

**IN THE EMPLOYMENT RELATIONS COURT AT SUVA**

**ORIGINAL JURISDICTION**

**CASE NUMBER:** ERCA 11 of 2024

**BETWEEN:** **MONIKA SHOBNA LAL**

**APPELLANT**

**FIJI NATIONAL UNIVERSITY**

**RESPONDENT**

*Appearances:* Ms. S. Dean for the Appellant.

Mr. R. Prasad for the Respondent.

*Date/Place of Judgment:* Wednesday 5 November 2025 at Suva.

*Coram:* Hon. Madam Justice Anjala Wati.

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**JUDGMENT**

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***Cause***

1. The appellant is the former employee of the respondent Fiji National University ("**FNU**"). She is appealing the decision of the Tribunal of 12 July 2024.
2. The Tribunal had ordered the employee to pay to FNU a sum of \$6,000 with 10% interest per annum within 21 days for breach of the training bond which the appellant had entered into with FNU when she left for studies abroad for a period of 18 months.

***Parties Position – Re: The claim and the Defence***

3. The University's claim at the Tribunal was that the employee had applied for a full-time study leave and education allowance under the plaintiff's Human Resource Policy No. 21 for one and half years beginning 2 January 2018 to 31 July 2019.

4. It is claimed that on or about 21<sup>st</sup> November 2017, the employee entered into and signed a training bond with the University to obtain her Master's degree from the University of Newcastle, New South Wales, Australia.
5. The University says that the essential terms of the training bond were as that:
  - (a) *the employee will work in the University upon completion of the said training/opportunity in the same position held in such capacity as the University may direct till her contract of employment came to an end or such shorter period as the University determined; and*
  - (b) *if the employee did not serve for such period, for any reason whatsoever, then she must pay in one single payment an amount not exceeding the total amount of the bond as the University determined in its discretion..*
6. FNU asserted in its claim that a further term of the bond was that it was to pay the employee a sum of \$13,500.00 (\$750.00 for 18 months) as educational allowance for the duration of her study.
7. According to the FNU, the employee resigned from employment on or about 4 May 2020, without giving the requisite notice stipulated in the contract of employment dated 24 October 2017.
8. The FNU asserted that the worker served for only 10 months after completing her studies as opposed to the 18 months she had to serve under the training bond agreement.
9. The FNU therefore required the employee to refund \$6,000 education allowance, being the period for which the worker did not serve the University.
10. In her statement of defence, the employee disputed owing the sums claimed. She stated that the bond was superseded by a separate agreement which she had entered into with the Australian Department of Foreign Affairs and Trade on 13 October 2017. She also stated that the bond was not enforceable since the employment contract was suspended for the duration of the study leave.
11. She also relied on the fact that the employer had accepted her resignation unconditionally.
12. The defendant had also filed a counter-claim in the sum of \$36,766.99 with 8% FPNF in the sum of \$2,941.36 on the basis that FNU did not pay her the salary for the study period from 2 January 2018 to 31 July 2019. She claims that her salary for this period ought to have been paid to her when she started work.

*Tribunal's Findings*

13. The Tribunal found that the employee had received from FNU a sum of \$750 per month whilst she was on study leave and that she was obligated under the bond to serve the FNU for the period of study leave. She failed to honor the agreement as she did not serve for complete 18 months but 10 months only. She was therefore liable to pay to the University the sums claimed.

*The Appeal and Analysis*

14. The employee appeals the decision on the following grounds:
- *The Tribunal erred in law and fact when he only considered the claim of the University but not her counter-claim.*
  - *The Tribunal erred in law and fact when he failed to uphold that the University had suspended her employment contract and all the costs associated with her scholarship to undertake Master's Degree in Environmental Risk Assessment and Remediation for the duration of 1 year 6 months in 2018 was fully funded by Department of Foreign Affairs and Trade, Australian Government, through her personal application.*
15. Although the Tribunal had not specifically dismissed the counter-claim, its judgment amounted to dismissing it. The employee's claim was that she was not paid her salary for the period of study leave when she resumed work. That claim arose from the same bond which she entered into with the FNU. There was no such provision for payment of the suspended salary for the period she was unemployed. To that end, the appellant's claim was not established and the Tribunal dealt with it by not addressing the same
16. The defendant's claim was not substantiated at the trial or even before me. In the appeal the appellant has failed to show the evidence based on which her claim could even be looked at and determined. No such evidence was produced except for the defendant's assertion. If a party failed to produce evidence in respect of their claim, the claim will stand dismissed.
17. It would have been tidier if the Tribunal addressed the counter-claim and stated that there was no evidence to establish the claim. Be that as it may, as the appellate court I can consider the evidence pertaining to the counter-claim and determine whether it was established.
18. The evidence clearly establishes that the appellant employee was informed that her salary will be suspended for the period on which she is on study leave. Her pay will begin when she started work again. In other words, she was on leave without pay.

19. The study leave policy HR 21 is also very clear that *“an employee proceeding on full time study leave shall have his/her contract suspended with salaries, term and benefits suspended at the level at which it was on the date the employee proceeded on the leave, which shall be restored when the employee returns from the leave having successfully completed his/her study”* **Clause 3.1**
20. The HR Policy and the letter to the worker establishes clearly that the worker will not be paid wages for the period of leave. She did not work for that period. She got paid the allowance for 18 months. Her job was kept secured by FNU for 18 months whilst she was away. There was nothing unconscionable or inequitable on the part of the employer to require the employee to serve her bond.
21. Clause 3.5 of the HR Policy 21 is relevant.

*“Each employee proceeding on full-time study leave shall be required to enter into a bond to serve the University for a period:*

- a. That is equivalent to the period of study leave if the employee proceeding on the study leave did not seek any educational allowance from the University, or*
  - b. That is twice the period of the study leave if the employee sought and received the educational allowances for study or tuition payment”.*
22. The worker cannot refuse to be bound by the bond or agreement between her and the FNU on the basis that she had entered into a contract with the Department of Foreign Affairs and Trade, Australian Government. The rights and liabilities under the bond with FNU was never waived or transferred or assigned to some other person or institution. Her counter-claim was frivolous and vexatious and that is why, maybe, the Tribunal did not deal with it by dismissing it.

#### ***Final Orders***

23. The appeal is dismissed. The Tribunal’s judgment is upheld to be complied with, within 21 days.
24. The appellant should pay to the defendant costs of this proceedings in the sum of \$5,000. The costs too shall be paid within 21 days.
25. For clarity, the amount to be paid by the appellant is as follows:

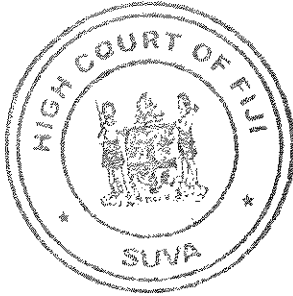
***\$6,000 - Unpaid Bond (ordered by the Tribunal)***

***\$600 - Interest at 10% for 1 year (ordered by the Tribunal)***

**\$5000 - Costs of the Appeal Proceedings**

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**\$11,600 – Total Sum to be Paid.**



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**Hon. Madam Justice Anjala Wati**

**Judge**

**5.11.2025**

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**To:**

- 1. Nilesh Sharma Lawyers for the Appellant.**
- 2. FNU Legal In-House for the Respondent.**
- 3. File: Suva ERCA 11 of 2024.**

