IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

CIVIL ACTION NO. HBC 35 of 2024

BETWEEN : **VIKASH NAND RAJU** of 10 Lautoka as the lawful administrator in the Estate of Parma Nand Raju.

FIRST PLAINTIFF

AND : **MAYA NAND RAJU** of Ranfurly Road, Papatoetoe, New Zealand.

SECOND PLAINTIFF

AND : **ASHNEEL KUMAR** of Navakai, Nadi.

FIRST DEFENDANT

AND : **MONIKA MADHU LAL** of Navakai, Nadi.

SECOND DEFENDANT

Before	:	Master P. Prasad
Counsels	:	Ms. A. Tubuitamana for Plaintiffs Mr. K. Chand and Ms. S. Sandhiya for Defendants
Date of Hearing	:	by way of written Submissions
Date of Decision:		18 August 2025

RULING

(Security for costs)

1. The Plaintiffs' claim revolves around a dwelling house built on State land in a squatter/ informal settlement, for which no lease has been issued by the Director of Lands (**Property**). The Plaintiffs state that they are the sons of the late Parma Nand Raju (**Parma**) and the dwelling house was built on the Property by Parma and the 2nd Plaintiff. The Plaintiffs allege that the Defendants are now residing on the Property illegally and without their approval, and as such seek the following reliefs: (i) judgment in the sum of $100,000.00 being the value of the dwelling house; (ii) judgment in the sum of

$9,277.00 for lost items from the dwelling house; (iii) general, special and exemplary damages; (iv) interest; and (v) costs.

2. The Defendants filed their Statement of Defence and Counterclaim on 27 March 2024. The Plaintiffs filed their Reply to Statement of Defence and Statement of Defence to Counterclaim on 02 May 2024.

3. The Defendants filed a Summons for Security for Costs against the 2nd Plaintiff on 01 July 2024 (**Summons**) together with an Affidavit in Support of the 2nd Defendant. The 2nd Plaintiff did not file any Affidavit in Opposition to the Summons.

4. The Defendants' counsel filed written submissions on 10 December 2024 and the 2nd Plaintiff's counsel filed written submissions on 15 April 2025 after several adjournments to file the same. On 15 April 2025, the Court fixed this Summons for Ruling on written submissions and also granted orders for the Defendants' counsel to file any submissions in reply. The Defendants' counsel filed written submissions in reply on 16 July 2025.

5. At the outset it is to be noted that the 2nd Plaintiff's counsel has attached certain documents, which clearly amounts to evidence that should have been adduced via an affidavit. I presume this act was due to them failing to file any Affidavit in Opposition to the Summons. Be that as may, this court will not consider any of the said documents attached to the Plaintiffs' counsel's submissions as that would be circumventing rules of evidence and tantamount to unfair proceedings against the Defendants.

6. Furthermore, the subject on which the entire written submissions filed by the 2nd Plaintiff's counsel relates to an application for possession of land pursuant to Order 113 of the High Court Rules 1988 (**HCR**), whereas the present application before this Court is a Summons for Security for Costs brought under Order 23 of the HCR. It is evident that the Plaintiffs' substantive claim does not pertain to an Order 113 application. The Court finds it both perplexing and concerning that counsel for the 2nd Plaintiff has submitted on issues that are wholly irrelevant to the matter at hand. Such reckless conduct reflects a troubling lack of diligence on the part of the 2nd Plaintiff and his legal counsel, and further shows disrespect towards the Court.

7. Therefore, I have no option but to disregard the entire written submissions of the 2nd Plaintiff's counsel and only consider the Affidavit in Support and the submissions filed by the Defendants' counsel in my determination.

8. Order 23 of the HCR gives a discretion to the Court to order for security for cost and deals with the other connected matters. While Rule 1 deals with the discretion of the Court, Rules 2 and 3 deal with the manner in which the Court may order security for cost and additional powers of the Court. Rule 1 reads as follows:

Security for costs of action, etc (O.23, r.1)

1.-(1) Where, on the application of a defendant to an action or other proceedings in the High Court, it appears to the Court –

(a) that the plaintiff is ordinarily resident out of the jurisdiction, or

(b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a normal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so, or

(c) subject to paragraph (2), that the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated therein, or

(d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

Then, if having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceedings as it thinks just.

(2) The court shall not require a plaintiff to give security by reason only of paragraph (1)(c) if he satisfies the Court that the failure to state his address or the mis-statement thereof was made innocently and without intention to deceive.

(3) The references in the foregoing paragraphs to a plaintiff and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counterclaim.

9. The Court's decision regarding the amount of security a party must provide is not governed by strict rules. Instead, it relies on the Court's discretion to determine a fair and just amount based on the specific circumstances of each case.

10. In ***Nair v Sudhan*** [2019] FJHC 567; HBC88.2015 (11 June 2019), Master Azhar (as His Lordship then was) has given a comprehensive review of the law applicable to security for cost orders and I gratefully adopt the same. Master Azhar outlined a non-exhaustive set of principles at paragraph [25] that should guide the court when considering a security for costs application:

    a. *"Granting security for cost is a real discretion and the court should have regard to all the circumstances of the case and grant security only if it thinks it just to do so (**Sir Lindsay Parkinson & Co. Ltd v. Triplan Ltd**[1] (supra); **Porzelack K G v. Porzelack (UK) Ltd**[2] (supra).*

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[1] [1973] 2 All ER 273.
[2] (1987) 1 All ER 1074.

b. *It is no longer an inflexible or a rigid rule that plaintiff resident abroad should provide security for costs (**The Supreme Court Practice 1999**).*

c. *Application for security may be made at any stage (**Re Smith** (1896) 75 L.T. 46, CA; and see **Arkwright v. Newbold** [1880] W.N. 59; **Martano v Mann** (1880) 14 Ch.D. 419, CA; **Lydney, etc. Iron Ore CO. v. Bird** (1883) 23 Ch.D. 358); **Brown v. Haig** [1905] 2 Ch. 379. Preferably, the application for security should be made promptly (**Ravi Nominees Pty Ltd v Phillips Fox**[3] (supra).*

d. *The delay in making application may be relevant to the exercise of discretion; however, it is not the decisive factor. The prejudice that may be caused to the plaintiff due to delay will influence the court in exercising its discretion (**Jenred Properties Ltd v. Ente Nazionale Italiano per il Tuismo**[4] (supra); **Ross Ambrose Group Pty Ltd v Renkon Pty Ltd**[5] (supra); **Litmus Australia Pty Ltd (in liq) v Paul Brian Canty and Ors**[6] (supra)).*

e. *The purpose of granting security for cost is to protect the defendant and not to put the plaintiff in difficult. It should not be used oppressively so as to try and stifle a genuine claim (**Corfu Navigation Co. V. Mobil Shipping Co. Ltd**[7] (supra); **Porzelack K G v. Porzelack (UK) Ltd** (supra). Denial of the right to access to justice too, should be considered (**Olakunle Olatawura v Abiloye**[8] (supra)).*

f. *It may be a denial of justice to order a plaintiff to give security for the costs of a defendant who has no defence to the claim (**Hogan v. Hogan** (No 2) [1924] 2 Ir. R 14). Likewise, order for security is not made against the foreign plaintiffs who have properties within the jurisdiction (**Redondo v. Chaytor**[9] (supra); **Ebbrard v. Gassier**[10] (supra)).*

g. *The court may refuse the security for cost on inter alia the following ground (see: **The Supreme Court Practice 1999** Vol 1 page 430, and paragraph 23/3/3;*

1. *If the defendant admits the liability.*
2. *If the claim of the plaintiff is bona fide and not sham.*
3. *If the plaintiffs demonstrates a very high probability of success. If there is a strong prima facie presumption that the defendant will fail in his defence.*
4. *If the defendant has no defence.*

h. *The prospect of success, admission by the defendants, payment to the court, open offer must be taken into account when exercising the discretion. However, the attempt to reach settlement and "without*

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[3] (1992) 10 ACLC 1314.
[4] 1985) Financial Times, October 29, CA.
[5] [2007] TASSC 75.
[6] [2007] NSWSC 670 (8 June 2007).
[7] [1991] 2 Lloyd's Rep. 52.
[8] [2002] 4 All ER (CA).
[9] (1879) 40 L.T. 797.
[10] (1884) 28 Ch.D. 232.

*prejudice" negotiations should not be considered (**Sir Lindsay Parkinson & Co. Ltd v. Triplan Ltd** (supra); **Simaan Contracting Co. v. Pilkington Glass Ltd**[11] (supra).*

*i. In case of a minor the security for cost will be awarded against the parent only in most exceptional cases (**Re B. (Infants)**)."*

Is the 2nd Plaintiff ordinarily resident out of jurisdiction?

11. In ***Nair v Sudhan*** (supra) Master Azhar further discussed as follows:

> *" 21. It is prima facie rule that, the foreign plaintiffs, who bring the actions, ought to give security for cost. This rule is subject to certain exceptions, one being that, if there is property within the jurisdiction, which can reasonably regarded as available to meet the defendant's right to have cost paid, then there should be no order for security (per Greer L.J. in Kevokian v. Burney (No.2) (1937) 4 All E.R. 468 at 469C)."*

12. It is not in dispute that the 2nd Plaintiff is ordinarily resident out of the jurisdiction and that the 2nd Plaintiff has not filed any Affidavit in Opposition to show whether he has any assets/property in Fiji.

13. However, this Court also notes that the 1st Plaintiff is ordinarily resident in Fiji.

14. The Supreme Court Practice 1999 (White Book), in Volume 1 at page 408, and in paragraph 23/1-3/3A, states the following on foreign and resident plaintiffs in relation to security for costs:

> *"The ordinary rule of practice is that no order for security for costs will be made if there is a co-plaintiff resident within the jurisdiction (Winthorp v. Royal Exchange Assurance Co. (1755) 1 Dick. 282; D'Hormusgee v. Gray (1882) 10 Q.B.D. 13). The ordinary rule, however, is subject to the general discretion of the Court; it is not an unvarying rule. Its application is appropriate where the foreign and English co-plaintiffs rely on the same cause of action, where each of the plaintiffs is bound to be held liable for all of such costs as may be ordered to be paid by any of the plaintiffs to the defendants at the conclusion of the trial, and where one or more of the plaintiffs has funds within the jurisdiction to meet such liability. Its application is inappropriate where there is a possibility that each of the plaintiffs may be ordered to pay an aliquot share of the defendant's costs (Slazengers Ltd v. Seaspeed Ferries Ltd; The Seaspeed Dora [1988] 1 W.L.R. 221; [1987] 2 All E.R. 905, C.A.). Where the plaintiffs do not rely on identical causes of action, or, even where they do, the outcome as to costs is unpredictable, security may be ordered against the foreign plaintiff (ibid.). Security may also be ordered where the English co-plaintiff is not a genuine co-plaintiff, but is merely joined to defeat an application for security for costs (Jones v. Gurney [1913] W.N. 72)."*
>
> [Emphasis mine]

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[11] [1987] 1 W.L.R. 516; [1987] 1 All E.R. 345.

15. In this proceeding, the Plaintiffs have the same cause of action and in the event costs are awarded against them, then both Plaintiffs are highly likely to be jointly liable for such to the Defendants. However, it is the 3rd exception to the ordinary rule of practise as stated in ***Slazengers Ltd*** [supra], where the Plaintiffs' case deviates. Here the Defendants' Summons is unopposed as the 2nd Plaintiff has neither filed an affidavit showing evidence that either of the two Plaintiffs has funds within the jurisdiction to meet the liability for costs nor has the 2nd Plaintiff's counsel offered any legal submissions opposing the granting of orders sought in the Summons. Hence, the said ordinary rule of practise cannot be wholly adopted here.

16. Therefore, I find that this is such a case where it is just for this Court to exercise its general discretion and order security for costs to be paid by the 2nd Plaintiff.

Will granting security for costs stifle the 2nd Plaintiff's right?

17. The burden of showing impecuniosity rests upon the plaintiff seeking to resist an order for security for costs. (See ***Inox World Pty Ltd v Shopfittings (Fiji) Ltd*** [2016] FJHC 781; HBC100.2015 (12 September 2016)).

18. As stated above, the 2nd Plaintiff has made no attempt to oppose an order for security for costs and neither has he provided any evidence to justify how his claim would be stifled.

19. Consequently, the 2nd Plaintiff has failed to satisfy this Court that an order for security for costs would prevent him from continuing the litigation. I therefore find that the 2nd Plaintiff has not discharged the onus as per ***Inox World Ltd*** (supra), and that an order for costs will not stifle the 2nd Plaintiff's case.

Probability of success or failure

20. The Plaintiffs' case is based on the allegation that they had spent money building a dwelling house, which is now occupied by the Defendants. The land on which the dwelling house is built is State Land owned by the Director of Lands. The exact description of the Property has not been provided in the Plaintiffs' Statement of Claim, which only refers to the Property as "*Bangladesh Road, Navakai, Nadi.*"
21. The Court notes from the pleadings that the said dwelling house is supposedly built in a squatter/informal settlement and the same has not been regularised by issuance of any form of leases by the Director of Lands. The Court also notes that the Plaintiffs' have admitted in their Reply to the Statement of Defence that Parma had built the dwelling house without any proper building plans.

22. The Defendants' defence to the Plaintiffs' claim is that: (i) there was a verbal agreement through which the 2nd Plaintiff authorised the Defendants to occupy and thereafter own the dwelling house on the Property; and (ii) the Defendants'

have invested financially in the maintenance and renovation of the dwelling house. In their Counterclaim, the Defendants are seeking; (i) a declaration on their right to remain on the Property; (ii) a permanent injunction against the Plaintiffs from interfering with the Defendants' occupation of the Property; (iii) alternatively for a compensation in the sum of $15,000.00 for costs incurred in maintenance of the dwelling house; and (iv) damages.

23. At this juncture, there is insufficient material before this Court in terms of the pleadings and the Affidavit in Support filed. Given such inadequacy of materials, it is difficult to properly weigh the matter in the balance – especially in relation to the probability of success of either the Plaintiffs or the Defendants respective claims against each other. It will therefore be imprudent to delve into the substantive merits of the case at this time.

No delay in applying for security for costs

24. In this matter there has been no substantive delay by the Defendants to file the Summons. The Acknowledgment of Service was filed on 27 March 2024 and the Summons was filed on 1 July 2024 after about 3 months.

25. In light of the above, I hold that this is a fit and proper case for exercise of the Court's discretion in favour of the Defendants and to order the Plaintiffs to deposit some amount as the security for cost.

26. The next issue to be determined is the quantum of the security to be ordered in this case.

Quantum

27. As stated earlier, there is no strict rule that dictates how a Court determines the amount of security a party may be required to provide. Typically, a Court exercises its discretion to set an amount it deems fair, taking into account all relevant circumstances of the case. In the case of ***Dominion Brewery Ltd v Foster*** 77 LT 507, Lindley MR said this at 508:

> *"It is obvious that, as to a question of quantum such as this, you cannot lay down any very accurate principle or rule. The only principle which, as it appears to me, can be said to apply to a case of the kind is this, that you must have regard, in deciding upon the amount of the security to be ordered, to the probable costs which the defendant will be put to so far as this can be ascertained. It would be absurd, of course, to take the estimate of the managing clerk to the defendant's solicitors and give him just what is asked for. You must look as fairly as you can at the whole case."*

28. The Supreme Court Practice 1999 (White Book), in Volume 1 at page 440, and in paragraph 23/3/39, explains this practice and states that:

*"The amount of security awarded is in the discretion of the Court, which will fix such sum as it thinks just, having regard to all the circumstances of the case. It is not always the practice to order security on a full indemnity basis. If security is sought, as it often is, at an early stage in the proceedings, the Court will be faced with an estimate made by a solicitor or his clerk of the costs likely in the future to be incurred; and probably the costs already incurred or paid will only a fraction of the security sought by the applicant. At that stage one of the features of the future of the action which is relevant is the possibility that it may be settled, perhaps quite soon. In such a situation it may well be sensible to make an arbitrary discount of the costs estimated as probable future costs but there is no hard and fast rule. On the contrary each case has to be decided on its own circumstances and it may not always be appropriate to make such a discount (**Procon (Great Brotain) Ltd v. Provincial Building Co. Ltd** [1984] 1 W.L.R. 557; [1984] 2 All E.R. 368, CA). It is a great convenience to the Court to be informed what are the estimated costs, and for this purpose a skeleton bill of costs usually affords a ready guide (cited with approval by Lane J. in **T.Sloyan & Sons (Builders) Ltd v. Brothers of Christian Instruction** [1974] 3 All E.R. 715 at 720)....*

"Sufficient" security or security that in all the circumstances of the case is just does not mean complete security. Where a defendant was seeking £147,000 by way of security and the judge ordered £10,000 the Court of Appeal declined to interfere as the judge had correctly taken into account that the delay by the defendant in making the application had deprived the plaintiff of time to collect the security and that the plaintiff's strong and genuine claim would be stifled by ordering a larger sum: Innovare Displays v. Corporate Booking Services [1991] B.C.C. 174, C.A

[emphasis added]

29. Master J.J.Udit stated in ***Sharma v Registrar of Titles*** [2007] FJHC 118; HBC 351.2001 (13 July 2007) as follows;

"The aforementioned rule, vests the court with an unfettered discretion to order security for costs. All this rule entails to protect is the risks to which an applicant may be exposed to for recovering of costs in a foreign jurisdiction. The quantum of costs comparatively in Fiji is not relatively high although fairly substantive within the jurisdiction which is worth recovering. Execution of costs abroad where the litigation costs are much higher will render the exercise as wholly uneconomical. Be that as it may, ultimately the issue is not that the respondent will not have the assets or money to pay the costs or that the law of the foreign party's country not recognizing an order of our court, and/or enforcement of costs order even be it under any legislation similar to our Reciprocal Enforcement of Judgments Act, (Cap 39), but it is also the extra steps which will be needed to enforce any such judgment outside the jurisdiction. Indeed, it will not be an irrefutable presumption to infer that an extra burden in terms of costs and delay, compared with the equivalent steps that could be taken in Fiji, will be an inevitable corollary. The obvious expenditure which comes to my mind is the

engagement of an attorney and the conundrum of registering an order in the foreign jurisdiction before it can be enforced".

30. In support of their Summons the Defendants' counsel submitted the following: (i) the Plaintiffs' failure to depose any Affidavit in Opposition and nonappearance from Court for Mentions undermines the credibility and sincerity of their claim; (ii) given this failure and non-compliance of previous Court Orders the Plaintiffs' claim is unlikely to succeed; (iii) costs are warranted to protect the Defendants from the risk of incurring expenses that the 2nd Plaintiff may not be able to pay if their claim ultimately fails; (iv) the 2nd Plaintiff have failed to demonstrate that he has a clear financial standing or willingness to comply with procedural obligations; and (v) the Defendants are incurring significant legal costs.

31. Relying on ***Neesham v Sonaisali Island resort Ltd*** [2011] FJHC 642; Civil Action 262.2007 (13 October 2011) the Defendants counsel sought a sum of $20,000.00 as security for costs.

32. Having considered all the circumstances of the case, I am of the view that to order the amount of security for costs sought by the Defendants (i.e. $20,000) would be on a higher scale. Despite the 2nd Plaintiff not filing an opposing affidavit and the legal submissions being wholly disregarded, the Court still notes from the pleading that at least one of the Plaintiffs, (i.e. the 1st Plaintiff) is resident in Fiji, hence granting of such a high figure would be unwarranted.

33. As such, I order that the 2nd Plaintiff pay security for costs of a lesser sum of FJ$5,000.00, which is a just and equitable amount.

34. Accordingly, I make the following orders:

(a) The 2nd Plaintiff should deposit a sum of FJ $5,000.00 at the High Court Registry within a month from today (by 18 September 2025);
(b) Costs will be in the cause; and
(c) The matter to be mentioned on 23 September 2025 to check the compliance of this Order.

HIGH COURT OF FIJI
LAUTOKA

P. Prasad
Master of the High Court

At Lautoka
18 August 2025