

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 347 of 2019

IN THE MATTER of an Application pursuant
to the provisions of the Probate, Succession
and Administration (Amendment) Act 2018

BETWEEN : LIKU LITEA of Villa 110 Belo Circle, Pacific Harbor, Deuba, Domestic Duties.

PLAINTIFF

AND : LINDA PAMELA OUAKNINE of 13928 Chandler Boulevard, Sherman Oaks,
California 91401, USA Care of Vijay Maharaj Lawyers, Marks Street, Suva.

DEFENDANT

BEFORE: Hon. Justice Vishwa Datt Sharma

COUNSEL: Ms. Ulamila F. - for the Plaintiff
Mr. Maharaj V. with Lachman K. - for the Defendant

DATE OF RULING: 11th August, 2025.

RULING ON ADJOURNMENT

[To vacate trial/adjourn and effect settlement]

A. Introduction

1. The Plaintiff made an oral application for the vacation of the Hearing date and a short adjournment in Court.
2. The substantive matter was fixed for Hearing today [11th August 2025] at 9.30 am. This Hearing date was scheduled on 26th February 2025, some six months ago.
3. Before the commencement of the Hearing, the Plaintiff's counsel informed Court that the Plaintiff this morning was on her way to Court proceedings and was involved in an accident. She sought for the matter to be stood down and Court to allow Counsel to contact the Plaintiff by phone and to find out on her status.
4. When the Court resumed, the Plaintiff's Counsel informed Court that the Plaintiff's mobile phone was diverting and therefore unable to contact and speak to the Plaintiff.
5. On the other hand, Counsel representing the Defendant told Court that he was ready to proceed with the hearing, however, understood the circumstances and the difficulties of the Plaintiff and the Counsel representing. He left it to the Court for a Decision but added that no satisfactory explanation has been furnished to Court and hence the Plaintiff's case must be accordingly dismissed.
6. This Court then asked both counsels on number of witnesses that will be testifying. The response was one witness for the Plaintiff who still has not arrived in Court and defence had two witnesses.
7. Counsel representing the Plaintiff then sought for three (03) weeks adjournment to pursue settlement, till 20th August 2025.
8. However, Defence Counsel sought for 1,000 costs for wastage hearing but told Court, he was ready to proceed.
9. This Court then thought fit in the circumstances to stand down this matter once again and allow both Counsels to discuss. Upon resumption the Court was informed that there was no further development, still the Plaintiff's Counsel could not reach the Plaintiff.
10. The Court delivered a bench Ruling giving a summation of the reasons for refusing to grant any vacation and adjournment as sought for by the Plaintiff's Counsel.
11. The substantive reason for refusal to grant vacation and adjournment was that the action was filed in 2019 and some 6-7 seven years has passed by this matter remained impending hearing and determination. Section 15(3) of the 2013 Constitution was also cited to Counsel concerned.

12. The parties were informed that a full written Ruling will be given to them on the following day.
13. The power to adjourn or refuse to adjourn a trial and Hearing is within the discretion of the Court hearing the matter. This discretion is to be exercised judicially and in the interest of justice.
14. The Plaintiff is seeking an adjournment since her key witness [The Plaintiff - Liku Litea] was not present in the Court to give evidence in the within trial since the Counsel representing was told that the Plaintiff was involved in an accident whilst making her way to the Court. There was no concrete evidence to substantiate that the Plaintiff was in fact really involved in an accident.
15. This Court on two (2) occasions stood down the matter for the Plaintiff to ascertain the Plaintiff's status and her whereabouts, however, the Plaintiff's phone was diverted. She was the only witness to testify in Court in this case during the hearing.
16. The Defendant on the other hand was fully prepared to go ahead with the Hearing and Skype arrangements were also made and set up in advance for the Defendant to testify from California.
17. The matter was scheduled for Hearing, six months ago on 26th February 2025.
18. Notably, prior to this Hearing date, this matter was initially assigned for Hearing before me for 18th June 2024 on 5th December 2023. However, a fresh Summons was filed on 14th June 2024 by the Defendant seeking certain orders pursuant to Order 37 rule 7 and Order 18 of the High Court Rules in particular that 'the Writ of Summons and Statement of Claim filed' on 4th October 2019 is an abuse of the Court process by failing to appeal the Decision of Justice Amaratunga dated 29th December 2020.'
19. This Court then embarked on the Hearing of the Defendant's Summons and determined the same on 7th August 2024. Hence, the scheduled hearing date of the substantive action of 18th June 2024 had to be utilized to hear and determine the Defendant's Summons first and then reassigned the Hearing on this substantive matter returnable 11th August 2025 on 26th February 2025.

B. The Law

20. Reference is made to the case of **Goldenwest Enterprise Limited v Timoci Pantogo**, Civil Appeal No. ABU 0038 of 2005 at paragraph 37 reads:

'Generally, this is the principal covering Court's discretion to adjourn or not to adjourn. If refused to grant an adjournment amounts to a denial of fair hearing

and hence denial of natural justice or procedural fairness, or where a refusal to adjourn would cause definite and irreparable harm to the parties seeking it, adjournment should be granted.....'

21. The Appeal of **Goldenwest Enterprise Limited (Supra)**, the Court in *Dick v. Piller* [\[1943\] 1 All ER 627](#) the issue was whether the appeal was on a point of law or fact. It was a question of law, for by refusing the adjournment the judge 'caused a serious miscarriage of justice, and ... in doing so, rejected the first principle of law, for the deprivation the defendant of his very right to be heard before he was condemned': at 628.
22. In view of the principle enunciated in **Goldenwest Enterprises Ltd (supra)** the test for adjournment, can be summarily listed as follows:
 - 1) Will refusal to grant an adjournment amount to a denial of a fair hearing and hence denial of natural justice or procedural fairness; or
 - 2) Whether a refusal to adjourn would cause definite and irreparable harm to the party seeking it; and
 - 3) If there is any fault on the party seeking the adjournment?
23. The Plaintiff Counsel's application and contention was that the Plaintiff was involved in an accident. She could only inform Court that the Counsel spoke to the Plaintiff at 8.15am. What transpired thereafter could not be ascertained by the Counsel representing since the Plaintiff's mobile was diverting and she was faced with a difficult situation. The Counsel did not submit and/or address how will Refusal to an adjournment will amount to a denial of fair hearing, denial of natural justice or procedural fairness.
24. Counsel for the Defence submitted that there was no satisfactory explanation from the Plaintiff/ Counsel.
25. The Plaintiff had only one witness to testify and yet absent from Court. Again, the Plaintiff failed to submit anything on how a refusal to adjourn would cause definite and irreparable harm to the Plaintiff?
26. The Plaintiff had only one witness (the Plaintiff) who was absent from Court. This was a 2019 matter impeding the system for about 6-7 years.
27. The Plaintiff in person had the responsibility to inform her Counsel as to her whereabouts since the matter was stood down on two occasions and this Court made its decision at 11.30 am on the day of the hearing.
28. In respect of whether there is 'any fault' on the Plaintiff seeking adjournment?

29. Reference is again made to the Court of appeal case in **Goldwest Enterprises Limited** (supra) at paragraph 42:

"There is, however, a requirement that there be no 'fault' on the part of the party seeking the adjournment: **Piggott Construction v. United Brotherhood** (1974) 39 DLR (3d) 311 (Sask. CA)..."

30. I reiterate that this matter was commenced by the Plaintiff in 2019. On two (2) occasions 18th June 2024 and 11th August 2025, the substantive matter was fixed for hearing and determination of the same.
31. On 18th June 2024, this date was utilized to hear and determine the issues on an Interlocutory Summons filed by the Defendant and park the substantive matter on the side, only to be rescheduled for hearing and determination at a later date.
32. On 11th August 2025, the Defendant was ready to proceed with the hearing whilst the Plaintiff was not since the Plaintiff was not present and involved in an accident, although there is no concrete evidence of the accident and the status of the Plaintiff. The Plaintiff had a responsibility to inform her lawyer and the Court on her status and aftermath of the accident that she was involved in. There is no satisfactory explanation on this.
33. I find that there is a serious 'fault' on the Plaintiff when she failed to furnish her lawyer/Court with a satisfactory explanation and any concrete evidence in hand as to her absence from the scheduled hearing and holding this Court at ransome.

C. In conclusion

34. I have very carefully considered the evidence and the oral submissions made by both Counsels on 'Adjournment'.
35. I am not satisfied with that this Court should exercise its discretion in allowing the oral application for an adjournment of this case by the Plaintiff. Alternative arrangements for Skype by the Defendant's were made and put in place, the Defendant ready to testify by Skype from California. However, there is no sign of the Plaintiff to commence with the hearing. It was rather unfortunate that the Plaintiff was involved in an accident, if she was, since there was no concrete evidence to establish the same coupled with no satisfaction explanations furnished to Court in order to accede to the Plaintiff's oral application for the 'Adjournment'.
36. In the interest of the justice and grant of the adjournment dates not warrant in their circumstances of the case. This case has been impending hearing and its determination since 2019.

Section 15(3) of 2013 Fiji Constitution is relevant which states the matters filed in Court must be heard and determined within a reasonable timeframe.


37. There would be prejudice and/or damage caused to the Defendant since, she has been waiting for the final outcome of this substantive matter to allow her to be appointed and given the Probate grant in the Deceased's Estate for Administration and disposition of the Deceased's Estate in terms of his Will.
38. The oral application for 'adjournment' is refused.

D. Orders

- (i) The oral application for Adjournment is refused in its entirety.
- (ii) Court will now call upon the Plaintiff to proceed with its case on the substantive matter accordingly.
- (iii) Matter stood down.

Dated at **Suva** this **11th** day of **August** , 2025.




VISHWA DATT SHARMA
PUISNE JUDGE

CC: VIJAY MAHARAJ LAWYERS, SUVA
LAW SOLUTIONS, SUVA