

IN THE HIGH COURT OF FIJI AT LAUTOKA
IN EXERCISE OF ADMIRALTY JURISDICTION

ADMIRALTY ACTION No. HBG 01 of 2024

BETWEEN : **NATAPOA LIMITED**, a limited liability company duly incorporated in Vanuatu and having its registered office at International Building No-05, Whart Road, port Villa, Vanuatu

PLAINTIFF

AND : **PACIFIC BUILDING SOLUTION PTE LIMITED** whose registered office is located at -09 -12 Nukuwatu Street, Wailada Industrial, Lami, Fiji.

1st DEFENDANT

: **NOEL MACAMANAWAY** of Nadi, Fiji, Director.

2nd DEFENDANT

: **DUMB BARGE “ENDEAVOUR”**, a Dumb Barge presently lying on Certificate of Title No- 27361 at Wailoaloa Bay in Nadi.

3rd DEFENDANT

Counsel : Mr.Wainiqolo E. O/I for the Plaintiff.

: Ms. Degei A. for the 1st and 3rd Defendant.

: Ms. Reddy S. for the 2nd Defendant.

Hearing : By way of Written Submissions (On preliminary objection raised by the 1st & 3rd Defendants and on the Application by the Plaintiff for the Arrest of the Boat)

Written submissions : Not filed by the Defendants.

: Filed by the Plaintiff on 17th December 2024

Date of Ruling : 7th July 2025

RULING

A. INTRODUCTION:

1. This written ruling is pronounced (pursuant to the oral ruling pronounced on 5th May 2025) in relation to the preliminary objection raised by the Counsel for the 1st and 3rd Defendants on 7th October 2024 against the acceptance of this action filed seeking reliefs, *inter alia*, the arrest of the 3rd Defendant Dumb Barge "ENDEAVOUR" (the Boat), on the ground that the action should be filed against the owner of the said Dumb Barge "ENDEAVOUR".
2. This ruling also serves the Application made by the Plaintiff for the arrest of the 3rd Defendant Boat said to be owned by the 1st Defendant, allegedly, taken care of by the 2nd Defendant and lying on the land described in the Certificate of Title, No-27361 owned by the Plaintiff and situated at Wailoaloa Beach, Nadi.
3. In the said Preliminary objection, counsel for the 1st & 3rd Defendants submitted THAT;
 1. ***This matter having been filed as entitled and in part seeking the arrest of a vessel in rem had been incorrectly accepted and prior to any further action being taken should be entitled to be against the owner of the Dumb Barge Endeavour only.***
4. The 1st and 3rd Defendants state that they have raised this as an issue in their Statement of Defence as well. It was also stated that the 1st and 3rd Defendants would rely on written submission to be filed in support of this preliminary objection. Accordingly, the 1st and 3rd Defendants moved for the dismissal of this action.
5. This Application is made by the said Defendants pursuant to Order 2 Rule 2 of the High Court Rules and under the inherent jurisdiction of this court.

B. BACKGROUND:

6. While filing its Writ of Summons and the Statement of Claim against the Defendants on 27th May 2024, the Plaintiff also filed an Ex-parte Notice of Motion supported by its Affidavit, annexed with documents marked as "ZL-1" to "ZL-11" seeking the arrest of the 3rd Defendant DUMB BARGE "ENDEAVOUR", which in fact is a Naval Towing Boat, said to be owned by the 1st Defendant and lying in the Plaintiff's Land described in the Certificate of Title No-27361.
7. The 2nd Defendant has been named as a party on the basis that he is the caretaker of the said 3rd Defendant Boat, who also has filed his Statement of Defence followed by an Application for strike out, which is pending to be fixed for hearing.
8. The Plaintiff in its Statement of Claim and the Affidavit in support averred, *inter alia*, that on or about July 2022, the 3rd Defendant Boat was pulled out of the Sea and left to dry dock on the Plaintiff's land without the consent or approval of the Plaintiff, causing loss and damages, which it estimates at \$1,500.00 per day totaling to Fiji \$ 8, 79,000.00 till the date of filing this action.

9. When the matter was supported before me ex-parte on 27th May 2024 seeking an Order for the arrest of the said 3rd Defendant Boat, after considering the submissions made and the contents of the papers filed, the Court directed the Plaintiff's Counsel to support the matter inter parte on 5th June 2024.
10. Accordingly, due to non-sitting of Court on 5th June 2024, when the matter came up on 27th September 2024 for the inter- parte hearing, as the Counsel for the 1st and 3rd Defendants raised a preliminary objection for the acceptance of this action and for the reliefs sought therein , the Court granted time for the Defendants to file their Affidavit in opposition and for the Plaintiff to file its Affidavit in reply in relation to the application for the arrest of the Boat, and to file written submission on the question of preliminary objection.
11. Instead of filing the Affidavit in opposition in relation to the arrest of the said Boat, the Solicitors for the 1st and 3rd Defendants relied on the aforesaid preliminary objection raised in relation to the acceptance of this action by this Court and moved to dismiss the same in limine. However, no written submission was filed by the 1st and 3rd defendants to support the preliminary objection raised on behalf of them. Only the plaintiff's Solicitors filed written submissions in relation to the preliminary objections.

C. CONSIDERATION:

12. This Court has been called upon to decide on the said preliminary objection raised on behalf of the 1st and the 3rd Defendants and on the Application for the arrest of the 3rd Defendant Boat.
13. The very Order 2 and Rule 2 of the HCR 1988 relied on by the counsel for the 1st and 3rd Defendants to raise this preliminary objection states as follows.

Application to set aside for irregularity (O.2, r.2)

*2.-(1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein **shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.***

(2) An application under this rule may be made by summons or motion and the grounds of objection must be stated in the summons or notice of motion.

14. It is to be observed that, it was after filing of the Statement of Defence by the 1st and 3rd Defendant on 08th July 2024, they have opted to take this preliminary objection on 07th October 2024 against the acceptance of this action, on the basis of irregularity. This is contrary to the Order 2 Rule 2 (1) above.
15. The above Order 2 Rule 2 (1) clearly states that an Application to set aside for irregularity **shall not be allowed** unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.
16. The 1st and 3rd Defendants in their Statement of Defence already filed had pleaded on the alleged irregularity. This seems to have had escaped the attention of the Counsel for the 1st and 3rd Defendants when they decided to raise the preliminary objection. The 2nd Defendant, who is not supporting this

preliminary objection, having filed his Statement of Defence on 04th December 2024, has also filed an Application for Strike Out, which is yet to be fixed for hearing.

17. I find that in terms of the above Order 2 Rule 2 (1) , the purported preliminary objection raised by the 1st and 3rd Defendants, which is belated, cannot be accepted and acted upon as the 1st and 3rd Defendants had already filed their statement of Defence wherein they had admitted the knowledge of the purported irregularity. Thus, the court decides to overrule the same and proceed with the action subject to the decision on any other Application that is before the Court.

ADMIRALTY JURISDICTION

18. The Plaintiff in its Statement of Claim prays for loss and damages, for parking the 3rd Defendant Dumb Boat "ENDEAVOUR", owned by the 1st Defendant, in the Plaintiff's Land, at the rate of \$1,500.00 per day. The Plaintiff states that there is no any agreement or understanding between it and the 1st or 2nd Defendant for the said Boat to be brought into and left to remain in the Plaintiff's land. The total of such charges claimed by the Plaintiff from the date of bringing the Boat into its land till the date of filing of this action is said to be in a sum of \$ 879,000.00 Fijian Dollars. It is alleged that despite various reminders sent to the Defendants by the Plaintiff, Defendants have failed and/or willfully neglected to pay it. As a result, the plaintiff took out writ of summons against the Defendant, and at the same time filed an ex parte notice of motion seeking the arrest of the Dumb Boat "ENDEAVOUR".

19. In Fiji, the High Court is vested with admiralty jurisdiction by virtue of Section 18 (2) of the High Court Act (Cap 13) which deals with such jurisdiction provides:

'The High Court has the admiralty jurisdiction which the High Court of Justice in England possessed on 4th December, 1987.'

20. The High Court has the powers and authority which the Supreme Court had on 4th December 1987. So the admiralty jurisdiction of the High Court of Fiji is the same as the jurisdiction which the High Court of Justice in England had as at 4th December 1987.

21. Sections 20-23 both inclusive of the UK Supreme Court Act deals with the admiralty jurisdiction of the High Court of UK.

22. The admiralty jurisdiction of the High Court of Fiji may be exercised in respect of any of the following claims enunciated under section 20 (1) of the Supreme Court Act 1981 which include:

(m) Any claim in respect of goods or mate materials supplied to a ship for her operation or maintenance;

(n) Any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;

... ' (Emphasis added).

23. Furthermore, the Admiralty Jurisdiction (Fiji) Order in Council, 1962 (the 'OiC') which came into operation on the 27 February, 1962 also confers admiralty jurisdiction on the High Court of Fiji. Section 2 of the OiC provides:

'2. The Colonial Courts of Admiralty Act, 1890, shall, in relation to the [High Court] of Fiji, have effect as if for the reference in subsection (2) of section 2 thereof to the Admiralty jurisdiction of the High Court and land there were substituted a reference to the Admiralty jurisdiction of that court and by section 1 of the Administration of Justice Act, 1956, subject to the action and modification of the said section 1 that is specified in the First Schedule.'

24. Section 1 (1) of the Administration of Justice Act, 1956 so far as material provides:

'The admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following question or claims-

'...

(l) Any claim in respect of goods or materials supplied to a ship for her operation or maintenance;

(m) Any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;

...'

25. The question whether the Plaintiff is entitled to recover its claim from the Defendants as prayed for is a matter to be gone into at the trial.

D. ARREST OF DUMB BOAT:

26. In Fiji, arrest of vessel is dealt with in Supreme Court (Now High Court) (Admiralty) Rules. Order 2 of that Rules provides:

1. In admiralty actions in rem a warrant for the arrest of property may be issued at the instance either of the plaintiff or of the defendant at any time after the writ of summons has issued, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with: -

(a) the affidavit shall state the name and description of the party at whose instance the warrant is to be issued, the nature of the claim or counter-claim, the name and nature of the property to be arrested, and that the claim or counter-claim has not been satisfied;

(b) in an action of wages or of possession the affidavit shall state the national character of the vessel proceeded against; and, if against a foreign vessel, that notice of the commencement of the action has been given to the Consul of the State to which the vessel belongs if there be one resident in Fiji, and a copy of the notice shall be annexed to the affidavit;

(c) in any action of bottomry the bottomry-bond, and, if in a foreign language, also a notarial translation thereof, shall be produced for the inspection and perusal of the Registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.' (Emphasis provided).

E. DETERMINATION:

26. The plaintiff applies for the arrest of the 3rd Defendant Boat on the ground that the said Boat owned/ managed by the 1st defendant has been brought into and left to remain in the **Plaintiff's land** without an agreement or understanding for the same and alleges that its claim has not been honored by the Defendants despite demand being made.

27. The nature of the claim is that the plaintiff's land has been used by the 1st and/ or the 2nd Defendants to park the 3rd Defendant Boat in the said Land without any authority or permission by the Plaintiff.
28. The affidavit in support also states the nature of the claim, the name and nature of the property to be arrested and that the claim has not been satisfied.
29. In its writ of summons, the plaintiff claims, *inter alia*, special damages and general damages against the defendants. The claims stems from the said unauthorized parking of the 3rd Defendant Boat in the Plaintiff's Land.
30. In the statement of claim and the supporting affidavit, it is also averred that since this is an action in rem, the plaintiff is entitled to have the Boat arrested. I have perused several case law authorities on this subject. Those are, among others, ***Captain & Crew of the MV Voseleai v Owners of the MV Voseleai [1994] FJHC 159; HBG 0006j.1994s (28 October 1994); Donald Pickering & Sons Enterprises Ltd v Karim's Ltd [1997] FJHC 20; [1997] 43 FLR 60;(6 February 1997); Baobab Industries Ltd v Owners of the Yacht 'Jubilant' [2009] FJHC 167; Admiralty Action 01.2009L (19 August 2009) & Hai Soon International Trading Ltd vs. of the Motor Vtor Vessels Yin Chen No 1 [2010] FJHC 474; HBG 05.2008 (15 October 2010).***
31. In **MV Voseleai's** case (supra) the Master and 10 crew members issued action in rem claiming unpaid wages and allowances. The vessel was arrested by the Admiralty Marshal pursuant to a warrant issued by the Court. Later, vessel was released upon the defendant producing the Bankers Undertaking issued by a bank in the Solomon Islands.
32. In the case of **Donald Pickering** (supra), the plaintiffs who claimed not to have been paid for the work done to 2 vessel, obtained warrants for their arrest. The defendant owner of the vessels sought discharge of the warrants arguing that the plaintiffs were not entitled to a maritime lien and hence were not entitled to arrest the ships. Dismissing the defendant's application, Fatiaki, J, examined the nature and origins of the admiralty action in rem and the Court's jurisdiction to issue a warrant for the arrest of the res.
33. In **Baobab Industries Ltd v Owners of the Yacht 'Jubilant'** (supra) the plaintiff alleged that it had done repairs and other work on the yacht but the owners have neglected to pay for them. The court granted an order for the arrest of the yacht.
34. Hon. Anjala Wati, J in the case of **Hai Soon International Trading PTE Ltd** (supra) after analyzing the relevant admiralty law refused FIRCA's application to be joined as a party in the admiralty proceedings and said that FIRCA's claim could not be brought as an action under the admiralty jurisdiction.
35. Turning back to the current application, the plaintiff's claim is not for any services rendered or goods supplied to the said Boat, but for the charges of parking the Boat in the **Plaintiff's Land** in the absence of any agreement or understanding for the same. The Statement of claim clearly states that its claim is in respect of the parking of the said Boat **in the Plaintiff's Land, It is not lying in the water.**
36. The Plaintiff's averments in its Statement of claim and the affidavit in support do not support the proposition that admiralty jurisdiction can be invoked against the Dumb Boat "ENDEAVOUR" lying on dry land claimed to be owned by the Plaintiff. **The said Dumb Boat is under the custody and control of the plaintiff in its land. Hence the question of arrest will not arise.**

F. CONCLUSION:

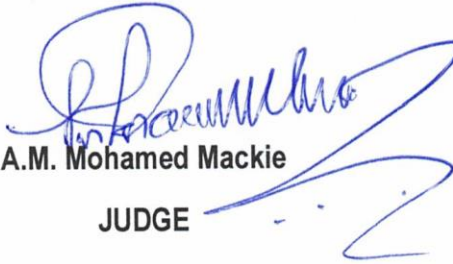
37. The preliminary objection raise by the 1st and 3rd Defendants cannot stand in view of the provision under Order 2 Rule 2 (1) of the High court rules 1988. Hence, this written Ruling embodies reason for my oral Ruling delivered on 05th May 2025, overruling the preliminary objection raised on behalf of the 1st and 3rd Defendants.
38. The order for arrest is sought in respect of the Dumb Boat "ENDEAVOUR" which is already under custody and control of the plaintiff. In my opinion, the admiralty jurisdiction cannot be invoked for the arrest of a Boat lying on the dry land, and which is already in the control and custody of the Plaintiff. I therefore refuse to grant order for the arrest of the 3rd defendant Dumb Boat "ENDEAVOUR".

G. FINAL ORDERS:

1. The Application by the Plaintiff for the arrest of the 3rd Defendant Dumb Boat "ENDEAVOUR" is hereby dismissed.
2. The Plaintiff may proceed with this action for recovery of damages and losses, if any, however not under the admiralty jurisdiction, and subject to the decision in the pending strike out Application made by the 2nd Defendant.
4. Order on costs reserved.

On this 07th Day of July, 2025 at the Civil High Court of Lautoka.




A.M. Mohamed Mackie
JUDGE
High Court (CIVIL)
Lautoka.

SOLICITORS:

For the Plaintiff- **Messrs. LAW SOLUTIONS – Lawyers & Legal consultants.**
 For the 1st and 3rd Defendants. **Messrs. O'DRISCOLL & Co. LAWYERS**
 For the 2nd Defendant – **Messrs. A.K. Lawyers – BARRISTERS & SOLICITORS.**