

- b) Any irregularity arising out of this application be cured and/or set aside pursuant to Order 2 of the High Court Rules 1988.
 - c) The time for service of the Summons be abridged.
 - d) That costs of this application be costs in the proceedings and such further orders as this Honourable Court deems just and expedient in the circumstances.
2. The application is supported by the affidavit of Sashi Mala deposed on the 3rd of September 2025 and filed on the same date.
3. This application is made pursuant to Order 35 Rule 3, Order 3 Rule 4 (1) of the High Court Rules 1988.

The grounds to vacate the Trial

4. Sashi Mala is the wife of the Plaintiff and they were married on the 28th of August 2010.
5. Since early August 2025, her husband has been unwell and his doctor, Dr. Paula Sili provided the following diagnosis: -
- i. He is suffering from chronic liver jaundice due to cysts detected in the space between the pancreas and the liver.
 - ii. Severe anemia
 - iii. Increase liver enzymes
 - iv. Generalized weakness/dehydration
 - v. On examination he was pale and dehydrated
 - vi. BP 95/87, P-130/mm Temp – 36.6[^]c
 - vii. Lung fields air entry normal
 - viii. HS S1&2, No cardiac murmurs
 - ix. Abd No Mass
 - x. He is on medication and reviews
6. This was also confirmed by scans from MIOT Hospital, which showed as follows: -

- a) The visualized pancreas echotexture is slightly coarse and echogenic with normal in size and outlines. This is a tubular cyst detected in the space between the pancreas and liver. The cyst has internal echoes and measures 3.9 cm x 1 cm x 1cm in size.
 - b) The liver demonstrates normal parenchymal echotexture, with normal size. No evidence of dilated intra or extrathepatic ducts. No focal lesion.
 - c) The gallbladder is contracted with no evidence of any calculi or debris. No cholecysticis.
 - d) The spleen, distal aorta and interior vena cava are normal in appearance with no lymphadenopathy seen.
 - e) Bilateral kidneys are normal in Parenchymal echotexture, sizes and outlines. No obvious calculus seen. No hydroneposis.
 - f) No abdominal mass or Ascites. Loops of gaseous bowels are seen in RUQ.
 - g) Slightly enlarged prostate at 40cm³ with regular outlines, N Nodules.
7. The Plaintiff was prescribed very strong medication that has seriously affected his ability to function normally. He often suffers from confusion, forgetfulness and disorientation and at times he struggles to understand or respond clearly to even simple questions. The doctor has advised that his recovery will take several months.
8. Once his condition was notified to counsel, counsel advised the registry as well as the other parties.
9. The Plaintiff is currently unable to appear in Court and coordinate his case and his case will not be able to be presented fully or accurately.
10. If the Trial is not vacated, the Plaintiff will be severely prejudiced, as he will not be able to provide instructions, cross examine witnesses or give evidence and the Court

will be deprived of critical information necessary for a fair and just determination of the matter.

11. The medical circumstances were unforeseen and entirely beyond their control and this is the first trial date of this matter.
12. The application is made pursuant to Order 35 Rule 3 of the High Court Rules, which provides as follows: -

“Adjournment of trial (O.35, r.3)

3. The judge may, if he [or she] thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he [or she] thinks fit”

13. The Plaintiff also relies on the case of Chand vs Vision Trading Ltd [2018] FJHC 278; HBC 128 of 2014 (29 March 2018) where the High Court cited the Court of Appeal decision in Goldenwest Enterprises Ltd vs Pautogo [2008] FJCA 3; ABU 38 of 2005 (3 March 2008) as follows: -

10. Order 35 Rule 3 of the High Court Rules, which gives a judge the discretion to adjourn a trial in the interest of justice, reads as follows;

“The judge may, if he thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit.”

11. The principles enunciated in ***Goldenwest Enterprises Ltd vs Timoci Pautogo, Civil Appeal Number ABU 0038 of 2005*** guides me on the subject in issue. The test for adjournment of trial is based on the following questions.

1. Will refusal to grant an adjournment amount to the denial of a fair hearing and hence denial of natural justice or procedural fairness? Or
2. Where a refusal to adjourn would cause definite and irreparable harm to the party seeking it; and
3. Is there any ‘fault’ on the part of the party seeking the adjournment?

14. The 1st Defendant opposes the application on the basis that the he is elderly and this matter directly relates to the land where the Plaintiff currently occupies and he wants

the matters resolved at this Trial. He further submits that he will be severely prejudiced if there are further adjournments and delay due to his age.

15. The 2nd and 3rd Defendants are nominal Defendants and they have no objections to the application.
16. In response to the 1st Defendant's objections, the Plaintiff proposes that he can provide his examination in chief by way of affidavit and he can be cross examined on the same only, thus reducing his time in Court.

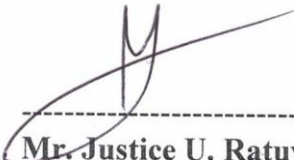
Analysis

17. There is no dispute that the Court has the absolute authority to grant adjournments upon any terms it thinks fit – Order 35 Rule 3.
18. This Trial was fixed on the 11th of May 2024, the Trial to commence from 8th to 10th September 2025.
19. The 8th was a public holiday therefore today was to have been the first day of the Trial. The affidavit evidence is clear that the Plaintiff was recently diagnosed with a liver disease and associated complications. The medication that he is taking is affecting his abilities to function normally.
20. The parties have all prepared for Trial, subpoenas have been issued and in the absence of this diagnosis, parties would have been proceeding to trial today.
21. I find that the Plaintiff has demonstrated just cause for the Trial to be vacated as the Plaintiff needs to be available to properly present his case and I find that he is currently not in apposition to do so today.
22. I am also aware of the 1st Defendant's concerns and the Court will make all attempts to expedite this matter for another Trial date.

This is the Ruling of the Court: -

1. The Trial is hereby vacated, the Plaintiff will pay the wasted hearing fees for the remaining two days.
2. The Plaintiff will also pay costs to the 1st Defendant summarily assessed at \$700 – 14 days to pay.
3. This matter is adjourned for one month to review the Plaintiff's condition and for further directions.





Mr. Justice U. Ratuville
Puisne Judge

cc: - Sunil Kumar Esq.
- Lajendra Lawyers
- Office of the Attorney-General