

AT THE HIGH COURT OF FIJI
WESTERN DIVISION IN LAUTOKA
EXERCISING CIVIL JURISDICTION

Civil Action No. HBC 239 of 2015

BETWEEN : **RAVIN NARAYAN SHARMA** of Lautoka City, Unemployed.
PLAINTIFF

AND : **VIJENDRA PRASAD** trading as **VIJENDRA TAILERING CENTRE**, a
duly Registered Business in the Republic of Fiji Islands, having its
registered place of Business at 23 Yasawa Street, Lautoka.
1st DEFENDANT

AND : **NESH INVESTMENTS PTE LIMITED** a duly Registered Company,
in the Republic of Fiji Islands, having its Registered Place of
Business at 21, Drasa Avenue, Lautoka.
2nd DEFENDANT

AND : **URMILA WATI** and **RAVINESH KAMAL PRASAD** of Lautoka,
Domestic duties and Businessman respectively, as the Executrix/
Executor and Trustee of the **ESTATE OF VIJENDRA PRASAD** of
Lautoka, businessman, by virtue of the Probate.
3rd DEFENDANTS

BEFORE : Hon. A.M. Mohamed Mackie-J.

COUNSEL : Ms. Degei with Mr. Heritage - for the Plaintiff.
Ms. Lidise- For the Defendants.

DATES OF TRIAL : 15th & 16th June and 30th November 2023.

WRITTEN SUBMISSIONS: Filed by the Plaintiff on 11th September 2024.
Filed by the Defendants on 30th May 2024.

DATE OF JUDGMENT : 25th February 2026.

JUDGMENT

A. INTRODUCTION:

1. The Plaintiff commenced this action on 23rd December 2015 by filing his initial Writ of Summons and the Statement of Claim, which was later amended for the second time on **23rd December 2021**, seeking from the Defendants the following reliefs;

On the First Cause of Action:

- 1. Damages for the unlawful termination and/ or summary dismissal of the Plaintiff's employment, without due cause.*

- II. *For an Order that the Defendants do pay loss of wages to the plaintiff from the date of unlawful termination to the judgment date at the rate of between \$250.00 (Two Hundred and Fifty Dollars) to \$ 300.00 (Three Hundred dollars) per week.*
- III. *The Defendants do pay the Plaintiff all his benefits of holiday pay, sick leave and FNFP contributions from the date of his Employment till the date of his unlawful termination.*
- IV. *Any other order or orders which in the opinion of this Honorable Court may deem just and proper.*
- V. *Costs of this action on Solicitor / client indemnity basis.*

On the Second Cause of Action:

- VI. *Loss of business at the rate of \$300.00 (Three Hundred Dollars) Per day from November 2013 up to the date of judgment.*
 - VII. *Damages for the loss of potential customers that was established in the plaintiff's business.*
 - VIII. *The sum of \$503,900.00 being the plaintiff's items unlawfully detained by the Defendants as pleaded in paragraph 18 hereinabove.*
 - IX. *An order for recovery of plaintiff's personal items for the said Video business.*
 - X. *Any other order or orders which in the opinion of this Honorable Court may deem just and proper.*
 - XI. *Costs of this action n Solicitor/ Client indemnity basis.*
2. The Defendants, on 30th June 2020, filed their joint Statement of Defence in response to the Plaintiff's Amended Statement of Claim filed on 23rd December 2021, wherein, while denying almost all the averments therein, the 2nd Defendant made a counterclaim of a sum at the rate of \$3,500.00 (Three thousand Five Hundred dollars) per month from December 2013 till the date of judgment, being the alleged loss of profits out of the DVD business, and moved for the dismissal of the plaintiff's action.
 3. The plaintiff in turn filed his reply to Defence and Defence to Counterclaim and moved for the dismissal of statement of defence and the counterclaim.

B. AGREED FACTS & ISSUES:

4. On the initial pleadings, parties had on 25th September 2018 filed a Pre-Trial Conference minute with Two (2) Agreed facts to the following effect.
 1. That both **Mr. Kamal Prasad** and **Mr. Anish Prasad** (first and Second named Defendants as per the caption to the initial Statement of Claim) are brothers and the sons of **Mrs. Urmila Prasad** (the Third named Defendant in the initial SOC).
 2. That the Father of the First and Second named Defendants and the Husband of the Third named Defendant, namely **Vijendra Prasad** died in October 2013.

5. As per the Pre-Trial Conference minutes (PTC) filed on 25th September 2018, parties had raised 30 Agreed Issues. Though, the Statement of Claim was subsequently amended as aforesaid and further pleadings were filed accordingly, no amended PTC was filed. Thus, I am left with the PTC minutes dated 25th September 2018, in which most of the issues are found to be redundant, warranting no serious consideration. Hence, I will reproduce below only the crucial issues formulated by me, answering of which alone would, in my view, dispose this action fully and finally.

1. *Whether the Plaintiff was terminated from his Employment with the First and/ or the Second Defendant, by the Defendants in or about the latter part of December 2013?*
2. *Whether the Plaintiff, as an employee of the First and/or the Second Defendant, was paid all his dues for the services rendered by him?*
3. *Whether the DVD business within the 2nd Defendant's premises was owned by the Plaintiff?*
4. *If the answer to the 3rd issue above is negative, whether the Second Defendant incurred any loss of income from the DVD business due to the act/s of the Plaintiff, as alleged in the counterclaim.*
5. *Which party is entitled for costs, if any, and how much to be ordered?*

C. TRIAL:

6. At the 3 days trial held on 5th, 16th June 2023 and 30th November 2023, the Plaintiff- **Ravin Narayan Sharma (PW-1)** gave evidence for and on his behalf and closed his case. Subsequently, **Ravinesh Kamal Prasad (DW-1)** **Ronald Anish Prasad (DW-2)** and finally one **Sanjesh Padiyachi (DW-3)** – Team Leader FNPF Lautoka Office, gave evidence for and on behalf of the Defendants and closed the Defence case. Parties relied on the Agreed Bundle of Documents (ABD) Volume I & ii.

D. EVIDENCE:

7. I have carefully perused and analyzed the entire evidence given by the Plaintiff, being the only witness for and on his behalf, and that of the 3 witnesses for the Defence. I don't find any necessity to reproduce the whole or part of the evidence here, except for referring to the crucial part/s thereof, if and when needed.
8. I would like to put on record that although the trial in this matter was concluded on 30th November 2023, due to the time taken by both parties to file written submissions, and on account of the high volume of work that had piled up pursuant to my extended medical leave, the delivery of judgment in timely manner was made impossible. I tender my sincere apologies to the parties and their Solicitors.

E. DISCUSSION:

9. This is a civil claim where the burden of proof is on preponderance of evidence or balance of probability. This burden is, undoubtedly, on the Plaintiff requiring him to adduce evidence in order to substantiate his averments in the Amended Statement of Claim and to justify the reliefs claimed therein against the Defendants. Since the 2nd

Defendant has advanced a Counterclaim against the Plaintiff, the aforesaid standard of proof is applicable to the 2nd Defendant as well.

10. The averments in the SOC to the effect that the Plaintiff was initially employed by the late **Vijendra Prasad** at his Vijendra Tailoring Centre at Yasawa Street- Lautoka as a Tailor in March 2001 or 2002, and subsequently in the month of August in the same year was transferred by the said Vijendra **Prasad** to the 2nd Defendant's premises at No- 21. Drasa Avenue- Lautoka are not disputed. Though, there are no agreed facts in this regard, careful reading of the Pleadings shows that these facts have been admitted either directly and/ or tacitly.
11. It is also obvious on careful reading of the Pleadings, that the Plaintiff had worked with the 2nd Defendant only up to the latter part of December 2013 and not thereafter. It means that he did not resume his work at any time thereafter, either on his own volition or on the invitation of the Defendants.

Issue No-01

Whether the Plaintiff was terminated by the Defendants, from his Employment with the First and/ or the Second Defendant, in or about the latter part of December 2013?

12. On the plain reading of the Pleadings and the careful analysis of the whole evidence, it is amply clear that the Plaintiff was unhappy and had disagreement with the Directors of the Second Defendant - "Nesh Investments" over their decision to internally relocate the DVD business from the existing portion of the building where the second Defendant was operating, to a different part of the said building bearing No-21 Drasa Avenue Lautoka.
13. It was owing to the said argument erupted towards the end of December 2013 over the said issue of relocation of DVD business, the Plaintiff had left his place of work where he was primarily employed as a Tailor. The plaintiff says that his claim is against the Vijendra Tailoring as they had illegally terminated him from the work without giving him a letter. (***Vide answer to the last question in page 5 of the transcript.***)
14. In further evidence in chief, as per page 8 of the transcript, he says that as soon as Vijendra Prasad passed away and the rituals were over, Vijendra Prasad's Son told him to shift to the other shop and despite his mother had told him not to shift until she tells, after around 5 minutes the son came and pushed him out of the shop.
15. In his further evidence in chief, as per page 33 of the transcript, when he was asked specific questions, his answers were as follows;

Q. *A what happened when he pushed you out, did he say anything to you?*

A. *He said "I don't want to see you in my shop".*

Q. *when he said he doesn't want to see you in his shop ever again did he tell you the reason?*

A. *No.*

Q. *Mr. sharma on that day you came out, what did you do next. Did you go back to the shop?*

A. *No.*

Q. *Can you tell this Court why didn't you go back to this shop or to continue your employment there?*

A. *They tried to hit me, "if I see you in the shop, I gonna tell Police to arrest you, you are not allowed here".*

16. Under further evidence in chief in page 33, he averred that they did neither give him any explanation for stopping him from going to work nor gave him a letter of dismissal.
17. A notable thing here is that the Plaintiff did not make any complaint to any authorities, particularly to the Police and/ or to the Labor Officer about his alleged dismissal. Though, in his Statement of claim, he averred that he sent a letter through his Solicitors seeking the reasons for his dismissal, he did not utter a word about this purported letter in his examination in chief and no such a letter was produced as evidence before this Court.
18. If he was terminated from his service as alleged by him, he could have made a complain to the Labor Officer concerned and gone before the Employment Tribunal or before the Employment Relations Court (ERC), provided his claim fell within the original jurisdiction of the ERC. No evidence whatsoever was adduced to show that he had made any such progressive moves. If he had the threat of being assaulted, he could have simply made a complaint to the Police in order to protect his job. But, for the reasons best known to him, he did not do so. Even to come before this Court, it had taken 2 years for him. If he had lost his job owing to the alleged action of Vijendra Prasad's Son/s and he was ousted from the job that he had been doing for such a longtime, he should have acted swiftly and diligently.
19. Majority of his evidence in chief was revolving around the DVD Business, the purchases made for it and about the ownership of the instruments therein, including that of the recorded and empty DVD's. He did not speak at all about his alleged termination and about any steps taken by him to secure his job or for his reinstatement.
20. He has not proved by adducing sufficient evidence that his employment with the 2nd Defendant was terminated in the manner he complained of. His evidence shows that his prime motive was running the DVD business as his own one from the same place in the 2nd Defendant's premises at 21 Drasa Avenue Lautoka, while he had not established that the said business belongs to him.
21. It is to be observed that the Plaintiff in his evidence in chief was mainly focusing on his claim for DVD business and not about his alleged dismissal or non-payment of salary, FNPF or other entitlements until he was cross examined by the Defence counsel in that regard, wherein he directly and tacitly admitted that all his salary for the period from the inception till 20th December 2023 were duly paid.
22. The plaintiff has not proved on his own evidence or by calling any supporting evidence that his services as a Tailor was terminated by the Defendants. The evidence does not show that he had acted to have him reinstated by resorting to any of the due process. Instead, what he has exhibited through his evidence is that he wanted to continue in the DVD business as his own one, when he has not proved that the said business was commenced by him on his own investment, registered/ licensed it in his own name, paid the relevant taxes and followed the other formalities thereto.

23. The evidence shows that he left the place of his employment on the day in question not in relation to any issue/s of his work as a Tailor, but owing to his displeasure on losing of the control over the DVD business, for which he claimed to be the owner but failed to substantiate it at the trial. When he was particularly asked under the cross examination whether he agrees that the Employer/ Employee relationship could be terminated if the employee stops coming to work, his answer was affirmative. The suggestion made to him to the effect that the Defendants can make their choice themselves, his answer again was affirmative. (Vide page 43 of the transcript)
24. Accordingly, this Court has no alternative other than arriving at a negative answer to the issue 1 hereof as the plaintiff has not proved the alleged termination of employment.

Issue No-02

Whether the Plaintiff, as an employee of the First and/or the Second Defendant, was paid all his dues for the services rendered by him?

25. As alluded to above, in his evidence in chief, the Plaintiff did not bother to speak about his alleged nonpayment of wages/ salary, FNPF payments or any other dues, until he was cross examined to that effect, wherein he clearly admitted that all his all dues were paid till 20th December 2013 and the FNPF contribution was also made by the employer. This is also substantiated by the relevant payment records and the witness for the Defendants from FNPF Lautoka Office (DW-3)
26. His complain, as per his pleadings was to mean that he was not paid during the time of late **Vijendra Prasad** as well. Admittedly, Vijendra Prasad died in October 2013 and the Plaintiff was continued to be paid till 20th December 2013. The Plaintiff in his evidence did not speak any ill or fault on the part of late Vijendra Prasad. Instead, he praised him as a good employer.
27. Moreover, under his further cross examination, as per page 44 of the transcript, the Plaintiff conceded that there were no any issues when he was employed at the second Defendant "Nesh Investment" during the period of Vijendra Prasad and his son Kamal Prasad.
28. Thus, since the Plaintiff has not served anymore with the 2nd Defendant after the incident in the latter part of December 2013, and he had stopped coming to work as a Tailor voluntarily, there cannot be any claim against any of the Defendants. It is also to be observed that the plaintiff, in his prayers to the amended statement of Claim, has not moved for reliefs specifically against any of the Defendants.
29. When questioned by Court in page 53 whether all his entitlements were duly paid? His prompt answer was "***He was paying me the wages my Lord, but about FNPF and all that I don't know my Lord whether he was paying or not***". Subsequently, under further cross examination in page 55, he has admitted the contribution for the FNPF by the employer and he did not bother to check it at the FNPF, and though he could have gone to FNPF office to check, he did not go.

30. In page 62 of the transcript, under further cross examination, the plaintiff has admitted that he has no any doubt if the payments are done and he is ok on it. When the relevant documents in proof of payment of wages and the contribution of the FNPF were shown, in pages 66 to 69 of the transcript, he admitted to have signed those papers, those are accurate and he (Vijendra Prasad) was an honest person.
31. For the reasons stated above, the plaintiff cannot move for any relief against any of the Defendants, particularly, when the payments during the period of Vijendra Prakash is not in dispute, and when he had not served under the 2nd Defendant after December 2013. Hence, the issue No-02 above has to, necessarily, attract an affirmative (“Yes”) answer against the Plaintiff.

Issue No-03.

Whether the DVD business within the 2nd Defendant’s premises was owned by the Plaintiff?

32. The Plaintiff has not adduced any evidence to substantiate that the DVD business was owned by him. The business license at the Local Authority is issued in the name of the Second Defendant- Nesh Investments”. No reason given for not having it in his name, and to have it issued in the second Defendant’s name.
33. Though, he averred in the SOC that he had paid \$1,000.00 to late Vijendra Prasad as monthly rental for the DVD business, no evidence whatsoever was produced to substantiate it. Moreover, he failed to call any witness, particularly, the suppliers of the DVD cassettes, Polythene and other utensils for the said business, to confirm that all those items were sold for the business owned by the Plaintiff. Whether he paid the relevant taxes to the government and maintained the accounts for the DVD business are further questions that required his answers and explanation if he had owned the DVD business. The fact he served in the DVD shop is not disputed by the Defendants. Mere inclusion of his name only in few memos and receipts will not bestow him any right or entitlement as he prayed for.
34. A pertinent question that arises is why the plaintiff did not make any claim for the DVD business and/or for the utensils thereof at the Police Station, after both parties were taken to the Police subsequent to the incident. The Plaintiff may have had some of his personal belongings within the 2nd Defendant’s premises, which he could have claimed through the due process. No evidence adduced by him for this Court to hold with the Plaintiff that he is the owner of the DVD business. Accordingly, the issue No-3 cannot be answered in the Plaintiff’s favor and the answer thereto has to be necessarily a negative one.

Issue -04.

If the answer to the 3rd issue above is negative, Whether the Second Defendant incurred any loss of income from the DVD business due to the act/s of the Plaintiff, as alleged in the counterclaim.

35. With the negative answer to the issue 3 above, the 2nd Defendant is now called upon to substantiate its Counterclaim that it suffered loss of income from the DVD Business.

36. DW-1 **Ravinesh Prasad** in his evidence in chief has categorically stated that it was his late father who established the DVD business at No-21 Drasa Avenue, Lautoka (2nd Defendant's Place of business) and the Plaintiff used to Manage it by serving customers, writing the CD's and the DVD's in addition to his job as a Tailor. He added further that after the demise of his Father, when they decided to shift the DVD Shop internally, the plaintiff disagreed with it, and as a result an argument started where the Plaintiff became angry and aggressive and due to threats from him they decided to close the DVD shop. This witness did not give evidence on the sales and the profits that was being made. Probably, this could have been within the knowledge of his late father Vijendra Prasad. The DVD business had in fact run only for a very short period after the death of Vijendra Prasad.
37. The DW-2 too in his evidence, while confirming that the DVD business was established by his late father in the year 2009, stated that he is unable to comment on the sales that was done in the DVD business and confirmed that no separate books were there for DVD sales.
38. DW-1 in his evidence added further that when the Plaintiff used to come and create problems by shouting and swearing, on their complain, the Police came and took both parties to the Police Station, recorded statements, after which such incidents went down and never occurred again.
39. But, none of the Defence witnesses gave clear evidence as to for how long the DVD business was kept closed, whether the closure was solely due to the alleged threat by the Plaintiff and what was the actual loss, if any, incurred owing to the closure. It was stated that the relevant part of the building was rented out to a third party only in the year 2017. However, no evidence was adduced that the DVD business had to be closed till 2017 or for any period lessor than that purely because of the alleged threat by the Plaintiff.
40. In the absence of sufficient evidence, the Court is not inclined to allow the counterclaim advanced by the 2nd Defendant. The court cannot decide the liability on mere assumptions. Therefore, the issue No-4 has to be answered against the 2nd Defendant and the counterclaim has to be dismissed.

Issue No-05:


Which party is entitled for costs, if any, and how much to be ordered?

41. In the analysis of overall evidence led, it is abundantly clear that the Plaintiff has failed to prove his claim as per the standard of proof expected of him. He failed to call necessary evidence despite he had sufficient time to do so. He knew that he had no valid claim against the Defendants, particularly, against the deceased 1st Defendant and 3rd Defendant Executors & Trustees. His claim against the Second Defendant on the alleged termination is unfounded. He failed to prove his ownership to the DVD business as well. Thus, he caused the Defendants to incur unnecessary costs, on account of which this Court decide to order him to pay \$4,500.00 (Four Thousand Five Hundred Dollars) as summarily assessed costs.

F. FINAL ORDERS:

- a. Plaintiff's action fails.
- b. Plaintiff's action, together with the Amended Statement of Claim filed on 23rd December 2021, is hereby struck out and dismissed.
- c. The 2nd Defendant's Counter Claim also fails and same is hereby dismissed.
- d. The Plaintiff shall pay the Defendants \$4,500.00 (Four Thousand Five Hundred Dollars) as summarily assessed costs.




A.M. Mohamed Mackie
Judge

At the High Court of Lautoka on this 25th day of February, 2026.

SOLICITORS:
For the Plaintiff
For the Defendants

Messrs. Iqbal Khan & Associates- Barristers & Solicitors
Messrs. Young & Associates- Barristers & Solicitors