

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

Civil Action No. HBC 81 of 2021

In the matter of a Land Claim by Maciusela Railumu claiming to be the rightful owner of the Yavusa: Kai Totogo, (extinct) for the Land legally described as Lot 27, Plan J/15, 3, Sch A, in the District of Nasinu, Ovalau.

**BETWEEN:** **SIMIONE VATAVATALEVU** of Vuniivisavu, Lovoni, Ovalau, residing at Draiba District of Nasinu, employed as Senior Supervisor of Pacific Fishing Company Ltd (PAFCO).

**PLAINTIFF**

**AND:** **MACIUSELA RAILUIMU** of Korolevu, Coral Coast, Nadroga, Carrier Driver/Businessman.

**FIRST DEFENDANT**

**AND:** **SILIVIA KARALAINI** Residing in Dogoru Village, Wairiki, Cakaudrove.

**SECOND DEFENDANT**

**AND:** **PECELI DAVOIVALE** Korovou Settlement, Levuka, Ovalau.

**THIRD DEFENDANT**

**AND:** **ITAUKEI LAND TRUST BOARD** a body corporate established under the iTaukei Land Trust Act 1940 having its registered office at 431 Victoria Parade, Suva.

**FOURTH DEFENDANT**

**AND:** **ITAUKEI LANDS & FISHERIES COMMISSION** of 87 Queen Elizabeth Drive, iTaukei Trust Fund Complex, Suva, Fiji.

**FIFTH DEFENDANT**

**BEFORE:** **Hon. Justice Vishwa Datt Sharma**

**COUNSEL:** **Mr. Raikanikoda S.** for the Plaintiff/Applicant

**Ms. Nawaikula L.** for the 4<sup>th</sup> Defendant/Respondent

**Ms. Nalumatua E.** for the 5<sup>th</sup> Defendant/Respondent

**DATE OF JUDGMENT:** 12<sup>th</sup> November 2025

**JUDGMENT**

***[Reinstatement]***

On the outset, it is noted that the Substantive Action was filed and proceeded with in 2021 which was pending in the system for five years now.

### **Introduction**

1. The Plaintiff filed a Notice of Motion together with an Affidavit in Support on 20<sup>th</sup> May 2025 and sought for the following orders:
  - (a) That the above matter which was struck out on the 03<sup>rd</sup> day of April 2025 due to the 'non-appearance' of the Plaintiff and Counsel be 're-instated' to the cause list and a 'fresh mention date' be assigned.
2. Subsequently, the Plaintiff filed a Supplementary Affidavit in Support, deposed by one Etonia Moce (formerly an associate solicitor/barrister with Vosarogo Lawyers, now with Tuifagalele Legal).
3. The Fifth Defendant, iTaukei Lands & Fisheries Commission filed an affidavit in opposition to the Plaintiff's Notice of Motion seeking for Reinstatement.

### **Brief background**

4. The Plaintiff filed a Substantive Originating Summons on 12<sup>th</sup> March 2021 and sought for an order 'that the Plaintiff be granted orders to recover and acquire the said land legally described as Lot 27, Plan J/15, 3 that was allocated to Mataqali Vatuni, Tokatoka, Darawau, Yavusa: Kai Totogo now being extinct, and the person now claiming the said land does not have any inherited biological or legal rights to such claim and therefore should not be accorded access to the said land from now and onwards or the said land be reverted to the Yavusa: Navuivula, Mataqali: Niuma, Tokatoka: Nasauvou, together with other orders.
5. This claim in fact arises from an alleged incident on 18<sup>th</sup> March 2017, when the First Named Defendant and his family entered Draiba village threatening the villagers with an eviction notice concerning the disputed land, Lot 27, J15, 3.
6. This eviction was unsuccessful due to the Plaintiff filing a petition, resulting in the land being lawfully owned by the Draiba village.

### **Plaintiff's Contention.**

7. On 2<sup>nd</sup> April 2025, Mr. Sitiveni Raikanikoda instructed Mr. Etonia Moce to appear in this matter HBC 81 of 2021 on 3<sup>rd</sup> April 2025, since the Principal Solicitor, Mr. Raikanikoda was engaged and attending another High Court Civil matter HBC 164 of 2022 at Lautoka High Court.

8. The Matter was struck out and dismissed for non-appearance.
9. The Matter had merits and ought to be heard as striking out will not resolve the issue at hand and filed a formal application for reinstatement.
10. There will be no prejudice caused to the Defendants if orders are granted.
11. Mr. Etonia Moce, in his supplementary affidavit in support stated that after receiving instructions and fees from Mr. Raikanikoda, his principal Mr. Vosarogo instructed him to attend a corporate client at Nadi. He then instructed associate solicitor, Vaciseva to take the instruction.
12. Non-appearance on his part was unintentional.
13. The Plaintiff has a genuine claim and seeks reinstatement.

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

14. Relies on affidavit in opposition deposed by Apimeleki Tola filed on 5<sup>th</sup> August 2025.
15. The Matters were scheduled for hearing on both the Plaintiff's Substantive Originating Summons and the fifth Defendants striking out application.
16. No response to Defendant's striking out application and answering affidavit to substantive application was ever filed by the Plaintiff's Solicitor's in 11 months and 07 months respectively indicating a laxity on the part of the Plaintiff.
17. A Non-appearance and double booking by the Plaintiff Counsel of Court dates is an administrative issue and the hearing date in this pending matter was set seven (7) months prior on 5<sup>th</sup> September 2024 which gave the Plaintiff/solicitors enough time to make the necessary arrangements or avoid double bookings of Court dates.
18. There is no evidence in Vola Kawa Bula (VKB) to the Plaintiff's claim given that the Plaintiff's maternal links as per their record VKB 20/390 is Yavusa Sawaniika, Mataqali Tuirara, Tokatoka Tuirara, Koro Tokau - Annexure marked 'AT1'- copy of the Plaintiffs VKB record and 'AT2' is Plaintiff's maternal VKB record - refers.
19. Seeks for dismissal of Plaintiff's reinstatement application and costs.

#### **Determination**

20. The possible orders that could be made in a 'Reinstatement' application is to either:

- "Dismiss the application and/or
  - Allow such application."
21. In the current case, this Court struck out and dismissed both applications seeking striking out and the Substantive Originating Summons which had probable tribal issues on 3<sup>rd</sup> April 2025.
22. However, the power vested with Court to 'reinstate' an action is discretionary. The principles to be applied to the exercise of the Judicial discretion to 'reinstate' an action are:
- A. Adequate reasons must be given for non-appearance,
  - B. The applications to reinstate must be made promptly, and
  - C. Prejudice.
- A. Reasons for non-appearance**
23. It cannot be disputed that it is well established that parties to the proceedings have a duty to prosecute their claims diligently and appear when required to do so upon the assigned returnable Court Hearing date.
24. It must be borne in mind that seeking for reinstatement is not automatic and must be supported clearly and with compelling reasons.
25. The Counsel representing the Plaintiff had filed a supporting affidavit to its reinstatement application to explain his absence and/or non-appearance on 03<sup>rd</sup> April 2025 at paragraph 9 he deposed:
- 'That this non-appearance on my part was unintentional as I was genuinely tied up with Lautoka High Court Matter HBC 164 of 2022 and I have given my instructions to Mr. Moce to attend my matter and I did not know that he will defy acting on my instructions despite paid him advance appearance fees.'
26. The Counsel [Etonia Moce] instructed by Mr. Raikanikoda deposed in his supplementary affidavit that because of his commitment, he had to ask associate Solicitor, Vaciseva to take the same instructions who agreed to shoulder in for Etonia Moce's absence.
27. The explanation and reasons provided for in Mr. Raikanikoda and Mr. Moce's affidavits are extremely unsatisfactory and not good and reasonable excuse for non-appearance specially when the hearing date in this case was fixed some seven (07) months prior and was for Hearing of two applications; Summons to strike out the Plaintiff's Substantive Originating Summons and for Hearing of the Substantive Originating Summons. This Court in its list has other matters ready awaiting assignment and scheduling of hearing and trial dates. The precious Court's time was wasted unnecessarily when, another old awaiting trial matter could have been fixed in place of this current case for this day and dealt with accordingly.

28. The Counsel representing the Plaintiff had done a double booking of Court dates which is an administrative issue and had enough time to make necessary arrangements or avoid double bookings.
29. The Counsel failed to prioritize this matter and proceeded to double book his diary for the Lautoka High Court matter and had to resort to other Counsel's assistance, who failed to appear before this Court and carry out the necessities as per his instructions.

**B. Length of delay**

30. This Court struck out and dismissed the application on 03<sup>rd</sup> April 2025 which was scheduled for hearing for non-appearance, of the Plaintiff and/or his counsels.
31. The Reinstatement application was filed after a lapse of 47 days of the striking out and dismissal of the applications on 20<sup>th</sup> May 2025.
32. The Plaintiff/ Counsel in his oral submissions to Court on 'Reinstatement' just reiterated what the substantive action was all about and why was it filed rather than arguing and submitting 'why the applications dismissed by the Honourable Court should not be reinstated to the list?'.  
33. However, Court took into consideration the affidavits filed in Support of his applications.
34. The reasons for the inordinate delay of 47 days has not been explained to this Court to allow this Court to make a consideration for the relief sought for the reinstatement, which tentamounts to a clear of abuse of the Court process and cannot be treated as reasonable:
  - Application for reinstatement was not made promptly as was required of him within a reasonable timeframe,
  - The delay of 47 days is inordinate which is materially longer than the time which is usually regarded by laws as an acceptable period, and.
  - No explanation has been given for the delay in filing this applications for the reinstatement.

**C. Prejudice**

35. 'Prejudice' can be of two kinds. It can be either '**specific**' that is arising from particular event that may or may not occur during the relevant period or '**general prejudice**' that is implied for the extent of delay.
36. Hence, the Defendant is being prejudiced by the inordinate delay in the prosecution of this claim since the matter has been impending determination and disposition since 2021.
37. The Hearing could have been proceeded with on the hearing date of 3<sup>rd</sup> April 2025, however, due to the Plaintiff's and its instructed agent's actions, double booking and giving priority to

the Lautoka High Court Case over this case led to the striking out and dismissal of the case in its entirety.

38. The fundamental questions that I asked myself, **'whether the Plaintiff was serious in this prosecution of this case and successfully obtained the relief as sought in the prayers?'** If the Plaintiff was serious enough, then since he was the one who was hired to represent and prosecute the Plaintiff's case, however, the Plaintiff failed to do so when he was aware that the case was scheduled for hearing and determination by this Court on the same date.

### **In conclusion**

39. Whether the Plaintiff has locus which is a foundational requirement for filing this legal action or not in the absence of any legal or customary connection between the Plaintiff and Lot 27, Plan J/15, which is the extinct Mataqali land of Yavusa Totogo and the unsupported assertion of ownership via maternal links, which is allegedly contradicted by the VKB (20/390), confirming lineage to Yavusa Sawaniika; Mataqali Tuirara, Tokatoka Tuirara, Koro Tokou is the impending substantive issue for determination within the Originating Summons.
40. The above issue in any event was a triable issue that needed determination and could only be heard and determined by the filing a Writ of Summons coupled with a Statement of Claim and *viva voce* evidence be heard and cannot be dealt with summarily by filing an Originating Summons which in fact is a summary proceedings.
41. Accordingly, the Plaintiff's 'reinstatement' application is fatal and is dismissed in its entirety.

### **Costs**

42. The Plaintiff to pay the Defendant summarily assessed costs of \$2,000 within 14 days timeframe.
43. The Costs assessed and arrived at for the reasons, the hearing did not proceed and the action was struck out and dismissed coupled with the fact the loss of Court time when an alternative matter for hearing and/or trial could have been fixed for that day, if the Plaintiff knew that he will not be able to prosecute the case because of his double booking.

### **Orders**

- (i) The Plaintiff's notice of motion seeking for 'reinstatement' of its substantive matter to list which was struck out and dismissed and on 3<sup>rd</sup> April 2025 is refused and accordingly dismissed in its entirety.

- (ii) The Plaintiff to pay the Defendant summarily assessed costs of \$2,000 within 14 days timeframe.
- (iii) File now stands closed.

Dated at **Suva** this **12<sup>th</sup>** day of **November** ,2025.



  
VISHWA DATT SHARMA  
PUISNE JUDGE

CC: Raikanikoda & Associate, Suva  
Legal Department - ITLTB, Suva  
Office of the Attorney General Chambers, Suva