

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO. 352 OF 2015

BETWEEN: **LATCHAN HOLDINGS LTD** a limited liability company with its registered office at 211 Ratu Sukuna Road, Suva, Fiji.

Plaintiff

AND: **KEOLAPATI LAGAN** as Administratrix of the Estate of **RAM LAGAN** of 6 Opal Place, Bossley Park, NSW 2176, Australia, retired.

1st Defendant

AND: **PRAKASH LAGAN** of Lot 4, Nakasi Park Estate, Stage 1 Nakasi

2nd Defendant

RULING

(Compliance with Court Orders re costs)

Counsels:

For the Plaintiff: *Mr. N. Lajendra & Mr. M. Waqavana.*

For the Defendant: *Ms. S. Dean & Ms. N. Ram*

Date of Hearing: *2nd September 2025*

Date of Ruling: *19th September 2025*

Introduction

1. By a Writ filed on 17th November 2015, the Plaintiff claimed that it entered into a Sale and Purchase Agreement (SPA) with the late Ram Lagan on 8th July 2014 to purchase his half share in Native Lease, NL No. 29608, in the land known as Waidalice in Verata, Tailevu, island of Viti Levu containing an area of 2.3067 hectares (Native Lease Property) and his two thirds share of freehold CT Register Vol 36, Folio 3580 containing an area of 200 acres (the freehold property) and chattels which included 149 goats, 67 sheep and 216 head of cattle, all for the sum of \$498, 466. 67.

2. The Plaintiff claims *inter alia* that clause 3.0 of the SPA provides that the settlement was to be effected within 60 days from 8th July 2014, that is by 30th August 2014; that before the settlement date, the late Ram Lagan died on 19th August 2014; that clause 5(d) of the SPA provides for the Plaintiff to take possession of the property immediately upon the death of Ram Lagan; that the Plaintiff was ready to fulfill its obligations as Purchaser under the agreement; that the First Defendant did not give instructions to her solicitors to proceed with the sale and that the Plaintiffs as a result had been deprived by the Defendants from taking full possession of the properties and has suffered loss in the value of the chattels.
3. The claim against the second Defendant is that he had registered a caveat against the freehold property and that since the death of Ram Lagan, he has been selling stock and causing loss to the Plaintiff. The Plaintiff seeks orders for adjustment of the purchase price due to the diminution in the stock agreed to be purchased.

Prayers

4. The Plaintiff seeks the following orders from the court:
 - a. An order for specific performance of the Sale and Purchase Agreement dated 8th July 2014 between the Plaintiff and the late Ram Lagan;
 - b. Variation to the purchase price of the Chattels upon a stock take;
 - c. An order that the First Defendant performs all the obligations of the Estate pursuant to the Agreement in order to convey the properties to the Plaintiff;
 - d. An order that Caveats Nos. 806997, 803057 and 756320 lodged by the First and Second Defendants be removed forthwith.

The History of Proceedings

5. The history of proceedings is succinctly put in the Petition for special leave to appeal to the Supreme Court which the 2nd Defendant attached to his affidavit in opposition to this application: -
 - a. The writ was filed on 17th November 2015.
 - b. On the 9th of April 2019, Justice Mutunayagam delivered an interlocutory ruling dismissing the Defendants application for Striking Out & Preliminary Determination, Interim Injunction and vacant possession and ordering a second caveat to be lodged against Native Lease No. 29608 and CT Register Vol 36, Folio 3580 (CT 3580) and ordering security of costs in the sum of \$7,500 with costs of \$3,000 to be paid by the Defendants.
 - c. The Defendants filed for a stay of the ruling by way of an application filed on 25th April 2019 in the High Court. This was dismissed by the court in his decision of 2nd October 2019 with costs of \$1,000.

- d. The Defendants sought leave to appeal against the said Ruling which included an order for security for costs in the sum of \$7,500.00. The Defendants also sought a stay of the interlocutory ruling pending appeal, but the court refused and ordered costs of \$1,000.00 on 7th October 2019.
 - e. The Defendants then renewed their application in the Court of Appeal on 15th October 2019 and leave was granted. The Court also stayed the decision of the High Court.
 - f. Pending the determination of the appeal by the Court of Appeal, the original first Defendant, KEOLAPATI LAGAN as executrix of the Estate of Ram Lagan passed away on 23rd December 2023. No one has been appointed yet as the Administrator of the said Estate.
 - g. The Court of Appeal delivered their judgment on 29th May 2025 and made the following orders:
 - i. Appeal dismissed.
 - ii. The Appellants shall jointly and severally pay \$5,000 as costs of this appeal to be paid to the Respondent within 21 days hereof;
 - iii. The High Court is directed to hear and dispose of this case within 06 months from the next mention date in the High Court by giving preference to the trial in this action; and
 - iv. The parties are directed to co-operate with the High Court to achieve Order 3.
6. The second Defendant has applied for special leave from the Supreme Court to appeal the decision of the Court of Appeal and the matter was set down for 14 September 2025.

This Application

7. The Plaintiff filed this application by way of summons seeking the following orders:
- a. Unless the Defendant within 14 days:
 - i. Pay the sum of \$7,500.00 as security for costs in court; and
 - ii. Pay the sum of \$9,000.00 as costs to the Plaintiff;

The Defendants statement of defence and counter-claim be struck out; and

- iii. Costs of this application.

The Hearing

8. The matter was heard on 2nd September 2025. Only the Plaintiff and the second Defendant were represented and both counsels tendered written submissions and made oral submissions on the day. I thank counsels for their submissions.

The Submissions

9. The Plaintiff said in its submissions emphasised that the application is administrative and for the purposes of ensuring that court orders are complied with by the Defendants and that there be consequences for disobedience; that otherwise, the Defendants will continue to disobey orders of the court; that as a consequence of disobedience, the court must strike out the non-complying party's pleadings which in this case means the defence and counter-claim. Counsel then relied on the case of *Bhawis Pratap v Christian Mission Fellowship, Civil Appeal No. ABU 9903 of 2005*, specifically, paragraph 23 which stated:

The correct approach to be taken by the courts in Fiji on an application to strike out proceedings for want of prosecution has been considered by this court on several occasions. Most recently, in Abdul Khadeer Kuddus Hussein v Pacific Forum Line ABU 0024/2000-FCA B/V 03/382, the court re-adopted the principles expounded in Birkett v James [1978] ACT 297; [1977] 2 All ER 801 and explained that:

The power should be exercised only where the court is satisfied that the default has been intentional and contumelious; e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court.

10. Counsel then submits that the disobedience of the Defendants to costs orders is an abuse of the court system and that if they do not comply, it is only appropriate that the statement of defence and counter-claim should be struck out.

ANALYSIS

11. The Court of Appeal in *Bhawis Pratap v Christian Mission Fellowship (supra)* which the Plaintiff's counsel relied on, went on to say at paragraph 20, quoting *Metropolitan Bank Limited v Pooley (1885) 10 App. Cas 201 at 220, 221* that the power to strike out is a power which must be exercised with considerable caution. The Court of Appeal then went on to quote *Dey v Victorian Railways Commissioners (1949) 78 CLR 62 at 91* where Dixon J said:

A case must be very clear indeed to justify the summary intervention of the court... once it appears that there is a real question to be determined whether of fact or of law and that the rights of the parties depend upon it, then it is not competent for the court to dismiss the action as frivolous or vexatious and an abuse of the process of the court.

12. I turn now to the claim and defence to determine if there is a real question of fact and law to be determined upon which the rights of the parties depend as Dixon J said above. I believe this whole case rests on the answer to a simple question which I discuss next.

Issue—Is the Sale and Purchase Agreement Enforceable?

13. The Defendants avers at paragraph 6 (c) of its statement of Defence that the Sale and Purchase Agreement was signed by Rohit Latchan, purportedly as a Director of the

Plaintiff company at a time when he was an undischarged bankrupt and incapable of carrying out such a role. Section 189(1) of the Companies Act [Cap 247] of the Laws of Fiji, the law governing companies at the time the Sale and Purchase Agreement was signed, makes it an offence for a director who is and undischarged bankrupt to directly or indirectly take part in the management of any company, **except with the leave of the court**. Without leave of the court, any act taken by the Director would be unlawful.

14. This issue goes to the root of the Plaintiff's case and the court must determine this at the trial. If proved, then the contract was unlawful and void ab initio.
15. **The remedy sought by the Plaintiffs is specific performance which is an equitable remedy.** It is trite law that equity follows the law and it will not enforce a contract that is unlawful. Should the Sale and Purchase Agreement be found to be unlawful, then this court is bound by the decision of *Charmers v Pardoe [1963] 3 All ER 552*, a judgment of the Judicial Committee of The Privy Council delivered on 21st May 1963 on appeal from the Fiji Court of Appeal where their Lordships said in the last paragraph of their judgment:

Their Lordships after full and anxious consideration of the whole matter have reached the same conclusion as the Court of Appeal namely that a dealing in the land took place here without the prior consent of the Board as required by Section 12 of the Ordinance: that the dealing was accordingly unlawful: and that in these circumstances Equity cannot lend its aid to Mr. Chalmers. Their Lordships will, therefore, humbly advise Her Majesty that the appeal should be dismissed.


16. This issue was not argued or determined in all the decisions of the High Court and the Court of Appeal and if proved, then all the costs orders of this court and the Court of Appeal which is the subject of this application will have to be re-examined by this court at the trial.
17. The Court is aware of the evidence adduced in the Independent Legal Services Commission case of *Chief Registrar v Kapadia [2016] FJILSC 8 (21 September 2016)* where the 2nd Defendant herein laid a complaint against Mr. Kapadia who witnessed the signature of Rohit Latchan, on behalf of the Plaintiff in the contract being sought to be enforced in this matter. On the basis of the evidence presented in that case, and which might be presented again at the trial of this matter, I find it prudent to dismiss this application.
18. I see no reason to examine the other submissions of the Plaintiff or the 2nd Defendant in view of my conclusions below.

Conclusions

19. For the reasons given, this application is dismissed with costs summarily assessed at \$3,000 to be paid by Plaintiff to the 2nd Defendant within 2 days of this Ruling.

Orders

1. The application is dismissed.
2. Costs of \$3,000. 00 summarily assessed to be paid by the Plaintiff to the 2nd Defendant within 21 days.
3. The 2nd Defendant, to take steps to facilitate the application for appointment of an Executor and Trustee of the Estate of his late father, Ram Lagan to defend the said estate in the hearing of this matter.
4. A hearing date in early December 2025 is to be fixed to comply with the Order 3 of the Court of Appeal in this case delivered on 29th May 2025.


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Penijamini R Lomaloma
Acting Puisne Judge

