IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 166 of 2023

BETWEEN:

JAZON ZHONG
PLAINTIFF

AND:

ULAIASI NANOVO
DEFENDANT

BEFORE:

Acting Master L. K. Wickramasekara

COUNSELS:
Vosarogo Lawyers for the Plaintiff
Sunil Kumar Esquire for the Defendant

Date of Hearing:
By way of Written Submissions

Date of Ruling:
23rd April 2025

RULING

01. This Ruling deals with the Notice issued by the Court, on its own motion, pursuant to Order 25 Rule 9 of the High Court Rules 1988 on the Plaintiff to show cause as to why this matter should not be struck out for want of prosecution and/or as an abuse of the

process of the court due to the failure of the Plaintiff to take any steps in the matter for over 06 months.

02. Order 25 Rule 9 Notice was issued on 26/07/2024 and served on the Plaintiffs' and the Defendant's solicitors on 30/07/2024.

03. When the matter was first called before this Court on 14/08/2024 pursuant to Order 25 Rule 9 Notice, the Plaintiff had filed a Notice of Intention to Proceed on 02/08/2024 and was allowed further time to file an Affidavit to Show Cause as to why the matter should not be Struck Out pursuant to Order 25 Rule 9 of the High Court Rules. The Defendant was also granted time to file an Affidavit, if necessary.

04. Plaintiff has accordingly filed an Affidavit to Show Cause on the 15/08/2024 whereas the Defendant has filed an Affidavit on 22/08/2024 in reply to the Affidavit of the Plaintiff.

05. This cause has commenced by way of a Writ of Summons and Statement of Claim filed on 02/06/2023. The claim is for specific performance and for damages following a Sales and Purchase Agreement between parties over a potential sale of a parcel of land which belonged to the Defendant.

06. The Defendant on 28/06/2023 filed the Acknowledgment of Service of the Writ and then filed a Statement of Defence on 09/08/2023.

07. From 09/08/2023, upon the Statement of Defence being filed, for almost 12 months, there were no steps taken in these proceedings, until such time the Court issued the Notice under Order 25 Rule 9 of the High Court Rules on 26/07/2024, on its own motion.

08. It is therefore clear from the Court record that since the last steps taken in the cause, as highlighted above, for almost 12 months, the Plaintiff has failed to take any steps to move this matter forward and the Plaintiff has left the matter dormant for such time.

09. As per the directions of the Court, the counsel for both the Plaintiff and the Defendant have filed comprehensive written submissions regarding the Notice to striking out the cause pursuant to Order 25 Rule 9 of the High Court Rules.

10. The Court shall consider the facts averred in the Affidavit to Show Cause as filed by the Plaintiff, the facts averred by the Defendant in his Affidavit in Reply and the written submissions on behalf of the parties along with the relevant legal provisions and the case authorities regarding Order 25 Rule 9 of the High Court Rules whilst reaching a decision in this matter.

11. Order 25 Rule 9 provides for the jurisdiction of the Court to strike out any cause or matter for want of prosecution or as an abuse of process of the Court if no step has been taken for six months. The said rule reads,

> ***Strike Out for Want of Prosecution (O 25, R 9)***
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> *9. (1) If no step has been taken in any cause or matter for six months then any party on application or the court of its own motion may list the cause or matter for the parties to show cause why it should not be struck out for want of prosecution or as an abuse of the process of the court.*
>
> *(2) Upon hearing the application, the court may either dismiss the cause or matter on such terms as maybe just or deal with the application as if it were a summons for directions.*

12. The grounds for striking out as provided in the above rule are firstly, the want of prosecution and secondly, the abuse of process of the Court. This is a rule that was introduced to the High Court Rules for case management purposes and was effective from 19 September 2005. The main characteristic of this rule is that the court is conferred with power to act on its own motion in order to agitate the unduly lethargic litigation (**see; *Trade Air Engineering (West) Ltd v Taga* *[2007] FJCA 9; ABU0062J.2006 (9 March 2007***). Well before the introduction of this rule, the Courts in Fiji have exercised the power to strike out the cause for want of prosecution following the leading English authorities such as ***Allen v. McAlpine*** [1968] 2 QB 299;[1968] 1 All ER 543 and ***Birkett v. James*** [1978] AC 297; [1977] 2 All ER 801.

13. **Justice Scott**, whilst striking out the Plaintiff's action in ***Hussein v Pacific Forum Line Ltd* *[2000] Fiji Law Report 24; [2000] 1 FLR 46 (6 March 2000),*** held,

> *"The principles governing the exercise of the Court's jurisdiction to strike out for want of prosecution are well settled. The leading English authorities are **Allen v. McAlpine** [1968] 2 QB 299;[1968] 1 All ER 543 and **Birkett v. James** [1978] AC 297; [1977] 2 All ER 801 and these have been followed in Fiji in, for example, **Merit Timber Products Ltd v. NLTB** (FCA Reps 94/609) and **Owen Potter v. Turtle Airways Ltd** (FCA Reps 93/205)".*

14. The Court of Appeal of Fiji in ***Trade Air Engineering (West) Ltd v Taga*** (supra) held,

> *"In our view the only fresh power given to the High Court under Order 25 Rule 9 is the power to strike out or to give directions of its own motion. While this power may very valuably be employed to agitate sluggish litigation, it does not in our opinion confer any additional or wider jurisdiction on the Court to dismiss or strike out on grounds which differ from those already established by past authority".*

15. Pursuant to the above decision of the Court of Appeal in ***Trade Air Engineering (West) Ltd v Taqa*** (supra), it is clear that the principles set out in ***Birkett v. James*** (supra) are still applicable to strike out any cause where no step is taken for six months, despite the introduction of a new rule (Or 25 R 9).

16. **Lord Diplock**, in ***Birkett v. James*** (supra), explained the emerging trend of English Courts in exercising the inherent jurisdiction for want of prosecution. His Lordship held that,

> *"Although the rules of the Supreme Court contain express provision for ordering actions to be dismissed for failure by the plaintiff to comply timeously with some of the more important steps in the preparation of an action for trial, such as delivering the statement of claim, taking out a summons for direction and setting the action down for trial, dilatory tactics had been encouraged by the practice that had grown up for many years prior to 1967 of not applying to dismiss an action for want of prosecution except upon disobedience to a previous peremptory order that the action should be dismissed unless the plaintiff took within a specified additional time the step on which he had defaulted.*
>
> *To remedy this High Court judges began to have recourse to the inherent jurisdiction of the court to dismiss an action for want of prosecution even where no previous peremptory order had been made, if the delay on the part of the plaintiff or his legal advisers was so prolonged that to bring the action on for hearing would involve a substantial risk that a fair trial of the issues would not be possible. This exercise of the inherent jurisdiction of the court first came before the Court of Appeal in* ***Reggentin vs Beecholme Bakeries Ltd (Note)*** *[1968] 2 Q.B. 276 (reported in a note to* ***Allen v Sir Alfred McAlpine & Sons Ltd*** *[1968] 2 Q.B. 229) and* ***Fitzpatrick v Batger & Co Ltd*** *[1967] 1 W.L.R. 706*
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> *The dismissal of those actions was upheld and shortly after, in the three leading cases which were heard together and which, for brevity, I shall refer to as* ***Allen v McAlpine*** ***[1968] 2 Q.B. 229****, the Court of Appeal laid down the principles on which the jurisdiction has been exercised ever since. Those principles are set out, in my view accurately, in the note to R.S.C, Ord. 25, R. 1 in the current Supreme Court Practice (1976).* ***The power should be exercised only where the court is satisfied either (1) that the default has been intentional and contumelious, e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court; or (2) (a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to***

have caused serious prejudice to the defendants either as between themselves and the plaintiff or between each other or between them and a third party*"*.(emphasis added)

17. The first limb in the test for striking out a pleading and/or a matter as expounded in the above case is ***the intentional and contumelious default***. **Lord Diplock** gave two examples for that first limb in the above judgment. One is ***disobedience to a peremptory order of the court*** and the other is ***conduct amounting to an abuse of the process of the Court.*** In considering the above examples, it is clear that the second ground as provided in Order 25 Rule 9, which is 'abuse of the process of the court', is a good example for '***the intentional and contumelious default'*** as illustrated by **Lord Diplock** in ***Birkett v. James*** (supra). According to **Lord Diplock** abuse of the process of the Court falls under the broad category of '***the intentional and contumelious default.'***

18. House of Lords in ***Grovit and Others v Doctor and Others*** ***(1997) 01 WLR 640, 1997 (2) ALL ER, 417,*** held that, commencing an action without real intention of bringing to conclusion amounts to an abuse of the process of the Court. It was held as follows,

> *"The court exists to enable parties to have their disputes resolved. To commence and to continue litigation which you have no intention to bring to conclusion can amount to abuse of process. Where this is the situation the party against whom the proceedings are brought is entitled to apply to have the action struck out and if justice so requires (which will frequently be the case) the courts will dismiss the action. The evidence which was relied upon to establish the abuse of process may be the plaintiff's inactivity. The same evidence will then no doubt be capable of supporting an application to dismiss for want of prosecution. However, if there is an abuse of process, it is not strictly necessary to establish want of prosecution under either of the limbs identified by* ***Lord Diplock*** *in* ***Birkett v James*** *[1978] A.C 297. In this case once the conclusion was reached that the reason for the delay was one which involved abusing the process of the court in maintaining proceedings where there was no intention of carrying the case to trial the court was entitled to dismiss the proceedings".*

19. The Fiji Court of Appeal in ***Thomas (Fiji) Ltd –v- Frederick Wimheldon Thomas & Anor,*** *Civil Appeal No. ABU 0052/2006****,*** followed the principles of ***Grovit and Others v Doctor and Others*** (supra) and held that,

> *"During the course of his careful and comprehensive ruling the judge placed considerable emphasis on the judgment of the House of Lords in* ***Grovit and Ors v Doctor*** *[1997] 2 ALL ER 417. That was an important decision, and the judge was perfectly right to take it into account. It should however be noted that Felix Grovit's action was struck out not because the accepted tests for striking out established in* ***Birkett v James*** *[1977] 2 ALL ER 801; [1978] AC 297 had been satisfied, but because the court found that*

he had commenced and continued the proceedings without any intention of bringing them to a conclusion. In those circumstances the court was entitled to strike out the action as being an abuse of the process of the Court. The relevance of the delay was the evidence that it furnished of the Plaintiff's intention to abuse the process of the Court."

20. **Master Azhar** (as His Lordship then was) in the case of ***Amrith Prakash v Mohammed Hassan & Director of Lands; HBC 25/15: Ruling (04 September 2017)*** has held,

> *"Both the **The Grovit** case and **Thomas (Fiji) Ltd** (supra) which follows the former, go on the basis that, "abuse of the process of the court" is a ground for striking out, which is independent from what had been articulated by **Lord Diplock** in **Birkett v James** (supra). However, it is my considered view that, this ground of "abuse of the process of the court" is part of '**the intentional and contumelious default',** the first limb expounded by **Lord Diplock**. The reason being that this was clearly illustrated by Lord Diplock in **Birkett v. James** (supra). For the convenience and easy reference, I reproduce the dictum of **Lord Diplock** which states that; "...**either (1) that the default has been intentional and contumelious, e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court…"** (Emphasis added). According to **Lord Diplock**, the abuse of the process of the court falls under broad category of '**the intentional and contumelious default'**. In fact, if a plaintiff commences an action and has no intention to bring it to conclusion it is an abuse of the process of the court. Thus, the default of a plaintiff intending not to bring it to conclusion would be intentional and contumelious. Accordingly, it will fall under the first limb of the principles expounded in **Birkett v. James** (supra). This view is further supported by the dictum of **Lord Justice Parker** who held in **Culbert v Stephen Wetwell Co. Ltd,** (1994) PIQR 5 as follows,*
>
> *"There is, however, in my view another aspect of this matter. An action may also be struck out for contumelious conduct, or abuse of the process of the Court or because a fair trial in action is no longer possible. Conduct is in the ordinary way only regarded as contumelious where there is a deliberate failure to comply with a specific order of the court. In my view however a series of separate inordinate and inexcusable delays in complete disregard of the Rules of the Court and with full awareness of the consequences can also properly be regarded as contumelious conduct or, if not that, to an abuse of the process of the court. Both this and the question of fair trial are matters in which the court itself is concerned and do not depend on the defendant raising the question of prejudice."*

21. It must, however, be noted that the Defendant, is under no duty to prove the prejudice to him/her, or for that matter for the Court to consider the prejudice to the Defendant, to strike out an action under Order 25 Rule 9 of the High Court Rules 1988, if the abuse of the process of the Court is established**.** Whereas, in such an instance, it is sufficient to establish the Plaintiff's inactivity coupled with the complete disregard of the Rules of the Court with the full awareness of the consequences, for the action to be struck out pursuant to Order 25 Rule 9 of the High Court Rules.

22. The burden of proof in determining the matters under Order 25 Rule 9 of the High Court Rules may fall as a "negative burden of proof' on the Plaintiff itself. **Master Azhar** (as His Lordship then was) in ***Amrith Prakash v Mohammed Hassan & Director of Lands*** (Supra) further held,

> *"If the court issues a notice, it will require the party, most likely the Plaintiff, to show cause why his or her action should not be struck out under this rule. In such a situation, it is the duty of the Plaintiff to show to the Court negatively that, there has been no intentional or contumelious default, there has been no inordinate and inexcusable delay, and no prejudice is caused to the Defendant. This is the burden of negative proof. In this case, the Defendant does not, even need to participate in this proceeding. He or she can simply say that he or she is supporting court's motion and keep quiet, allowing the plaintiff to show cause to the satisfaction of the court not to strike out plaintiff's cause. Even in the absence of the defendant, the court can require the plaintiff to show cause and if the court is satisfied that the cause should not be struck out, it can give necessary directions to the parties. Generally, when the notice is issued by the court, it will require the defendant to file an affidavit supporting the prejudice and other factors etc. However, this will not relieve the Plaintiff from discharging his or her duty to show cause why his or her action should not be struck out. In the instant case, it was the notice issued by the court on its own motion. Thus, the Plaintiff has the burden of negative proof and or to show cause why his action should not be struck out for want of prosecution or abuse of the process of the court."*

23. The second limb of the ***Birkett v. James*** (supra) is (a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such that it is likely to cause or to have caused serious prejudice to the defendants. In short, inordinate, and inexcusable delay and the prejudice which makes the fair trial impossible.

24. Fiji Court of Appeal in ***New India Assurance Company Ltd v Singh*** **[1999] FJCA 69; Abu0031u.96s (26 November 1999),** unanimously held that, *"We do not consider it either helpful or necessary to analyse what is meant by the words 'inordinate' and*

'inexcusable'. They have their ordinary meaning. Whether a delay can be described as inordinate or inexcusable is a matter of fact to be determined in the circumstances of each individual case". However, in ***Deo v Fiji Times Ltd* [2008] FJCA 63; AAU0054.2007S (3 November 2008)** the Fiji Court of Appeal cited the meaning considered by the court in an unreported case. It was held that,

> *"The meaning of "inordinate and inexcusable delay" was considered by the Court of Appeal in* ***Owen Clive Potter v Turtle Airways Limited v Anor*** *Civil Appeal No. 49 of 1992 (unreported) where the Court held that inordinate meant "so long that proper justice may not be able to be done between the parties" and "inexcusable" meant that there was no reasonable excuse for it, so that some blame for the delay attached to the plaintiff".*

25. In considering whether a period of delay to be inordinate and contumelious pursuant to Order 25 Rule 9 of the High Court Rules, **Master Azhar** (as His Lordship then was) in ***Amrith Prakash v Mohammed Hassan & Director of Lands*** (Supra) went on to hold,

> *'Order 25 Rule 9 by its plain meaning empowers the Court to strike out any cause either on its own motion or an application by the defendant if no steps taken for six months. The acceptable and/or tolerable maximum period for inaction could be six months. The threshold is six months as per the plain language of the rule. It follows that any period after six months would be inordinate and excusable so long that proper justice may not be able to be done between the parties and no reasonable excuse is shown for it. Therefore, whether a delay can be described as inordinate or inexcusable is a matter of fact which to be determined in the circumstances of each and every case."*

26. All in all, since the Notice was issued by this Court on its own motion pursuant to Order 25 Rule 9, it is the Plaintiff who must show cause why his action should not be struck out under the provisions of the said rule.

27. Surprisingly, in this case, in the Affidavit to Show Cause as sworn by the Plaintiff, the Court is unable to cite an acceptable reason for the delay of almost 12 months. I shall herewith reproduce *in verbatim* the reasons averred by the Plaintiff to explain the delay as per the Plaintiff's Affidavit filed on 15/08/2024. These reasons appears to be set out from averment number 19 to 25 of the said Affidavit.

> ***19. ON*** *Wednesday, 01/11/23, the Defendant's new solicitors, SUNIL KUMAR Esquire, wrote to me terminating the sale and purchase agreement. Annexed hereto and marked "**JZ1**" is a copy of the letter dated 01/11/23.*

> ***20. ON*** *17/11/23, my lawyer sent an email to Sunil Kumar Esquire to ask that this matter be discussed further. Annexed hereto and marked "**JZ2**" is a printout of the chain of emails from my lawyer.*
>
> ***21. NOTHING*** *further was heard from the Defendant's solicitors* ***until recently when they decided to move on this case****. To this day, they have not responded to my solicitor's emails.* (Emphasis Added)
>
> ***22. IN*** *the meantime, the lawyer in carriage of my file at Pacific Chambers, Mr. Mathew Young abruptly left for New Zealand towards the end of 2023 and did not indicate whether he was coming back and what he did with my file.*
>
> ***23. MY*** *Solicitors also changed office and therefore due to change of staff and shifting of office, my file was misplaced and was overlooked.*
>
> ***24. MY*** *current lawyer was busy engaged with national duties from October and inadvertently let my case lie for a while. It was not from any lack of prompting on my part.*
>
> ***25. IN*** *February 2024 a couple of searches were made at the High Court Registry for my documents but somehow, they were unsuccessful. However, my solicitors finally managed to get a copy of the writ from the High Court Registry around June this year.*

28. The delay and/or the inaction of the Plaintiff in this matter is almost an year. The Plaintiff appears to hold the view that writing an email through his solicitor to the solicitors of the Defendant requesting for a further discussion on the matter is sufficient action which would override any delay in the proceeding for almost an year.

29. The alleged email had been sent on 17 and 21/11/2023 to the Defendants solicitors. Plaintiff alleges that the Defendant's solicitors failed to reply to the said email. However, even at the time of sending this alleged email, the Plaintiff had failed to take any progressive action in the proceeding before the Court for over 03 months since filing of the Statement of Defence on 09/08/2023.

30. After sending the alleged email as stated above, the Plaintiff took no action at all till the Court issued the Notice under Order 25 Rule 9 on 26/07/2024. That is over 08 months from the date of sending the alleged email to the Defendant's solicitors. The delay during this period is only explained as the fault of the Plaintiff's solicitors.

31. The Plaintiff claims that *'the lawyer in carriage of my file at Pacific Chambers, Mr. Mathew Young abruptly left for New Zealand towards the end of 2023 and did not indicate whether he was coming back and what he did with my file'.* This clearly is unacceptable and there is no evidence whatsoever, before this Court that the Plaintiffs matter was, in fact, handled by the said Mr. Mathew Young.

32. On the contrary, it is clear from the Court Record that the Plaintiff's matter had been handled by the law firm 'Pacifica Chambers' until the current solicitors for the Plaintiff

filed a Notice of Change of Solicitors only on 12/09/2024. The averments that the Plaintiff's solicitors changed office buildings and misplaced the Plaintiff's file are purely hearsay and not corroborated. Even if such averments are to be corroborated, such excuses are unacceptable and frivolous in explaining a delay of almost an year in this proceeding. I therefore find that the reasons averred by the Plaintiff in lieu of the delay in this proceeding is unacceptable, frivolous and vexatious.

33. As held in **Amrith Prakash v Mohammed Hassan & Director of Lands (Supra)**, the legally acceptable period for inaction in a civil cause in Fiji is 06 months as embodied in Order 25 Rule 9 of the High Court Rules 1988.

34. Beside the above breach of failing to take steps within the acceptable 06 months period, the Plaintiff is in breach of various other rules as per the High Court Rules 1988. Pursuant to Order 18 Rule 3, the Plaintiff had 14 days to file and serve a Reply to the Statement of Defence. Time period for filing a Reply has lapsed sometime in the third week of August 2023. In the event where no Reply to the Statement of Defence is filed, then pursuant to Order 18 Rule 13, the pleadings shall come to a closure and the Plaintiff is to attend to Discovery and Inspection pursuant to Order 24 Rule 2 within 14 days from the close of pleadings. Thereupon, the Plaintiff is under obligation pursuant to Order 25 Rule 1 to file for Summons for Directions within 30 days from the close of pleadings. In failure to file the Summons for Directions as per the above rule, the Defendant in the cause is entitled to apply for an order to dismiss the action pursuant to Order 25 Rule 1 (4) of the High Court Rules.

35. In the circumstances of this case, the delay is almost an year, which is well beyond the acceptable limit of 06 months. The Court therefore cannot find any justification in the position of the Plaintiff where it appears to suggest that a delay of almost an year could simply be excusable by submitting unacceptable hearsay reasons which is found to be frivolous and vexatious.

36. In Courts considered view, the Plaintiff has resorted to a lethargic and unprecedented approach to its own cause and caused a delay of almost an year. A delay of such a magnitude, in Court's considered view, may certainly affect the conduct of a fair trial.

37. The Defendant has submitted that he had moved on with the sale of the subject land as per the Sales and Purchase Agreement with another buyer due to the failure of the Plaintiff to comply with the terms in the said Agreement within the stipulated time. The Defendant has extensively annexed relevant documents with his Affidavit in Reply as evidence of his attempts to eventuate the settlement according to the Sales and Purchase Agreement and the failure of the Plaintiff to duly make payments as agreed.

38. Further, the Defendant submits that the relief the Plaintiff is now seeking, the specific performance of the said Sales and Purchase Agreement is no longer possible due to the

current change in circumstances, and that the Defendant shall therefore be unfairly prejudiced, and as well, in the same context, that a fair trial between the parties is no longer possible in this matter. I do find merit in this argument of the Defendant and that in Court's considered view, it is entirely a result of the Plaintiff's inaction and lethargic attitude towards its own cause that has brought about the above change of circumstances.

39. In Court's considered view the Plaintiff has failed to provide any plausible reason to explain the almost 12 months delay in this proceeding. Moreover, the Plaintiff has also failed to show that such lengthy delay has not, in fact, unfairly prejudiced the Defendant. On the contrary, the Court finds that the Defendant has successfully established unfair prejudice caused to him as a result of the lengthy delay orchestrated by the Plaintiff in this proceeding.

40. In view of the findings stated in the foregoing paragraphs in this ruling, it is therefore the informed conclusion of the Court that the delay in this proceeding is inordinate and inexcusable.

41. Furthermore, this Court concludes that the conduct of the Plaintiff in this matter (as discussed in the foregoing paragraphs) is such that it is clearly evident that this legal proceeding is being brought with no clear intention of bringing it to a finality, which in fact amounts to an abuse of the process of the Court. The Plaintiff at averment number 21 in his Affidavit to Show Cause, as reproduced at paragraph 27 of this ruling, avers that *'NOTHING further was heard from the Defendant's solicitors* ***until recently when they decided to move on this case****'*. It is clearly evident that the Plaintiff was, in fact, waiting for the Defendant to move this matter forward contrary to the requirements in the High Court Rules 1988.

42. Lord Justice Parker in ***Culbert v Stephen Wetwell Co. Ltd,*** *(1994) PIQR 5* held,

> *"There is however, in my view another aspect of this matter. An action may also be struck out for contumelious conduct, or abuse of the process of the Court or because a fair trial in action is no longer possible. Conduct is in the ordinary way only regarded as contumelious where there is a deliberate failure to comply with a specific order of the court. In my view however a series of separate inordinate and inexcusable delays in complete disregard of the Rules of the Court and with full awareness of the consequences can also properly be regarded as contumelious conduct or, if not that, to an abuse of the process of the court. Both this and the question of fair trial are matters in which the court itself is concerned and do not depend on the defendant raising the question of prejudice."* (Emphasis added).

43. I shall accordingly reiterate the fact that, although the Plaintiff instituted this action against the Defendant, it is apparent from the conduct of the Plaintiff that it did not share any intention to bring these proceedings to a conclusion within a reasonable time. The Court accordingly conclude that the Plaintiff's conduct in this proceeding, as reflected from the facts discussed in the foregoing paragraphs in this ruling, is contumelious.

44. The House of Lords in ***Grovit and Others v Doctor and Others*** ***(1997) 01 WLR 640, 1997 (2) ALL ER, 417,*** held that, commencing an action without real intention of bringing to conclusion amounts to an abuse of the process of the Court. It was held,

> *"The court exists to enable parties to have their disputes resolved. To commence and to continue litigation which you have no intention to bring to conclusion can amount to abuse of process. Where this is the situation the party against whom the proceedings is brought is entitled to apply to have the action struck out and if justice so requires (which will frequently be the case) the courts will dismiss the action. The evidence which was relied upon to establish the abuse of process may be the plaintiff's inactivity. The same evidence will then no doubt be capable of supporting an application to dismiss for want of prosecution. However, if there is an abuse of process, it is not strictly necessary to establish want of prosecution under either of the limbs identified by Lord Diplock in* ***Birkett v James*** *[1978] A.C 297. In this case once the conclusion was reached that the reason for the delay was one which involved abusing the process of the court in maintaining proceedings where there was no intention of carrying the case to trial the court was entitled to dismiss the proceedings".*

45. As already highlighted in the foregoing paragraphs, the acceptable and/or tolerable period of inaction in any matter is 6 months as embodied in Order 25 Rule 9. The threshold is six months, and any delay thereafter would be inexcusable and inordinate so long as no reasonable excuse is provided, and justice may not be able to be done between the parties. In this case, there is no justifiable reason given for the delay other than the frivolous and vexatious reasons as cited in the foregoing paragraphs of this ruling.

46. As stated in many previous rulings of this Court, it is to be noted that in litigation there are some parties that pursue their cases sporadically or make default with the intention of keeping the matters pending against the other parties without reaching a finality.

47. The Courts are not to ignore such practices or parties. Such practices must be disallowed promptly for reasons that it is an abuse of the process of the Court, and it is a waste of the Court's time and resources which are not infinite.

> '*The more time that is spent upon actions which are pursued sporadically, the less time and resources there are for genuine litigants who pursue their*

cases with reasonable diligence and expedition and want their cases to be heard within a reasonable time' (see; ***Singh v Singh*** -supra).

48. Furthermore, such a practice is in clear violation of the fundamental rights guaranteed by sections 15 (2) and (3) of the Constitution which read as,

> *(2) Every party to a civil dispute has the right to have the matter determined by a court of law or if appropriate, by an independent and impartial tribunal.*
> *(3) Every person charged with an offence and every party to a civil dispute has the right to have the case determined within a reasonable time.* (Emphasis added)

49. Further, such a practice may also constitute serious prejudice to the other party as justice may not be done between the parties since the matter is pending idle without any steps being taken to reach a finality over a lengthy period of time, so as to say to have a *Sword of Damocles* hanging over its head.

50. Apart from the above considerations, the Court shall also consider the interest of justice in the matter prior to deciding to summarily interfere with the rights of the parties. The Plaintiff, although has claimed that he has paid over $ 30000.00 to the Defendant pursuant to the Sales and Purchase Agreement between the parties fails to mention that the Agreement itself provides for remedies for the Defendant in case of a default by the Purchaser[1].

51. Moreover, it is noted by the Court that the Defendant has in his Affidavit filed on 22/08/2024 submitted evidence regarding compliance with the said Sales and Purchase Agreement on his part (the annextures attached with the Defendant's Affidavit filed on 22/08/2024), whereas the Plaintiff has failed to submit any such evidence in support and/or justification of his claim in the Affidavit to Show Cause.

52. In the above circumstances, the interest of justice, in Court's considered view, do not favour the Plaintiff in this matter as per given circumstances of the proceeding before the Court.

53. Moreover, as the Defendant has argued in its written submissions, the Plaintiff has only prayed for specific performance of the Agreement and for general damages as per the Statement of Claim. As per the facts stated in the foregoing paragraphs, I find that this prayer of the Plaintiff would now result in impracticality due to the material change in circumstances in the matter, resulting from (as discussed in the foregoing paragraphs) the unacceptable delay caused by the Plaintiff in this proceeding.

[1] Clause 15 of the Sales and Purchase Agreement dated 06/10/2022 as annexed with the Affidavit of the Defendant filed on 22/08/2024.

54. In the same context, it is worthy to note the new developments in the English Courts where the Courts have resorted to adopt a much stricter approach in considering the interest of justice and in attributing a far more general form to the term as opposed to limiting the definition of 'interest of justice' to individual rights alone. It could now be construed that the English Courts are much more willing to strike out a sporadic claim, considering the much broader meaning of the term 'interest of justice'. In the case of ***Securum Finance Ltd v Ashton [2001] Ch 291 (Securum Finance Ltd)*** it was held,

> *"[30] the power to strike out a statement of claim is contained in CPR r 3.4. In particular, rule 3.4 (2) (b) empowers the court to strike out a statement of case … if it appears to the court that the statement of case is an abuse of the court's process … In exercising that power the court must seek to give effect to the overriding objective set out in CPR 1.1: see rule 1.2 (a). The overriding objective of the procedural code embodied in the new rules is to enable the court "to deal with cases justly": see rule 1.1 (1).* ***Dealing with a case justly includes "allotting to it an appropriate share of the court's resources, while taking into accounts the need to allot resources to other cases****".* (Emphasis added).
>
> *[31] In the* ***Arbuthnot Latham case***[2] *this court pointed out in a passage which I have already set out that:*
>
> > ***In Birkett v James the consequence to other litigants and to the courts of inordinate delay was not a consideration which was in issue. From now on it is going to be a consideration of increasing significance."*** (Emphasis added).

55. Having duly considered the above developments in the law and based on the facts of this matter, in its final determination, this Court accordingly concludes that the Plaintiff has failed to duly show cause as to why his action should not be struck out for want of prosecution and/or as an abuse of the process of the Court.

56. The Court accordingly orders that the Writ of Summons and the Statement of Claim filed on 02/06/2023, to be struck out pursuant to Order 25 Rule 9 of the High Court Rules.

57. Consequently, the Court makes the following final orders,

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[2] ***Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd [1998] 1 WLR 1426; [1998] 2 All ER 181.***

I. Plaintiff's Writ of Summons and the Statement of Claim filed on 02/06/2023 is struck out and dismissed pursuant to Order 25 Rule 9 of the High Court Rules.

II. Plaintiff shall pay a cost of $ 2000.00 as summarily assessed by the Court to the Defendant as costs of this proceeding.

III. This Cause is wholly struck out and dismissed.

L. K. Wickramasekara,

Acting Master of the High Court.

At Suva,
23/04/2025.