

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

CIVIL ACTION NO. HBC 56 of 2021

BETWEEN : **HARI SHANKAR LAL** of California, United States of
America, Barrister and Solicitor.

PLAINTIFF

AND : **RAJENDRA PRASAD aka RAJ PRASAD** of 1B-12
Morning Star Place, Mt. Albert, Auckland, New Zealand,
Businessman.

DEFENDANT

Before : Master P. Prasad
Counsels : Mr. A. Singh for Plaintiff
Ms. A. Swamy for Defendant
Date of Hearing : By way of Submissions.
Date of Decision: 12 September 2025

RULING

(Security for costs)

1. Through his Statement of Claim (**SOC**), the Plaintiff seeks specific performance of a Sales and Purchase Agreement dated 12 December 2006, special damages, general damages and costs. The Plaintiff alleges that he paid money for the sale and transfer of 2 Certificates of Title namely CT 26707 and CT 26708, which the Defendant has failed to transfer to the Plaintiff.
2. On 23 August 2021, the Defendant filed a Summons pursuant to Order 23 Rule 1(a) of the High Court Rules (**HCR**) and the inherent jurisdiction of this Court. The Defendant filed an Affidavit in Support of the Summons and an Affidavit in Reply.

3. The Plaintiff opposed the Summons and filed an Affidavit in Opposition.
4. Though the Summons was filed on 23 August 2021, it was only heard on 17 July 2025 and the reasons for the chronological delay are stated below:
 - a. On 03 November 2021, there was non-appearance by the Plaintiff and the Court made orders for the Plaintiff to deposit \$20,000.00 as security for costs.
 - b. On 10 February 2022, due to the non-compliance of the above order, the Plaintiff's SOC was struck out.
 - c. On 05 April 2022, the Plaintiff filed a Summons to reinstate the Plaintiff's action and for re-hearing of the Summons for Security for Costs.
 - d. Thereafter, both parties were engaged in settlement talks until 20 February 2023 when the Defendant's counsel informed this Court that they were going to file Summons to withdraw as counsel for the Defendant.
 - e. On 24 February 2023 the Defendant's counsel filed the Summons to withdraw as counsel and Order in terms of the same were granted on 06 March 2023.
 - f. On 27 March 2023 this Court reinstated the Plaintiff's SOC, set aside the Orders made on 03 November 2021 and further ordered for the Summons for Security for Costs to be fixed for hearing.
 - g. On 09 November 2023 the previous counsel for the Defendant filed their Notice of Appointment of Solicitors for them to once again act for the Defendant.
 - h. The Plaintiff only filed his Affidavit in Opposition to the Summons on 03 September 2024 and the Defendant filed an Affidavit in reply on 22 January 2025.
 - i. The Summons was then fixed for hearing on 17 July 2025.
5. On the day of hearing, both parties agreed for the Court to rule on written submissions as counsel for the Defendant was unwell. Both parties then filed their respective submissions on the same day.
6. 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.

7. 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.
8. 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).*
- 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.*

¹[1973] 2 All ER 273.

²(1987) 1 All ER 1074.

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

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.

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

- 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 Plaintiff ordinarily resident out of jurisdiction?

9. 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).*”

10. It is not a disputed fact that the Plaintiff is ordinarily resident out of the jurisdiction in the United States of America. The Plaintiff has also failed to provide proof of any assets that he may own in Fiji.

Will granting security for costs stifle the Plaintiff’s right?

11. The burden of showing impecuniosity rests upon the plaintiff seeking to resist the Order. (See ***Inox World Pty Ltd v Shopfittings (Fiji) Ltd*** [2016] FJHC 781; HBC100.2015 (12 September 2016)).
12. In an attempt to oppose an order for security for costs, the Plaintiff’s counsel submitted that this Summons stifles the Plaintiff’s claim in totality. The Plaintiff relies only on the fact that he has allegedly paid about \$20,000.00 to the Defendant already.
13. However, no evidence or explanation was provided through the Plaintiff’s Affidavit in Opposition to support the assertion as to how his claim would be actually stifled. Consequently, the Plaintiff has failed to satisfy this Court that an order for security for costs would prevent him from continuing this litigation. I therefore find that the Plaintiff has not discharged the onus as per ***Inox World Ltd*** (supra), and an order for costs will not stifle the Plaintiff’s case.

Probability of success or failure

14. The Plaintiff’s case is based on the alleged payment of money to the Defendant pursuant to a Sale and Purchase Agreement. The Plaintiff did not attach any copies of the purported Sale and Purchase Agreement nor any certified true copies of the relevant Certificates of Titles to his Affidavit in Opposition. The Plaintiff also failed to attach proof of any payments made to the Defendant.

15. The Defendant in his Statement of Defence denies that there was any Sale and Purchase Agreement entered into by the Defendant and states that any such agreement would be illegal pursuant to sections 6 and 7 of the Land Sales Act 1974.
16. Given the inadequate material before this Court at this particular stage it is difficult to properly weigh the matter in the balance – especially in relation to the probability of success of either the Plaintiff's or the Defendant's 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

17. In this matter there has been no substantive delay by the Defendant to file the Summons for Security for Costs. The Acknowledgment of Service was filed on 24 March 2021 and the said Summons was filed on 23 August 2021 after 5 months.
18. 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 Defendant, and to order the Plaintiff to deposit some amount of money as security for cost.
19. The next issue is the quantum of the security to be ordered in this case.

Quantum

20. 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."

21. 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 Britain) 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]

22. The Defendant’s Affidavit in Support of the Summons for Security for Costs annexes as “4” a letter from his counsel to the Plaintiff’s counsel, which states that the Defendant’s counsel estimates the likely legal costs for the Defendant to be approximately \$60,000.00. No breakdown of the same has been provided.
23. The Plaintiff’s counsel’s contention is that there should be no order for any sum to be paid as security because the Plaintiff’s SOC relies on the Sale and Purchase Agreement to which the Land Sales Act 1974 does not apply as the aggregate area of the land is not more than one acre.
24. As stated above, the Plaintiff did not adduce any evidence of the purported Sale and Purchase Agreement nor any copies of the Certificates of title which are the subject of his SOC.
25. There are several cases, including **Sunflower Aviation Ltd v Civil Aviation Authority of the Fiji Islands** [2015] FJHC 336, **Peters v Seashell @ Momi Ltd** [2015] FJHC 581, **Aerolink Air Services Pty Ltd v Sunflower Aviation Ltd** [2014] FJHC 817, **Neesham v Sonaisali Island Resort Ltd** [2011] FJHC

642, and *Bailiff v Tuivuna* [2018] FJHC 909 wherein the Courts have required plaintiffs to deposit a substantial amount as security for costs. These cases may serve as reference points in determining an appropriate amount suited to the specific circumstances of the present case. However, they should not be regarded as rigid or binding precedents that constrain the Court's exercise of its discretion.

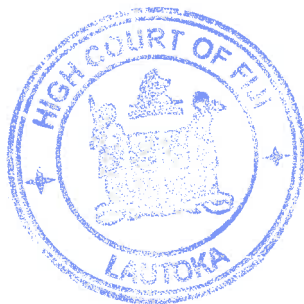
26. After having considered all the circumstances of the case, I am of the view that to order the amount of security for costs sought by the Defendant would be oppressive.

27. Instead, I order that the Plaintiff pay security for costs of a lesser sum of FJ\$8,500.00, which I deem as a just and equitable amount.

Final Orders

28. Accordingly, I make the following orders:

- a) The Plaintiff should deposit a sum of FJ\$8,500.00 with the High Court Registry within a month from today (by 13 October 2025);
- b) All proceedings in this cause shall be stayed forthwith if there is failure by the Plaintiff to deposit the security for costs as ordered in (a) above; and
- c) The matter to be mentioned on 17 October 2025 to check on compliance of Order (a) above by the Plaintiff.



P. Prasad
Master of the High Court

At Lautoka
12 September 2025

Solicitors:

Plaintiff – Messrs Anil J. Singh Lawyers, Nadi.
Defendant – Messrs Patel & Sharma, Nadi.