

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: 25 July 2025

Date of Ruling: 14 August 2025

R U L I N G

1. The question is, whether or not I should grant leave to the judgment creditor to issue a writ of execution to enforce a default judgment which was entered in his favour on 25 March 2013.
2. 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.
3. Order 46 Rule 2 (1) 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;
4. As to the difference between section 4 (4) and Order 46 Rule 2 (1), Brandon J said thus at page 293 in **Berliner Industriebank AG v Jost** [1971] 2 All ER 117 [1971] 1 QB, while

considering a limitation question in relation to a foreign judgment debt upon which the plaintiff was filing an action in England:

"In my view the word 'enforceable' in section 2(4) of the Limitation Act 1939 does not have the meaning which this argument describes to it. I think it means 'enforceable by action on the judgment' and not 'enforceable by execution on the judgment'. . . This distinction between the right to sue on a judgment (which is a substantive right) and the right to issue execution under it (which is a procedural right or remedy) has always been recognised in the law of limitation: see *W.T. Lamb & Sons v. Rider* [1948] 2 K.B. 331, where the history of the matter is reviewed."

(my emphasis)

5. Hence, whether a writ of execution will be allowed to be issued is a procedural matter. (**Lowsley v Forbes** [1998] UKHL 34; [199] 1 AC 329). However, the Court still has a discretion as intended by the law, for while a judgment creditor has a right to issue a writ of execution on his judgment or order within six years since the date of the judgment or order, he must seek the leave of the Court where six years or more has lapsed.
6. In exercising the discretion as to whether or not to grant leave, the Court must consider the reasons for the delay (**Patel v Singh** [2002] EWCA Civ 1938, the English Court of Appeal).
7. The reasons for the delay set out in the Judgment Creditor's affidavit sworn on 05 June 2025 are:
 - (i) the judgment debtor had applied to set aside the default judgment. That application was dismissed on 08 August 2014.
 - (ii) between 2014 and 2015, the judgment creditor wrote two letters to the i-TLTB to seek information as to whether or not the judgment debtor is a registered landowner and is regularly receiving a portion of lease monies. The i-TLTB however did not respond to his letters.
 - (iii) in 2018, the judgment creditor had applied for committal. However, this was refused on 29 September 2018. He then asked the judgment debtor to settle the judgment sum but to no avail. Instead, the judgment debtor pretended to be interested in buying back the lease from the judgment creditor – together with all machineries and standing crop.
 - (iv) the judgment debtor occasionally continues to harass the judgment creditor and his family. In fact, at some point last year, the judgment debtor and his *mataqali* members forcefully ploughed a portion of land which was within the judgment creditor's lease. The judgment creditor has filed a civil action on this (HBC 278 of 2024).
8. 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 (**Patel v Singh** [2002] EWCA Civ 1938, the English Court of Appeal).

9. In this case, I do not think the judgment creditor has shown enough to justify the exercise of discretion in his favour. My reasons follow:
- (i) at no time whatsoever, was a stay ever granted on the judgment in question. There was no order of this Court to stop him from enforcing his judgment by writ of execution.
 - (ii) this is not a case where the judgment debtor's whereabouts was not known to the judgment creditor.
 - (iii) the alleged negotiations which he entered into in 2018 with the judgment debtor does not explain why he would now, in 2025, suddenly wish to have a writ of execution issued.
 - (iv) the i-TLTB is under no obligation to provide him the information which he was seeking (he ought to have applied for garnishee proceedings on the judgment debtor's entitlement to lease payments).
10. In the final, I refuse to grant leave.



Anare Tuilevuka
JUDGE

14 August 2025