

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

CIVIL ACTION NO. HBC 318 OF 2022

BETWEEN : **BELA RANI GHOSH** of 34 Kelvin Road, St Ives, Sydney, Australia, Trustee and Administrator of the Estate of the late Hari Chand Akhil aka Mahadeo Hari Charan.

FIRST PLAINTIFF

AND : **RENU RANI SHARMA aka RENU RANI AKHIL** of 34 Kelvin Road, St Ives, Sydney, Australia, Beneficiary of the Estate of the late Hari Chand Akhil aka Mahadeo Hari Charan.

SECOND PLAINTIFF

AND : **AKHIL PROJECTS PTE LIMITED** a limited liability company having its registered office at 54 Narara Place, Lautoka.

FIRST DEFENDANT

AND : **RAKESH CHANDRA AKHIL** of 54 Longshore Dr, Clyde North, Victoria 3978, Australia.

SECOND DEFENDANT

AND : **ANUSHKA ANJELI VASEK** of 42 Grenfell Rise, Narre Warren, Victoria 3805, Australia.

THIRD DEFENDANT

Before : Master P. Prasad

Counsels : Mr. S. Drole for Plaintiff
Ms. K. Singh for Defendant

Date of Hearing : 28 October 2024

Date of Decision : 21 February 2025

RULING

(Strike out)

1. The First Plaintiff brings this action as the Administrator of the Estate of Hari Charan Akhil aka Mahadeo Hari Charan (**Estate**). The First Plaintiff is the widow of the late Hari Charan Akhil aka Mahadeo Hari Charan (**Deceased**). The Second Plaintiff is the daughter of the First Plaintiff and the Deceased.

2. The Plaintiffs through their Statement of Claim (**Claim**) state as follows:

- a. The Second Defendant is the biological son of the Deceased and the Third Defendant is the Second Defendant's daughter.
- b. In 1998 the First Plaintiff and the Deceased migrated to New Zealand and bought a house there.
- c. The First Defendant company was incorporated on 22 May 1974 and at the time of incorporation the shareholding was as follows; the Deceased (9997 shares); Virendra Chandra Akhil (1 share); Rakesh Charan Akhil (1 share); and Shekhar Chandra Akhil (1 share).
- d. The First Defendant company owns the following land:
 - i. CT 32583
 - ii. CT 32584
 - iii. CT 32585
 - iv. CT 32586
- e. An Annual Return of the First Defendant company filed on 16 December 2002 (when the Deceased was 84 years old) still showed the shareholding as per 2(c) above.
- f. In 2004, the Deceased's shares increased to 9999 shares.
- g. In 2006, the Deceased started showing signs of dementia.
- h. In 2008, the Second Defendant took the Deceased to Australia to live with him.
- i. On 24 November 2008, the Deceased wrote a letter to the First Plaintiff advising her that he was well and that the Second and Third Defendants had been given the authority to sell a 900 acre land (**subject land**). The subject land is owned by the First Defendant company.
- j. On 19 December 2008, the Deceased executed a Will in Australia.
- k. The Deceased moved back to New Zealand at the end of 2008.
- l. In 2009, at the age of 90, the Deceased transferred his shares in the First Defendant company to the Third Defendant. This resulted in the Deceased reducing his shares to 9 shares, the Third Defendant's shares increasing to 9990 shares, and Vijendra Chandra Akhil still owning 1 share.
- m. Thereafter, further share transfers transpired resulting as follows:
 - i. 2010 – Deceased 9 shares; Third Defendant 9991 shares.
 - ii. 2013 – Deceased transferred the 9 shares to Second Defendant; Third Defendant still owning 9991 shares.
- n. That in 2012 the Deceased and the First Plaintiff moved to Australia and the Deceased had "unconscionably" reduced his shares in the First Defendant company.
- o. That the Second and Third Defendant had at one stage promised the Deceased that they had found a buyer for the subject land for the purchase price of 3 Million AUD.
- p. In 2013, the Second Defendant evicted the First Plaintiff out of his house but kept the Deceased with him.

- q. The death certificate of the Deceased states that he was suffering from “lewy body dementia”.
- r. The Annual Returns (for the years 2003 to 2012) of the First Defendant company were filed on 17 November 2017 and the Deceased date of death is 17 August 2017.
- s. After the death of the Deceased, the First Plaintiff discovered that the Deceased’s shares in the First Defendant company had been transferred.
- t. The shares were fraudulently transferred which is evidenced by the Annual Returns which were only filed in November 2017 after the death of the Deceased.

3. The Plaintiffs claim:

- a. That the Second and Third Defendants fraudulently transferred the shares from the Deceased to themselves.
- b. The 3 million AUD which the Third Defendant failed to give to the Deceased from the sale of the subject land.
- c. 288,000.00 AUD interest over the 3 million AUD from June 2013 to June 2021.
- d. Loss of investment opportunity.
- e. Pain & suffering.
- f. Interest and costs.

4. On 25 May 2023, the Defendants filed a Summons to strike out the Plaintiffs’ Claim pursuant to Order 18 Rule 18 (1) (a), (b) and (d) of the High Court Rules (HCR) and Section 4 of the Limitation Act 1971. They also filed an Affidavit in Support of the Second Defendant stating the following:

- a. The Second Defendant is the Director of the First Defendant company and the Third Defendant is also a Director as well as the company secretary of the First Defendant company.
- b. The First Plaintiff and the Deceased got separated in 1989.
- c. Thereafter, the Deceased lived in various places with his children in Fiji, Australia and New Zealand.
- d. In 1984, the Deceased had purchased a house for his son Vijendra Chandra Akhil (**Vijendra**) in New Zealand.
- e. In 2009, the Third Defendant assisted the Deceased to build a unit at the back of Vijendra’s property for the Deceased to stay in. During this time the First Plaintiff was also living in New Zealand with her daughter. The First Plaintiff then moved to Australia as she had some family tension with her daughter and had no where to stay. The Deceased allowed the First Plaintiff to stay in the unit with him as she had no where else to stay, even though the two were separated.
- f. The First Plaintiff’s daughter moved to Melbourne, Australia in 2011 and the First Plaintiff moved to stay with that daughter.

- g. The Deceased died in Melbourne, Australia on 17 August 2017. He had executed a Will dated 19 December 2008 wherein he had appointed the Third Defendant and her husband as Executors and Trustees. The Will is annexed to the Affidavit in Support. In the said Will the Deceased bequeathed all his shares in the First Defendant company and a property in Johnson Road, Lautoka to the Third Defendant. The Deceased further bequeathed \$100,000.00 to be shared among his 14 children (10 with his first wife and 4 with the First Plaintiff). The Deceased bequeathed the balance of his real and personal property to the First Plaintiff.
- h. The Deceased owned majority shares in the First Defendant company and began to transfer the same in 2009 where he engaged an accounting firm namely 'Pricewaterhouse Coopers' (**PWC**) for the same.
- i. Annexed to the Affidavit in Support are copies of the 'Transfer of Shares' documents. The first document is dated 28 February 2009 where the Deceased transferred 9990 of his shares for \$1.00 a share to the Third Defendant. This document was duly executed by the Deceased and witnessed by a Solicitor in Australia. The second 'Transfer of shares' document is dated 28 August 2013 where the Deceased transferred 9 of his shares for \$1.00 a share to the Second Defendant. This document is also duly executed by the Deceased and witnessed by a Solicitor in Australia. Also annexed is a letter dated 1 April 2010 from the Reserve Bank of Fiji (**RBF**) to PWC granting permission for the transfer of 9990 shares from the Deceased to the Third Defendant subject to the payment of \$9990.00 to a resident account in Fiji.
- j. The Deceased transferred his shares in the First Defendant company during his lifetime and the shares did not form part of his Estate.
- k. The share transfers were not done fraudulently as the Deceased had attended to the same personally.
- l. The First Plaintiff had filed a Writ previously with citation *Ghosh v Akhil* [2022] FJHC 647, which was struck out by the High Court as the Plaintiff had failed to comply with Order 6 Rule 6 of the HCR.
- m. The Plaintiff has filed this second Writ and Statement of Claim which is an abuse of the Court process.
- n. The First Plaintiff has no claim or right over the First Defendant company shares.
- o. The Deceased had bequeathed his shares in the First Defendant company to the Third Defendant.
- p. The Defendants are not aware of any agreement for the sale of the properties owned by the First Defendant.
- q. The First Plaintiff was aware of the Will of the Deceased yet fraudulently applied for a Letters of Administration for the Estate of the Deceased on 11 February 2021.
- r. The Deceased was not diagnosed with any mental health disorder.
- s. The Plaintiffs' have not pleaded particulars of fraud in the Claim.
- t. The Claim of alleged negligence and breach of contract is statute barred pursuant to the Limitation Act 1971.

5. The Plaintiffs oppose the application and filed an Affidavit in Opposition stating the following:
 - a. The First Plaintiff and the Deceased were never separated.
 - b. The Deceased used to borrow money from the Second Plaintiff and her husband.
 - c. The First Plaintiff was made aware that the Deceased had executed a Will dated 19 December 2008 after the passing away of the Deceased.
 - d. The share transfer is fraudulent as the Defendants took advantage of the Deceased's mental incapacity during the time of the transfer of shares as he was suffering from lewy dementia.
 - e. That all the share transfer documents were executed in 2009 but filed with the Registrar of Companies 8 years later.
 - f. The said shares form part of the Deceased Estate as they are mentioned in the Will.
 - g. That the Court in ***Ghosh v Akhil*** [2022] FJHC 647 had ruled that the Plaintiffs' Claim has a reasonable cause of action.
 - h. That the Plaintiffs' Claim is not statute barred.
6. Both parties made oral submissions at the hearing of the Strike out Application and filed written submissions as well.
7. Before considering the Strike out Application, I must consider the decision of the Court in ***Ghosh v Akhil*** (supra) which both parties have referred to.

The Court's decision in ***Ghosh v Akhil*** [2022] FJHC 647

8. In essence, the Defendant's submissions in the current proceedings are that the Court had already decided in ***Ghosh v Akhil*** (supra) that the Plaintiffs' Claim cannot be sustained. The Plaintiffs submitted that the Court had already decided that the Plaintiffs had a reasonable cause of action.
9. The Court had stated as follows in ***Ghosh v Akhil***:
 18. *Apart from applying under Order 18 Rule 18, the Defendants also argue that they are ordinary residents out of Fiji and that the writ was served on them without the prior leave of the Court to serve out of jurisdiction. The Plaintiff concedes but argues that the Defendants have waived this requirement by accepting service and by responding to the writ.*
 19. *The Defendants submit that without the prior leave of the Court, the mistake is fatal and that the action must therefore be struck out.*
 20. *I have read the authorities relied on by the Defendants. While I would not strike out the claim on all the other grounds, I agree that the requirement under Order 6 Rule 6 of the High Court Rules is mandatory (see ***Habib Bank Ltd v Raza (2019) FJHC 308; Civil Action 53 of 2005 (21 February 2019)***, ***Ralulu v Chand (2019) FJC 1025; Civil Action 87 of 2013 (25 October 2019)***).*

21. *This error cannot be cured under Order 2 Rule 1. (Ralulu v Chand (supra)).*

22. *Accordingly, agreeing with the above authorities, I dismiss the Writ and Statement of Claim."*

10. It is clear from the above that the previous claim was struck out solely due to the Plaintiffs' non-compliance of Order 6 Rule 6 of the HCR, and the then presiding Court had not alluded to the other grounds of the strike out application let alone assess the merits of the facts against the said other grounds.

11. Therefore, I find that this Court can consider the current strike out application filed by the Plaintiff. I will now deal with each ground on which this strike out application is filed.

Order 18 Rule 18 (a), (b) and (d)

12. The relevant rule which the Defendant is relying on is Order 18 Rule 18 (1) (a), (b) and (d) of the HCR and Section 4 of the Limitation Act 1971.

13. Order 18 rule 18 provides:

"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 case of action or defence, as the case may be;

(b) it is scandalous, frivolous or vexatious;

(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."

14. The following excerpts from the 1997 Supreme Court Practice provide the scope of the rule together with guiding factors when dealing with an application for the strike out of a pleading.

15. Footnote 18/19/3 of the 1997 Supreme Court Practice reads:

"Striking out or amendment—The rule also empowers the Court to amend any pleading or indorsement or any matter therein. If a statement of claim does not disclose a cause of action relied on, an opportunity to amend may be given, though the formulation of the amendment is not before the Court (CBS Songs Ltd v. Amstrad [1987] R.P.C. 417 and [1987] R.P.C. 429). But unless there is reason to suppose that the case can be improved by amendment, leave will not be given (Hubbuck v. Wilkinson [1899] 1 Q.B. 86, p.94, C.A.). Where the statement of claim presented discloses

no cause of action because some material averment has been omitted, the Court, while striking out the pleading, will not dismiss the action, but give the plaintiff leave to amend (see "Amendment," para. 18/12/22), unless the Court is satisfied that no amendment will cure the defect (Republic of Peru v. Peruvian Guano Co. (1887) 36 Ch.D. 489)."

16. Footnote 18/19/7 of the 1997 Supreme Court Practice reads:

"Exercise of powers under this rule—It is only in plain and obvious cases that recourse 18/19/7 should be had to the summary process under this rule, per Lindley M.R. in Hubbuck v. Wilkinson [1899] 1 Q.B. 86, p.91 (Mayor, etc., of the City of London v. Horner (1914) 111 L.T. 512, C.A.). See also Kemsley v. Foot [1951] 2 K.B. 34; [1951] 1 All E.R. 331, C.A., affirmed [1952] A.C. 345, H.L. It cannot be exercised by a minute and protracted examination of the documents and facts of the case, in order to see whether the plaintiff really has a cause of action (Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.)."

17. Footnote 18/19/11 of the 1997 Supreme Court Practice on no reasonable cause of action or defence reads:

"Principles—A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered (per Lord Pearson in Drummond-Jackson v. British Medical Association [1970] 1 W.L.R. 688; [1970] 1 All E.R. 1094, C.A.). So long as the statement of claim or the particulars (Davey v. Bentinck [1893] 1 Q.B. 185) disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out (Moore v. Lawson (1915) 31 T.L.R. 418, C.A.; Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.);..."

18. The legal principles regarding striking out pleadings are clear and widely understood. The Court of Appeal in **National MBF Finance v Buli** [2000] FJCA 28 determined the principles for strike out. In **Attorney-General v Shiu Prasad Halka** 18 FLR 210 at 214 Justice Gould V.P. in his judgment expressed "*that the summary procedure under O.18, r.19 is to be sparingly used and is not appropriate to cases involving difficult and complicated questions of law.*"

19. Justice Winter (as his Lordship then was) in **Ah Koy v Native Land Trust Board** [2005] FJHC 49 aptly stated:

"The practice in Fiji of preemptively applying to strike out a claim is wrong and must cease. Counsels ability to overlook the purpose of this summary procedure is astounding. The expense to the administration of justice, let alone clients, is a shameful waste of resources...."

Apart from truly exceptional cases the remedy should not be granted. The

approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be provided at trial. If a legal issue can be raised on the facts as pleaded then the courts will not strike out a pleading and will certainly not do so upon a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of such a factual contention....

The rule of law requires the existence of courts for the determination of disputes and that litigants have the right to use the court for that purpose. The courts will be alert to their processes being used in a way that results in an oppression or injustice that would bring the administration of justice into disrepute. However, the court cannot and must not deny proper access to justice by the glib use of a summary procedure to pre-emptorily strike out an action no matter how weak or poorly pleaded the Statement of Claim supporting the case is....

It is not for the court in deciding whether there is a reasonable cause of action to go into the details of the issues that are raised by the parties. This summary jurisdiction of the court was never intended to be exercised by a detailed examination of the facts of the case at a mini hearing to see whether the plaintiff really has a good cause of action merely a sufficient one. This is not the time for an assessment of the strengths of either case. That task is reserved for trial. The simple fact that these parties engaged in argument by opinion over statutory interpretation must bring into existence a mere cause of action raising some questions fit to be decided by a judge.”

20. The clear and unambiguous wording of Order 18 Rule 18 indicates that the power to strike out pleadings is discretionary rather than obligatory.

21. The first ground to consider under Order 18 Rule 18 is (1) (a) – no reasonable cause of action. For this ground, the Court may only conclude an absence of a reasonable cause of action on the pleadings itself with no evidence being admissible. His Lordship Chief Justice Mr. A.H.C.T. Gates (as His Lordship then was) held in **Razak v Sugar Corporation Ltd** [2005] FJHC 720 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] UKLawRpCh 186; (1887) 36 Ch.D 489 at p.498”.

22. The pleadings suggest that the Plaintiffs are challenging the transfer of the shares in the First Defendant company from the Deceased to the Second and Third Defendants.

23. To ascertain if there is a reasonable cause of action, this Court needs to determine whether firstly, the Plaintiffs have any beneficial interest in the First Defendant company, or any land owned by the First Defendant company and

secondly whether the particulars of fraud have been pleaded as required by the HCR.

24. The Claim refers to a letter dated 24 November 2008 (**Letter**) allegedly sent from the Deceased wherein the Deceased refers to an authority he had given to the Third Defendant to sell the subject land as the Third Defendant had found a buyer for the same. There is no mention of 3 million AUD in the Letter and the subject land was never sold. The Plaintiffs rely on the contents of this Letter to state that they are now entitled to 3 million AUD. The Plaintiffs reliance on the contents of this Letter allegedly authored by the Deceased suggests that as far as the Plaintiffs are concerned, there were no issues with the Deceased's mental health at the time of writing the Letter.
25. Furthermore, it is an agreed fact that the Deceased executed his Will on 19 December 2008. The Plaintiffs are not challenging the validity of the said Will. This is clear from the Claim and from the submissions of the Plaintiffs counsel whereby he confirmed to the Court that the Plaintiffs were not challenging the Will *per se* but rather the share transfer from the Deceased to the Third Defendant. This means that the Plaintiffs are not challenging the mental capacity of the Deceased at least at the time of executing the said Will.
26. Rather than challenging the validity of the Will, the Plaintiffs' counsel made illogical submissions that since the Deceased in his Will had bequeathed his shares in the First Defendant company to the Third Defendant, the Deceased could not have dealt with the said shares during his lifetime. The Plaintiffs' counsel further submitted that the Deceased's Will became null and void in 2013 when the share transfer documents were endorsed.
27. There are no legal principles that support the submissions made by the Plaintiffs' counsel. Instead, the principle of ademption is well known in common law and is applicable to this case. Although there are exceptions to the said principle, the Court does not need to consider the same here as the Plaintiffs have no interest in the First Defendant company by virtue of the Will of the Deceased.
28. It is evident that the Plaintiffs never had any interest in the First Defendant company, neither during the lifetime of the Deceased nor until such time as the Deceased's shares were transferred to the Second and Third Defendants. The Claim also fails to lay any factual foundation as to how the Plaintiffs are now claiming an interest in the purported sale of the subject land owned by the First Defendant company when the Plaintiffs never had any interest in the First Defendant company to begin with.
29. Moreover, as stated above, the subject land owned by the First Defendant company was never sold and still belongs to the First Defendant company. Even if the subject land had actually been sold in the Deceased lifetime, the

Claim does not present any basis on which the Plaintiffs would have been entitled to any share of the sale proceeds.

30. Similarly, if the share transfers had not eventuated during the lifetime of the Deceased, the Third Defendant would still have inherited all the Deceased shares in the First Defendant company including the subject land by virtue of the unchallenged Will. Even in this scenario, the Plaintiffs would not have any beneficial interest in the shares of the First Defendant company and any land owned by it.
31. The Defendants further submitted that the particulars of fraud are not properly pleaded in the Claim. While the Plaintiffs' claim that the Second and Third Defendants fraudulently acquired shares in the First Defendant company, the only particulars of fraud provided in the Claim is as follows:

"The Second Defendant fraudulently acquired 9 shares in Akhil Projects Pte Ltd.

The Third Defendant failed to sell the land to the buyer she had found as promised and also failed to give AU\$3,000,000.00 to the 1st Plaintiff's husband but instead fraudulently acquired 9,991 shares in Akhil Projects Pte Ltd the 1st Defendant.

Particulars of special damages

- *96 months (June 2013- June 2021) the First Plaintiff footing living & medical expenses at AU\$3,000.00 per month from the savings of her daughter the 2nd Plaintiff, which the total was in the vicinity of AU\$288,000.00*
- *AU\$3,000,000.00 from the failed land sale*

Total special damages is AU\$3,288,000.00.

Particulars of general damages

- *Loss of investment opportunity*
- *Pain."*

32. Order 18 Rule 11(1)(a) provides that:

"Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defense or other matter pleaded including, without prejudice to the generality of the foregoing words –

- (a) Particulars of any misrepresentation, fraud, breach of trust, willful default or undue influence on which the party pleading relies;..."*

33. in **Farrell v. State for Defence** [1980] 1 W.L.R at 179 Lord Edmund-Davies held:

"It has become fashionable in these days to attach decreasing importance to pleadings, and it is beyond doubt that there have been times when an insistence on complete compliance with their technicalities put justice at risk, and, indeed, may on occasion have led to its being defeated. But pleadings continue to play an essential part in civil actions, and although there has been since the Civil Procedure Act 1833 a wide power to permit amendments, circumstances may arise when the grant of permission would work in justice or, at least, necessitate an adjournment which may prove particularly unfortunate in trials with a jury. To shrug off a criticism as 'a mere pleading point' is therefore bad law and bad practice. The purpose is to define the issues and thereby to inform the parties in advance of the case they have to meet and so enable them to take step to deal with it."

34. The House of Lords in ***Three Rivers District Council v Bank of England*** [2001] UKHL/16; [2001] 2 ALL E.R 513 at paragraphs 51-52 stated the following:

"51. On the other hand, it is clear that as a general rule, the more serious the allegation of misconduct, the greater is the need for particulars to be given which explain the basis for the allegation. This is especially so where the allegation that is being made of bad faith or dishonesty. The point is well established by authority in the case of fraud.

52. In Wallingford v Mutual Society (1880) 5 App Cas 685, 697 Lord Selborne LC said:

'With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any court ought to take notice.'

In the same case Lord Watson said (at 709):

'My Lords, it is a well-known and a very proper rule that a general allegation of fraud is not sufficient to infer liability on the part of those who are said to have committed it. And even if that were not the rule of the common law, I think the terms of Order XIV, would require the parties to state a very explicit case of fraud, or rather of facts suggesting fraud, because I cannot think that a mere statement that fraud had been committed, is any compliance with the words of that rule which require the defendant to state facts entitling him to defend. The rule must require not only a general and vague allegation but some actual fact or circumstance or circumstances which take together imply, or at least very strongly suggest, that a fraud must have been committed, those facts being assumed to be true.'

35. In dealing with allegations of fraud in pleadings, Calanchini J (as he then was) in ***Alam v Colonial National Bank*** [2012] FJHC 826 aptly stated that:

"It is, of course, well settled that an allegation of fraud must be pleaded together with the facts matters and circumstances relied on to support the allegation. It is also the practice in pleading to particularise allegations of

negligence. The Defendant is entitled to those particulars. If they are not provided in the Statement of Claim, they may be sought by way of application with the usual consequence that the defaulting party should pay the costs of the application."

36. In **Three Rivers District Council v Bank of England** [Supra] the House of Lords in their conclusion further held (at 192) that:

"while cases should in principle be disposed of as expeditiously and cheaply as the circumstances permit, the most important principle of all is that justice should be done. But this does not mean justice to the plaintiff alone. It is not just to a plaintiff to strike out his claim without a trial unless it has no real prospect of success. It is not just to defendants to subject them to a lengthy and expensive trial to defend their integrity when there is no foundation in the evidence for the attack upon it."

37. The Plaintiffs current pleadings on fraud are devoid of the necessary particulars of fraud such as who was the perpetrator of the fraudulent act and when and how the said fraudulent act had been committed.

38. It is also noteworthy to mention that prior to the filing of these proceedings, the Plaintiffs' counsel sent a notice to the Second and Third Defendants requesting the cancellation of share transfers in the First Defendant company.

39. The Defendants' counsel had responded to the notice seeking further and better particulars against the Plaintiffs' claim. The Plaintiffs' filed the current proceedings without having responded to the Defendants' request for further and better particulars.

40. I therefore find that the Claim is deficient in providing particulars of fraud or of any cause of action, and as such, the Claim would fail because allegations *per se* do not constitute a valid cause of action.

41. Even if the Court were to grant leave to the Plaintiffs to amend their pleadings to include the particulars of fraud, in foresight it would be a futile exercise because the Deceased in his uncontested Will has bequeathed his shares in the First Defendant company to the Third Defendant. Consequently, the Plaintiffs have no beneficial interest in the First Defendant company and as such are not entitled to any of its shares or any land owned by it.

42. The Claim fails to show any causal nexus between the alleged fraud and the averred harm as claimed by the Plaintiffs. The bare particulars of fraud pleaded show that the entire Claim is based on the loss of 3 million AUD from the purported sale of subject land (a sale which did not eventuate). As already stated, the Plaintiffs never had any beneficial interest in the First Defendant company, neither before nor after the Deceased's death.

43. Since the Claim discloses no cause of action and raises no question of law, the Plaintiffs have failed to show that there is a reasonable cause of action and therefore this Claim is wholly unsustainable.

44. Having already determined that there is no reasonable cause of action in this Claim, which is sufficient to strike out the same, I will nonetheless proceed to consider and address the remaining grounds raised by the Defendant that the Claim is scandalous, frivolous or vexatious; an abuse of process of the Court; and is statute barred.

45. In regard to these grounds, the Second Defendant has filed affidavits to support the same. These affidavits are admissible under Order 18 Rule 18 (1) (b) and (d) to support the Defendant's application.

Is the Claim statute barred?

46. Section 4 of the Limitation Act 1971 provides as follows:

"4. (1) The following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued, that is to say-

- (a) actions founded on simple contract or on tort;*
- (b) actions to enforce a recognizance;*
- (c) actions to enforce an award, where the submission is not by an instrument under seal;..."*

47. As fraud is a tort, the Claim is subject to a limitation period of 6 years in accordance with section 4 mentioned above.

48. Section 15 of the Limitation Act 1971 further provides that:

"Where, in the case of any action for which a period of limitation is prescribed by this Act, either –

- (a) The action is based upon the fraud of the Defendant or his agent or of any person through whom he claims or his agent; or*
- (b) The right of action is concealed by the fraud of any such person; or*
- (c) The action is for relief from the consequence of a mistake,*

The period of limitation shall not begin to run until the Plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it..."

49. The Plaintiffs filed their Claim on 31 March 2023 and averred that they only got to know about the alleged fraudulent transfers of shares in the First Defendant company after the death of the Deceased and when the relevant documents

were filed with the Registrar of Companies on 17 November 2017. There is nothing in the affidavits filed by the Defendants which contradicts this.

50. However, in paragraph 32 of their Claim, the Plaintiffs refer to an e-mail of 27 June 2009 from the First Plaintiff's stepson to the partner in PWC. The said e-mail alludes to the fact that the Deceased was "feeling uneasy" about signing documents wherein he transferred his shares to the Third Defendant.

51. In his ruling in **Vula v Merchant Bank of Fiji Ltd** [2014] FJHC 54 regarding sections 4 and 15 of the Limitation Act and Order 18 Rule 11(1)(a) of the HCR, Master Rajasinghe (as His Lordship then was) referenced the useful discussion by Lord Watson in **Dow Hager Lawrance v Lord Norreys** (1890) 15 App Case 210, where Lord Watson stated that:

"In my opinion, a Plaintiff who desires to avail himself of the provisions of section 26 is not released from the ordinary rule of pleading applicable to cases of fraud, which was thus expressed by Earl Selborne in Wallingford v Mutual Society (5 app. Cas. 697) "General allegation, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any court ought to take notice". It is not a sufficient compliance with the rule to state facts and circumstances which merely imply that the defendant, or someone from whose action he is responsible, did commit a fraud of some kind. There must be a probable, if not necessary, connection between the fraud averred and the injurious consequences which the plaintiff attributes to it, and if that connection is not sufficiently apparent from the particulars stated, it cannot be supplied by general averments".

52. In striking out the Plaintiffs claim in **Vula v Merchant Bank of Fiji Ltd** (supra), Master Rajasinghe further commented as follows:

"31. In view of Lord Watson's comprehensive observation in Lord Norreys (Supra), the Plaintiff is required to comply with the requirements stipulated in Order 18 rule 11 in order to seek assistance of section 15 of the Limitation Act. A mere statement of facts and particulars of fraud are not sufficient to meet the threshold of necessary particulars of fraud in pleading. The Plaintiff should give the particulars of the overt act of fraud. The particulars of concealment or that the fraud was unknown to him until he discovered it with reasonable diligence need to be pleaded. The pleaded facts must provide a probable connection between the alleged fraud and the injurious consequence which the Plaintiff is claimed.

53. In light of the above, I believe the Plaintiffs were aware of the share transfer in 2009 and not in 2017, and they either failed to exercise due diligence to discover the details of the said transfer or waited for the Deceased to pass away before filing this Claim and alleging fraud against the Defendants. Based on this the Claim was statute barred in 2015.

Abuse of Court process

54. Footnote 18/19/11 of the 1997 Supreme Court Practice reads:

“Limitation - ... if the defendant does plead a defence under the Limitation Act, he can seek the trial of a preliminary issue, or in a very clear case, he can seek to strike out the claim upon the ground that it is frivolous, vexatious and an abuse of the process of the Court (see, per Donaldson L.J. in Ronex Properties Ltd v. John Laing Construction Ltd [1983] Q.B. 398). Thus, where the statement of claim discloses that the cause of action arose outside the current period of limitation and it is clear that the defendant intends to rely on the Limitation Act and there is nothing before the Court to suggest that the plaintiff could escape from that defence, the claim will be struck out as being frivolous, vexatious and an abuse of the process of the Court (Riches v. Director of Public Prosecutions [1973] 1 W.L.R. 1019; [1973] 2 All E.R. 935, C.A., as explained in Ronex Properties Ltd v. John Laing Construction Ltd, above).”

55. It thus follows that since the Claim is statute barred, the Claim should be struck out as being frivolous, vexatious and an abuse of the process of the Court.

56. For the aforementioned reasons, I find that the Claim discloses no reasonable cause of action; is statute barred; and that the Plaintiff has abused the process of this Court by instituting this action.

57. Accordingly, I make the following orders:

- (a) The Plaintiffs' Statement of Claim is hereby struck out; and
- (b) The Defendants are entitled to costs summarily assessed in the amount of \$1,500.00 each, payable by the Plaintiff within 1 month.



P. Prasad
Master of the High Court

At Lautoka
21 February 2025