conduct. The plaintiff neither get the supply of gravel nor any justifiable reason given for the failure to supply. The Plaintiff has lost the benefit of his money for last 5 years. In my calculation, I find that ordering a sum of \$12,500.00 (Twelve Thousand Five Hundred Dollars) as compensation would do justice.

Interest:

83. The Plaintiff is asking for 13.5% interest per annum on the principal sum of \$50,000.00 under the Law Reforms Miscellaneous Provisions (Death & Interest) Act. The money was paid on 29th April 2019 for the supply to be made within 2 months, which the Defendant failed. Having failed to supply the gravel, in order to avoid the repayment of \$50,000.00 that was well and truly paid and accepted by the Defendant, the Defendant went to the extent to forging and fabricating the invoice No623 dated 22nd May 2019.
84. He suppressed the payments made for the excavation and leasing of machinery through invoices No- 603,605 & 608. He was audaciously bold to deny the very agreement he signed on 29th April 2019 and tried to show that the \$50,000.00 was a part payment of \$ 92,697.00 as shown in paragraph 14 of his SOD. This Court stands fully convinced that the Plaintiff deserves interest he prayed for. However, considering the other reliefs granted by this judgment, I decide to limit the interest to 10% on the said sum of \$50,000.00 from the date of filing this action on 19th August 2020. The post judgment interest shall be payable at 4% for the said \$50,000.00 as prescribed by the relevant Law, and on the amount of compensation granted under FCCC Act

Costs:

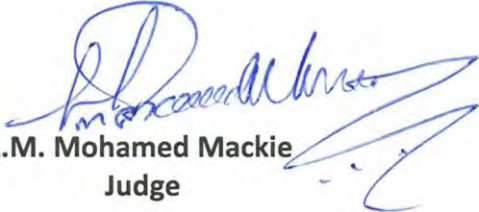
85. The Plaintiff has prayed for costs on a full solicitor / client indemnity basis. Under order 62 of the High court Rules 1988 and the inherent jurisdiction, this court has a discretion to award costs on an indemnity basis. Learned Counsel for the Plaintiff has made extensive submissions, by citing number of case law authorities, on the subject to justify the grant of costs as prayed for.
86. This matter was filed on 19th August 2020 and is being disposed in May 2024 in a relatively short period of 3 years and 9 months, which includes a period of around 10 months taken to write the judgment, after the trial held in July 2023. This delay was unavoidable due to the pending enormous workload before this Court and the extensive analysis needed

hereof. Also, I consider the time period that the process of the assessment of costs likely to take. There is no delay caused by the defendant in this matter. Considering the volume of monetary reliefs granted to the Plaintiff, I decide to order a sum of \$6,000.00 (Six Thousand Dollars) as summarily assessed costs payable by the Defendant.

FINAL ORDERS:

- a. The Plaintiff's action succeeds.
- b. Judgment is entered in favour of the Plaintiff, for a sum of \$50,000.00 (Fifty Thousand Dollars), as prayed for in paragraph 1 of the prayer to the Statement of Claim.
- c. The Plaintiff is also awarded compensation in a sum of \$ 12,500.00 (Twelve Thousand Five Hundred Dollars) as prayed for in paragraph 5 of the prayers to the Statement of Claim.
- d. The Plaintiff is awarded 10% interest on the said sum of \$50,000.00, to be calculated from the date of filing of this action till the date of this judgment.
- e. Post judgment interest shall be at 4% on the total sum awarded till the full and final satisfaction of the judgment.
- f. The Defendant's counter claim is hereby dismissed.
- g. The Plaintiff is also awarded summarily assessed costs in a sum of \$6,000.00 (Six Thousand Dollars).




A.M. Mohamed Mackie
Judge

At High Court Lautoka this 17th day of May 2024.

SOLICITORS:

For the Plaintiff: Messrs. A. K. Lawyers- Barristers & Solicitors.

For the Defendant: Messrs. Lal Patel & Bale Lawyers.