

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

**CIVIL ACTION NO.: HBC 234 of 2018**

**BETWEEN : LIVINGSTONE FUELS (PTE) LTD  
FIRST PLAINTIFF**

**AND : ISIKELI MARAVU TUITUKU  
SECOND PLAINTIFF**

**AND : TOTAL (FIJI) LIMITED  
FIRST DEFENDANT**

**AND : TOTAL OIL ASIA PACIFIC PTE LIMITED  
SECOND DEFENDANT**

**AND : EPIRONI TULELE  
THIRD DEFENDANT**

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**APPEARANCES/REPRESENTATION**

**PLAINTIFF : Mr R Doidoi [Law Solutions]**

**DEFENDANTS : Ms N Deo {Sherani & Co}**

**RULING BY : Master Ms Vandhana Lal**

**DELIVERED ON : 19 August 2025**

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**RULING**  
[Reinstatement]

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**Background leading to striking out of the action**

**1. On 09 December 2024 I had made following orders:**

*“2018 matter*

*Orders was for Pre-trial conference [PTC] in Court today hence following orders made:*

- *Discovery by 30 December 2024;*
- *PTC to be convened and a minute filed by 12 noon 17 January 2025. If minutes not filed PTC is deemed to be dispensed with. PTC minute is subject to late filing fees for each extension since orders first made for PTC.*
- *CP [Copy Pleading] and Order 34 summons by 31 January 2025 at 12 noon. If not filed matter shall stand struck out.*

2. Matter was adjourned to 03 February 2024 at 10am to check on compliance.

3. Earlier orders (amongst others) of 05 September 2024 were:

- Discovery by 15 November 2024;
- Pre-trial conference [PTC] to be convened and minutes filed by 12 noon 06 December 2024;
- If minute not filed Pre-trial conference [PTC] in Court on 09 December 2024.

4. On 09 December 2020, the Defendants counsel informed the court that they only received the PTC minute on Saturday (07 December 2024) and that the Plaintiffs have failed to complete discovery on their part.

5. According to Ms Fa, discovery was not completed due to number of documents involved.

6. However, there are 61 documents listed in their Affidavit Verifying List of Documents [AVLD] apart from court documents. And Plaintiffs failure in

completing discovery in 03 months since 09 May 2024 (when orders on summon for directive was originally made) was not acceptable.

7. I further take note that Plaintiffs did not file their AVL D until 19 September 2024 after an order for striking out of claim in default of compliance was made on 05 September 2024.
8. On 03 February 2025, court was informed that PTC was pending, and the Plaintiffs were yet to complete Discovery on their part.
9. I also had inspected the copy pleading and found that orders on summons for direction was not sealed and part of the copy pleadings.

#### **Plaintiff's Argument**

10. The Plaintiffs claim that if the matter is not reinstated, they will be prejudiced.

The Counsel informed that the copy pleading and O34 summon is ready and can be filed.

They were ready to file their documents by 03 February 2025. As the due date was on 31 January 2025, they could have paid the late filing fees.

The Plaintiffs are punished twice by the Court by striking out the action and ordering them to pay \$1000 to the Defendants as costs.

Defendants have refused to do discovery at the Plaintiffs' solicitors office.

#### **Defendant's Contention**

11. According to the Defendants, the matter was struck out due to the Plaintiffs failure in complying with Court orders of 19 December 2024.

Orders of 05 September 2024 were a result of the Plaintiffs failure to comply with prior Court Directions (20 May 2024).

Defendants Solicitors wrote on 02 September 2024; 23 October 2024; 08 January 2025; 27 November 2024 requesting for copies of documents as per the Plaintiffs' AVLD. The Plaintiffs solicitor failed to provide the same.

According to the Defendants, the Plaintiffs initiated the action in 2018 and have constantly failed to comply with court's directives thus causing prejudice to the Defendants.

The Defendants have provided the Plaintiffs with their Bundle of documents.

### **Inspection of Documents and taking copies thereof**

**12.** On the issue of inspection and taking copies thereof under Order 24 Rule 9 of the High Court Rules, a party has a right to take copies upon payment of proper charges (see Order 66 Rule 3).

Hence upon request for the documents from the Plaintiffs' list, the Plaintiffs' solicitors ought to have informed the Defendants' solicitors of proper charges to provide the copies.

### **Consideration of the application for reinstatement**

**13.** Following factors are considered when dealing with an application for reinstatement:

- Adequate reason
- Whether the application was made promptly
- Prejudice

*[see Maharaj v Matuka: HBC 92 of 2015L (04/10/2019); WM Anjus (Fiji) Ltd v Karan HBC 426 of 1986L (30/07/2008); Sharma v Sharma & Others HBC 204 of 2018S (28/10/24)]*

14. This matter was initiated in 2018. Order on summons for direction was made on 20 May 2024. There was precisely an application for striking out and the Plaintiffs were asked to amend its claim.
15. Till 05 September 2024 the Plaintiffs failed to file its AVLD. Hence the court made an unless order for filing of AVLD.
16. Plaintiffs filed its AVLD on 19 September 2024 and thereafter failed to complete discovery/ inspection of documents/ providing copies.
17. A PTC was scheduled to be heard in court on 09 December 2024 at 10am. This could not proceed as the Plaintiffs' solicitors failed to provide copies of documents to the Defendants' solicitors.
18. Hence unless orders were made.
19. According to the Plaintiffs, the Principal solicitor who attended the court brought the court minutes and there was no mention of the matter being struck out for non-compliance of filing the O34 summon and copy pleadings.
20. This reason for not filing the copy pleading and O34 summons is not acceptable.
21. It is the responsibility of every counsel attending court to take proper notes of the proceedings and orders of the court to ensure there is timely compliance of the same.

22. With the Plaintiffs still not providing copies of its documents to the Defendants solicitors, I find that the Defendants are prejudiced and it will be unfair to convene a PTC.


Further the Plaintiffs will not be able to adduce these documents as evidence as discovery is not completed.

23. For above mentioned reasons I do not find it proper to reinstate the matter.

### Orders

24. Application for reinstatement is refused.
25. Plaintiffs to pay the Defendants cost of this application assessed at \$1,500.00 and to be paid within 14 days of this ruling.



  
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Vandhana Lal [Ms]  
Master of the High Court  
At Suva.

**19 August 2025.**

### TO:

1. **Suva High Court Civil File No. HBC 234 of 2018;**
2. **Law Solutions**, Solicitors for the Plaintiffs;
3. **Sherani & Co**, Solicitors for the Defendants.