

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

CIVIL ACTION NO.: HBC 27 of 2023

**BETWEEN : MATAQALI LASELASE
FIRST PLAINTIFF**

**: LASELASE INVESTMENT PTE LIMITED
SECOND PLAINTIFF**

**AND : HOME FINANCE COMPANY PTE LIMITED
FIRST DEFENDANT**

**AND : BALE INVESTMENT PTE LIMITED
SECOND DEFENDANT**

**AND : I-TAUKEI LAND TRUST BOARD
THIRD DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms L Lazel [Lazel Lawyers]

FIRST DEFENDANT : Mr N Lajendra [Lajendra Lawyers]

SECOND DEFENDANT : No Appearance

THIRD DEFENDANT : Ms L Nawaikula [Legal Department – iTaukei Land Trust Board]

RULING BY : Master Ms Vandhana Lal

DELIVERED ON : 27 November 2025

**RULING
[Reinstatement of action]**

Application

1. This is the Plaintiffs application filed on 08 July 2025 seeking orders for reinstatement of the matter.

Background of the proceeding

2. The Plaintiffs had instituted proceedings against the Defendants on 02 February 2023.
3. Upon closing of the pleadings, a summon for direction was filed on 06 April 2023. Orders were made on 05 September 2023.
4. Till 05 September 2003 only the first two Defendants had entered appearance and filed their pleadings.
5. As at 16 November 2023, the Plaintiffs' and the First Defendant's affidavit verifying list of documents was filed.
6. Following orders were made on 16 November 2023:
 - The Second Defendant to file / serve its Affidavit Verifying List of Documents by 27 November 2023;
 - Pending orders of 05 September 2023 were extended by 14 days each.

Respective Counsels in Court were warned of “unless orders” should there be noncompliance.

7. On 06 February 2024 following orders were made:
 - Discovery to be completed in 07 days;
 - Pre-trial conference (PTC) to be convened and a minute filed by 27 March 2024. If minute is not filed, PTC is deemed to be dispensed with;
 - Copy pleading and Order34 summon with agreed bundle of documents (if any) to be filed by 12 noon on 26 April 2024;
 - If copy pleading and O34 summon is not filed, the matter shall stand struck out.
8. Appearance on 06 February were as follows:

- No appearance was entered by the Plaintiffs; First and Second Defendants and their respective solicitors;
- Mr. V. Vuikolo appeared for the Third Defendant.

9. Matter was next called on 30 April 2024 to check on compliance of orders. This Court was informed that Plaintiffs solicitor had taken up a post in the United Kingdom.
10. The unless orders made on 06 February 2024 was in force and since there was noncompliance of the orders no further action was required. That is the matter stood struck out as at 26 April 2024 as the copy pleading and O34 summons were not filed.
11. On 16 May 2024 the Plaintiffs' new solicitors filed a notice of change of solicitors. Along with the notice was a summons filed to have the matter reinstated.

The summon was not in the prescribed form and was not issued by the registry.

The Plaintiff's solicitors only enquired about the said application on 13 March 2025 and were informed of the error with the applications returned for correction.

12. On 08 July 2025 a fresh application for reinstatement was filed.

The Plaintiffs contention

13. According to the Plaintiffs, Suveinakama Legal was handling their matter.

Mr. Suveinakama did not attend court due to the fact that he left Fiji for his diplomatic appointment in the United Kingdom.

The lawyer did not make any application to cease acting for the Plaintiffs.

They have now engaged Lazel Lawyers and they were not aware of the unless orders.

Mr. Suveinakama attended court on 05 September 2023. He had filed a notice of change on 04 September 2023.

Mr. Suveinakama had emailed all Defendants on 28 September 2023 requesting for a PTC on 02 October 2023. Only the First and Third Defendants had responded.

In November 2023, Mr. Suveinakama informed Tuimavela Hemo (head of Mataqali Laselase and trustee of Mataqali Laselase) that he (Mr. Suveinakama) had accepted an offer from the Government and he could no longer represent them (the Plaintiffs) in court.

They could not find a lawyer during this time as the Plaintiffs found it difficult to obtain funds.

First Defendant's opposition

14. The Plaintiffs had filed their affidavit verifying list of documents a month after the initial due date of 19 September 2023.
15. The Plaintiffs' previous solicitor did not appear in court on 03 occasions before the action was struck out – 05 September 2023; 06 February 2024 and 30 April 2024.
16. Mr. Suveinakama was appointed to UK on 14 March 2024. Therefore, between 05 September 2023 and 14 March 2024, he had approximately 6 ½ months to comply with the orders made under the summons for directions.
17. The application for re-instatement was filed on 08 July 2025 which is more that 14 months from the date the action was struck out.
18. It was their duty and the Plaintiffs have not moved the matter for 14 months.
19. The Plaintiffs have not explained what they did after the matter was struck out.

The Second Defendant's position

20. It had initially opposed the application and had filed its opposition.
21. However, on the hearing date of the application, the counsel appearing for the Third Defendant informed the Court of the change in position. They were consenting to the application.

Can the Plaintiff make this application pursuant to Order 24 rules 16 and 17 of the High Court Rules?

22. This matter was struck out due to an unless order upon failing to file/serve copy pleadings and a Order 34 summon.
23. The matter was not struck out under O24 r16. Neither did this Court make any order under the said rule.
24. The order sought by the Plaintiffs is for reinstatement of the action, hence O24 r17 is not applicable which speaks of reconsideration and variation of orders (made under O24r16).
25. It should also be noted that the Plaintiffs are only seeking for reinstatement of the action. There are no further orders sought as to the conduct of the file should the matter be reinstated.

What is the appropriate application following the striking out of an action pursuant to non-compliance of an unless order?

26. The First Defendant's counsel relied on the case of **Trade Air Engineering (West) Ltd. v Toga [2007] Court of Appeal Civil appeal ABU 0062 of 2006 (delivered on 09 March 2007)** and submitted that this Court is *functus officio*.
27. I do not find that the principle discussed in **Trade Air** (supra) that the party whose pleading was struck out has the resort to appeal and not seek reinstatement, can be applied to the current proceeding.
28. In **Trade Air** (supra), the matter was struck out pursuant to an Order 25 rule 9 notice for want for prosecution and not on an unless order for non-compliance.
29. The appeal provision applies only when the court has made a decision on the merits of an application, treating it as final. Unless orders are issued under the court's inherent powers to enforce procedural compliance, not based on merits. Such orders can be reinstated by the same Judicial Officer without appeal, since the court is not *functus officio*. When the court strikes out matters for want of prosecution after considering objections on a show cause notice, the decision is final (though not on merits). In these cases, an aggrieved party must appeal, rather than apply for reinstatement. [see **Shamir Samat v Eleni Qelesai and Sushil Chand (HBC 0201 of 2002L) 1 FLR 122**]

30. Hence, I find the Plaintiffs application for reinstatement to be appropriate following the striking out of the action due non-compliance of an unless order as this court did not hear the merits of the matter.

Factors to consider whilst determining an application for reinstatement

31. Following factors has to be considered whilst determining on an application for reinstatement:

- a) Is there adequate reasons given by the Plaintiff;
- b) Is the application made promptly;
- c) Prejudice caused

[see Maharaj -v- Matukula Lautoka High Court Civil Action HBC 92 of 2015 (delivered on 04 October 2019); W M Anjus (Fiji) Ltd -v- Kavan Lautoka High Court Civil Action HBC 426 OF 1986 (delivered on 30 July 2008)]

Reasons for non-appearance and non-compliance of Orders.

32. According to the Plaintiffs, their previous lawyer Mr. Suveinakama did not appear in court as he had left Fiji to take up a diplomatic post.

The lawyer did not make any application to cease acting as solicitors.

33. However, in his affidavit filed on 12 September 2025, the Plaintiff's representative/ trustee/ head of Mataqali Taimavela Hemo informs that Mr. Suveinakama informed him of taking up the diplomatic post and he cannot appear for the Plaintiffs. He was informed in November 2023.

34. The order on summon for direction was made on 05 September 2023. Mr. Suveinakama did not appear in court on 05 September 2023.

35. On 16 November 2023 Mr. Suveinakama appeared and this Court had extended the orders of 05 September 2023. This Court had also put counsels on notice of 'unless orders' if the orders on the summon for direction were not complied with.

36. Upon being notified by Mr. Suveinakama in November 2023 of his intended departure the Plaintiffs had ample opportunity to make necessary arrangements to engage another solicitor and/or appear in court on 06 February 2024 and inform the court if their difficulties.

They failed to appear in court on 06 February 2024 and later on 30 April 2024.

37. From 16 November 2023 the Plaintiffs had 05 months to comply with the orders and/or appear in Court. The reason given for no compliance of orders is not acceptable.
38. There is no reason advanced why they could not appear in Court after November 2023.

Is the application made promptly?

39. The matter stood struck out as at 12 noon on 26 April 2024 since the copy pleading and O34 summon was not filed.
40. The Plaintiffs first filed its application for reinstatement on 18 May 2024. However, this was refused as a wrong form was used to make the application.
41. The Plaintiffs' current solicitors law firm only enquired on 13 March 2025 about the application it had filed on 18 May 2024.
42. A proper application was filed on 08 July 2025.
43. No sufficient reason has been provided for the failure to follow up with the registry after 18 May 2024, nor for the delay in filing a proper application on 08 July 2025 after being informed of the error on 13 March 2025.
44. There is delay of 15 months since the matter stood struck out which has not been properly explained by the Plaintiffs.

Prejudice caused

45. The Plaintiffs claim relates to a native land referred in I-TLTB 35372 situated at Naimatataya in Veisari showing Lot 1 on Plan SO8123.

Allegation is that the First Defendant had cancelled its mortgage sale contract dated 13 April 2022 despite partial payment of \$70,000.

According to the Plaintiff, the Second Defendant unreasonably, unfairly and unlawfully applied to change the lease without the First Plaintiff's consent. The

lease was changed from Agricultural to Industrial and mortgaged to the First Defendant.

The Third Defendant is alleged to have breached its role and responsibilities as statutory trustees of the First Plaintiff when it cancelled the agricultural lease and issued an industrial lease.

46. If matter is not decided on merit, the Plaintiffs claim they will lose the land for the duration of the industrial lease which is 75 years.


Findings

47. S.15 (3) of the Constitution of Fiji reads:

“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.”

48. It was the Plaintiffs duty to ensure that it complied with the orders of 05 September 2023 (later extended on 16 November 2023 and 06 February 2024).
49. There has been continued disobedience of court orders since 06 September 2023.
50. To ensure that its claim is decided on merits the Plaintiff ought to have to the very least appeared in Court to explain to the Court of its difficulties.
51. I find that the Plaintiff’s had ample opportunity (after November 2023) and it was necessary for them to appear in Court and inform Court of its difficulties. They failed to do so and there is no sufficient reason given for their non-appearance in Court.
52. Again, there is unexplained delay from 30 April 2024 till 08 July 2025 why they could not make an application for reinstatement promptly.
53. All parties have a right to access to justice. This Court had granted the Plaintiffs this right when it had on two occasions extended its orders of 05 September 2023 for compliance.
54. However, the Plaintiffs have failed to utilize this right diligently.

55. Considering the above I refuse to grant orders on the Plaintiffs summon filed on 08 July 2025.
56. The application is dismissed with costs in favour of the First and Third Defendants summarily assessed at \$1,500 each and to be paid within 14 days from delivery of this judgment.


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Vandhana Lal [Ms]
Master of the High Court
At Suva.



27 November 2025.

TO:

- 1. Suva High Court Civil File No. HBC 27 of 2023;**
- 2. Lazel Lawyers, Solicitors for the Plaintiffs;**
- 3. Lajendra Lawyers, Solicitors for First Defendant;**
- 4. Tuifagalele Legal, Solicitors for the Second Defendant;**
- 5. Legal Department, iTaukei Land Trust Board, for the Third Defendant.**