IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 88 of 2024

BETWEEN:

KARMILA DEVI
PLAINTIFF

AND:

SIGA TUWAI
1ST DEFENDANT

AND:

INTERLINK SHIPPING LINE PTE LIMITED
2NDDEFENDANT

BEFORE:

Acting Master L. K. Wickramasekara

COUNSELS:
Dayal & Associates for the Plaintiff
Kapadia Lawyers for the Defendants

Date of Hearing:
By way of written submissions

Date of Ruling:
30th September 2025

RULING

(COURTS' NOTICE UNDER ORDER 25 RULE 9)

01. Court has issued a Notice on its own motion on 19 March 2025 pursuant to Order 25 Rule 9 of the High Court Rules 1988 on the Plaintiff to show cause as to why this matter should not be struck out for want of prosecution or as an abuse of the process of the Court due to the failure of the Plaintiff to take any steps in the matter for over 06 months.

02. The said Notice has been duly served on the Plaintiff's solicitor by the Court Sheriff and a copy of the Notice as acknowledged by the Plaintiff's solicitor has been duly filed of record.

03. Having been duly served with the Court's Notice, the Plaintiff filed, on 15 April 2025, a Notice of Intention to Proceed and an Affidavit to Show Cause sworn by Karmila Devi, in accordance with the Court's directive.

04. Following the filing of the aforementioned documents by the Plaintiff, the Defendants' solicitors also filed an Affidavit in Opposition to the Affidavit of Karmila Devi on 30 June 2025, sworn by Richard Lal, the Manager of Operations for the 2nd Defendant.

05. Pursuant to further directions from the Court, both parties submitted their written submissions on 14 July 2025, and they agreed that the Court's ruling would be based on the affidavits and written submissions filed.

06. Having carefully considered the affidavit evidence and the written submissions of the parties, the Court now proceeds to deliver its ruling in accordance with Order 25, Rule 9 of the High Court Rules, as follows.

07. The Writ and Statement of Claim were filed on 28 March 2024. In the Statement of Claim, the Plaintiff asserts that she was a passenger aboard the vessel MV Westerland, captained by the 1st Defendant and owned by the 2nd Defendant company, on 2 April 2021, traveling from Natovi to Nabouwalu.

08. The Plaintiff contends that while boarding the vessel, she fell through a manhole at the parking area leading to the engine room, falling approximately twelve feet and sustaining various injuries.

09. She further alleges that the accident was due to the negligence of the 1st and 2nd Defendants and claims compensation and damages for her injuries and loss of income.

10. In their Statement of Defence, the Defendants deny the Plaintiff's allegations, asserting that she was not a passenger on the vessel, as no ticket was issued in her name and her name did not appear on the passenger list.

11. In further defence to the foregoing claims, the Defendants contend that, should it be established that the Plaintiff sustained injuries in the vessel on 02 April 2021, such injuries were directly caused by her own negligent conduct in contravention of

established safety protocols. It is asserted that the injuries resulted from her unjustified failure to adhere to the safety procedures in place, thereby attributing contributory negligence to the Plaintiff.

12. Furthermore, the Defendants have also questioned the validity and accuracy of the loss of income claimed by the Plaintiff, expressing doubt regarding the veracity and substantiation of such damages and had demanded the income and tax returns of the Plaintiff to be discovered.

13. In the Reply to the Statement of Defence, the Plaintiff denied the allegations contained therein and asserted that she was a passenger on the vessel on the date in question. The Plaintiff further contended that the Defendants were negligent in failing to ensure the enforcement of proper safety procedures during the disembarkation process and while passengers were boarding the bus within the vessel. Additionally, it is submitted that the Plaintiff's tax returns are irrelevant to the issues in this matter, and that any documents pertaining to her income shall be produced during the discovery stage.

14. Concurrently with the Reply to the Statement of Defence, the Plaintiff filed a Summons for Directions on 16 August 2024. However, when the matter was called before the Court on 3 September 2024, the Plaintiff's solicitors failed to appear. As a result, the Summons was struck out for want of prosecution.

15. In the Plaintiff's Affidavit to Show Cause, it is alleged that the Court Registry failed to notify the Plaintiff's solicitors of the returnable date for the Summons and had placed the Summons for Directions in another solicitor's folder, which prevented the Plaintiff's solicitors from retrieving the document. It is further argued that this oversight resulted in the Summons being struck out for want of prosecution. The Plaintiff appears to be relying on this explanation as a justification for the delay in progressing the matter.

16. I find this assertion to be without merit. Firstly, these allegations were raised by the Plaintiff's solicitors through a letter dated 8 October 2024, addressed to the Registry. This implies that, by the time the letter was drafted, the Plaintiff's solicitors were already aware that the Summons had been struck out.

17. In response to the allegations set forth in the aforesaid letter, the Senior Court Officer of this Court, via email to the Plaintiff's solicitors dated 6 December 2024, confirmed that, following an internal inquiry, the Registry staff had indeed called the Plaintiff's solicitors to notify them of the returnable date. It was further clarified that the Plaintiff's solicitors failed to answer the telephone calls from the Registry. Additionally, it was confirmed that the Summons was placed in the correct folder and was not misplaced or incorrectly filed, as alleged by the Plaintiffs solicitors. It is pertinent to note that it is the duty of solicitors to diligently follow up on their matters, and the Court Registry bears no responsibility for ensuring this obligation is fulfilled.

18. Secondly, it is evident that the Plaintiff failed to take any steps to file a new Summons for Directions and/or to seek re-instatement of the Summons that was struck out, at least from the date of the letter to the Court Registry. The Notice pursuant to Order 25, Rule 9, was issued only on 19 March 2025. This unreasonable delay is solely attributable to the Plaintiff and cannot be justified by the unfounded allegations made against the Court Registry.

19. In her Affidavit to Show Cause, the Plaintiff further contends that the delay was attributable to her ongoing financial difficulties resulting from the injuries she sustained, and her overriding obligation to support her family.

20. In the Court's considered view, this submission is also without merit and is perverse. The alleged incident occurred on 2 April 2021. According to the particulars of the injuries attributed to the Plaintiff, she sustained only superficial and muscular injuries[1]. There are no particulars indicating any injuries of a permanent or temporarily incapacitating nature. It is therefore unreasonable for the Plaintiff to assert that she was facing financial hardship as a result of injuries allegedly sustained in the incident. Furthermore, no details have been provided regarding her family circumstances to substantiate her claim that she was the primary breadwinner. Accordingly, the assertion that her familial obligations justify the delay in prosecuting this matter remains unsubstantiated.

21. I will now examine the relevant law concerning Order 25 Rule 9 of the High Court Rules. This rule confers upon the Court, the jurisdiction to strike out any cause or matter for want of prosecution or on the grounds of abuse of process, where no step has been taken in the matter for a period of six months. The relevant provision reads as follows,

Order 25 Rule 9

> *9 (1) If no step has been taken in any cause or matter for six months then any party on application or the court of its own motion may list the cause or matter for the parties to show cause why it should not be struck out for want of prosecution or as an abuse of the process of the court.*
>
> *(2) Upon hearing the application, the court may either dismiss the cause or matter on such terms as maybe just or deal with the application as if it were a summons for directions".*

22. The grounds provided in the above rule are firstly, want of prosecution and secondly, abuse of process of the Court. This is a rule that was introduced to the High Court Rules for case management purposes and was effective from 19 September 2005.

[1] Paragraph 10 of the Plaintiff's Statement of Claim filed on 28/03/2024.

23. The main characteristic of this rule is that the Court is conferred with power to act on its own motion in order to agitate the unduly lethargic litigation (**see; *Trade Air Engineering (West) Ltd v Taga*** *[2007] FJCA 9; ABU0062J.2006 (9 March 2007*). Well before the introduction of this rule, the Courts in Fiji have exercised this power to strike out the cause for want of prosecution following the leading English authorities such as ***Allen v. McAlpine*** *[1968] 2 QB 299;[1968] 1 All ER 543* and ***Birkett v. James*** *[1978] AC 297; [1977] 2 All ER 801*. Justice Scott, striking out the Plaintiff's action in ***Hussein v Pacific Forum Line Ltd*** *[2000] Fiji Law Report 24; [2000] 1 FLR 46 (6 March 2000)***,** stated that,

> *The principles governing the exercise of the Court's jurisdiction to strike out for want of prosecution are well settled. The leading English authorities are* ***Allen v. McAlpine*** *[1968] 2 QB 299;[1968] 1 All ER 543 and* ***Birkett v. James*** *[1978] AC 297; [1977] 2 All ER 801 and these have been followed in Fiji in, for example,* ***Merit Timber Products Ltd v. NLTB*** *(FCA Reps 94/609) and* ***Owen Potter v. Turtle Airways Ltd*** *(FCA Reps 93/205).*

24. The Court of Appeal of Fiji in ***Trade Air Engineering (West) Ltd v Taga*** (supra) held,

> *In our view the only fresh power given to the High Court under Order 25 rule 9 is the power to strike out or to give directions of its own motion. While this power may very valuably be employed to agitate sluggish litigation, it does not in our opinion confer any additional or wider jurisdiction on the Court to dismiss or strike out on grounds which differ from those already established by past authority.*

25. Pursuant to the above decision of the Court of Appeal, it is clear that the principles set out in ***Birkett v. James*** (supra) are still applicable to strike out any cause where no step is taken for six months, despite the introduction of a new rule (Or 25 R 9). Lord Diplock, in ***Birkett v. James*** (supra), explained the emerging trend of English Courts in exercising the inherent jurisdiction for want of prosecution. His Lordship held that,

> *Although the rules of the Supreme Court contain express provision for ordering actions to be dismissed for failure by the plaintiff to comply timeously with some of the more important steps in the preparation of an action for trial, such as delivering the statement of claim, taking out a summons for direction and setting the action down for trial, dilatory tactics had been encouraged by the practice that had grown up for many years prior to 1967 of not applying to dismiss an action for want of prosecution except upon disobedience to a previous peremptory order that the action should be dismissed unless the plaintiff took within a specified additional time the step on which he had defaulted.*
>
> *To remedy this High Court judges began to have recourse to the inherent jurisdiction of the court to dismiss an action for want of prosecution even where no previous peremptory order had been made, if the delay on the part of the plaintiff or his legal advisers was so prolonged that to bring the action on for hearing would involve a substantial risk that a fair trial of the*

issues would not be possible. This exercise of the inherent jurisdiction of the court first came before the Court of Appeal in ***Reggentin vs Beecholme Bakeries Ltd (Note)*** *[1968] 2 Q.B. 276 (reported in a note to* ***Allen v Sir Alfred McAlpine & Sons Ltd*** *[1968] 2 Q.B. 229) and* ***Fitzpatrick v Batger & Co Ltd*** *[1967] 1 W.L.R. 706*

The dismissal of those actions was upheld and shortly after, in the three leading cases which were heard together and which, for brevity, I shall refer to as Allen v McAlpine [1968] 2 Q.B. 229, the Court of Appeal laid down the principles on which the jurisdiction has been exercised ever since. Those principles are set out, in my view accurately, in the note to R.S.C, Ord. 25, R. 1 in the current Supreme Court Practice (1976). ***The power should be exercised only where the court is satisfied either (1) that the default has been intentional and contumelious, e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court; or (2) (a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between each other or between them and a third party***.(emphasis added)

26. The first limb in the above case is ***the intentional and contumelious default***. Lord Diplock gave two examples for that first limb in the above judgment. One is ***disobedience to a peremptory order of the Court,*** and the other is ***conduct amounting to an abuse of the process of the court.*** Thus, the second ground provided in Order 25 Rule 9, which is 'abuse of the process of the Court', is a good example for '***the intentional and contumelious default'*** as illustrated by Lord Diplock in ***Birkett v. James*** (supra). According to Lord Diplock abuse of the process of the Court falls under broad category of '***the intentional and contumelious default.'***

27. House of Lords in ***Grovit and Others v Doctor and Others (1997) 01 WLR 640, 1997 (2) ALL ER, 417,*** held that, commencing an action without real intention of bringing to conclusion amounts to an abuse of the process of the Court. It was held as follows,

The court exists to enable parties to have their disputes resolved. To commence and to continue litigation which you have no intention to bring to conclusion can amount to abuse of process. Where this is the situation the party against whom the proceedings are brought is entitled to apply to have the action struck out and if justice so requires (which will frequently be the case) the courts will dismiss the action. The evidence which was relied upon to establish the abuse of process may be the plaintiff's inactivity. The same evidence will then no doubt be capable of supporting an application to dismiss for want of prosecution. However, if there is an abuse of process, it is not strictly necessary to establish want of prosecution under either of the limbs identified by Lord Diplock in ***Birkett v James*** *[1978] A.C 297. In this*

case once the conclusion was reached that the reason for the delay was one which involved abusing the process of the court in maintaining proceedings where there was no intention of carrying the case to trial the court was entitled to dismiss the proceedings.

28. The Fiji Court of Appeal in ***Thomas (Fiji) Ltd –v- Frederick Wimheldon Thomas & Anor, Civil Appeal No. ABU 0052/2006,*** followed the principles of ***"Grovit and Others v Doctor and Others"*** (supra) and held that,

> *During the course of his careful and comprehensive ruling the judge placed considerable emphasis on the judgment of the House of Lords in **Grovit and Ors v Doctor** [1997] 2 ALL ER 417. That was an important decision, and the judge was perfectly right to take it into account. It should however be noted that Felix Grovit's action was struck out not because the accepted tests for striking out established in **Birkett v James** [1977] 2 ALL ER 801; [1978] AC 297 had been satisfied, but because the court found that he had commenced and continued the proceedings without any intention of bringing them to a conclusion. In those circumstances the court was entitled to strike out the action as being an abuse of the process of the Court. The relevance of the delay was the evidence that it furnished of the Plaintiff's intention to abuse the process of the Court.*

29. Master Azhar, as His Lordship then was, in the case of ***Amrith Prakash v Mohammed Hassan & Director of Lands; HBC 25/15: Ruling (04 September 2017)*** has held,

> *Both the **The Grovit** case and **Thomas (Fiji) Ltd** (supra) which follows the former, go on the basis that, "abuse of the process of the court" is a ground for striking out, which is independent from what had been articulated by Lord Diplock in **Birkett v James** (supra). However, it is my considered view that, this ground of "abuse of the process of the court" is part of '**the intentional and contumelious default',** the first limb expounded by Lord Diplock. The reason being that this was clearly illustrated by Lord Diplock in **Birkett v. James** (supra). For the convenience and easy reference, I reproduce the dictum of Lord Diplock which states that; "...**either (1) that the default has been intentional and contumelious, e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court…"** (Emphasis added). According to Lord Diplock, the abuse of the process of the court falls under broad category of '**the intentional and contumelious default'**. In fact, if a plaintiff commences an action and has no intention to bring it to conclusion it is an abuse of the process of the court. Thus, the default of a plaintiff intending not to bring it to conclusion would be intentional and contumelious. Accordingly, it will fall under the first limb of the principles expounded in **Birkett v. James** (supra). This view is further supported by the dictum of Lord Justice Parker who held in **Culbert v Stephen Wetwell Co. Ltd,** (1994) PIQR 5 as follows,*

> *"There is, however, in my view another aspect of this matter. An action may also be struck out for contumelious conduct, or abuse of the process of the Court or because a fair trial in action is no longer possible. Conduct is in the ordinary way only regarded as contumelious where there is a deliberate failure to comply with a specific order of the court. In my view however a series of separate inordinate and inexcusable delays in complete disregard of the Rules of the Court and with full awareness of the consequences can also properly be regarded as contumelious conduct or, if not that, to an abuse of the process of the court. Both this and the question of fair trial are matters in which the court itself is concerned and do not depend on the defendant raising the question of prejudice.*

30. Pursuant to the first limb of the test formulated in ***Birkett v James*** (supra) it is incumbent upon the Plaintiff to demonstrate that the delay was not ***intentional and contumelious*** to justify the continuation of the proceedings. In my understanding of the context in ***Birkett v James*** (supra), in an instance where the Notice pursuant to Order 25 Rule 9 of the High Court Rules was issued by the Court on its own motion, the Court need not look for the satisfaction of the second limb of the test if the first limb has been duly established to the satisfaction of the Court.

31. This view is fortified by the sentiments expressed by Lord Woolf MR in ***Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd*** *[1998] 1 WLR 1426; [1998] 2 All ER 181* where it was held,

> *While an abuse of process can be within the first category identified in* ***Birkett v James*** *it is also a separate ground for striking out or staying an action (see* ***Grovitt v Doctor****, 642 H to 643 A) which does not depend on the need to show prejudice to the defendant or that a fair trial is no longer possible. The more ready recognition that wholesale failure, as such, to comply with the rules justifies an action being struck out, as long as it is just to do so, will avoid much time and expense being incurred in investigation questions of prejudice, and allow the striking out of actions whether or not the limitation period has expired.*

32. Conversely, where a Notice under Order 25 Rule 9 of the High Court Rules was issued by the Court on its own motion, the Defendant bears no such obligation to prove prejudice nor is it a prerequisite for the Court to consider prejudice to the Defendant when determining whether to strike out an action under Order 25 Rule 9 of the High Court Rules 1988.

33. It suffices to be judiciously determined by the Court that the Plaintiff has displayed persistent inactivity and a flagrant disregard for the Rules of Court, including non-compliance with a peremptory order issued by the Court, with full knowledge of the

attendant consequences, when the Court on its own motion has issued a Notice under Order 25 Rule 9 of the High Court Rules. As exemplified in the first limb of ***Birkett v James*** (supra), such conduct may also constitute an abuse of process. Accordingly, in such an instance, it is within the Court's discretion to strike out the action *suo motu* pursuant to Order 25 Rule 9 of the High Court Rules, without a need for the Defendant to establish any prejudice to its case.

34. The burden of proof in determining the matters under Order 25 Rule 9 of the High Court Rules may fall as a "negative burden of proof" on the Plaintiff itself. Master Azhar, as His Lordship then was, in ***Amrith Prakash v Mohammed Hassan & Director of Lands*** (Supra) further held,

> *If the court issues a notice, it will require the party, most likely the Plaintiff, to show cause why his or her action should not be struck out under this rule. In such a situation, it is the duty of the Plaintiff to show to the Court negatively that, there has been no intentional or contumelious default, there has been no inordinate and inexcusable delay, and no prejudice is caused to the Defendant. This is the burden of negative proof. In this case, the Defendant does not even need to participate in this proceeding. He or she can simply say that he or she is supporting court's motion and keep quiet, allowing the plaintiff to show cause to the satisfaction of the court not to strike out plaintiff's cause. Even in the absence of the defendant, the court can require the plaintiff to show cause and if the court is satisfied that the cause should not be struck out, it can give necessary directions to the parties. Generally, when the notice is issued by the court, it will require the defendant to file an affidavit supporting the prejudice and other factors etc. However, this will not relieve the Plaintiff from discharging his or her duty to show cause why his or her action should not be struck out. In the instant case, it was the notice issued by the court on its own motion. Thus, the Plaintiff has the burden of negative proof and or to show cause why his action should not be struck out for want of prosecution or abuse of the process of the court.*

35. The second limb of the test as expounded in the case of ***Birkett v. James*** (supra) is twofold. The two components of the second limb is as follows,
    (a) that there has been inordinate and inexcusable delay on the part of the Plaintiff or his lawyers, and,
    (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants. In short, inordinate, and inexcusable delay and the prejudice which makes the fair trial impossible.

36. Fiji Court of Appeal in ***New India Assurance Company Ltd v Singh*** ***[1999] FJCA 69; Abu0031u.96s (26 November 1999),*** unanimously held that,

> *We do not consider it either helpful or necessary to analyse what is meant by the words 'inordinate' and 'inexcusable'. They have their ordinary meaning. Whether a delay can be described as inordinate or inexcusable is a matter of fact to be determined in the circumstances of each individual case.*

37. However, in ***Deo v Fiji Times Ltd*** *[2008] FJCA 63; AAU0054.2007S (3 November 2008)* the Fiji Court of Appeal cited with approval the meaning considered by the Court in an unreported case. It was held in this case,

> *The meaning of "inordinate and inexcusable delay" was considered by the Court of Appeal in* ***Owen Clive Potter v Turtle Airways Limited v Anor*** *Civil Appeal No. 49 of 1992 (unreported) where the Court held that inordinate meant "so long that proper justice may not be able to be done between the parties" and "inexcusable" meant that there was no reasonable excuse for it, so that some blame for the delay attached to the plaintiff.*

38. In considering whether a period of delay to be inordinate and contumelious pursuant to Order 25 Rule 9 of the High Court Rules, Master Azhar, as His Lordship then was, in ***Amrith Prakash v Mohammed Hassan & Director of Lands*** (Supra) went on to hold,

> *Order 25 Rule 9 by its plain meaning empowers the Court to strike out any cause either on its own motion or an application by the defendant if no steps taken for six months. The acceptable and/or tolerable maximum period for inaction could be six months. The threshold is six months as per the plain language of the rule. It follows that any period after six months would be inordinate and excusable so long that proper justice may not be able to be done between the parties and no reasonable excuse is shown for it. Therefore, whether a delay can be described as inordinate or inexcusable is a matter of fact which (is) to be determined in the circumstances of each and every case.*

39. In light of the foregoing authorities, it is clear that, since the Notice was issued by this Court on its own motion pursuant to Order 25 Rule 9 of the High Court Rules, the onus is on the Plaintiff to establish sufficient cause why the action should not be struck out under that provision. Any argument to the contrary is legally unsustainable and may, in itself, amount to an abuse of the Court's process.

40. Having carefully examined the history of the proceedings, the Court observes that the Plaintiff and/or its solicitors have contravened the rules of the Court by failing to take any substantive steps to advance the matter for a period exceeding six (6) months from the date of the close of the proceedings.

41. Although a Summons for Directions was filed on 16 August 2024, the Plaintiff subsequently failed to diligently prosecute the matter within a period of six (6) months.

As discussed in the preceding paragraphs of this ruling, the Court finds the reasons for the delay, as set forth in the Plaintiff's Affidavit to Show Cause, to be without merit. Accordingly, the Court dismisses the asserted reasons and concludes that the delay remains unexplained and/or unsubstantiated.

42. As noted in the authorities discussed above, the Defendant bears no burden to demonstrate prejudice resulting from the delay where the Order 25 Notice was issued by the Court *sua sponte*. Nevertheless, in their Affidavit in Opposition filed on 30 June 2025, the Defendants submit that the Plaintiff failed entirely to initiate or proceed with the discovery process, as required by the automatic directions under Order 25 Rule 8, from the close of pleadings. The Defendants further contend that no documents have been discovered by the Plaintiff to date.

43. Additionally, the Defendants assert that two employees of the 2nd Defendant, namely Luke Vunilu and Sefinalae, who were employed on the vessel MV Westerland on the date of the incident and who attended to the alleged occurrence, are no longer in the employment of the 2nd Defendant. The Defendants further contend that this absence of the witnesses may prejudice their case, implying that they would be unable to locate or summon these individuals for testimony.

44. Although the Defendants have not furnished additional particulars regarding the current whereabouts or availability of these witnesses, or on the extent of their reliance on the testimonies of these witnesses, it is evident that, given that more than four and a half years have elapsed since the alleged incident, such delay could certainly be prejudicial to the defence. The passage of time could adversely affect the ability to locate these witnesses and may impair the memory of the witnesses, particularly in a case of this nature. In any event, it is reiterated that the Defendant bears no onus to establish prejudice when the Order 25 Notice is issued by the Court *sua sponte*.

45. Based on the Court's findings detailed in the foregoing paragraphs of this ruling, the delay in these proceedings is solely attributable to the Plaintiff and remains unexplained and/or unsubstantiated. The delay, combined with the Plaintiff's failure to comply with the Court's rules as outlined above, renders such conduct both deliberate and contumelious, and the delay inordinate and inexcusable.

46. As held in ***Amrith Prakash v Mohammed Hassan & Director of Lands*** (supra), the legally acceptable period for inaction in a civil cause in Fiji is 06 months as embodied in Order 25 Rule 9 of the High Court Rules 1988.

47. Any delay beyond such acceptable period must be adequately explained by the party responsible. The Plaintiff's failure to provide a reasonable explanation for the delay may be construed as evidence of a lack of genuine intention to conclude the proceedings within a reasonable time from the outset.

48. In this context, it is pertinent to reiterate the words of Lord Justice Parker in ***Culbert v Stephen Wetwell Co. Ltd,*** *(1994) PIQR 5,* where it was held,

> *There is however, in my view another aspect of this matter. An action may also be struck out for contumelious conduct, or abuse of the process of the Court or because a fair trial in action is no longer possible. Conduct is in the ordinary way only regarded as contumelious where there is a deliberate failure to comply with a specific order of the court. In my view however a series of separate inordinate and inexcusable delays in complete disregard of the Rules of the Court and with full awareness of the consequences can also properly be regarded as contumelious conduct or, if not that, to an abuse of the process of the court. Both this and the question of fair trial are matters in which the court itself is concerned and do not depend on the defendant raising the question of prejudice.* (Emphasis added).

49. In light of the foregoing discussion and findings, the Court concludes that, despite initiating this action, the Plaintiff's conduct evidences a clear lack of genuine intention to resolve the proceedings within a reasonable timeframe. Such conduct constitutes contumelious behaviour and amounts to an abuse of the Court's process.

50. The House of Lords in ***"Grovit and Others v Doctor and Others" (1997) 01 WLR 640, 1997 (2) ALL ER, 417,*** held that, commencing an action without real intention of bringing to conclusion amounts to an abuse of the process of the court. It was held as follows,

> *The Court exists to enable parties to have their disputes resolved. To commence and to continue litigation which you have no intention to bring to conclusion can amount to abuse of process. Where this is the situation the party against whom the proceedings is brought is entitled to apply to have the action struck out and if justice so requires (which will frequently be the case) the courts will dismiss the action. The evidence which was relied upon to establish the abuse of process may be the plaintiff's inactivity. The same evidence will then no doubt be capable of supporting an application to dismiss for want of prosecution. However, if there is an abuse of process, it is not strictly necessary to establish want of prosecution under either of the limbs identified by Lord Diplock in* ***Birkett v James*** *[1978] A.C 297. In this case, once the conclusion was reached that the reason for the delay was one which involved abusing the process of the court in maintaining proceedings where there was no intention of carrying the case to trial the court was entitled to dismiss the proceedings.*

51. At this juncture, I would reiterate a point frequently observed in previous rulings of this Court, that in litigation, some parties may deliberately engage in sporadic pursuit or default, with the intent to prolong proceedings and leave the matter pending against the opposing party, thereby avoiding a final resolution.

52. Courts must not permit such practices. Such conduct should be promptly disallowed, as it constitutes an abuse of the Court's processes and causes an undue and inefficient consumption of the Court's limited time and resources.

53. In ***Singh v Singh*** (supra) it was held,

> *The more time that is spent upon actions which are pursued sporadically, the less time and resources there are for genuine litigants who pursue their cases with reasonable diligence and expedition and want their cases to be heard within a reasonable time.*

54. Such practices also infringe upon the fundamental rights guaranteed under Sections 15(2) and 15(3) of the Constitution, which provide, respectively,

> *(2) Every party to a civil dispute has the right to have the matter determined by a court of law or if appropriate, by an independent and impartial tribunal.*
> *(3) Every person charged with an offence and every party to a civil dispute has the right to have the case determined within a reasonable time.*
> (Emphasis added)

55. In this regard, recent developments within the English Courts demonstrate a broader and more holistic approach to the interest of justice, emphasizing the overall fairness of proceedings. Courts are increasingly likely to dismiss spurious or unnecessary claims that do not contribute to the substantive finality of the matter.

56. In the case of ***Securum Finance Ltd v Ashton [2001] Ch 291 (Securum Finance Ltd)*** it was held,

> *[30] the power to strike out a statement of claim is contained in CPR r 3.4. In particular, rule 3.4 (2) (b) empowers the court to strike out a statement of case … if it appears to the court that the statement of case is an abuse of the court's process … In exercising that power the court must seek to give effect to the overriding objective set out in CPR 1.1: see rule 1.2 (a). The overriding objective of the procedural code embodied in the new rules is to enable the court "to deal with cases justly": see rule 1.1 (1). Dealing with a case justly includes "allotting to it an appropriate share of the court's resources, while taking into accounts the need to allot resources to other cases".*
>
> *[31] In the **Arbuthnot Latham**[2] case this court pointed out in a passage which I have already set out that:*

[2] ***Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd*** ***[1998] 1 WLR 1426; [1998] 2 All ER 181***

> *In **Birkett v James** the consequence to other litigants and to the courts of inordinate delay was not a consideration which was in issue. From now on it is going to be a consideration of increasing significance.*

57. In ***Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd*** (supra), Lord Woolf, MR, expressed the above sentiments in clear and unequivocal terms.

> *In **Birkett v James** the consequence to other litigants and to the courts of inordinate delay was not a consideration which was in issue. From now on it is going to be a consideration of increasing significance. Litigants and their legal advisers, must therefore recognise that any delay which occurs from now on will be assessed not only from the point of view of the prejudice caused to the particular litigants whose case it is, but also in relation to the effect it can have on other litigants who are wishing to have their cases heard and the prejudice which is caused to the due administration of civil justice. The existing rules do contain time limits which are designed to achieve the disposal of litigation within a reasonable time scale. Those rules should be observed.*

58. Such sporadic and contumelious conduct can cause significant prejudice to the opposing party, as the effective administration of justice is undermined when a matter remains pending without substantive steps toward finality.

59. Furthermore, after careful consideration of the Plaintiff's claim, and without prejudice, the Court finds that it appears to be exaggerated, as the particulars of the injuries do not substantiate the extent of the claim or the relief sought. Accordingly, the Court concludes that proceeding further with this matter would be contrary to the interests of justice, especially given the contumelious conduct and the unacceptable delay in the proceedings.

60. Accordingly, the Court is of the considered opinion that the interests of justice would not be served by allocating further time in prosecuting this action, as it manifestly appears that the Plaintiff lacks a *bona fide* intention to bring these proceedings to a conclusion within a reasonable period and as such it would be contrary to the interests of due administration of justice, as expounded in the case of ***Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd*** (supra).

61. Lord Woolf MR in ***Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd*** (supra) further held,

> *Whereas hitherto it may have been arguable that for a party on its own initiative to in effect "warehouse" proceedings until it is convenient to pursue them does not constitute an abuse of process. When hereafter this happens, this will no longer be the practice. It leads to stale proceedings*

which bring the litigation process into disrespect. As case flow management is introduced, it will involve the courts becoming involved in order to find out why the action is not being progressed. ***If the claimant has for the time being no intention to pursue the action this will be a wasted effort. Finding out the reasons for the lack of activity in proceedings will unnecessarily take up the time of the court. If, subject to any directions of the court, proceedings are not intended to be pursued in accordance with the rules they should not be brought.*** *If they are brought and they are not to be advanced, consideration should be given to their discontinuance or authority of the court obtained for their being adjourned generally. The courts exist to assist parties to resolve disputes, and they should be used by litigants for other purposes.* (Emphasis added)

62. The Court accordingly finds that the Plaintiff has failed to establish any valid cause why the action should not be struck out for abuse of process and/or for want of prosecution. Consequently, the Court orders that the Writ of Summons and the Statement of Claim be struck out pursuant to Order 25, Rule 9 of the High Court Rules.

63. Consequently, the Court makes the following final orders,

    1. Plaintiff's Writ of Summons and the Statement of Claim filed on 28 March 2024 is hereby struck out pursuant to Order 25 Rule 9 of the High Court Rules subject to a cost of $ 1000.00, as summarily assessed by the Court, to be paid to the Defendants within 30 days.

    2. The Cause is accordingly struck out and dismissed and the file is closed.

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

At Suva

30/09/2025.