

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. **HBC 146 of 2019**

**BETWEEN:**                    **BIJEND PRASAD RAM** a Medical Doctor and Company Director of 361 Waimanu Road, Suva.

**1<sup>st</sup> Plaintiff**

**JOJI MALANI** a Medical Doctor and Company Director of 361 Waimanu Road, Suva.

**2<sup>nd</sup> Plaintiff**

**TROPICAL HEALTH INCORPORATED LIMITED** a Limited Liability Company of 361 Waimanu Road, Suva (Now in Liquidation).

**3<sup>rd</sup> Plaintiff**

**AND:**                            **FNPF INVESTMENTS LIMITED** of 33 Ellery Street, Suva.

**1<sup>st</sup> Defendant**

**BANK OF BARODA** a Government of India undertaking, incorporated in India and carrying on its business in Fiji.

**2<sup>nd</sup> Defendant**

**FIJI NATIONAL UNIVERSITY** a corporate body established under the Fiji National University Act of Fiji.

**3<sup>rd</sup> Defendant**

**Appearances:**

**1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Plaintiff:** **Mr Fa Jnr** (Fa & Co).

**1<sup>st</sup> Defendant:** **Mr. Suguturaga** (FNPF Legal Services Department).

**2<sup>nd</sup> Defendant:** **Mr. R. Singh** (Parshotam Lawyers).

**3<sup>rd</sup> Defendant:** **Mr R. Prasad** (FNU).

**Official Receiver:** Ms. Daunimatua.

**Date of Hearing:** 16<sup>th</sup> May 2025.

**Ruling**

- [1] The 2<sup>nd</sup> Defendant filed summons seeking clarification of judgment dated 18<sup>th</sup> October 2024.
- [2] The 3<sup>rd</sup> Defendant had filed summons to strike out and on 18<sup>th</sup> October 2024 the Plaintiff's writ of summons and statement of claim were struck out.
- [3] The 2<sup>nd</sup> Defendant is basically seeking to know the effect of the strike out of the claim on its counter claim.

[4] In this matter the Plaintiff's writ of summons and the statement of claim was struck out. The 2<sup>nd</sup> Defendant on 19th July 2019 had filed a statement of defence and counterclaim against the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff. The 2<sup>nd</sup> Defendant's are concerned that their counter claim was struck out, when the writ and the claim were struck out. The Plaintiff's lawyers argue the same point and are steadfast that the claim and the counterclaim are struck out.

[5] **The Supreme Court Practice 1998, Vol 1 (Part 1), Para 15/2/4 (pg. 168) (The White Book 1988)** provides guidance about a counterclaim and the extent of it as an independent action. It states that:

*"...A counterclaim is substantially a cross-action, not merely a defence to the plaintiff's claim. It must be of such a nature that the Court would have jurisdiction to entertain it as a separate action (Bow MacLachlan & The Camosun [1909] A.C. 597; Williams v. Agius [1914] A.C. 522). A counter-claim is to be treated, for all purposes for which justice requires it to be so treated, as an independent action" (per Bowen L.J., in Amon v. Bobbett 22 QBD 543, p. 548). If after the defendant has pleaded a counterclaim, the action of the plaintiff is for any reason stayed, discontinued, or dismissed, the counterclaim may nevertheless be proceeded with (para. (3)). Thus, where the plaintiff's claim was held to be frivolous, the Court still granted the defendant the relief prayed for by his counterclaim (Adams v. Adams (1892) 45 Ch. D. 426; [1892 1 Ch. 369). In short, for all purposes except those of execution, a claim and a counterclaim are two independent actions (per Lord Esher M.R., in Stumore v. Campbell & Co. ([1892] 1 QB 314, p.317)...."*

[6] Order 15 Rule 2 of the High Court Rules 1988 provides for counterclaim against plaintiff. Order 15 Rule 2 (3) provides that *"a counterclaim may proceed with notwithstanding that judgment is given for the plaintiff in the action or that the action is stayed, discontinued or dismissed."*

[7] This Court has power under the Rules to grant a Defendant in respect of any right claimed by him/her all such relief against the Plaintiff as such Defendant might have properly claimed if he/she had brought an action against the Plaintiff for that purpose. A counterclaim is promoted to the position of a statement of claim indorsed on a writ of summons. It is also noted that under the Rules, the Defendant may apply for summary judgment on a counterclaim. (**Order 14 Rule 5** of the High Court Rules 1988)

[8] It is clear from the **White Book 1988** (referred to above, which deals with analogous provisions of our High Court Rules) and **Order 15 Rule 2 (3)** of the High Court Rules 1988 that a counterclaim is an independent action. A counterclaim is independent of a writ and statement of claim. The writ and the statement of claim being struck out in this matter does not have a bearing on the counterclaim. It is an independent action. It is pleaded that way for convenience and multiplicity of suits. The counterclaim has not been dealt with. It remains undisposed.

.....  
Chaitanya S.C.A. Lakshman

**Puisne Judge**  
23<sup>rd</sup> May 2025

