

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 132 of 2022

IN THE MATTER of Summary Proceedings for Possession of Land made under Order 113 of the High Court Rules 1988 (as amended).

BETWEEN : **TAMAVUA RAMAYAN MANDALI**, a religious body duly registered under the provision of the Religious Bodies Registration Act 1881 having its registered office at Lot 13 Archie Seeto Road, Namadi Heights, Tamavua, Suva, Legally Described as Lot 13 DP 7516 on Certificate of Title No. 34610.

FIRST PLAINTIFF

AND : **SATEND PRASAD, RONAL AVNEEL DEO, AND SADASIVAN** of Suva Trustees of TAMAVUA RAMAYAN MANDALI.

SECOND PLAINTIFF

AND : **TEVITA JIKOTANI** of Tamavua, Suva, Occupation Unknown.

FIRST DEFENDANT

AND : **JOSEFA MOCECA** of Tamavua, Suva, Occupation Unknown.

SECOND DEFENDANT

AND : **ARE KOLIACI** of Tamavua, Suva, Occupation Unknown.

THIRD DEFENDANT

AND : **THE OTHER OCCUPIERS** of Lot 13 Archie Seeto Road, Namadi Heights, Tamavua, Suva, Legally Described as Lot 13 DP 7516 on Certificate of Title No. 34610.

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Patel A.** for the Plaintiff

Non-Appearance of the 1st, 2nd and 3rd Defendants

DATE OF JUDGMENT: 19th June, 2025

JUDGMENT

[Reinstatement]

On the outset, this Court notes that this Action was filed and commenced on 20th April 2022 and was impending in the system for almost 03 years now until its final disposition on 24th April 2025.

A. Introduction

1. The Plaintiff filed a **Notice of Motion for Reinstatement** coupled with an Affidavit in Support and sought for the following orders:
 - [1] That the above matter which was struck out on the 25th April 2024, for failure to appear in Court by the Plaintiff and/or its Solicitors be reinstated to the cause list and a fresh mention date be assigned.
2. The application is made pursuant to **Order 32 Rule 4 (4) of the High Court Rule, 1988**.
3. The Plaintiff furnished Court with its written submissions.

B. The Law

4. The Plaintiff has made this application for 'Reinstatement' pursuant to **Ordre 32 Rule 4 (4) of the High Court Rules 1988**. However, Order 32 only has Rules 1-4 inclusive and deals with applications and proceedings in chambers. There is no **order 32 rule 4 (4) found under Order 32, of the High Court Rules, 1988**.
5. This Court also notes that the Plaintiff's application for reinstatement is made by a "**Notice of Motion**". **Order 32 Rule 1** provides:

"Except as provided by Order 25, rule 7, every application in chambers not made ex-parte must be made by summons.
6. The wordings of **Order 32 Rule 1** is perfectly clear to me. There is no doubt that the Plaintiff's application for 'reinstatement' must be made by Summons. **Order 32 Rule 1** is mandatory in its terms. There is no ambiguity. The obligation is clear.
7. I hold that the Plaintiff's application before this Court is not properly constructed because the Plaintiff has failed to comply with the mandatory provisions of **Order 32, Rule 1**, in that the Plaintiff has not filed a Summons instead filed a Notice of Motion.
8. Reference is made to the case of **Reijieli Dioge v Munian Chetty & Anr**, High Court Suva Civil Action No. HBC 053R of 2002B (05th April 2004) '*that making an application under a wrong rule is a fundamental error which the Court cannot, in its discretion, rectify as mere non-compliance under Order 2 of the Rules.*'
9. The importance of complying with the Rule was emphasized in the case of **Kenneth John Hart v Air Pacific Ltd** Civil Appeal No 23 of 1983. in the case of **Native Land Trust Board v Kaur** [1997] FJHC 44, the Court adopted the principles espoused in the case of **Venkatamma v Ferrier - Watson**, Civil Appeal No. CBV 0002 of 1992 at p.3 that:

'We now stress however, that the Rules are there to be obeyed. In future practitioners must understand that they are on Notice that non-compliance may

well be fatal to an Application in cases not having the special combination of the feature present here, it is unlikely to be excused.'

10. In view of Non compliance of the Rules by the Plaintiff as a matter of academic interest only at worst is an exercise in futility to express my conclusion on the merits of the application for reinstatement.
11. Further, the current substantive Action was commenced by the Plaintiff in 2022 seeking for Vacant Possession pursuant to **Order 113 of the High Court Rules** and the same remained pending in the Court System to the current time for almost 03 years now with change of Counsels by the Plaintiff.
12. The substantive 'vacant possession' was scheduled for hearing on 25th April 2024. The Plaintiff's and the Counsel failed to appear in Court no doubt the Plaintiff's Counsel in the Affidavit in Support explained that his mother had collapsed at home and he had to convey her to the hospital.
13. This Court bearing in mind that the matter was getting of age [03 years old] and that there was no appearance and interest shown specially by the Plaintiff, and the counsel representing failing to appear and/or instructing another Counsel to appear and inform his absence to Court, had no other alternative but proceed to Dismiss the Plaintiff's Action in its Entirety with no costs to the Defendant.
14. Accordingly, for the aforesaid approach that I have adopted herein, I proceed to dismiss the Plaintiff's Notice of Motion seeking for 'Reinstatement' in its entirety.

C. Costs

15. There will be no order as to costs against the Plaintiff on this occasion at the discretion of this Court.

D. Orders

- (i) The Plaintiffs Notice of Motion of 03rd May 2021 seeking for reinstatement is dismissed in its entirety.
- (ii) There will be no order as to costs against the Plaintiff.
- (iii) File is closed.

Dated at Suva this 19th day of June ,2025.




 VISHWA DATT SHARMA
 PUISNE JUDGE

cc. **Patel/ Skiba, Suva**
Tevita Jitotani, Tamavua Suva.
Josefa Moceca, Tamavua Suva
Are Koliaci, Tamavua Suva