

IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC. 25 of 2018

BETWEEN : CECIL QUAI HOI an Australian National, presently of Korovuto, Nadi,
unemployed. PLAINTIFF

AND : THE COMMISSIONER OF POLICE 1ST DEFENDANT

AND : THE ATTORNEY GENERAL OF FIJI 2ND DEFENDANT

BEFORE : A.M. Mohamed Mackie-J

COUNSEL : Mr. E. Dass, for the Plaintiff
Ms. J Raman, (S.C) for the Defendants

TRIAL : Held on 11th March 2025

WRITTEN SUBMISSIONS: Filed by both parties on 7th April, 2025

DATE OF JUDGMENT : 22nd August, 2025

JUDGMENT

A. INTRODUCTION:

1. This is an action commenced by the Plaintiff on 12th February 2018 by filing the writ of summons, together with his Statement of Claim (SOC) dated 09th February 2018, seeking the following reliefs;
 - a) *The sum of \$40,000 for loss of personal items.*
 - b) *The sum of \$240,000 (Australian Dollars) being loss of income.*
 - c) *The sum of \$9,200 being rental expenses.*
 - d) *The sum of \$3,000 being transportation costs.*
 - e) *General and Exemplary Damages for wilful misconduct.*
 - f) *Costs on a Solicitor/client Indemnity basis.*
 - g) *Any other relief, which in the opinion of this Honourable Court is just and expedient.*
2. The summary of the Plaintiff's SOC is that he is an Australian National and in the month of March 2008, he was arrested on suspicion of murder by the officers of the 1st Defendant in Nadi. That during and after his arrest, his personal items in approximate value of \$40,000.00 were seized from him, subsequently he was charged and tried for the offence of murder by imposing a stop departure order and finally after trial, on or about 26th April 2010, he was acquitted with the direction for all the items so seized to be returned to him, however, after the expiry of the Appealable period.

3. He states further, that though on numerous occasions he demanded the 1st Defendant to return all the items seized, the 1st Defendant's officers, who consistently advised him that his request was under process, finally advised him that all the items have been stolen. Accordingly, as his first cause of action, he alleges that the Defendants have wrongfully and unlawfully misappropriated his items, and as his 2nd cause of action, alleges that the Defendants by themselves, their servants or agents have been negligent in processing the release of his items.
4. The Defendants by their joint Statement of Defence (SOD) filed on 18th June 2018, having admitted the arrest of the plaintiff and seizure of certain items, except for the Camera, Wrist Watch and various Clothing listed in paragraph 2 of the SOC, strongly denied the allegations of misappropriation and negligence on the part of them and took up the position that neither the first Defendant nor any of his agents had reason to hold the Plaintiff in Fiji upon his acquittal on 26th April 2020.
5. The Defendants also took the defence that the Plaintiff's claim is out of time contrary to section 4 of the Limitation Act, and finally averred that except for what was expressly admitted in the SOD, they deny each and every allegation, including the particulars thereof, and moved for the dismissal of the claim with costs.
6. It is to be observed that SOC does not specifically reveals the name/s of any individual officer/s, servant/s or agent/s, who was/were responsible for the alleged misappropriation and negligence. However, both the Defendants, who were named in their respective official capacity, filed their joint SOD as aforesaid.
7. The Plaintiff on 20th June 2018 filed Summons for default judgment pursuant to Order 77 rule 6 of the High Court Rules 1988 and the then learned Master ("the Master"), after hearing both parties, by his Ruling dated 03rd December 2021 dismissed the same. Thereafter, further pleadings being filed, the matter proceeded for trial before me on the following Agreed Facts and Issues. The PTC minutes is dated 08th February 2023 and filed on 09th February 2023

B. AGREED FACTS & ISSUES:

Agreed Facts:

1. *The Plaintiff is an Australian citizen.*
2. *The Plaintiff was arrested by the 1st Defendant's officers in March, 2008 on suspicion of murder.*
3. *As part of the investigation process, the 1st Defendant's officers seized several items belonging to the Plaintiff.*
4. *The Plaintiff was ultimately bailed by the High Court, and at the 1st Defendant's request, the High Court imposed a stop departure from Fiji on the Plaintiff as a condition of the bail.*
5. *The Plaintiff was acquitted of the offence of murder on 26th April, 2010.*
6. *The High Court directed the State to facilitate the removal of the stop departure Order and accordingly issued a memorandum to the Immigration Authorities to remove the Plaintiff's name from the stop departure list.*

Agreed Issues:

7. *Whether the Defendants to date have failed to facilitate the stop departure removal of the Plaintiff?*
8. *Whether the Plaintiff's name has been removed from the stop departure list?*

9. *What has happened to the Plaintiff's items seized by the 1st Defendant's officers?*
10. *Whether the Defendants have provided any communication to the Plaintiff regarding the missing items?*
11. *What are the assessments of approximate value of the items missing?*
12. *Whether the Defendants have wrongfully and without lawful excuse misappropriated the Plaintiff's items?*
13. *What is the measure of damages suffered by the Plaintiff for the loss of his items from the date of acquittal to the date of the judgment?*
14. *Whether there has been any effort undertaken by the Defendants to have the stop departure against the Plaintiff removed or cancelled?*
15. *Whether the Defendants are liable for damages in respect of the continued unlawful detention of the Plaintiff in Fiji?*
16. *Whether the Defendants are liable for damages suffered by the Plaintiff and if so, then the measures of such damages?*
17. *Whether the Plaintiff's claim is statute barred?*

C. TRIAL:

8. At the one- day trial held before me on 11th March 2025, the Plaintiff gave evidence on his behalf. On behalf of the 1st Defendant, an Acting Superintendent of Police, namely, Mr. LEONE VURUKANIA gave evidence. The Plaintiff through his evidence marked and tendered exhibits from "Pex-1" to "Pex-14", while the Defence witness through his evidence marked and tendered only 1 exhibit as "Dex-1". Counsel for both parties have filed their respective written submissions, for which I thank them profusely.

D. EVIDENCE:

9. This is a civil action, wherein the burden of proof is squarely on the Plaintiff to prove his claim against the Defendants on preponderance of evidence or on balance of probability. Only the Plaintiff has given evidence before this Court on his behalf by marking 14 exhibits in order to substantiate his claim on his allegation of misappropriation and negligence on the part of both the Defendants. On careful scrutiny of his evidence, I don't find any substantial or tangible evidence to implicate and make the 1st and/or the 2nd Defendants liable for the Plaintiff's claim against them.
10. All what I could grasp from his overall evidence adduced before this Court is the Plaintiff's inaction and/ or failure to act diligently and in timely manner to have his personal items released and to have his Stop Departure Order uplifted after his acquittal and discharge on 27th April 2010 on being found not guilty for the charge of murder levelled against. I will discuss this in detail later in this judgment.
11. On behalf of the Defendants too, only the said Police officer, namely, **Mr. Leone Vurukania** was called, who testified that he has been serving at Nadi Police Station since 2013, and about the limited role he played in relation to the Plaintiff, including the drafting of a minute dated 31st August 2022 addressed to Director Legal informing that the exhibits claimed by the Plaintiff could not be found in the exhibit Container. He testified further that the Nadi Police Station does not have any record of the Plaintiff coming to the Station claiming for exhibits, and that the only time he met the Plaintiff during his period of service so far, was in last month (*apparently referring to the month of February 2025*), and there had been instances of breaking into containers and exhibits being stolen. He added that if the plaintiff had come to the Police Station claiming his items, they would have assisted him in locating, if he was able to identify those items. He testified further under cross examination that he was not the part of the investigation or trial against the Plaintiff at the High Court in the year 2008,

and under re-examination he confirmed that there was no any formal order from the Magistrate's Court or the High Court for the release of the Plaintiff's items.

E. ANALYSIS:

12. Altogether, parties have raised 11 issues (numbered from 7 to 17), out of which issues Nos- 7, 8 and 14 are founded on his allegation of not uplifting the Stop Departure Order by the Immigration officers, while Issues Nos- 9 to 13 are founded on the allegation of not releasing the items seized from him. It is observed that if the Plaintiff intended to attract favourable answers to these issues, essentially, he should have adduced convincing evidence and demonstrated that there was no any inaction or delay on his part and that he acted with due diligence, in order to have the Stop Departure Order uplifted and his personal items released, soon after the appealable period in his Criminal Action had lapsed pursuant to his release on 27th April 2010. It was also incumbent on him to prove that it was either the 1st or the 2nd Defendant or both who failed to uplift the Stop Departure Order and to release his items.
13. Also, I find that the issues no 15 and 16 have been framed basing on his allegation that he was in continued unlawful detention in Fiji. In order to attract favourable answer to these issues, apart from satisfying this Court that there was no any inaction and/ or delay on his part as observed above, he was also required to adduce cogent evidence with regard to the ownership & the value of the goods he claims, and that he could not go back to Australia solely due to the continuation of the Stop Departure Order in force. He also should have proffered evidence with supporting documents that he would have earned such an amount in a sum of around \$240,000.00 AUD as claimed by him, had he gone back.
14. The issue No-17, which is framed in terms of Section 4(1) of the Limitation Act, if answered against the Plaintiff, would substantially dispose this action, leaving no requirement to go into majority of the remaining issues, unless this Court decides to do so for the sake of completeness.
15. Accordingly, I shall primarily go into the issue No-17 to decide whether the Plaintiff's action is statute barred as pleaded in paragraph 14 of the Statement of Defence, on which the Counsel for the Defendants in her written submissions has sufficiently addressed this Court. I don't find any counter arguments in this regard from the Plaintiff's Counsel in their written submission.

Section 4 of the Limitation Act, Cap 35

16. The Defendants submitted that the Plaintiff's action was statute barred as the same was filed after the expiration of six (6) years period from the date on which the cause of action, if any, accrued and it included action founded on tort.
17. It was submitted that the writ was filed on 12th February 2018, after almost 8 years from the date of accrual of his Causes of action, as such the Plaintiff's action is statute barred and should be struck out.
18. Section 4 of the Limitations Act (Cap 35) states as follows:

4. (1) the following actions shall not be brought after the expiration of six 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 recognizance;
- (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 six years there were substituted a reference to three 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 six years before the commencement of the action.

(3) An action upon a specialty shall not be brought after the expiration of twelve 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 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.

(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 two 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 Supreme 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.

19. The English Court of Appeal in the case of *Riches v. Director of Public Prosecutions* [1973] 2 All ER 935 held that:

"When the statement of claim discloses that the cause of action arose outside the current period of limitation and it is clear that the defendant intends to rely on the limitation act and there is nothing before that Court to suggest that the plaintiff could escape from that defence, the claim will be struck out as being frivolous, vexation and an abuse of the process of the court."

"I do not want to state definitely that, in a case where it is merely alleged that the statement of claim discloses no cause of action, the limitation objection should or could prevail. In principle I cannot see why not. If there is any room for an escape from the statute, well and good, if it can be shown. But in the absence of that, it is difficult to see why a defendant should be called on to pay large sums of money and a plaintiff be permitted to waste large sums of his own or somebody else's money in an attempt to pursue a cause of action which has already been barred by the statute of limitation and must fail ..."

"The object of RSC Ord 18, r 19 (which is equivalent to our O.18, r 18) is to ensure that defendants shall not be troubled by claims against them which are bound to fail having regard to the uncontested facts. One of the uncontested set of facts which arises from time to time is when on the statement of claim it is clear that the cause of action is statute barred and the defendant tells the court that he proposes to plead the statute and, on the uncontested facts, that is no reason to think that the plaintiff can bring himself within the exceptions set out in the Limitation Act 1939. In those circumstances it is pointless for the case to go on so that the defendant can deliver a defense. The delivery of the defense occupies time and wastes money; and even more useless and time-consuming from the point of view of the proper administration of justice is that there should then have to be a summons for direction and an order for an issue to be tried and, for that issue to be tried before the inevitable result is attained."

20. In the current case before this Court, the cause of action, if any, arose only after his failure in his alleged initial attempts to have the Stop Departure Order uplifted, and the personal items released subsequent to the expiry of appealable period, pursuant to his release by the High Court on 26th April 2010.
21. The Writ of Summons, together with the Statement of Claim, was filed on 12th February 2018; almost nearly eight (8) years after the alleged cause of action arose. The Plaintiff should have filed and commenced this action, if he had a case on 'Tort of Negligence', within six (6) years' time frame from the date of the accrual of the cause of action as prescribed by section 4(1) (a) of the Act .
22. If, the Plaintiff had a valid cause of action on tort, it must have arisen in April 2010 and expired in April 2016. The Plaintiff did not plead any reason to purge his delay, and for the extension of time frame for filing the action after 8 years. He did not either make any formal demand for damages if any. The Plaintiff's action for damages against the Defendants was after expiry of his purported causes of action and in the absence of any forewarning or a formal demand.
23. Having perused and analysed the issue raised by the Defendants in this regard, I stand convinced that this court does not have the jurisdiction to determine this case as per section 4 (1) of the Limitation Act Cap 35 since it has been filed outside the Limitation period. Therefore, I find that the Plaintiff's claim is statute barred in law.
24. The Plaintiff's causes of action did not include the breach of duty on the part of the Defendants. The remaining cause of action is the alleged misappropriation, which is pleaded in paragraph 10 of the SOC. But the Plaintiff has not given any particulars of the alleged misappropriation as to how and who misappropriated the Plaintiff's items. When this kind of an allegation is made, particularly against

the 2nd Defendant, the Plaintiff and/or his Solicitors should have acted with some degree of responsibility by giving the relevant and correct particulars.


25. Though, the above analysis disposes the Plaintiff's action substantially on operation of Section 4(1) of the Limitation Act, I will delve into the rest of the issues as well for the sake of completeness. Issues No; 7, 8 and 14 are revolving around the Defendants' alleged failure to uplift the Stop Departure Order against the Plaintiff. The Plaintiff's attempt, during his evidence, to find fault with the Immigration Officers was objected by the Defence Counsel as the Fiji Immigration was not a party to the proceedings.
26. The High Court Judgment in the Criminal Case No- HAC 15 of 2008 marked as "Pex-2" in these proceedings did not contain even a word about the uplifting of the Stop Departure Order or the release of the Plaintiff's goods seized during his arrest. In the absence of such an order or direction by the trial judge, the Registry could not have issued any letters or memo to the Police, D.P.P Office or to the Immigration Office for the upliftment of the Stop Departure Order or to release the items seized. Those items may or may not have been produced as evidence at the trial, but should have been entered in the list of productions and/or in the reports filed of in the case record.
27. There is no any evidence before this Court to show that the Hon. Judge of the High Court made an Order to uplift the Stop Departure Order and/ or for the release of the goods. The Plaintiff's exoneration and his eventual release would, undoubtedly, have been secured by his then Lawyers before the High Court by filing necessary applications before that Court. Likewise, for the upliftment of the Stop Departure Order and release of his items too, there should have been such an application before the same Court. The Plaintiff could have produced copies of such applications, Orders of that Court on it, if any, or the relevant case record through the Registrar of that Court to satisfy this Court that there was an attempt by the Plaintiff to have his Stop Departure Order uplifted and items released pursuant to his acquittal.
28. The Registry has to act only administratively, provided there is an order or direction made by the judge in writing for the upliftment of the Stop Departure Order and for the release of the goods. This may be the reason as to why the Immigration officer said to have refused to act on the memos issued by the High Court Registry in the absence of an order of the Court. The Plaintiff, for the reason best known to him, did not make a formal application to the High Court for the upliftment of the SDO or to have his items released. Had there been orders by the Court to those effects, undoubtedly, those orders would have been carried out forthwith.
29. The exhibits marked as "Pex-3", "Pex-4" and "Pex-5", all of which are dated 17th March 2011, show that the Plaintiff has started to role to have his stop Departure Order uplifted and to have his goods released only after around 11 months from the date of his release on 27th April 2020. Hence, a question arises as to why the Plaintiff did not act promptly and diligently soon after the Appealable period was over on expiry of 30 days from 27th April 2010? The Plaintiff's then Lawyers, who secured his release, seem to have failed to make an application to the Judge for the remaining reliefs.
30. Further, if the Plaintiff had such a monthly income earning job in Australia, why didn't he act instantly to have his Stop Departure Order uplifted in order to go to Australia at the earliest possible opportunity? If his goods were of such a value, why did he wait for 11 months to make his first move by only writing letters to the Registry, which was not supposed to bring any relief in the absence of a written order or direction by the Hon. Judge of the High Court?

31. The Plaintiff in his evidence did not utter a word about any of his attempt to go out of Fiji, and he was stopped on account of the impugned Stop Departure Order. He had all the avenues and opportunities to have his Stop Departure Order uplifted. He doesn't say even now whether it is uplifted or not. In my view, he had his own reasons to stay back in Fiji, when he had his girlfriend in Fiji as he came out in his evidence. He also had stated in his initial evidence that he came to Fiji to get married. It appears that now he is trying to play the role of a victim of the Defendants' alleged negligence and misappropriation.
32. If his items were of such a value, he could have produced the relevant documents to prove his ownership and value thereof. It is common knowledge, that when an article is taken to the Police custody during the investigation of crime from the possession of the suspect or from the crime scene, whether those items are produced or not as evidence at the trial, there is a procedure to have those articles disposed and released, which is only by a formal Order of the Court, on which the Registry and the Officers, who brought those items to Court, would act.
33. The next move made by the Plaintiff to have his items released was writing of 2 letters dated 29th February 2016 and 2nd December 2016 marked as "Pex-6" and "Pex-10" respectively, addressed to the 2nd Defendant Attorney General, on which some actions were taken by the 2nd Defendant as evidenced by letter dated 23rd June 2016 marked as "Pex-7" addressed to the Plaintiff, and the even dated letter marked as "Pex-8" addressed to the 1st Defendant Commissioner of Police.
34. The first occasion the Plaintiff, admittedly, went to the Nadi Police Station in relation to his goods was on 18th July 2016 to make a Statement as evidenced by the annexure marked as "Pex-9". Apart from this, another occasion he went to the Nadi Police Station was only in the Month of February 2025 as stated by the DW-1 in his evidence, which was not refuted by the Plaintiff.
35. The Plaintiff did not take appropriate and timely action to have his Stop Departure Order uplifted and for his goods to be released promptly. He did not move the Court for those reliefs pursuant to his release and simply relied on the letters and memos issued by the Registry. The evidence given by the DW-1 that there were instances of breaking the Production depository (the container) at the Nadi Police Station was not refuted by the Plaintiff's Counsel at the trial before this Court. Not even a suggestion was made to the effect that the officer was giving false evidence.
36. Counsel for the Plaintiff in her written submissions, has not addressed the Court on any material legal issues, particularly with regard to the defence of time bar advanced on behalf of the Defendants.
37. Had the Plaintiff acted with due diligence in timely manner and obtained the relevant orders from the Court then and there, he could have avoided all the alleged predicaments. He only knows as to how and when the Stop Departure Order was lifted, which he appears to have suppressed for the reason best-known to him. Further, in the absence of evidence from the Plaintiff, this Court cannot engage in the exercise of ascertaining as to what could have happened to his items, to answer the issue No-09. The Court cannot give judgment on assumptions.
38. The Plaintiff failed to prove his action against both the Defendants on preponderance of evidence. Accordingly, all issues raised in this case stand answered against the Plaintiff. This Court has no alternative, but to dismiss the Plaintiff's action against both the Defendants, however with no order for Costs. Parties shall bear their own costs.

F. FINAL ORDERS:

1. The Plaintiff's action against the Defendants fails.
2. The Plaintiff's action filed on 12th February 2018, against the Defendants, is hereby struck out and dismissed.
3. No costs ordered and the parties shall bear their own costs.




A.M. Mohamed Mackie
Judge

At the High Court of Lautoka on this 22nd day of August, 2025.

SOLICITORS:

For the Plaintiff: Messrs Fazilat Shah Legal, Barristers & Solicitors
For the Defendants: Office of the Attorney-General