

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 304 of 2023

BETWEEN:

RAJ KUAR aka RAJ KUAR
1ST PLAINTIFF

AND:

ARON ADARSH JIVARATNAM and PREMINA SINGH
DEFENDANTS

BEFORE:

Acting Master L. K. Wickramasekara

COUNSELS:

Sherani & Company for the Plaintiff
Shelvin Singh Lawyers for the Defendants

Date of Hearing:

By way of written submissions

Date of Ruling:

23rd September 2025

RULING

The Application

- 01.** Defendants in this action have filed Summons to Strike Out the Writ of Summons and the Statement of Claim of the Plaintiff on 16/02/2024 pursuant to Order 18 Rule 18 of the High Court Rules 1988.
- 02.** The Defendants seek to wholly Strike Out the Writ of Summons and the Statement of Claim as filed by the Plaintiff on grounds that,
 - a. It discloses no reasonable cause of action,
 - b. It is scandalous, frivolous and vexatious and,
 - c. It is otherwise an abuse of the process of the Court.

03. The Defendants have also relied upon the ground of *res judicata* and has raised the ground of Plaintiff being estopped from bringing this action following the decision of the Supreme Court in *Aron Adarsh Jivaratnam & Anor v Gaya Prasad (Supreme Court Petition No. CBV0005 of 2020)* and related decisions of the High Court.
04. This Summons is supported with an affidavit of the Defendant, Aron Adarsh Jivaratnam sworn on 15/02/2024. Contents of the said Affidavit in Support shall be discussed at a later stage of this Ruling.
05. The Plaintiff has opposed the said Summons and has filed an Affidavit in Opposition on the 27/03/2024 as sworn by one Rajesh Prasad authorized to do so by the Plaintiff. As the said Affidavit in Opposition was sworn at and witnessed in Sydney, Australia, a copy of the same has been annexed and submitted with the Affidavit of Zaina Dean, as sworn on 27/03/2024. Contents of this Affidavit shall also be discussed at a later stage of this Ruling.
06. An Affidavit in Reply was filed by the Defendants on 10/04/2024 as sworn by Aron Adarsh Jivaratnam on 10/04/2024. The contents of this Affidavit too shall be discussed later.
07. As per the directions made by the Court, comprehensive written submissions have been filed by both parties on 24/04/2024. Consequently, this Court decided to rule on the Summons to Strike Out by way of written submissions and the Affidavit evidence already filed by the parties. The Defendants then sort leave to file a Supplementary Written Submissions in Reply and with leave of the Court accordingly filed the same on 08/08/2024.
08. Having carefully considered the pleadings in the matter, the Affidavit evidence of the parties and the comprehensive written submissions tendered, I now proceed to make the Ruling on the Summons to Strike Out as follows.

Defendants Affidavit Evidence

09. The Defendants in their Affidavit in Support and the Affidavit in Reply have submitted that the Plaintiff is attempting to re-litigate a matter that was dealt by the High Court (HBC 286 of 2014) and later by the Fiji Court of Appeal (ABU 116 of 2016) and then by the Supreme Court of Fiji (CBV0005 of 2020) and again by the Fiji Supreme Court in an Application for Review, which was refused subject to costs by the Supreme Court on 26/09/2023.

Plaintiff's Affidavit Evidence

10. As per the Affidavit in Reply of Rajesh Prasad, the main contention of the Plaintiff is that *'the Sale and Purchase Agreement dated 22nd April 2014, which was previously*

deliberated by the Suva High Court in Civil Action HBC 286 of 2014 and affirmed by the Supreme Court, was underpinned by deception¹’.

11. It is also contended by the Plaintiff that the Defendants have taken undue advantage of Gaya Prasad Chotu, the owner of the property at 94 Brown Street and that they have forged the signature of Gaya Prasad Chotu to illicitly gain ownership of the said property and then by forged documents transferred the said property in the name of the Defendants.

Previous Proceedings in HBC 286 of 2014

12. The Defendant’s in the current proceedings before the Court, had initiated the proceedings in HBC 286 of 2014 against Gaya Prasad Chotu. The dispute in that matter was the failure of Gaya Prasad Chotu to act pursuant to a Sales and Purchase Agreement entered between the parties on 22/04/2014 for sale and purchase of the property comprised in CT8413, Lot 3 on DP1995.
13. Gaya Prasad Chotu was the registered proprietor of the said property and the Plaintiffs, Aron Adarsh Jivaratnam and Premina Singh (the Defendants in the current proceedings) were the intended buyers. The parties had agreed (as per the said Sales and Purchase Agreement) to purchase the said property for a consideration of FJD \$ 360000.00 as the full sale price and for the transfer to be completed within 60 days and the full consideration to be paid by the date of settlement.
14. Following the said Agreement, a Transfer document was duly executed by Gaya Prasad Chotu as transferor on 25/04/2014 and the relevant stamp duty was paid by the Plaintiffs on 06/06/2014. The copy of the stamped Transfer document was then sent over to the solicitors for Gaya Prasad Chotu on 09/06/2014 for him to obtain the necessary Capital Gains Tax Clearance Certificate to finalize the transaction.
15. As Gaya Prasad Chotu failed to obtain the said Capital Gains Tax Clearance Certificate to finalize the transfer despite several reminders by the Plaintiffs solicitors upon various reasons cited by him, the sale of the property did not eventuate as per the Agreement and the Petitioners initiated proceedings in HBC 286/2014 for specific performance of the said Sales and Purchase Agreement and obtained through Court on 26/03/2015 necessary orders for substitute service of the Writ and the Statement of Claim to Gaya Prasad Chotu.
16. I will not go into the details under which circumstances the said orders were obtained by the Plaintiffs as that issue had been fully argued upon during the proceedings in HBC 286/2014 from the High Court to the Supreme Court in the exhaustive and lengthy appeal process. It is, however, suffice to state here that the Plaintiffs had duly

¹ Affidavit in Reply of Rajesh Prasad as filed annexed to the Affidavit of Zaina Dean on 27/03/2024 at averment no. 5 (b) therein.

obtained a Court order for the Writ and the Statement of Claim to be served by way of substitute service and that the Plaintiffs effected service accordingly and an Affidavit of Service was filed on 01/06/2015.

17. Upon the due service of the Writ and the Statement of Claim on Gaya Prasad Chotu, as per the said Court order for substitute service, Gaya Prasad Chotu had failed to duly acknowledge the service and/or file any Notice of Intention to Defend or any Statement of Defence to the claim within the stipulated time period as stipulated in the High Court Rules.
18. Petitioners had thereupon moved, by way of *Ex-parte* Notice of Motion, to enter Default Judgment pursuant to Order 13 Rule 6 and Order 19 Rule 6 and the Court had on 27/07/2015 granted the said application and entered Default Judgment against Gaya Prasad Chotu.
19. Plaintiffs thereupon had filed Summons for Further Directions, to authorize the Chief Registrar to obtain the Capital Gains Tax Clearance Certificate and to obtain the duplicate Certificate of Title to the said property, as the Plaintiff was not complicit with the Default Judgment.
20. Gaya Prasad Chotu on 08/04/2016 filed a Motion to Set Aside the Default Judgment on the ground, *inter alia*, that the Writ and the Statement of Claim was not duly served on him.
21. Then Master of the Court having heard both the applications, on 19/07/2016 had refused the application by Gaya Prasad Chotu to set aside the Default judgment and had instead allowed the Summons by the Plaintiffs for Further Directions and had made orders therein.
22. Gaya Prasad Chotu then sort leave to appeal to a Judge of the High Court against the Master's decision and orders but a Judge of the High Court, having heard the application, refused leave on 14/10/2016.
23. The decision of the High Court Judge refusing leave was then appealed by Gaya prasad Chotu to the Court of Appeal. The Court of Appeal on 28/02/2020 by its judgment, allowed the appeal and set aside the orders by the Judge of the High Court and the Masters decision and orders dated 19/07/2016.
24. Following the Judgment of the Court of Appeal, the Plaintiffs on 03/03/2020 filed a Petition for Special Leave to Appeal to the Supreme Court the Judgment and orders of the Court of Appeal.

25. The Supreme Court of Fiji had heard the said Petition for Special Leave to Appeal as filed by the Plaintiffs and on 28/04/2023 delivering its Judgment had set aside the Judgment and the orders of the Fiji Court of Appeal and had affirmed the orders of the Master of 27/07/2015 (entering Default Judgment against Gaya Prasad Chotu) and the orders of the Judge of the High Court of 14/10/2016 (refusing leave to appeal the orders of the Master).
26. For Gaya Prasad Chotu another attempt had been made at the Supreme Court of Fiji by way of a review application as against the Judgment and orders of the Court made on 28/04/2023.
27. Having heard this application, the Acting President of the Supreme Court (as His Lordship then was), had refused the same and had dismissed the said application subject to costs on 26/09/2023.
28. Soon after, on 05/10/2023, Raj Kuar aka Rajkuar, as the Executor and Trustee of the Estate of Gaya Prasad Chotu, had filed the current Writ and the Statement of Claim therein.

Statement of Claim in the current proceeding, HBC 304 of 2023.

29. Although it is not my usual practice to lay out the Statement of claim in the ruling *in verbatim*, I find it essential in the sake of clarity and to give emphasis over the findings of this Court, to reproduce the Statement of Claim in this matter, in its entirety, in this ruling.

“STATEMENT OF CLAIM

The Plaintiff through her solicitors says as follows:

1. *The Plaintiff is the executor and trustee of the Estate of Gaya Prasad Chotu aka Gaya Prasad Chotu (“GPC”). Gaya Prasad aka Gaya Prasad Chotu deceased and the Grant of Probate was issued on 6 July 2021.*
2. *The Defendants are school teachers.*
3. *At the material time, the GPC was the registered proprietor of the property comprised in Certificate of Title 8413 being Lot 3 on DP 1995 (“the Property”)*
4. *In or about April 2014, it was the intention of GPC to sell the Property.*
5. *In or about April 2014, the Defendants were introduced to the GPC were the Defendants expressed a desire to purchase the Property.*
6. *In or around April 2014, a Sale and Purchase Agreement was prepared for the sale of the Property by GPC to the Defendants and executed.*

7. *Key term of the Agreement included inter alia:*
 - a. *The sale price was FJD 360,000.00*
 - b. *Payment of a deposit*
 - c. *Sale price to be paid within 60 days of the execution of the Agreement.*
8. *The Defendants breached the Agreement by failing to pay any deposit in respect of the sale and further that the Defendants failed to pay the sum of FJD 360,000.00 either to the GPC or to the solicitors trust fund within 60 days of the execution of the Agreement.*
9. *As a result of the failure of the Defendants to complete their obligations under the Agreement, GPC refused to complete the sale.*
10. *Upon the refusal by GPC to complete the sale, the Defendants formed the intention to procure the Property by fraud. The fraud is particularized in the subsequent pleadings.*
11. *At the time of the forming of the intention to obtain the Property by fraud, the Defendants were aware of the following material facts:*
 - a. *GPC had limited education and was not familiar with the processes relating to sale and purchase of properties.*
 - b. *GPC was ordinarily resident in the United States of America.*
 - c. *GPC was in Fiji alone.*
 - d. *GPC had various medical conditions rendering him vulnerable to influence, anxiety and stress.*
12. *The Defendants commenced Suva High Court Civil Action number 286 of 2014. At the material time, it was the intent of the Defendants to use the proceedings as the vehicle to execute the fraud. The actions of the Defendants in using the proceedings as the vehicle for fraud include without limited the following:*

Particulars of Fraud

- a. *The Defendant notwithstanding knowledge that GPC was resident in the United States of America at the material time, filed proceedings in the Suva High Court with the stated address of GPC being a Fiji address.*
- b. *The Defendant notwithstanding knowledge that GPC was resident in the United States of America at the material time, did not seek leave to issue the Writ of Summons against a Defendant not ordinarily resident in Fiji and did not seek leave to serve GPC in the United States of America.*
- c. *The Defendant notwithstanding knowledge that GPC was resident in the United States of America at the material time, filed an application to serve via a newspaper advertisement in Fiji. At the material time, the Defendants deliberately, wilfully and with the intention of misleading the Court did not*

disclose the material facts relating to GPC's ordinary residence being in the United States of America to the Court.

- d. The Defendants despite the knowledge that GPC was resident in the United States of America at the material time, advertised the Writ of Summons in a Fiji newspaper with the knowledge that GPC would not receive notice of the Writ of Summons.*
- e. The Defendants despite the knowledge that GPC was resident in the United States of America at the material time and that GPC would not have had knowledge of the Writ of Summons, obtained default judgment on the account of the failure of GPC to file an Acknowledgement of Service.*
- f. The Defendants were represented by counsel and knew or ought to have known that in case of a claim for specific performance of a contract and in default of the filing of an Acknowledgement of Service by the other party, the Defendants were procedurally the Defendants were required to proceed to the trial to establish their claim as set out in Order 13 Rule 6 of the High Court Rules.*
- g. The Defendants via their counsel wilfully and deliberately proceeded to obtain default judgment instead of complying with Order 13 Rule 6 of the High Court Rules to avoid establishing their claim on merit and establishing that at the Defendants had either paid the FJD 360,000.00 to GPC or his solicitors trust account or that the Defendants had readily available funds to the value of FJD 360,000.00 at the time of the expiry of 60 days for settlement or at the time of the commencement of the proceedings.*
- h. The Defendants at all the material times withheld from the Court the salient fact that the Defendants did not paid GPC or his solicitors the sum of FJD 360,000.00 within 60 days of the execution of the Agreement or had readily available funds at the end of the 60 days period to be entitled to specific performance relief.*
- i. The Defendants knew at all material times, that the Defendants had not met all their obligations under the Agreement to be entitled to specific performance relief.*
- j. The Defendants thereafter opposed applications to set aside default judgment that GPC filed and thereafter took steps at each stage of the appeals process to maintain the default judgment that the Defendants knew that was wrongfully procured including in appeals before a single judge of the High Court, the Fiji Court of Appeal, the Supreme Court including a review application in the Supreme Court. The Supreme Court upheld the default judgment in a decision of 27 April 2023.*
- k. The Defendants relied on documents (Sale and Purchase Agreement dated 22 April 2014 and Transfer instrument dated 25 April 2014) that were purportedly executed by GPC when in fact GPC did not execute the said document. The signatures contained in those documents are not that of GPC and does not math his signatures.*

1. *The Defendants tempered with the address in relation to service by post box as noted on paragraph 22 of the Fiji Court of Appeal decision in ABU 116 of 2016.*
13. *The Defendants thereafter relies on the Supreme Court of Fiji judgment of 27 April 2023 to cause Westpac Banking Corporation to approve finance for the payment of the sum of FJD 360, 000.00 into Court.*
14. *Thereafter upon the payment of the sum of FJD 360,000.00 into Court and Defendants lodged the transfer instrument to transfer the Property into the Defendants name on 26 June 2023.*
15. *The Defendants using the Suva High Court Civil Action No. 286 of 2014 procured the Property on 26 June 2023 and therefore completing the fraud.*
16. *At the time of the procurement of the Property on 26 June 2023, the Property was valued at FJD 900,000.00 or such a familiar figure.*
17. *As a result of the procurement of the Property by the Defendants through fraud, the Defendants enriched themselves to the value of FJD 540,000.00.*
18. *Subsequent to procuring the Property on 26 June 2023, the Defendants immediately or within a short period thereafter listed the Property for sale with the real estate firm Suva Realty with a listing price of FJD 800,000.00.*
19. *The listing of the Property for sale was designed by the Defendants to cash the unjust enrichment.*
20. *The Plaintiff and GPC had incurred substantial expenses in their efforts to thwart the Defendants efforts to procure the Property by fraud and unjustly enrich themselves. The expenses include without limitation legal cost, professional service costs, travel and accommodation costs of the representatives of the Plaintiff and such other reasonable expenses. The Plaintiff will provide further and better particulars at discovery.*
21. *The Plaintiff continues to incur legal costs and expenses arising out of these within proceedings.*
22. *The Plaintiff claims from the Defendants the cost and expenses pleaded in paragraph 19 and 20 above.*
23. *Furthermore, the Plaintiff seeks the reversion of the Property from the Defendants to the Plaintiff.*

Alternatively

24. *The Plaintiff seeks judgment in the sum of FJD 540,000.00 against the Defendants being the value of the financial loss suffered by the Plaintiff as a result of the fraud and unjust enrichment by the Defendants.*
25. *The Plaintiff further claims the loss of rental income from the Property at the rate of FJD 1000 per month from August 2015 until the date of judgment.*

26. *The Plaintiff further seeks punitive damages in the sum of FJD 50,000.00 and exemplary damages in the sum of FJD 50,000.00. The basis for exemplary and punitive damages are set out in paragraphs 10-16 of this Claim.*
27. *The Plaintiff seeks costs on a solicitor client indemnity basis.*
28. *The Plaintiff seeks pre and post judgment interest at a rate of 8% per annum commencing from 26 June 2023 until payment.*

Wherefore, the Plaintiff seeks the following relief:

- a. *An Declaration that the Defendants procured the property comprised in Certificate of Title 8413 being Lot 3 on DP 1995 by fraud.*
- b. *An order that the records at the Registrar of Titles be rectified by cancelling Memorial Number 935735 on Certificate of Title 8413 being Lot 3 on DP 1995.*
- c. *An Order that the Plaintiff be memorialized as the registered proprietor of the property comprised in Certificate of Title 8413 being Lot 3 on DP 1995.*

Alternative relief to prayer b and c above

- d. *An award for damages in the sum of FJD 540,000.00 being the value of loss suffered by the Plaintiff on the account of the Defendants fraud.*
- e. *Special damages for loss and expenses suffered as pleaded in paragraph 20 and 21.*
- f. *Special damages to loss of rental income as pleaded in paragraph 25.*
- g. *Exemplary damages*
- h. *Punitive damages*
- i. *Costs on a solicitor-client basis*
- j. *Pre and Post judgment interest at a rate of 8% per annum*
- k. *Any other orders that this Court deems just and fair or necessary.”*

The Relevant Law

30. I shall now move on to consider the relevant legal provisions and the legal precedence in respect of a Striking Out application and on the principle of *Res judicata*.
31. Defendants have filed their Summons to Strike Out pursuant to Order 18 Rule 18 of the High Court Rules 1988. Order 18 Rule 18 reads as follows.

Striking out pleadings and indorsements (O.18, r.18)

18.- (1) *The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that—*

- (a) it discloses no reasonable cause of action or defence, as the case may be; or*
- (b) it is scandalous, frivolous or vexatious; or*
- (c) it may prejudice, embarrass or delay the fair trial of the action; or*
- (d) it is otherwise an abuse of the process of the court;*

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

- (2) No evidence shall be admissible on an application under paragraph (1)(a).*
- (3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.*

32. Master Azhar (as His Lordship then was), in the case of **Veronika Mereoni v Fiji Roads Authority**: HBC 199/2015 [Ruling; 23/10/2017] has succinctly explained the essence of this Rule in the following words.

*“At a glance, this rule gives two basic messages, and both are salutary for the interest of justice and encourage the access to justice which should not be denied by the glib use of summery procedure of pre-emptory striking out. Firstly, the power given under this rule is permissive which is indicated in the word “may” used at the beginning of this rule as opposed to mandatory. It is a “may do” provision contrary to “must do” provision. Secondly, even though the court is satisfied on any of those grounds mentioned in that rule, the proceedings should not **necessarily** be struck out as the court can, still, order for amendment. In **Carl Zeiss Stiftung v Rayner & Keeler Ltd** (No 3) [1970] Ch. 506, it was held that the power given to strike out any pleading or any part of a pleading under this rule is not mandatory but permissive, and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending plea. MARSACK J.A. giving concurring judgment of the Court of Appeal in **Attorney General v Halka** [1972] FJLawRp 35; [1972] 18 FLR 210 (3 November 1972) held that:*

“Following the decisions cited in the judgments of the Vice President and of the Judge of the Court below I think it is definitely established that the jurisdiction to strike out proceedings under Order 18 Rule 19 should be very sparingly exercised, and only in exceptional cases. It should not be so exercised where legal questions of importance and difficulty are raised”.

33. The first ground to consider in respect of the Summons to Strike Out by the Defendants is the absence of a reasonable cause of action. No evidence is admissible for this ground for the obvious reason that, the Court may only conclude an absence of a reasonable cause of action, merely on the pleadings itself, without any extraneous evidence. His Lordship the Chief Justice A.H.C.T. GATES (as His Lordship then was) in *Razak v Fiji Sugar Corporation Ltd* [2005] FJHC 720; HBC208.1998L (23 February 2005) held that:

“To establish that the pleadings disclose no reasonable cause of action, regard cannot be had to any affidavit material [Order 18 r.18(2)]. It is the allegations in the pleadings alone that are to be examined: Republic of Peru v Peruvian Guano Company (1887) 36 Ch.D 489 at p.498”.

34. Citing several authorities, Halsbury’s Laws of England (4th Edition) in volume 37 at para 18 and page 24, defines the reasonable cause of action as follows:

“A reasonable cause of action means a cause of action with some chance of success, when only the allegations in the statement of case are considered” Drummond-Jackson v British Medical Association [1970] 1 ALL ER 1094 at 1101, [1970] 1 WLR 688 at 696, CA, per Lord Pearson. See also Republic of Peru v Peruvian Guano Co. (1887) 36 ChD 489 at 495 per Chitty J; Hubbuck & Sons Ltd v Wilkinson, Heywood and Clark Ltd [1899] 1 QB 86 at 90,91, CA, per Lindley MR; Hanratty v Lord Butler of Saffron Walden (1971) 115 Sol Jo 386, CA.

35. The Court may not use its discretionary power to strike out a claim under this Rule, for the reasons it is weak, or the plaintiff is unlikely to succeed. The power should rather be used when the claim is obviously unsustainable. His Lordship, Chief Justice A.H.C.T. Gates, in *Razak v Fiji Sugar Corporation Ltd* (supra) held that:

“The power to strike out is a summary power “which should be exercised only in plain and obvious cases”, where the cause of action was “plainly unsustainable”; Drummond-Jackson at p.1101b; A-G of the Duchy of Lancaster v London and NW Railway Company [1892] 3 Ch. 274 at p.277.”

36. If the Statement of Claim or Defence contains degrading charges which are irrelevant, or if, though the charge be relevant, unnecessary details are given, the pleading becomes scandalous (see: **The White Book** Volume 1 (1999 Edition) at para 18/19/15 at page 350).
37. Likewise, if the proceedings were brought with the intention of annoying or embarrassing a person or brought for collateral purposes or irrespective of the motive, if the proceedings are obviously untenable or manifestly groundless as to be utterly hopeless, such proceedings becomes frivolous and vexatious (per: Roden J in *Attorney General v Wentworth* (1988) 14 NSWLR 481, said at 491).

38. In The **White Book** in Volume 1 (1987 Edition) at para 18/19/14 it is stated,
- “Allegations of dishonesty and outrageous conduct, etc., are not scandalous, if relevant to the issue (Everett v Prythergch (1841) 12 Sim. 363; Rubery v Grant (1872) L. R. 13 Eq. 443). “The mere fact that these paragraphs state a scandalous fact does not make them scandalous” (per Brett L.J. in Millington v Loring (1881) 6 Q.B.D 190, p. 196). But if degrading charges be made which are irrelevant, or if, though the charge be relevant, unnecessary details are given, the pleading becomes scandalous (Blake v Albion Assurance Society (1876) 45 L.J.C.P. 663)”.*
39. On the other hand, if the action is filed without serious purpose and having no use, but intended to annoy or harass the other party, it is frivolous and vexatious. Roden J in **Attorney General v Wentworth** (1988) 14 NSWLR 481, said at 491 that:
1. *Proceedings are vexatious if they instituted with the intention of annoying or embarrassing the person against whom they are brought.*
 2. *They are vexatious if they are brought for collateral purposes, and not for the purpose of having the court adjudicate on the issues to which they give rise.*
 3. *They are also properly to be regarded as vexatious if, irrespective of the motive of the litigant, they are so obviously untenable or manifestly groundless as to be utterly hopeless.*
40. In **Halsbury's Laws of England** (4th Ed) Vol. 37) explains the abuse of process in para 434 which reads as follows,
- “An abuse of the process of the court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purposes, or more simply, where the process is misused. In such a case, even if the pleading or endorsement does not offend any of the other specified grounds for striking out, the facts may show that it constitutes an abuse of the process of the court, and on this ground the court may be justified in striking out the whole pleading or endorsement or any offending part of it. Even where a party strictly complies with the literal terms of the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of abuse of process, and where subsequent events render what was originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court.”*
41. In relation to the legal analysis concerning the doctrine of *Res Judicata*, the Court has identified several case authorities that have comprehensively elucidated the principles underlying the doctrine. Accordingly, the Court shall herein cite relevant excerpts

from these authorities to outline the pertinent legal concepts associated with the doctrine of *Res Judicata*.

42. The Supreme Court of Fiji in the decision of *Varani v Native Lands Commission*; CBV0014.2018 (29 April 2022), discussed the doctrine of *Res Judicata* at length. His Lordship, Justice Marsoof, at paragraphs 40-43 of the Judgment states as follows,

“ *Res Judicata*

[40] *The concept of res judicata is well known in both common Law and civil law jurisdictions, though in certain legal systems it is more popularly known as “claim preclusion”. Under Roman law, the principle was embodied in two legal maxims, interest rei publicae ut sit finis litium, meaning “it concerns the State that there be an end to lawsuits” and nemo debet bis vexari pro una et eadem causa, meaning “no man should be vexed twice over for the same cause”². As Halsbury’s Laws of England explains, “the doctrine of res judicata is not a technical doctrine applicable only to records; it is a fundamental doctrine of all courts that there must be an end of litigation.”³”*

[41] *Spencer Bower and Handley have defined res judicata as a “decision pronounced by a judicial or other tribunal with jurisdiction over the cause of action and the parties, which disposes once and for all of the fundamental matters decided, so that, except on appeal, they cannot be re-litigated between persons bound by the judgment.”⁴ A plea of res judicata can consist of a cause of action estoppel or an issue estoppel⁵. A cause of action estoppel is concisely defined by **Spencer Bower and Handley** in this way: “If the earlier action fails on the merits a cause of action estoppel will bar another.”⁶ By way of contrast, an issue estoppel applies to “a state of fact or law which is necessarily decided by the prior judgment, decree or order.”⁷*

[42] *The recent decision of the English Supreme Court in R (Coke-Wallis) v. Institute of Chartered Accountants in England and Wales⁸ which involved two successive sets of disciplinary proceedings, provides an example of a cause of action estoppel. Lord Clarke of Stone-cum-Ebony J. (with whom Lord Phillips of Worth Matravers P, Lord Rodger of Earlsferry and Lord Collins of Mapesbury JJ agreed)*

² See, *Lockyer v. Ferryman* (1877), 2 App. Cas. 519 at p. 530, per Lord Blackburn.

³ Halsbury’s Laws of England (3rd Edition), Vol 15 para. 357 at page 185.

⁴ Spencer Bower and Handley, *Res Judicata* (4th Edition) (Butterworths Common Law Series, LexisNexis, 2009) paragraph 1.01.

⁵ *ibid.*, paragraph 1.05.

⁶ *ibid.*, paragraph 1.06.

⁷ See, Dixon J in *Blair v. Curran* [1939] HCA 23; [1939] 62 CLR 464 at 532. See also Spencer Bower and Handley, *Res Judicata*, supra note 3 paragraph 8.01.

⁸ *R (Coke-Wallis) v. Institute of Chartered Accountants in England and Wales* [2011] 2 AC 146.

outlined the requisites of *res judicata* in its application to the proceedings before administrative tribunals in the following manner:⁹ “In para 1.02 **Spencer Bower & Handley, *Res Judicata***, (4th ed.) makes it clear that there are a number of constituent elements in a case based on cause of action estoppel. They are: ‘(i) the decision, whether domestic or foreign, was judicial in the relevant sense; (ii) it was in fact pronounced; (iii) the tribunal had jurisdiction over the parties and the subject matter; (iv) the decision was— (a) final; (b) on the merits; (v) it determined a question raised in the later litigation; and (vi) the parties are the same or their privies, or the earlier decision was *in rem*.’ It is not in dispute that all those elements are established except (iv) and (v). Even if any of the others were in dispute, I would hold that they are plainly satisfied. As to (vi), it was not suggested that the first decision was *in rem* but it is plain that the parties to both sets of proceedings were the same.” (emphasis added)

[43] It is trite law that a party to a dispute relying on *res judicata* in the form of cause of action estoppel must clearly set it up in its pleadings and establish all the constituent elements adverted to by Lord Clarke of Stone-cum-Ebony JSC in the above quoted passage from his judgment in in **R (Coke-Wallis) v. Institute of Chartered Accountants in England and Wales**¹⁰.

43. In the case of **Arvind Kumar v Mary Joan Nelson & Another; HBC322.2022 (15 February 2023)**, His Lordship Justice Amaratunga expounded on the doctrine with reference to English case authorities as follows,

64. In **P&O Nedlloyd BV v Arab Metals Co and others [2006] EWCA Civ 1717** UK Court of Appeal decision discussed the issue estoppel,

“[21] Issue estoppel is a form of estoppel by record which ultimately rests on a principle of public policy that there should be finality in litigation. Its recognition and development in the modern law is often credited to the following passage in the judgment of Diplock LJ in **Thoday v Thoday [1964] P 181, 197-198, [1964] 1 All ER 341, [1964] 2 WLR 371**:

“The particular type of estoppel relied upon by the husband is estoppel *per rem judicatam*. This is a generic term which in modern law includes two species. The first species, which I will call ‘cause of action estoppel’, is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of

⁹ *ibid.*, paragraph 34.

¹⁰ *Supra*, note 3.

competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, ie, judgment was given upon it, it is said to be merged in the judgment, or, for those who prefer Latin, transit in rem judicatam. If it was determined not to exist, the unsuccessful Plaintiff can no longer assert that it does; he is estopped per rem judicatam. This is simply an application of the rule of public policy expressed in the Latin maxim 'Nemo debet bis vexari pro una et eadem causa'. In this application of the maxim 'causa' bears its literal Latin meaning. The second species, which I will call 'issue estoppel', is an extension of the same rule of public policy. There are many causes of action which can only be established by proving that two or more different conditions are fulfilled. Such causes of action involve as many separate issues between the parties as there are conditions to be fulfilled by the Plaintiff in order to establish his cause of action; and there may be cases where the fulfilment of an identical condition is a requirement common to two or more different causes of action. If in litigation upon one such cause of action any of such separate issues as to whether a particular condition has been fulfilled is determined by a court of competent jurisdiction, either upon evidence or upon admission by a party to the litigation, neither party can, in subsequent litigation between one another upon any cause of action which depends upon the fulfilment of the identical condition, assert that the condition was fulfilled if the court has in the first litigation determined that it was not, or deny that it was fulfilled if the court in the first litigation determined that it was.

But 'issue estoppel' must not be confused with 'fact estoppel', which, although a species of 'estoppel in pais', is not a species of estoppel per rem judicatam. The determination by a court of competent jurisdiction of the existence or nonexistence of a fact, the existence of which is not of itself a condition the fulfilment of which is necessary to the cause of action which is being litigated before that court, but which is only relevant to proving the fulfilment of such a condition, does not estop at any rate per rem judicatam either party in subsequent litigation from asserting the existence or non-existence of the same fact contrary to the determination of the first court." (Emphasis added.)

[22] Diplock LJ returned to the question of issue estoppel in **Fidelitas Shipping Co Ltd v V/O Exportchleb** [1966] 1 QB 630, 641 where he said:

"The final resolution of a dispute between parties as to their respective legal rights or duties may involve the determination of a number of different 'issues,' that is to say, a number of decisions as to the legal consequences of particular facts, each of which decisions constitutes a necessary step in determining what are the legal rights and duties of the

parties resulting from the totality of the facts. To determine an 'issue' in this sense, which is that in which I shall use the word 'issue' throughout this judgment, it is necessary for the person adjudicating upon the issue first to find out what are the facts, and there may be a dispute between the parties as to this. But while an issue may thus involve a dispute about facts, a mere dispute about facts divorced from their legal consequences is not an 'issue'." (Emphasis added.)

[23] In *In re State of Norway's Application* [1990] 1 AC 723, [1989] 1 All ER 745, [1989] 2 WLR 458 it became necessary for this court to consider again the ambit of the principles relating to issue estoppel. Having referred to the judgment of Diplock LJ in *Thoday v Thoday* and other authorities, and having cited extensively from *Spencer Bower and Turner, The Doctrine of Res Judicata*, 2nd edition, the court (May, Balcombe and Woolf LJJ) held that the only decisions capable of giving rise to an issue estoppel are those which are necessary to the court's substantive decision. At p 752 Balcombe LJ cited with approval the following passage from *Spencer Bower and Turner*:

"In order to make this essential distinction [between the fundamental and the collateral] one has always to inquire with unrelenting severity – is the determination upon which it is sought to found an estoppel so fundamental to the substantive decision that the latter cannot stand without the former. Nothing less than this will do."

[24] In the third edition of this work, edited by K J R Handley of the Court of Appeal of New South Wales and entitled *Spencer Bower, Turner and Handley, The Doctrine of Res Judicata*, the position is described as follows:

"HOW TO DISTINGUISH THE FUNDAMENTAL FROM THE COLLATERAL

202 . . . In order to make this distinction one has to enquire whether the determination was so fundamental to the decision that the latter cannot stand without it." (emphasis added)

44. In the recent case of *Auto World Trading (Fiji) PTE Ltd v Total (Fiji) Limited*; HBC29/2023 (Judgment: 06/06/2025), His Lordship, Justice Amaratunga, provided a comprehensive exposition on the doctrine of *Res Judicata*, particularly in relation to the abuse of the Court's process.
45. I will undertake an extensive quotation from the above case to provide a thorough and clear understanding of the doctrine of *Res Judicata* and its implications in relation to the abuse of the Court's process. His Lordship, Justice Amaratunga, from paragraph 74 to 81 in the above Judgment stated as follows,

“Is this action abuse of process and matter res judicata

[74] *Issues relating resjudicata and abuse (issued d,e) considered together. .Halsbury's Laws of England*¹¹

“RES JUDICATA¹²

(i) The Doctrine of Res Judicata

1568. Basis for doctrine of res judicata.

The doctrine of res judicata provides that, where a decision is pronounced by a judicial or other tribunal with jurisdiction over a particular matter, that same matter cannot be reopened by parties bound by the decision, save on appeal. It is most closely associated with the legal principle of 'cause of action estoppel', which operates to prevent a cause of action being raised or challenged by either party in subsequent proceedings where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties (or their privies) and having involved the same subject matter. However, res judicata also embraces 'issue estoppel', a term that is used to describe a defence which may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided, but, in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue. For this reason, res judicata has been described as a portmanteau term which is used to describe a number of different legal principles with different juridical origins upon which the courts have endeavoured to impose some coherent scheme only in relatively recent times.

Cause of action estoppel is absolute only in relation to points actually decided on the earlier occasion and there is no justification for the principle applying in circumstances where there has been no actual adjudication of any issue and no action by a party which would justify treating them as having consented, either expressly or by implication, to having conceded the issue by choosing not to have the matter formally determined. Equally, an exception to issue estoppel arises in the special circumstance where there has become available to a party further material relevant to the correct determination of a point involved in the earlier proceedings, whether or not that point was specifically raised and decided, being material, which could not by reasonable diligence have been adduced in those proceedings.

The purpose of the principle of res judicata is to support the good administration of justice in the interests of the public and the parties by preventing abusive and duplicative litigation, and its twin principles are often expressed as being the public interest that the courts should not be clogged by re-determinations of the same disputes; and the private interest that it is unjust for a man to be vexed twice with litigation on the same subject matter. A distinction is often made between the doctrine of res judicata and the wider rule (alternatively seen as an extension of res judicata) that precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised, in the earlier ones for the purpose of establishing or negating the existence of a cause of action ('abuse of

¹¹ Halsbury's Laws of England > Civil Procedure (Volume 11 (2020), paras 1–496; Volume 12 (2020), paras 497–1206; Volume 12A (2020), paras 1207–1740) > 25. Finality of Judgments and of Litigation > (2) Res Judicata > (i) The Doctrine of Res Judicata

¹²ibid

process'), *although the policy underlying both principles is essentially the same.*"(emphasis added) (Foot notes deleted)

[75] In UK decision of Hashwani v Jivraj [2015] EWHC 998 (Comm), [2015] All ER (D) 169 (Apr) held that parties to litigation have no right to litigate piecemeal. Accordingly, if a party desired to claim for alternate claims that should be claimed alternatively and should be brought in the same proceedings, unless they can show a reason for not doing so. In this action such reason is neither stated in the affidavits of Plaintiff or in the submission. Plaintiff state it had not pleaded rent review, which is an admitted fact, but why it was not done, not explained.

[76] In Heswani (supra) held that evidence did not explain why crucial features of the claim had not been raised in prior litigation in HBC 234 of 2007, and the public interest in finality in litigation was likely to arise just as much in relation to an alternative claim as it was in relation to an additional claim. Further held, those who litigated had no right to litigate piecemeal. If a party wanted to be able to rely upon additional or alternative claims, they generally had to be brought in the same proceedings.

[77] In Johnson v. Gore Wood & Co. [2001] 1 All ER 481; [2001] 2 WLR 72 (14th December 2000) under Abuse of Process Lord Bingham discussed analyses previous judgments relating to the issue of failure to portion held,

'...One manifestation of this power was to be found in RSC Order 18 rule 19¹³ which empowered the court, at any stage of the proceedings, to strike out any pleading which disclosed no reasonable cause of action or defence, or which was scandalous, frivolous or vexatious, or which was otherwise an abuse of the process of the court. A similar power is now to be found in rule 3.4 of Part 3 of the Civil Procedure Rules.'

"This form of abuse of process has in recent years been taken to be that described by Sir James Wigram V.-C. in Henderson v. Henderson (1843) 3 Hare 100 at 114 where he said:

"In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the Court requires the **parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.**"(emphasis added)

¹³ This is analogous to Order 18 Rule 18

[78] After quoting the above often quoted passage in many Commonwealth jurisdictions including Fiji¹⁴ Lord Bingham in UK House of Lord decision in *Johnson v. Gore Wood & Co.* (supra) held,

“Thus the abuse in question need not involve the reopening of a matter already decided in proceedings between the same parties, as where a party is estopped in law from seeking to re-litigate a cause of action or an issue already decided in earlier proceedings, but (as Somervell L.J. put it in Greenhalgh v. Mallard [1947] 2 All E.R. 255 at 257) may cover;

“issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.”

A series of cases, mostly in recent years, has explored this form of abuse. Reference need not be made to all of them. In the *Yat Tung* case abuse was found where a claimant who had unsuccessfully sued a bank on one ground brought a further action against the same bank and another party on a different ground shortly thereafter. Giving the advice of the Judicial Committee of the Privy Council, Lord Kilbrandon said at page 589:

*“The second question depends on the application of a doctrine of estoppel, namely res judicata. Their Lordships agree with the view expressed by McMullin J. that the true doctrine in its narrower sense cannot be discerned in the present series of actions, since there has not been, in the decision in no. 969, any formal repudiation of the pleas raised by the appellant in no. 534. Nor was Choi Kee, a party to no. 534, a party to no. 969. **But there is a wider sense in which the doctrine may be appealed to, so that it becomes an abuse of process to raise in subsequent proceedings matters which could and therefore should have been litigated in earlier proceedings.**”*

[79] After discussing several decisions relating to abuse of process and the relationship between public interest and efficiency and economy in the conduct of litigation further held, (Per Lingham LJ) in *Johnson v. Gore Wood & Co.* (supra) held,

*“It may very well be, as has been convincingly argued (Watt, “The Danger and Deceit of the Rule in Henderson v. Henderson: A new approach to successive civil actions arising from the same factual matter,” 19 Civil Justice Quarterly, (July 2000), page 287), that what is now taken to be the rule in Henderson v. Henderson, has diverged from the ruling which Wigram V.-C. made, which was addressed to res judicata. But Henderson v. Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. **The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis***

¹⁴ Including Yang v FDB [2021] FJHC 366 (decided on 10.12.2021)

on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in early proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not. Thus, while I would accept that lack of funds would not ordinarily excuse a failure to raise in earlier proceedings an issue which could and should have been raised then, I would not regard it as necessarily irrelevant, particularly if it appears that the lack of funds has been caused by the party against whom it is sought to claim. While the result may often be the same, it is in my view preferable to ask whether in all the circumstances a party's conduct is an abuse than to ask whether the conduct is an abuse and then, if it is, to ask whether the abuse is excused or justified by special circumstances. Properly applied, and whatever the legitimacy of its descent, the rule has in my view a valuable part to play in protecting the interests of justice..." (emphasis added)

[80] *From the above UK House of Lords decision, if a party is misusing or abusing the process of the court, cannot be decided in 'dogmatic' manner but all the circumstances of the case need to be considered. Plaintiff's failure to counter claim rent review should be taken along with other circumstances of the case. For this, I need not reiterate the failure to notify rent review in terms of Clause 12 where it was required to notify before or within reasonable time after commencement of reviewed period. Plaintiff had also filed third review application of Supreme Court decision, after this action. Notice of rent review was 'without prejudice' to Plaintiff's rights for such litigation. All these facts culminate to abuse of process*

[81] *Above UK House of Lords decision was applied in recent UK Court of Appeal decision of Skatteforvaltningen v MCML Ltd (previously known as ED&F Man Capital Markets Ltd) [2025] EWCA Civ 371,*

'93. As Lord Sumption explains (see Virgin at [19] and [24]), the modern law on the subject really began with the decision of the Privy Council in Yat Tung Investment Co Ltd v Dao Heng Bank Ltd [1975] AC 581, and the

point has been taken up in a large number of subsequent decisions, the most important of which is the decision of the House of Lords in Johnson v Gore-Wood [2002] 2 AC 1. There Lord Bingham endorsed and explained the principles of Henderson v Henderson abuse ...”

Findings and Analysis

46. In considering the Statement of Claim in this matter, it is abundantly clear that the subject matter in the current case is as same as the subject matter in HBC 286 of 2014.
47. Moreover, it is obvious from the Statement of Claim that the claim of the Plaintiff in this matter is based on the same issues and particulars as were already dealt with during the proceedings in HBC 286 of 2014.
48. The only causes of action relied upon by the Plaintiff in this matter is ‘Fraud’ and ‘Unjust Enrichment’. However, as per the particulars pleaded in the Statement of Claim and more specifically under the heading ‘Particulars of Fraud’, it is evident that majority of these particulars relates to the same issues that had already been raised and dealt in the previous proceedings in HBC 286 of 2014. Though it would tediously lengthen this ruling, I shall list out these particulars below for clarity,
8. *The Defendants breached the Agreement by failing to pay any deposit in respect of the sale and further that the Defendants failed to pay the sum of FJD 360,000.00 either to the GPC or to the solicitors trust fund within 60 days of the execution of the Agreement.*
 9. *As a result of the failure of the Defendants to complete their obligations under the Agreement, GPC refused to complete the sale.*
 10. *Upon the refusal by GPC to complete the sale, the Defendants formed the intention to procure the Property by fraud. The fraud is particularized in the subsequent pleadings.*
 11. *At the time of the forming of the intention to obtain the Property by fraud, the Defendants were aware of the following material facts:*
 - e. *GPC had limited education and was not familiar with the processes relating to sale and purchase of properties.*
 - f. *GPC was ordinarily resident in the United States of America.*
 - g. *GPC was in Fiji alone.*
 - h. *GPC had various medical conditions rendering him vulnerable to influence, anxiety and stress.*
 12. *The Defendants commenced Suva High Court Civil Action number 286 of 2014. At the material time, it was the intent of the Defendants to use the proceedings as the vehicle to execute the fraud. The actions of the Defendants in using the proceedings as the vehicle for fraud include without limited the following:*

Particulars of Fraud

- a. *The Defendant notwithstanding knowledge that GPC was resident in the United States of America at the material time, filed proceedings in the Suva High Court with the stated address of GPC being a Fiji address.*
- b. *The Defendant notwithstanding knowledge that GPC was resident in the United States of America at the material time, did not seek leave to issue the Writ of Summons against a Defendant not ordinarily resident in Fiji and did not seek leave to serve GPC in the United States of America.*
- c. *The Defendant notwithstanding knowledge that GPC was resident in the United States of America at the material time, filed an application to serve via a newspaper advertisement in Fiji. At the material time, the Defendants deliberately, wilfully and with the intention of misleading the Court did not disclose the material facts relating to GPC's ordinary residence being in the United States of America to the Court.*
- d. *The Defendants despite the knowledge that GPC was resident in the United States of America at the material time, advertised the Writ of Summons in a Fiji newspaper with the knowledge that GPC would not receive notice of the Writ of Summons.*
- e. *The Defendants despite the knowledge that GPC was resident in the United States of America at the material time and that GPC would not have had knowledge of the Writ of Summons, obtained default judgment on the account of the failure of GPC to file an Acknowledgement of Service.*
- f. *The Defendants were represented by counsel and knew or ought to have known that in case of a claim for specific performance of a contract and in default of the filing of an Acknowledgment of Service by the other party, the Defendants were procedurally the Defendants were required to proceed to the trial to establish their claim as set out in Order 13 Rule 6 of the High Court Rules.*
- g. *The Defendants via their counsel wilfully and deliberately proceeded to obtain default judgment instead of complying with Order 13 Rule 6 of the High Court Rules to avoid establishing their claim on merit and establishing that at the Defendants had either paid the FJD 360,000.00 to GPC or his solicitors trust account or that the Defendants had readily available funds to the value of FJD 360,000.00 at the time of the expiry of 60 days for settlement or at the time of the commencement of the proceedings.*
- h. *The Defendants at all the material times withheld from the Court the salient fact that the Defendants did not paid GPC or his solicitors the sum of FJD 360,000.00 within 60 days of the execution of the Agreement or had readily available funds at the end of the 60 days period to be entitled to specific performance relief.*
- i. *The Defendants knew at all material times, that the Defendants had not met all their obligations under the Agreement to be entitled to specific performance relief.*
- j. *The Defendants thereafter opposed applications to set aside default judgment that GPC filed and thereafter took steps at each stage of the appeals process to maintain the default judgment that the Defendants knew*

that was wrongfully procured including in appeals before a single judge of the High Court, the Fiji Court of Appeal, the Supreme Court including a review application in the Supreme Court. The Supreme Court upheld the default judgment in a decision of 27 April 2023.

k.

l. *The Defendants tempered with the address in relation to service by post box as noted on paragraph 22 of the Fiji Court of Appeal decision in ABU 116 of 2016.*

13. *The Defendants thereafter relies on the Supreme Court of Fiji judgment of 27 April 2023 to cause Westpac Banking Corporation to approve finance for the payment of the sum of FJD 360, 000.00 into Court.*

14. *Thereafter upon the payment of the sum of FJD 360,000.00 into Court and Defendants lodged the transfer instrument to transfer the Property into the Defendants name on 26 June 2023.*

15. *The Defendants using the Suva High Court Civil Action No. 286 of 2014 procured the Property on 26 June 2023 and therefore completing the fraud.*

16. *At the time of the procurement of the Property on 26 June 2023, the Property was valued at FJD 900,000.00 or such a familiar figure.*

17. *As a result of the procurement of the Property by the Defendants through fraud, the Defendants enriched themselves to the value of FJD 540,000.00.*

18. *Subsequent to procuring the Property on 26 June 2023, the Defendants immediately or within a short period thereafter listed the Property for sale with the real estate firm Suva Realty with a listing price of FJD 800,000.00.*

19. *The listing of the Property for sale was designed by the Defendants to cash the unjust enrichment.*

20. *The Plaintiff and GPC had incurred substantial expenses in their efforts to thwart the Defendants efforts to procure the Property by fraud and unjustly enrich themselves. The expenses include without limitation legal cost, professional service costs, travel and accommodation costs of the representatives of the Plaintiff and such other reasonable expenses. The Plaintiff will provide further and better particulars at discovery.*

49. A plain reading of the of the Masters' Ruling delivered on 19 July 2016¹⁵ alongside the Judgment of the Fiji Supreme Court in CBV0005 of 2020¹⁶ (The Application for Special Leave to Appeal in the High Court matter of HBC 286 of 2014) delivered on 28 April 2023, unequivocally demonstrates that all the issues mentioned above have been duly raised and thoroughly addressed by the Court in the subsequent proceedings in HBC 286 of 2014.

50. Considering the principles of the doctrine of *Res Judicata*, as discussed at length in the foregoing paragraphs of this ruling, it is evident that the Plaintiff is clearly attempting to re-litigate the same issues previously determined by the Court, in HBC 286 of 2014. Accordingly, it is the conclusive finding of the Court that these issues

¹⁵ Refer to Annexure 'B' in the Affidavit in Support by Aron Adarsh Jivaratnam filed on 16/02/2024

¹⁶ Refer to Annexure 'C' in the Affidavit in Support by Aron Adarsh Jivaratnam filed on 16/02/2024

fall squarely within the scope of ‘issue estoppel’ and that such actions, in the overall circumstances of this case, constitute an abuse of the Court’s process.

51. The sole exception to the issues outlined at paragraph 48 above pertains to the particulars submitted by the Plaintiff, alleging that the Sale and Purchase Agreement concerning the sale of the property comprised in CT8413, Lot 3 on DP1955, and the Transfer Instrument dated 25/04/2014, are forged documents. The Plaintiff contends that Gaya Prasad Chotu never executed these documents and that the signatures thereon do not correspond with his genuine signatures. These allegations have been specifically pleaded at paragraph 12(k) of the Statement of Claim. For the sake of clarity, I will reproduce the relevant excerpt below.

12. k. The Defendants relied on documents (Sale and Purchase Agreement dated 22 April 2014 and Transfer instrument dated 25 April 2014) that were purportedly executed by GPC when in fact GPC did not execute the said document. The signatures contained in those documents are not that of GPC and does not match his signatures.”

52. In the Court’s considered view, these particulars are not sufficiently substantiated. Furthermore, the Court finds that they are contradicted by the Plaintiff’s own previous pleadings in the Statement of Claim. Specifically, at paragraph 6 of the Statement of Claim, the Plaintiff has asserted that,

6. In or around April 2014, a Sale and Purchase Agreement was prepared for the sale of the Property by GPC to the Defendants and executed.

53. Furthermore, the material before this Court reveals that Gaya Prasad Chotu passed away sometime in the year 2021. All proceedings in the prior case of HBC 286 of 2014 were conducted while Gaya Prasad Chotu was still alive. Throughout the course of these proceedings, from the High Court to the Supreme Court, Gaya Prasad Chotu was actively alive and represented by legal counsel. He was consistently instructing his solicitors from the time of the alleged Sale and Purchase Agreement until the appeal of the proceedings in HBC 286 of 2014 to the Supreme Court.
54. However, it is notably surprising that throughout the lifetime of Gaya Prasad Chotu and during the entire proceedings in HBC 286 of 2014, he did not raise any objection or issue regarding the alleged forged nature of the Sale and Purchase Agreement concerning the property comprised in CT8413, Lot 3 on DP1955, and the Transfer Instrument dated 25/04/2014. Specifically, he did not contest the authenticity of the signatures or assert that these documents were not executed by him.
55. It was within the rights of Gaya Prasad Chotu, throughout the course of proceedings in HBC 286 of 2014, spanning from the Masters’ Court to the Supreme Court, to raise the issue of fraud. However, he evidently chose to refrain from doing so. This failing or intentional omission by Gaya Prasad Chotu must also be considered within the

principles of estoppel and Res Judicata, as it represents a conduct that precludes subsequent challenges to the same matter.

56. Moreover, in the judgment of the Fiji Supreme Court in CBV0005 of 2020, dated 28 April 2023, the Court explicitly observed that the above documents were not disputed by the parties, thereby affirming that the Plaintiff in that proceedings (Gaya Prasad Chotu) had never previously raised any issue regarding the alleged forgery of these documents. It is thus highly questionable how the current Plaintiff, following the death of Gaya Prasad Chotu, is now asserting that these documents were indeed forged.
57. Having regard to the facts outlined in the preceding paragraphs, this Court concludes that the Plaintiff's allegation of forgery concerning the Sales and Purchase Agreement and the Transfer Instrument constitutes a blatant attempt to mislead the Court by presenting the matter as a new issue.
58. If the Court were to treat this as a genuine fresh issue, despite the numerous shortcomings and infirmities discussed above, it is important to note that the Plaintiff has failed to furnish any relevant particulars to support this claim in the Statement of Claim. There is no indication of when or how the Plaintiff supposedly discovered this issue, nor is there any reference to any supporting documents to substantiate such an assertion. Furthermore, there are no such facts provided at least in the Affidavit in Opposition filed on behalf of the Plaintiff.
59. Overall, the Court is of the considered view that this is an afterthought and a fabricated pretext created by the Plaintiff to circumvent the barrier of *Res Judicata*, thereby attempting to relitigate issues that have already been adjudicated in HBC 286 of 2014.
60. In light of the foregoing discussion, along with the findings and conclusions reached by the Court, the Court's overall conclusion is that the proceedings initiated by the Plaintiff in HBC 304 of 2023 constitute an attempt to re-litigate issues that have already been adjudicated in HBC 286 of 2014. Consequently, these proceedings are barred by the doctrine of *Res Judicata*. Furthermore, considering the overall circumstances of this case, such conduct amounts to a clear abuse of the Court's process.
61. In the same vein, the Court further finds that these proceedings constitute a clear form of harassment against the Defendants. All relevant issues had previously been fully and thoroughly adjudicated in the lengthy proceedings of HBC 286 of 2014, which spanned from the Masters' Court to the Supreme Court. Despite this, the Plaintiff is attempting to relitigate the same matters anew, effectively seeking to repeat the entire process of judicial resolution. Accordingly, the Court concludes that the Statement of Claim in this matter is therefore frivolous and vexatious.

62. Therefore, the Court concludes that the Defendants' application to strike out the Writ and the Statement of Claim in this matter is successful and shall therefore be granted. The Court further finds that the Defendants are entitled to an award of costs on an indemnity basis, or alternatively, the Court may summarily assess the costs at the highest scale, having regard to the overall facts and circumstances outlined in the preceding paragraphs of this ruling.
63. Accordingly, exercising the Court's discretionary power under Order 18 Rule 18(1) of the High Court Rules, the Court hereby entirely strikes out the Writ and the Statement of Claim filed by the Plaintiff against the Defendants.
64. Consequently, the following final orders are made.
1. The Summons to Strike Out as filed by the Defendants on 16/02/2024 is hereby allowed subject to costs against the Plaintiff, that shall be summarily assessed by the Court,
 2. Plaintiffs Writ of Summons and Statement of Claim filed on 05/10/2023 is hereby wholly struck out and dismissed pursuant to Order 18 Rule 18 (1) of the High Court Rules 1988,
 3. Plaintiff shall pay a cost of \$ 7000.00 to the Defendants as costs of these proceedings, as summarily assessed by the Court, within 28 days of this ruling.
 4. The proceedings in this matter is accordingly terminated, and the file is closed.



**At Suva,
23/09/2025.**

**L. K. Wickramasekara,
Acting Master of the High Court.**