

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 130 of 2023

BETWEEN:

TARA WATI aka TARAWATI aka TARA WATI DOUGHTY
PLAINTIFF

AND:

FIJI PUBLIC TRUSTEE CORPORATION PTE LTD
1ST DEFENDANT

AND:

THE HOUSING AUTHORITY OF FIJI
2ND DEFENDANT

AND:

OFFICE OF THE ATTORNEY GENERAL
3RD DEFENDANT

BEFORE:

Acting Master L. K. Wickramasekara

COUNSELS:

Sunil Kumar Esquire for the Plaintiff

In-house Counsel for Fiji Public Trustee Corporation Limited for the 1st Defendant

In-house Counsel for Housing Authority of Fiji for the 2nd Defendant
Office of the Attorney General for the 3rd Defendant

Date of Hearing:

26 March 2024

Date of Ruling:

08 November 2024

RULING

- 01.** The 3rd Defendant, on the 06/06/2023, filed Summons to Strike Out the Writ of Summons and the Statement of Claim filed by the Plaintiff on the 25/04/2023. The Summons for Strike Out has been filed pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules 1988.
- 02.** Plaintiff opposed the same and both the parties filed comprehensive written submissions on the matter. Hearing on the Summons was held on 26/03/2024 and parties moved time to file further written submissions.
- 03.** Further written submissions were accordingly filed by the Plaintiff on 09/04/2024 and by the 3rd Defendant on 16/04/2024.
- 04.** The 1st Defendant moved to support the Striking Out filed by the 3rd Defendant, on 1st Defendant's behalf and the Court allowed the said application and granted time for the 1st Defendant to file written submissions. Upon several adjournments being made in this regard, the 1st Defendant filed its written submissions on 12/09/2024.
- 05.** Accordingly, with due regard to all arguments raised by the parties, the Court now proceeds to make the Ruling on the Summons to Strike Out as follows.
- 06.** The Plaintiff's claim arises from an alleged mismanagement of the estate of Appu Madhwan Nair (hereinafter referred to as the Estate). The said Appu Madhwan Nair has passed away on 30/05/1991 and by his will dated 22/11/1988 the Plaintiff had been named the sole executrix of the will. Soon after the demise of the testator; the Plaintiff, had approached the Public Trustee of Fiji (the precedent government entity to the 1st Defendant) and on 16/12/1991 had, in writing, authorized the Public Trustee of Fiji, to manage the estate since the Plaintiff at the time was not able to manage the same on her own.

07. The Public Trustee of Fiji had obtained a probate, in its name, over the estate (Grant No. 29982) on 19/11/1993. The Plaintiff had thereafter left for Australia where she was residing for several years.
08. Plaintiff alleges that upon her return to Fiji, she had visited the office of the 1st Defendant regarding the affairs of the estate, but no information was duly provided to her. She had thereafter engaged the services of her current solicitors to follow up on the matter and a letter dated 09/09/2019 was referred to the 1st Defendant in this regard.
09. By letter dated 26/09/2019, the 1st Defendant had advised the Plaintiff, that one estate property had been sold by the 2nd Defendant as a recovery process, one property has been transferred in the name of the 2nd Defendant, the rental proceeds of another property is being received by the Plaintiff's son and that they have no information on the proceeds from the insurance policy of the testator.
10. The Plaintiff thereupon filed an action in the High Court by way of an Originating Summons on 17/10/2019 to remove the 1st Defendant as the administrator of the estate and accordingly the Court had granted the said application, and the Plaintiff had been appointed the administratrix of the estate by orders made on 11/06/2020. The Court had further ordered the 1st Defendant to provide all accounts relating to the estate to the Plaintiff.
11. Pursuant to the said order, the 1st Defendant on 17/09/2020 had provided a statement of account relating to the estate indicating a balance of \$ 0.12. However, the 1st Defendant had, at the same time, claimed that they '*were still looking for the insurance money to finalize the accounts.*'
12. The Plaintiff has also alleged that the Plaintiff's solicitors had also written to the 3rd Defendant on 31/03/2022 for information over the issues relating to the management of the affairs of the estate by the former office of the Fiji Public Trustee.
13. It is further alleged that the 3rd Defendant, by letter dated 21/04/2022 had responded in the effect requesting the Plaintiff to direct all her queries regarding the estate to the 1st Defendant. It is also alleged that till the date of filing the claim the relevant information relating to the management of the estate had not been duly provided to the Plaintiff.

14. Thus, the Plaintiff now alleges misadministration of the estate, breach of trust, and breach of fiduciary duty by the Defendants and is claiming for the following relief,

“35.0 Whereof the Plaintiff seeks the following reliefs,

1. That the 1st Defendant be held liable for contempt of Court in its failure to follow and/or comply with the Orders of Justice Amaratunga dated 11th day of June 2020.
2. That the 1st Defendant and 3rd Defendant to provide a proper and accurate account of the Estate of APPU also known as APPU MADHWAN also known as APPU MADHWAN NAIR father’s name Raman Nair of Loloma Street, Tavua Town, Tavua, Salesman, including the rental account of the dwelling on the Crown Lease land in Tavua from the year 1991.
3. That the 1st Defendant and 2nd Defendant to provide proper and accurate account of the mortgage sale of Housing Authority Lease No. 204122 being Lot 10 on DP 4810.
4. That the 1st Defendant and 3rd Defendant provide proper and accurate account of the Blue Cross Insurance Policy Money.
5. The Defendants jointly and/or collectively and/or severally do pay damages to the Plaintiff for Damages for Breach of Trust, breach of fiduciary duty, misadministration and purported Fraud.
6. The Defendants jointly and/or collectively and/or severally cater for the maintenance of the Crown Land with improvement being Lease No. 92352 of Lot 12 Section 11, Tavua Township on DP No. 938.
7. The Defendants jointly and/or collectively and/or severally be held liable for special damages in the sum of \$ 23730.00 (Twenty-Three Thousand Seven Hundred and Thirty Dollars).
8. Exemplary damages for breach of Fiduciary duty imposed by the Public Trustees Act to gain public at the Honourable Court’s discretion.
9. Solicitors Cost and Cost of this action.
10. Any other order this Honourable Court deems just.”

15. As per the Summons for Striking Out, the application has been made pursuant to Order 18 Rule 18 (1) (a) on the following grounds.

- a) That there is no reasonable cause of action against the Defendant

16. Order 18 Rule 18 (1) of the High Court Rules 1988 reads as follows.

Striking out pleadings and indorsements (O.18, r.18)

18.- (1) *The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or*

anything in any pleading or in the indorsement, on the ground that—

(a) it discloses no reasonable cause of action or defence, as the case may be; or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

17. As submitted by the 3rd Defendant, the basis for making the application to strike out the Plaintiff's claim pursuant to the above rule is firstly that the Plaintiffs claim against the 3rd Defendant is statute barred pursuant to Section 14 of the Fiji Public Trustee Corporation Act 2006 as the Plaintiff has failed to initiate the action pursuant to the time limitations provided in that section. It is alleged that the Plaintiff specifically failed to commence these proceedings within 12 months from the date of commencement of the Act (03/04/2006) and/or failed to give Notice of the intention to take proceedings against the Government to the Solicitor General within 12 months of the date of commencement of the Act or the date on which the prospective Plaintiff became aware of the breach.
18. The 3rd Defendant alleges that the Plaintiff had been informed of the status of her entitlements under the estate by 26/09/2019 and as such the Plaintiff should have given Notice of her intention to institute proceedings within 12 months from that date.
19. Secondly, it is alleged by the 3rd Defendant that the Plaintiff has failed to particularize any breach of trust or breach of legal obligation as against the previous entity of the 1st Defendant, which was the Public Trustee. Proceedings against the 3rd Defendant has been brought pursuant to Sec. 14 of the Fiji Public Trustee Corporation Act 2006 in respect of the actions by the Public Trustee. However, the Plaintiff has only particularized breaches by the 1st Defendant and no particulars have been referred to as against the actions of the Public Trustee.
20. Thirdly, the 3rd Defendant has submitted that the Plaintiff has failed to particularize Fraud although relied upon as a cause of action. It is submitted that the Plaintiff is, therefore, in breach of Order 18 Rule 11 of the High Court Rules.

21. In addition to the above grounds, the 1st Defendant in its written submissions supporting the strike out of the Plaintiff's claim, submits that the Plaintiff's claim is also statute barred pursuant to Section 9 of the Limitations Act 1971.
22. Plaintiff in opposition has submitted that the grounds relied upon by the Defendants for the current strike out application are outside the scope of Order 18 Rule 18 (1) (a). It is submitted that such matters should have either been pleaded in a Statement of Defence and/or should have been raised by way of an Affidavit. It is submitted that pursuant to Order 18 Rule 7 of the High Court Rules, such matters relating to statutory limitations must have been specifically pleaded in a Statement of Defence. In support of the above position, the Plaintiff has relied upon the decision in **Fiji Development Bank v Khan**; HBC06.2012 (22 March 2013).
23. Plaintiff has also submitted that the claim against the 3rd Defendant is brought pursuant to Sec. 14 (2) (d) of the Fiji Public Trustee Corporation Act 2006. It is based on the actions of the previous entity of the 1st Defendant, which was the Public Trustee. However, the Plaintiff submits that the time pursuant to the above section is still running as the 1st Defendant has yet to provide the complete accounts relating to the affairs of the estate despite a Court order to that effect and numerous requests being made to the 1st Defendant.
24. Accordingly, the Plaintiff submits that without such final and complete accounts, the Plaintiff is not aware of the particular breaches committed by the Public Trustee.
25. I shall now consider the relevant law relating to striking out and as well the statutory provisions referred to by the parties in their respective arguments.
26. Master Azhar (as he then was), in the case of **Veronika Mereoni v Fiji Roads Authority**; HBC 199/2015 (Ruling: 23/10/2017) has succinctly explained the essence of this Rule in the following words.

*“At a glance, this rule gives two basic messages, and both are salutary for the interest of justice and encourage the access to justice which should not be denied by the glib use of summery procedure of pre-emptory striking out. Firstly, the power given under this rule is permissive which is indicated in the word “may” used at the beginning of this rule as opposed to mandatory. It is a “may do” provision contrary to “must do” provision. Secondly, even though the court is satisfied on any of those grounds mentioned in that rule, the proceedings should not necessarily be struck out as the court can, still, order for amendment. In **Carl Zeiss Stiftung v Rayner & Keeler Ltd** (No 3) [1970] Ch. 506, it was held that the power given to strike out any pleading or any part of a pleading under this rule is not mandatory but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending plea. MARSACK J.A. giving concurring judgment of the Court of Appeal in **Attorney General v Halka** [1972] FJLawRp 35; [1972] 18 FLR 210 (3 November 1972) held that:*

“Following the decisions cited in the judgments of the Vice President and of the Judge of the Court below I think it is definitely established that the jurisdiction to strike out proceedings under Order 18 Rule 19 should be very sparingly exercised, and only in exceptional cases. It should not be so exercised where legal questions of importance and difficulty are raised”.

27. Pursuant to Order 18 Rule 18 (2), no evidence shall be admissible upon an application under Order 18 Rule 18 (1) (a), to determine if any pleading discloses no reasonable cause of action or defence. No evidence is admissible for this ground for the obvious reason that the court can conclude absence of a reasonable cause of action or defence merely on the pleadings itself, without any extraneous evidence.

28. His Lordship the Chief Justice A.H.C.T. GATES (as His Lordship then was) in **Razak v Fiji Sugar Corporation Ltd** [2005] FJHC 720; HBC208.1998L (23 February 2005) held that:

“To establish that the pleadings disclose no reasonable cause of action, regard cannot be had to any affidavit material [Order 18 r.18(2)]. It is the allegations in the pleadings alone that are to be examined: Republic of Peru v Peruvian Guano Company (1887) 36 Ch.D 489 at p.498”.

29. Citing several authorities, Halsbury’s Laws of England (4th Edition) in volume 37 at para 18 and page 24, defines the reasonable cause of action as follows:

“A reasonable cause of action means a cause of action with some chance of success, when only the allegations in the statement of case are considered” Drummond-Jackson v British Medical Association [1970] 1 ALL ER 1094 at 1101, [1970] 1 WLR 688 at 696, CA, per Lord Pearson. See also Republic of Peru v Peruvian Guano Co. (1887) 36 ChD 489 at 495 per Chitty J; Hubbuck & Sons Ltd v Wilkinson, Heywood and Clark Ltd [1899] 1 QB 86 at 90,91, CA, per Lindley MR; Hanratty v Lord Butler of Saffron Walden (1971) 115 Sol Jo 386, CA.

30. Given the discretionary power the court possesses to strike out under this rule, it cannot strike out an action for the reasons it is weak, or the plaintiff is unlikely to succeed, rather it should obviously be unsustainable. His Lordship the Chief Justice A.H.C.T. Gates (as he then was) in **Razak v Fiji Sugar Corporation Ltd** (supra) held that:

“The power to strike out is a summary power “which should be exercised only in plain and obvious cases”, where the cause of action was “plainly unsustainable”; Drummond-Jackson at p.1101b; A-G of the Duchy of Lancaster v London and NW Railway Company [1892] 3 Ch. 274 at p.277.”

31. It was held in **Ratumaiyale v Native Land Trust Board** [2000] FJLawRp 66; [2000] 1 FLR 284 (17 November 2000) that:

“It is clear from the authorities that the Court's jurisdiction to strike out on the grounds of no reasonable cause of action is to be used sparingly and only where a

cause of action is obviously unsustainable. It was not enough to argue that a case is weak and unlikely to succeed, it must be shown that no cause of action exists (**A-G v Shiu Prasad Halka** [1972] 18 FLR 210; **Bavadra v Attorney-General** [1987] 3 PLR 95. The principles applicable were succinctly dealt by Justice Kirby in **London v Commonwealth** [No 2] 70 ALJR 541 at 544 - 545. These are worth repeating in full:

1. It is a serious matter to deprive a person of access to the courts of law for it is there that the rule of law is upheld, including against Government and other powerful interests. This is why relief, whether under O 26 r 18 or in the inherent jurisdiction of the Court, is rarely and sparingly provided (**General Street Industries Inc v Commissioner for Railways (NSW)** [1964] HCA 69; (1964) 112 CLR 125 at 128f; **Dyson v Attorney-General** [1911] 1 KB 410 at 418).

2. To secure such relief, the party seeking it must show that it is clear, on the face of the opponent's documents, that the opponent lacks a reasonable cause of action (**Munnings v Australian Government Solicitor** (1994) 68 ALJR 169 at 171f, per Dawson J.) or is advancing a claim that is clearly frivolous or vexatious; (**Dey v. Victorian Railways Commissioners** [1949] HCA 1; (1949) 78 CLR 62 at 91).

3. An opinion of the Court that a case appears weak and such that it is unlikely to succeed is not alone, sufficient to warrant summary termination. (**Coe v The Commonwealth** (1979) 53 ALJR 403; (1992) 30 NSWLR 1 at 5-7). Even a weak case is entitled to the time of a court. Experience teaches that the concentration of attention, elaborated evidence and argument and extended time for reflection will sometimes turn an apparently unpromising cause into a successful judgment.

4. Summary relief of the kind provided for by O 26, r 18, for absence of a reasonable cause of action, is not a substitute for proceeding by way of demurrer. (**Coe v The Commonwealth** (1979) 53 ALJR 403 at 409). If there is a serious legal question to be determined, it should ordinarily be determined at a trial for the proof of facts may sometimes assist the judicial mind to understand and apply the law that is invoked and to do so in circumstances more conducive to deciding a real case involving actual litigants rather than one determined on imagined or assumed facts.

5. If notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it has failed to put in proper form, a court will ordinarily allow that party to reframe its pleadings. (**Church of Scientology v Woodward** [1982] HCA 78; (1980) 154 CLR 25 at 79). A question has arisen as to whether O 26 r 18 applies only part of a pleading. (**Northern Land Council v The Commonwealth** (1986) 161 CLR 1 at 8). However, it is unnecessary in this case to consider that question because the Commonwealth's attack was upon the entirety of Mr. Lindon's statement of claim; and

6. The guiding principle is, as stated in O 26, r 18(2), doing what is just. If it is clear that proceedings within the concept of the pleading under scrutiny are doomed to fail, the Court should dismiss the action to protect the defendant from being further troubled, to save the plaintiff from further costs and disappointment and to relieve the Court of the burden of further wasted time which could be devoted to the determination of claims which have legal merit”.

32. The 3rd Defendant had relied on Sec. 14 of the Fiji Public Trustee Corporation Act 2006 (hereinafter referred to as the Act). I shall reproduce this section for clarity in this ruling.

Liabilities of the Office of Public Trustee

- 14(1) *The Corporation shall not assume any liability of the former Office of the Public Trustee arising from any breach of trust or breach of any legal obligation applying to the former Office.*
- (2) *Any action arising from any breach of trust or other legal obligation applying to the former Office of the Public Trustee may be taken or continued against the Government provided that—*
- (a) *the proceedings were commenced against the former Office of the Public Trustee prior to the commencement of this Act;*
 - (b) *notice of the intention to take proceedings was given to the Public Trustee prior to the commencement of this Act;*
 - (c) *proceedings are commenced against the Government within 12 months of the date of commencement of this Act; or*
 - (d) *notice of the intention to take proceedings against the Government is given to the Solicitor-General within 12 months of the date of commencement of this Act or the date on which the prospective plaintiff became aware of the breach.*
33. Pursuant to the above section it is to be noted that this provision is not strictly imposing a statutory time limit but a statutory requirement as a pre-condition to bringing proceedings against the former office of the Public Trustee. If not complied with, then this provision may operate as a bar to bringing in proceedings against the former office of the Public Trustee.
34. In reading the above provision as a whole, I find that bringing in an action under Sec. 14 (2) of the Act without compliance with the provisions therein may render the action an abuse of the process. However, it is my considered view that it shall not negate a cause of action.
35. Moreover, I find quite peculiar circumstances in this case that may favour the argument of the Plaintiff to the effect that the time limit under Sec. 14 (2) (d) of the Act is still running. It is evident from the facts stated in the Statement of Claim of the Plaintiff that there was a Court Order made by Justice Amaratunga, in a separate but connected action, to remove the 1st Defendant as the administrator of the estate, and that the 1st Defendant to provide full and complete accounts relating to the affairs of the estate to the Plaintiff, which to this date, it is alleged, not to have been complied with.

36. Although the 3rd Defendant argues that the Plaintiff should have given Notice to bring this action within 12 months from 26/09/2019 where *the Plaintiff was informed by the 1st Defendant the status of her entitlements under the Estate*, what the Act requires, pursuant to Section 14 (2) (d) of the Act, is to give Notice ‘*within 12 months of the date of commencement of this Act or the date on which the prospective plaintiff became aware of the breach.*’
37. Knowing the status of the entitlements under the estate shall not necessarily mean that the Plaintiff becomes aware of the breaches by the Public Trustee. In Courts considered view, for one to become aware of the breaches as enshrined in Sec. 14 of the Act, one must have the complete details of accounts relating to the estate administered by the Public Trustee to understand the nature of breaches and formulate the extent of such breaches if any.
38. In relation to this case, Court finds that without knowing all the facts relating to the administration of the estate by the former office of the Public Trustee (by way of complete accounts), one cannot specifically have any knowledge over a *breach of trust or breach of any legal obligation* as allegedly committed by that office. As such, this Court finds that the time under Sec. 14 (2) (d) of the Act shall only start to run from the date the 1st Defendant discloses complete accounts of the affairs relating to the estate and/or give reasons for inability or refusal to provide such accounts. Pursuant to the pleadings of the Plaintiff, it is revealed that, so far, the 1st Defendant has failed to disclose the same.
39. However, in the above circumstances, I do not find that the Plaintiff should be prevented from filing this action, because the circumstances as outlined in the foregoing paragraphs are outside the control of the Plaintiff. It appears that the 1st Defendant has willfully and/or negligently failed to provide to the Plaintiff the complete accounts of the affairs of the estate and/or any reasons for its failure to do so.
40. It should also be noted that as a result of this failure, the Plaintiff is moving for disclosure of these complete accounts by the 1st Defendant as relief in this case. It shall, therefore, not be in the interest of justice to hold the alleged illegal action of the 1st Defendant in not disclosing the complete accounts of the affairs of the estate to the Plaintiff against the rights of the Plaintiff to bring in this action as a whole.
41. The Plaintiff, in 1991, had authorized the former office of the Public Trustee to manage the estate, which included several real estate properties at the time. When the Plaintiff had returned to claim the estate, currently, the remaining value of the estate

had come down to \$ 0.12. It is obvious that the Plaintiffs rights as a beneficiary of the estate has been infringed but without the complete accounts of the affairs of the estate, there is no avenue for the Plaintiff to determine any *breach of trust or breach of any legal obligation* as allegedly committed by the former office of the Public Trustee.

42. Besides, from 2006 onwards, from the commencement of the new Act, the 1st Defendant had been responsible for the administration of the estate (pursuant to Sec. 5 of the Act) until the grant of probate was revoked in 2020. As such, it is, for obvious reasons, a must that the Plaintiff receive the complete accounts of the affairs of the estate to individually determine any breaches of the former office of the Public Trustee and the 1st Defendant, if any.
43. Given these circumstances, I do not find this action to offend the provisions in Sec. 14 of the Act. It is the considered view of this Court that, if the Plaintiff gives the Notice under Sec. 14 (2) (d) of the Act within 12 months from the date the 1st Defendant discloses the complete accounts of the affairs of the estate and/or reasons for any failure to do so, the proviso in Sec. 14 shall be held to have being complied with and any irregularity (if any) as per the current circumstances shall be deemed quired. As such the argument that due to no Notice being given currently under Sec. 14 of the Act, in Courts view, shall not support a strike out of the Plaintiff's claim under Order 18 Rule 18 (1) (a).
44. In the circumstances of this case, as discussed above, it is open for the Plaintiff to give Notice pursuant to Sec. 14 of the Act within 12 months from the date the complete accounts are provided to the Plaintiff by the 1st Defendant.
45. In respect of the argument under Sec. 9 of the Limitations Act, I do not find the limitation period of 06 years as per this section to have any application to this matter in the circumstances of this case. Sec. 9 of the Limitations Act is reproduced here for clarity.

Limitation of actions in respect of trust property

- 9(1) *No period of limitation prescribed by the provisions of this Act shall apply to an action by a beneficiary under a trust, being an action—*
 - (a) *in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or*
 - (b) *to recover from the trustee, trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his or her use.*
- (2) *Subject as aforesaid and to the provisions of the Trustee Act 1966, an action by a beneficiary to recover trust property or in respect of any breach of trust,*

not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued, provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest fell into possession.

(3) No beneficiary as against whom there would be a good defence under the provisions of this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he or she could have obtained if he or she had brought the action, and this Act had been pleaded in defence.

46. As per the reasons given in the foregoing paragraphs of this ruling, I do not find the limitation period of 06 years to have passed in this case pursuant to the proviso in Sec 9 (3) of the Limitation Act, firstly, as in my view the right of action had not accrued in the circumstances of this case and the interest in the estate has not fell in to possession (as the Plaintiff is currently acting only as an Administratrix in the estate) and secondly, until the time the Plaintiff was appointed the Administratrix in the estate, which was only done in 2020. As such, I do not find that the limitation period of 06 years shall have any application in this matter under the circumstances elaborated as above.
47. In view of the argument on failure to duly particularize the claim against the 3rd Defendant, I do, however, agree that the Statement of Claim fails to particularize the claim against the 3rd Defendant. However, in the Court's considered view, this is an issue of lack of particulars rather than having no cause of action.
48. The error, in my view, is in the formation of the Statement of Claim and the fact that the failure of the 1st Defendant to provide the complete accounts of the affairs of the estate to the Plaintiff. Despite these shortcomings, the Court does not find that striking-out the Plaintiffs claim for lack of particulars is warranted or justified. If struck out on this ground alone, that would shut out the Plaintiff in seeking justice through the judicial system as against the alleged breaches of her rights by the Defendants, in respect of the estate.
49. This, in my view, shall undoubtedly result in the breach of the constitutional rights of the Plaintiff guaranteed under Sec. 15 (2) of the Constitution of Fiji. Moreover, pursuant to Order 18 Rule 18 (1) the Court is vested with the power to order amendment of any pleading as opposed to striking out the same, in its judicial discretion. I find that circumstances of this case are such that the issue of failure to particularize the claim against the 3rd Defendant can be adequately addressed by way of ordering an amendment to the Statement of Claim rather than striking out the whole claim against the 3rd Defendant.

50. Without going into detail, it is to be noted that the argument regarding the failure to particularize 'Fraud' in the claim is made on the same basis as the above argument on lack of particulars against the 3rd Defendant. I do not find this argument too to warrant a striking out of the whole claim. I do find that the Plaintiff has failed to particularize the allegation of fraud and that it is inconsistent with Order 18 Rule 11 of the High Court Rules. However, at the same time, this error too, in Courts considered view can be duly rectified by way of ordering an amendment to the Statement of Claim rather than having the whole claim of the Plaintiff being struck out.
51. In overall consideration of the Statement of Claim, this Court is of the view that there are triable issues between the Plaintiff and all the Defendants in these proceedings. The Plaintiffs Statement of Claim may lack certain particulars as discussed in the foregoing paragraphs. However, these errors, in Courts considered view, can be adequately addressed by way of an amendment to the Statement of Claim.
52. The Court, accordingly, concludes that the 3rd Defendant (and/or the 1st Defendant) had failed to pass the threshold for allowing an application to strike out the Writ of Summons and/or the Statement of Claim pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules 1988 and that this application should, therefore, necessarily fail.
53. In the outcome, the Court makes the following orders.
1. The Summons to Strike Out as filed by the 3rd Defendant on 06/06/2023 and supported by the 1st Defendant is hereby refused and struck out subject to the following orders of the Court,
 2. Costs of this application shall be in the cause.
 3. The 1st Defendant shall within 14 days from today disclose to the Plaintiff detailed and complete accounts of the affairs of the estate of APPU aka APPU MADHWAN aka APPU MADHWAN NAIR from the time the said estate was legally administered by the former office of the Public Trustee till the 1st Defendant was removed as the Administrator of the said estate and/or provide adequate written reasons for failure to provide such accounts (That is by 22/11/2024).
 4. 07 days after, the Plaintiff shall give necessary Notice under Sec. 14 of the Fiji Public Trustee Corporation Act 2006 to the Solicitor General (That is by 03/12/2024).
 5. 14 days thereafter, the Plaintiff shall file and serve an Amended Statement of Claim, duly particularizing the claim against the 3rd Defendant and particularizing the alleged claim in 'Fraud' pursuant to the Rules of the Court (That is by 17/12/2024).
 6. Defendants shall file and serve a Statement of Defence to the Amended Statement of Claim 14 days after (That is by 31/12/2024).

7. Plaintiff shall file and serve a reply to Statement of Defence 14 days thereafter (That is by 14/01/2025).
8. Plaintiffs Summons for Directions to be filed and served 14 days after (That is by 28/01/2025).
9. In failure to comply with any of the above orders, the defaulting party shall pay a cost of \$ 2000.00, as summarily assessed by the Court, to the other party.
10. Matter to be Mentioned in Court on 06/02/2025.



A handwritten signature in blue ink, appearing to read "L. K. Wickramasekara".

**L. K. Wickramasekara,
Acting Master of the High Court.**

**At Suva
08/11/2024**
