

**IN THE HIGH COURT OF FIJI**  
**NORTHERN DIVISION**  
**AT LABASA**

**[CIVIL JURISDICTION]**

**Civil Action No. HBC 60 of 2024**

**BETWEEN** : **SUSHMA NAIDU** of Labasa.

**PLAINTIFF**

**AND** : **SUREN PRASAD** as the Administrator in the Estate of Kisun Prasad.

**1<sup>st</sup> DEFENDANT**

**AND** : **THE DIRECTOR LANDS DEPARTMENT**

**2<sup>nd</sup> DEFENDANT**

Before : Acting Master L. K. Wickramasekara

Counsel : Crown Law for the Plaintiff

John Prasad Lawyers for the 1<sup>st</sup> Defendant

Attorney Generals Chambers for the 2<sup>nd</sup> Defendant

Hearing : By way of Written Submissions

Date of Ruling : Wednesday, 02<sup>nd</sup> of July 2025.

**RULING**

**The Application**

01. On 5 December 2024, the First Defendant herein filed a Summons seeking to strike out the Writ of Summons and the Statement of Claim, both of which were filed by the Plaintiff on 22 October 2024. This application is supported by an Affidavit sworn by the First Defendant, Suren Prasad, on 28 November 2024.
02. Plaintiff has opposed the said application and has filed an Affidavit in Opposition on 19/02/2025 as sworn by the Plaintiff, Sushma Naidu on 19/02/2025.

03. The 1<sup>st</sup> Defendant then filed an Affidavit in Reply on 04/03/2025.
04. Although the Second Defendant was given an opportunity to file an Affidavit in Support of the current Striking Out Application, the Second Defendant failed to do so within the prescribed timeframe. Without any authority or leave of the Court, the Second Defendant subsequently filed an Affidavit on 11 March 2025. This Affidavit was deemed an abuse of the Court's process and was accordingly struck out by this Court on 31 March 2025.
05. Upon the directions by the Court, the 1<sup>st</sup> Defendant has filed written submissions in support of its Application for Strike Out on 19/03/2025 and the Plaintiff has filed its written submissions on 21/03/2025.
06. This Application was then fixed for Ruling on written Submissions by the Court on 31/03/2025.
07. Having read the Affidavits in evidence of the parties and the comprehensive written submissions tendered, I now proceed to make my Ruling on the Summons to Strike Out as follows.

### **The Plaintiff's Claim**

08. The Plaintiff, in its Statement of Claim, contends that the dispute pertains to a parcel of land situated in Labasa, identified as Lot 1 on Survey Office Plan SO7136, Lease No. 20939, formerly known as Crown Lease No. 5581, L.D. 4/9/3058, which is part of Lot 7 on Plan M2698, Rara, Fiji (the "subject property"). The property was originally leased to the late Kisun Prasad, father of the First Defendant, who is now the legal representative of the Estate of Kisun Prasad.
09. It is alleged that on 7 August 2004, the Plaintiff and the late Kisun Prasad entered into a written agreement for the sale of the subject property, which comprised an area measuring 44 meters by 33 meters from a total area of 11 acres, 2 roods, and 1 perch. The total purchase price was agreed upon as \$8,000.00, of which the Plaintiff paid a deposit of \$2,600.00 to the Lands Department in accordance with the terms of the said agreement.
10. It is further alleged that, since the execution of the said agreement, the Plaintiff has been in peaceful possession of the subject property and has constructed a residential dwelling thereon, currently residing on the said land. On 12 September 2024, the First Defendant issued a Demand Notice to the Plaintiff demanding that the Plaintiff vacate the subject property, thereby precipitating the present dispute.
11. The Plaintiff contends that the First Defendant has failed to perform or honour the written agreement entered into between the Plaintiff and Kisun Prasad, in his capacity

as the legal representative of the Estate of Kisun Prasad. The Plaintiff accordingly seeks specific enforcement of the said agreement.

12. The Plaintiff previously commenced proceedings via an Originating Summons<sup>1</sup>. However, by judgment of the Court, the application was dismissed, and the Plaintiff was subsequently directed to pursue its remedy through a Writ action.
13. Pursuant to the aforementioned judgment, the Plaintiff submits that the current claim has been instituted via a Writ action. The Plaintiff seeks an order for specific performance of the written agreement executed on 7 August 2004.

### **The Defence**

14. In the Statement of Defence filed by the First Defendant, it is admitted that a written agreement between the Plaintiff and the late Kisun Prasad, dated 7 August 2004, existed. However, the First Defendant contends that the said agreement was null and void ab initio, on the basis that no consent was obtained from the Director of Lands prior to its execution.
15. It is further alleged that the Plaintiff has failed to comply with the conditions stipulated in the said agreement, thereby preventing the completion of the transfer. Additionally, it is contended that the Plaintiff's occupation and the construction of a residential dwelling on the land are unlawful.
16. The First Defendant has also claimed that the Plaintiff's previous action by way of an Originating Summons was refused by the Court, '*on the grounds of breach of the State Lands Act*'.
17. The First Defendant further contends that, having entered into the said agreement in 2004, which is over twenty (20) years prior, this action is now barred by limitation pursuant to the provisions of the Limitations Act.
18. To the extent relevant to the current application before this Court, it is noted from the Second Defendant's Statement of Defence that no consent was obtained from the Director of Lands for the sale of the subject property.

### **The Application to Strike Out**

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

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<sup>1</sup> Labasa HC Civil Action No. HBC 29/2024 (Judgment on 12 September 2024).

- a) That it discloses no reasonable cause of action against the 1<sup>st</sup> Defendant
  - b) Is scandalous, frivolous and/or vexatious.
  - c) Is otherwise an abuse of the process of the court.
20. Based on the facts averred in the Affidavit in Support, the First Defendant asserts that the subject land is classified as State Land, and that the requisite consent of the Director of Lands was neither obtained prior to nor subsequent to the execution of the written agreement between the Plaintiff and the late Kisun Prasad. Consequently, the First Defendant contends that the said agreement is not enforceable.
21. Moreover, it is alleged that the Plaintiff failed to comply with the conditions of the said agreement, leading to its repudiation in 2008. From that date onwards, the Plaintiff purportedly failed to institute proceedings for over sixteen (16) years. It is therefore submitted that the current claim is now barred by limitation pursuant to the provisions of the Limitations Act, as the action ought to have been commenced within six (6) years from the date of repudiation.
22. Accordingly, the First Defendant submits that the Plaintiff has no valid cause of action in law, and that these proceedings constitute an abuse of the Court's process.
23. The Plaintiff contends in opposition that obtaining the consent of the Director of Lands was not a mandatory requirement for the validity of the said agreement, and therefore, the agreement is not null and void ab initio.
24. Furthermore, the Plaintiff submits that the six (6) year limitation period prescribed by the Limitations Act is inapplicable to the current claim, as the claim involves specific performance of the agreement, which is not subject to the limitation period.

### **The Relevant Law**

25. 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.*

26. Master Azhar (as His Lordship 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 summary 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 (4<sup>th</sup> 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 pleadings under this rule, it is to be highlighted that the Court cannot strike out an action for the sole reason that it is weak, or the plaintiff is unlikely to succeed, rather the subject pleading should obviously be unsustainable. His Lordship the Chief Justice A.H.C.T. Gates 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. If the Statement of Claim or the Defence contains degrading charges which are irrelevant, or if, though the charge be relevant, unnecessary details are given, the pleading becomes scandalous (*see: The White Book Volume 1 (1999 Edition) at para 18/19/15 at page 350*).

33. Likewise, if the proceedings were brought with the intention of annoying or embarrassing a person or brought for collateral purposes or irrespective of the motive, if the proceedings are obviously untenable or manifestly groundless as to be utterly hopeless, such proceedings becomes frivolous and vexatious (*per: Roden J in Attorney General v Wentworth (1988) 14 NSWLR 481, said at 491*).

34. In **The White Book** in Volume 1 (1987 Edition) at para 18/19/14 states that,

*Allegations of dishonesty and outrageous conduct, etc., are not scandalous, if relevant to the issue (Everett v Prythergch (1841) 12 Sim. 363; Rubery v Grant (1872) L. R. 13 Eq. 443). "The mere fact that these paragraphs state a scandalous fact does not make them scandalous" (per Brett L.J. in Millington v Loring (1881) 6 Q.B.D 190, p. 196). But if degrading charges be made which are irrelevant, or if, though the charge be relevant, unnecessary details are given, the pleading becomes scandalous (Blake v Albion Assurance Society (1876) 45 L.J.C.P. 663).*

35. On the other hand, if the action is filed without serious purpose and having no use, but intended to annoy or harass the other party, it is frivolous and vexatious. Roden J in Attorney General v Wentworth (1988) 14 NSWLR 481, said at 491 that:

1. *Proceedings are vexatious if they instituted with the intention of annoying or embarrassing the person against whom they are brought.*
2. *They are vexatious if they are brought for collateral purposes, and not for the purpose of having the court adjudicate on the issues to which they give rise.*
3. *They are also properly to be regarded as vexatious if, irrespective of the motive of the litigant, they are so obviously untenable or manifestly groundless as to be utterly hopeless.*

36. In *Halsbury's Laws of England (4th Ed) Vol. 37* explains the abuse of process in para 434 which reads.

*An abuse of the process of the court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purposes, or more simply, where the process is misused. In such a case, even if the pleading or endorsement does not offend any of the other specified grounds for striking out, the facts may show that it constitutes an abuse of the process of the court, and on this ground the court may be justified in striking out the whole pleading or endorsement or any offending part of it. Even where a party strictly complies with the literal terms of the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of abuse of process, and where subsequent events render what was originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court.*

37. I shall further make reference to the relevant provisions in the State Lands Act 1945 as the main contention for the current application is the absence of the consent of the Director of Lands for the said agreement between the Plaintiff and the late Kisun Prasad.
38. The relevant provision of the State Lands Act is Sec. 13 of the said Act, which reads as follows,

**Protected leases**

13(1) *Whenever in any lease under this Act there has been inserted the following clause—*  
*“This lease is a protected lease under the provisions of the State Lands Act 1945”*  
*(hereinafter called a protected lease) it shall not be lawful for the lessee thereof to alienate or deal with the land comprised in the lease of any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever, nor to mortgage, charge or pledge the same, without the written consent of the Director of Lands first had and obtained, nor, except at the suit or with the written consent of the Director of Lands, shall any such lease be dealt with by any court of law or under the process of any court of law, nor, without such consent as aforesaid, shall the Registrar of Titles register any caveat affecting such lease.*

*Any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void.*

*[subs (1) subst Act 23 of 2023 s 2, effective 3 October 2023]*

(1A)

*[subs (1A) rep Act 23 of 2023 s 2, effective 3 October 2023]*

(2) *On the death of the lessee of any protected lease his or her executors or administrators may, subject to the consent of the Director of Lands as above provided, assign such lease.*

(3) *Any lessee aggrieved by the refusal of the Director of Lands to give any consent required by this section may appeal to the Minister within 14 days after being notified of such refusal. Every such appeal shall be in writing and shall be lodged with the Director of Lands.*

*[subs (3) am LN 112 of 1970 O 74, effective 8 October 1970]*

(4) *Any consent required by this section may be given in writing by any officer or officers, either solely or jointly, authorised in that behalf by the Director of Lands by notice published in the Gazette. The provisions of subsection (3) shall apply to the refusal of any such officer or officers to give any such consent.*

*[subs (4) insrt Ordinance 21 of 1959 s 2, opn 25 June 1959]*

(5) *For the purposes of this section “lease” includes a sublease and “lessee” includes a sublessee.*

(6)

*[subs (6) rep Act 23 of 2023 s 2, effective 3 October 2023]*

39. Moreover, the relevant provisions of the Limitations Act 1971 (Sec. 4) reads as follows,

**Limitation of actions of contract and tort, and certain other actions**

- 4(1) *The following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued, that is to say—*
- (a) actions founded on simple contract or on tort;*
  - (b) actions to enforce a recognisance;*
  - (c) actions to enforce an award, where the submission is not by an instrument under seal;*
  - (d) actions to recover any sum recoverable by virtue of any Act, other than a penalty or forfeiture or sum by way of penalty or forfeiture, provided that—*
    - (i) in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to 6 years there were substituted a reference to 3 years; and*
    - (ii) nothing in this subsection shall be taken to refer to any action to which section 6 applies.*
- (2) *An action for an account shall not be brought in respect of any matter which arose more than 6 years before the commencement of the action.*
- (3) *An action upon a specialty shall not be brought after the expiration of 12 years from the date on which the cause of action accrued, provided that this subsection shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act.*
- (4) *An action shall not be brought upon any judgment after the expiration of 12 years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of 6 years from the date on which the interest became due.*
- (5) *An action to recover any penalty or forfeiture, or sum by way of penalty or forfeiture, recoverable by virtue of any Act or Imperial enactment shall not be brought after the expiration of 2 years from the date on which the cause of action accrued, provided that for the purposes of this subsection the expression*

*“penalty” shall not include a fine to which any person is liable on conviction of a criminal offence.*

- (6) *Subsection (1) shall apply to an action to recover seamen’s wages, but save as aforesaid this section shall not apply to any cause of action within the Admiralty jurisdiction of the High Court which is enforceable in rem.*
- (7) *This section shall not apply to any claim for specific performance of a contract or for any injunction or for other equitable relief, except in so far as any provision thereof may be applied by the court by analogy in like manner as has, prior to the commencement of this Act, been applied.*

### **The Analysis**

40. Although the cause of action is not expressly identified under a designated heading, the particulars set out in the Statement of Claim unequivocally establish that the Plaintiff’s claim is founded in equity.
41. The Plaintiff alleges that it entered into an agreement with the late Kisun Prasad for the purchase of the subject land and, pursuant to that agreement, has been in purported occupation of the land since 2004. The Plaintiff further claims to have constructed a residential dwelling and to have maintained peaceful possession of the land until the First Defendant issued a Demand Notice requiring the Plaintiff to vacate the premises. The Plaintiff seeks an order for specific performance of the said agreement, which, accordingly, constitutes a relief grounded in equitable principles.
42. Although the First Defendant asserts that the said agreement is void ab initio due to the absence of consent from the Director of Lands, such consent is only deemed necessary if the lease of the subject land qualifies as a "protected lease" under the provisions of the State Lands Act. This requirement is mandated by Section 13 of the State Lands Act 1945, which stipulates that the consent of the Director of Lands must be obtained for leases classified as protected under that Act.
43. At no point in time do the Defendants allege that the lease of the subject property contains the wording stating that *“This lease is a protected lease under the provisions of the State Lands Act 1945,”* in accordance with Section 13 of the State Lands Act 1945.
44. A similar observation was previously made by Hon. Justice Dalaituicama in his judgment dated 12 September 2024, in the connected proceeding between the same

parties, bearing No. HBC 29/2024, specifically at paragraphs 20 and 21 of the said judgment<sup>2</sup>.

45. Despite clearly outlining the prerequisites for the operation of Section 13 of the State Lands Act 1945, the First Defendant has adopted the same position without disclosing whether the original lease on the subject land qualifies as a protected lease under the said Act. Moreover, despite having the opportunity to submit a copy of the said original lease to the Court, the First Defendant appears to have deliberately neglected to do so, without any apparent justification.
46. Furthermore, the said agreement was entered into between the Plaintiff and the late Kisun Prasad for the sale and purchase of the subject land. To establish the validity of an initial agreement for the sale and purchase of a state land, the prior consent of the Director of Lands is not necessarily a prerequisite.
47. Counsel for the Plaintiff has submitted the authority of the Fiji Supreme Court in **Rangana Naicker v Ami Chand and The Director of Lands**; *Civil Petition No. CBV 0002 of 2023 (26 April 2024)*, which accordingly reinforces the above position. The Court appreciates the Plaintiff's Counsel for bringing this case authority to its attention. At paragraphs 24 and 25, the Supreme Court held as follows,

24. *I have not overlooked the argument that the absence of consent made the agreement to transfer the lease not merely unenforceable, but null and void. Had it been null and void, the subsequent consent of the Director of Lands to the transfer of the lease could not have saved the agreement. This argument tracks the actual language of section 13 which is that "any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void."*

*The mere fact that the consent of the Director of Lands to the transfer had not been obtained could not on its own have rendered the transfer null and void. As the Privy Council said in **Chalmers v Pardoe [1963] 1 WLR 677**, a decision of the Privy Council on appeal from the Court of Appeal of Fiji concerning section 12 of the iTaukei Land Trust Act 1940 (which was the equivalent provision for iTaukei land as section 13 of the State Lands Act is for State land)*

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<sup>2</sup> See Annexure 'B' of the Affidavit of Suren Prasad filed on 30/10/2024.

*“ ... it would be an absurdity to say that a mere agreement to deal with land would contravene Section 12, for there must necessarily be some prior agreement in all such cases. Otherwise, there would be nothing for which to seek the Board’s consent.”*

25. *Moreover, in **Kulamma v Manadan** [1968] AC 1062, the Privy Council said that the parties “should be presumed to contemplate a legal course of proceeding rather than an illegal [one]”. Neither Mr. Chand nor Mr. Naicker ever contemplated that the transfer of the lease would take effect without the Director of Lands’ consent as the agreement for the transfer of the lease was in the very document in which the Director of Lands’ consent to the transfer was being sought. There was, therefore, no question of the proposed transfer being null and void simply because the Director of Lands’ consent to the transfer had not been obtained earlier. That is the effect of a series of cases including the decision of the Court of Appeal in **Jai Kissun Singh v Sumintra** (1970) 16 FLR 165, the decision of the Court of Appeal in **D B Waite (Overseas) Ltd v Wallath** (1972) 18 FLR 141, and the decision of the Supreme Court in **Reggiero v Kashiwa** [1998] FJSC 8.*
48. It is, therefore, evident that the First Defendant’s contention that the agreement relied upon by the Plaintiff is void ab initio is without merit. Consequently, the First Defendant’s position shifts to the allegation that the Plaintiff failed to comply with the conditions set forth in the said agreement. However, this is a factual matter that requires the evaluation of admissible evidence at trial and cannot be conclusively determined on the basis of untested affidavit evidence.
49. I have considered the Defendant's argument that the claim is statute-barred. However, the Plaintiff, in its sought relief, is explicitly requesting specific performance of the agreement. As such the limitation period of 06 years for simple contract or tort shall not have any application on the claim of the Plaintiff pursuant to Sec. 4 (7) of the Limitations Act 1971. Therefore, this argument too is devoid of merit.
50. This Court further observes that the same conclusion was reached by Hon. Justice Dalaituicama in his judgment dated 12 September 2024, in the related prior proceeding between the same parties, bearing No. HBC 29/2024. At paragraph 18 of that judgment, His Lordship found that the Plaintiff’s claim is permissible to proceed under Section 4(7) of the Limitations Act 1971.

51. Despite these prior findings, the First Defendant has once again moved to have the Plaintiff's claim struck out on the same grounds, which were explicitly rejected by the Court in the earlier proceeding between the parties<sup>3</sup>.
52. Furthermore, in paragraph 12 of its Statement of Defence, the First Defendant alleges a misleading fact, asserting that '*the Plaintiff filed an Originating Summons seeking declaratory orders, which was refused by the Court on the grounds of breach of the State Lands Act.*' It should be emphasized that this claim constitutes a deliberate attempt to mislead the Court.
53. I find the First Defendant's conduct in this regard to be frivolous and vexatious, and clearly an abuse of the Court's process. Consequently, it is the further finding of the Court that such conduct be addressed with costs at a higher level.
54. Despite the aforementioned unsuccessful arguments, I find that the First Defendant has not raised any additional points justifying the exercise of the Court's discretion to summarily strike out the Plaintiff's claim pursuant to Order 18 Rule 18 of the High Court Rules.
55. Conversely, it is the conclusive finding of the Court that genuine triable issues exist between the parties, which warrant a full adjudication at a trial to be properly conducted.
56. The principle of a fair trial is a cornerstone of the rule of law and democracy. It is a fundamental and absolute right that applies equally in both criminal and civil proceedings, and it must not be limited or restricted. The right encompasses a fair and public hearing conducted within a reasonable time by an independent and impartial tribunal duly established by law.
57. Accordingly, the courts are vested with the authority to strike out any proceedings or claims that are detrimental to or cause unnecessary delay in the pursuit of a fair trial. Similarly, the principles of the rule of law and natural justice mandate that every individual is entitled to access justice and has a fundamental right to have their disputes resolved by an independent and impartial court or tribunal. No individual or party should be permitted to manipulate or abuse these provisions for ulterior motives.
58. In light of the foregoing discussion and having thoroughly examined all pleadings and affidavit evidence filed before the Court, the Court finds that the Plaintiff has adequately disclosed a reasonable cause of action in its Statement of Claim. Furthermore, the Court concludes that the Statement of Claim, or any part thereof, does not constitute a scandalous, frivolous, or vexatious proceeding.

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<sup>3</sup> Judgment of Hon. Justice Dalaitucama dated 12/09/2024, in the connected previous action between the same parties, bearing Case No. HBC 29/2024.

59. The Court also finds that, under no circumstances as discussed herein, does the Plaintiff's claim constitute an abuse of the Court's process, particularly given that such allegations are based on affidavit evidence that has not been subjected to cross-examination.
60. I reiterate my determination that genuine triable issues exist between the Plaintiff and the Defendants in this matter. Consequently, I conclude that the First Defendant has not satisfied the threshold required to obtain an order to strike out the Statement of Claim pursuant to Order 18 Rule 18(1) of the High Court Rules 1988.
61. In the outcome, the following orders are made.
1. The Summons to Strike Out as filed by the 1<sup>st</sup> Defendant on 05/12/2024 is hereby refused and struck out subject to the following orders of the Court,
  2. 1<sup>st</sup> Defendant shall pay a cost of \$ 3000.00 to the Plaintiff, as summarily assessed by the Court, as costs of this application. The costs shall be paid within 21 days from today (That is by 23/07/2025).
  3. The Plaintiff shall file and serve Reply to Statement of Defence of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants (If it wishes to do so) and the Summons for Directions within 14 days from today to be returnable on the next Court date in the High Court of Labasa. (That is by 16/07/2025).
  4. In failure to comply with any of the above orders of the Court, the pleadings of the defaulting party shall stand struck out subject to the payment of a further cost of \$ 3000.00, as summarily assessed by the Court, which shall be paid to the other party.
  5. Summons to Strike Out filed on 05/12/2024 is accordingly struck out and dismissed.



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

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

**At Labasa,**  
**02/07/2025.**