IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 238 of 2012

BETWEEN: **SHAMENDRA K. RAM** of 31 Saru Back Road, Lautoka, Farmer.

PLAINTIFF

A N D: **SEMISI TORA NO 3** of Tore Seaside Road, Lovu, Lautoka, Landowner.

DEFENDANT

Appearances: Mr. Shamendra Ram - in person

Date of Hearing: 11 June 2025

Date of Ruling: 25 July 2025

R U L I N G

1. The background to this case is set out in **Ram v Tora** [2014] FJHC 189; HBC238.2012 (20 March 2014) and **Ram v Tora** [2018] FJHC 924; HBC238.2012 (28 September 2018).

2. What is before me now is an ex-parte Notice of Motion which. Ram) filed on 05 June 2025, pursuant to Order 46 Rule 2 (1) (a) and Order 46 Rule 4 of the High Court Rules 1988. The Motion is supported by an affidavit which he swore on 05 June 2025.

3. Ram seeks leave to enforce and to execute the default judgement which was entered in his favour on 25 March 2013.

4. Notably, at the time when Rem filed the Motion, some twelve (12) years and three (3) months has lapsed since the default judgement in question was entered.

5. Section 4(4) of the Limitation Act provides:

> **4**.-(4) An action shall not be brought upon any judgment after the expiration of twelve 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 six years from the date on which the interest became due.

6. Order 46 Rule 2 (1) (a) provides:

> 2.-(1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases, that is to say-
>
> (a) where six years or more have elapsed since the date of the judgment or order;

7. In **Central Trading Co v Chandra Kanta** Volume 23 (FLR) 274, the Fiji Court of Appeal had to consider whether section 4(4) of the Limitation Act applied to bar an application for leave to issue a writ of execution on a money judgement which was entered in 1961 and where no further action was taken for 16 years when leave was sought to issue a writ of execution.

8. The issue became whether a writ of execution is an "action" within the contemplation of section 4(4) of the Limitation Act.

9. The Court relied on **W.T Lamb & Sons v Rider** [1948] 2 K.B. 331 and held that the word "action" as it appears in section 4(4) – while it obviously includes the right to sue on a judgement, does not include the right to issue execution under a judgement – the two being distinguishable. Accordingly – a writ of execution is not caught under the twelve year limitation period under section 4(4) of the Limitation Act.

10. Order 46 Rule 2 (1) (a) however, was clearly not considered in **Kanta**.

11. In **Patel v Singh** [2002] EWCA Civ 1938, the English Court of Appeal had to consider the very same question in terms of the then applicable English Order 46 Rule 2 (1) of the Rules of the Supreme Court which is similar in wording to Fiji's Order 46 Rule 2 (1) (a) above.

12. I did attempt to summarize the English Court of Appeal's reasoning in **Patel v Singh** in paragraph 23 of **Wati v Rasiga** [2023] FJHC 388; HBC311.2003 (15 June 2023) as follows:

> (a) in all the cases on the exercise of discretion after the expiry of six years, something more is needed to justify the exercise of discretion in favour of the judgment creditor who has allowed six years to elapse since judgment.

(b) the starting point is - there has been the six-year passage of time which is now equal to the applicable limitation period if the judgment were sought to be enforced by a fresh action.

(c) the policy underlying section 24 must be that the judgment creditor has to get on with enforcing his judgment. Similarly there can be no issue of a writ of execution pursuant to Order 46 rule 2(1)(a) after six years without the court's permission.

(d) whether a writ of execution will be allowed to be issued is a procedural matter. (Lowsley v Forbes [1998] UKHL 34; [1999] 1 AC 329). However, the court still has a discretion as intended by the law

(e) so, while the judgement creditor is free to issue execution of his judgement within the six-year period, that freedom is removed after the expiry of the period.

(f) it is then left to the court to decide whether to allow the judgment creditor to proceed with one form of execution, the issuing of a writ of execution.

(g) the policy of the rule is that, after six years, permission will not be given and that is underlined by the provisions of Order 46 rule 4(2), requiring the judgment creditor to explain his delay.

(h) in contrast, the judgment debtor should not be required to file evidence to state what prejudice, if any, he has suffered by the delay.

(i) therefore, consistent with Powney, the starting position is that the lapse of six years may, and will ordinarily, in itself justify refusing the judgment creditor permission to issue the writ of execution.

(j) however, the judgment creditor can justify the granting of permission by showing that the circumstances of his or her case takes it out of the ordinary.

(k) thus, the judgment creditor might be able to point, for example, to the fact that for many years the judgment debtor was thought to have no money and so was not worth powder and shot but that, on the judgment creditor winning the lottery or having some other change of financial fortune, it has become worthwhile for the judgment creditor to seek to pursue the judgment debtor.

(l) while there is no express guidance or qualification in Order 46 rule 2(1)(a), in truth, what both the Master and the judge were doing was to consider whether there was something in the circumstances of the case which took it out of the general rule.

(k) accordingly, Jack J was wrong to find that the Master had misdirected himself on the law by looking for "exceptional circumstances". This is because, by looking for “exceptional circumstances”, the Master was looking for the presence of something to take the case out of the ordinary rule.

(l) the way the judge dealt with the facts is open to serious criticism

13. I have considered the reasons stated in Ram's affidavit for his delay in taking steps to enforce the judgement. I have some misgivings about the veracity of the reasons he gives. However, I feel the issues are best dealt with *inter-partes*. I now adjourn the matter to 06 August 2025 for mention. The Registry is to re-issue the Notice of Motion *inter-partes* with 06 August 2025, 10.30 a.m. as the returnable date and time.

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Anare Tuilevuka
JUDGE

25 July 2025