

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

CIVIL ACTION NO: HBC 147 OF 2013

BETWEEN : **VIRENDRA SINGH** of 41 Northwich Ct, Sacramento, CA 95832, United States of America and **SHAIENDRA PRASAD** also known as **SHELENDRA SUMAN PRASAD** of Ragg Avenue, Tamavua, Suva.

PLAINTIFFS

AND : **CHANDRESH ARUN PRASAD** of Varadoli, Ba, Fiji.
FIRST DEFENDANT

AND : **JOSEPHINE SANJINI LATA PRASAD** of Varadoli, Ba, Fiji.
SECOND DEFENDANT

AND : **RASHIKENDRA SINGH** of 2 Emma Place, North Natoma, Sacramento, CA 95835, United States of America, **RAJESH SINGH** of 809 Applewood Dr. S.E Calgary, Alberta, T2A-7T5, Canada, **AKLESH PRASAD** of 24 Albalone Way NE Calgary, Alberta, T2A-6Y7, Canada and **CHANDRA PRABHASH** of 10 Shiv Street, Varadoli, Ba, Fiji.

THIRD DEFENDANTS

AND : **WESTERN LAND DEVELOPMENT AND INVESTMENT COMPANY LIMITED** a limited liability company having its registered office at Ba, Fiji.

FOURTH DEFENDANT

APPEARANCES : Mr. C.B. Young - For the Plaintiffs
Mr. Krishna S. For the 1st and 4th Defendants.
2nd & 3rd Defendants are absent and no representation.

DATE OF HEARING : 13th March 2026 at 10.00 am

DATE OF RULING : 16th March 2026 at 2.30 Pm.

RULING
(ON VACATION OF TRIAL)

1. Before me is a Summons (“Application”) preferred by the Solicitors for the 1st, 4th Defendants on 13th March 2026, seeking, inter alia, for the adjournment of trial, when the Trial in this matter stood fixed for 16th to 20th March 2026.

2. This Application is made pursuant to order 32 rule 1 Order 35 rule 3 of the High Court Rules 1988 and the inherent jurisdiction of this Court.
3. The Application is supported by an Affidavit sworn by **SHAYAL SWASTIKA KUMAR** on 12th March 2026 and filed on 13th March 2026, however, with no documents to substantiate the averments therein.

HEARING:

4. Due to the urgency, the Summons being issued instantly, when it came up for hearing at 2.30 PM on the same day (on 13th March 2026) and supported by the Defence Counsel, Counsel for the Plaintiff vehemently objected to the same citing the grounds, *inter alia*, to the following effect;
 - a. The absence of any evidence to substantiate the averments in the Affidavit in support.
 - b. The application is made at last moment, when the trial is around the corner fixed for 16th to 20th March 2026.
 - c. The first named Plaintiff has come for the trial all the way from USA incurring heavy expenses and present in Court.
 - d. Serious prejudice could occur to the Plaintiff particularly by way of excessive costs and delay.
 - e. The matter is an old one being filed in the year 2013.
5. The main and only ground adduced by the Counsel for the Defendants, as averred in paragraphs 10 to 16 of the Affidavit in support of **Shayal Swastika Kumar**, was that their partner counsel **Mr. Ashneel Sudhakar**, is presently unavailable to conduct the defence as his mother has recently been diagnosed with Cancer and he being the only available sibling in Fiji, was to take her immediately to India for treatment.
6. It was further submitted, as averred in the Affidavit, that **Mr. Shailendra Krishna**, who ordinarily conducts the trial, is engaged in other urgent matters including commitment to appear in some other courts, and as such there is no other Solicitor/counsel who is with sufficient knowledge, and available to conduct the trial.
7. After hearing both Counsel, the matter was fixed to be called on Monday 16th March 2026 at 2.30 pm for the Ruling on the Application, by leaving the Counsel for the Defendants at liberty to submit documents in proof of **Mr. Ashneel Sudhakar's** traveling to India and his mother's medical condition, along with a supplementary Affidavit to be filed before 9.00 on 16th Monday Morning with the service of it on the plaintiff's Solicitors.

8. Plaintiff's Solicitors also was left at the liberty of responding to the same by 1.00 pm on 16th Monday in order to enable this Court to pronounce the Ruling on the application at 2.30 on Monday 16th March 2026. The arrangement was that if the adjournment is declined, the Trial will commence on 17th March 2026.
9. Accordingly, the Defendant's Solicitors filed a Supplementary Affidavit as per the direction, with several annexures marked from "SRK-1" to "SRK-5" and this Affidavit was sworn by none other than the Senior Counsel for Defendants' Solicitors, Mr. Shailendra Krishna.
10. Affidavit in response, to both original and Supplementary Affidavits, was sworn by the first named Plaintiff **VIRENDRA SINGH** on 16th March 2026 and was filed as per direction, together with the annexures marked as "VS-1" – "VS-11". With all these materials, now the task before me is to consider the Defendants' Application for adjournment and pronounce the Ruling on it.

LAW

11. In coming to a decision, I have given my thought to the principles formulated in the Court of Appeal decision in **Goldenwest Enterprises Ltd vs Timoci Pautogo, Civil Appeal Number ABU 0038 of 2005** in particular paragraph 37:

"Generally, this is the principle covering courts' discretion to adjourn or not to adjourn. If refusal to grant an adjournment amounts to a denial of a 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 party seeking it, adjournment should be granted ..."

12. It is to be noted that in the appeal of **Goldenwest Enterprises Ltd (supra)** the Court of Appeal also took into account the case of **Dick vs Piller [1943] All ER 627** at paragraph 41 the Court of Appeal made an important observation as follows:

"In Dick v. Piller in issue was whether the appeal was on point of law or fact. It was a question of law, said the Court, for by refusing the adjournment the judge 'caused a serious miscarriage of justice, and ..., in doing so, rejected the first principle of law, for he deprived the defendant of his very right to be heard before he was condemned': at 628"

13. In view of the principles enunciated in **Goldenwest Enterprises Ltd (supra)** the test for adjournment of trial dates can be stated as follows:
 - a. will refusal to grant an adjournment amount to a denial of a fair hearing and hence denial of natural justice or procedural fairness; or
 - b. where a refusal to adjourn would cause definite and irreparable harm to the party seeking it; and is there any 'fault' on the part of the party seeking the adjournment?

CONSIDERATION:

Will Refusal to grant the adjournment amount to denial of justice or procedural fairness?

14. It is Mr. Krishna's submission that if the trial dates are not vacated it will cause a serious miscarriage of justice since the Counsel, who was handling and to conduct the trial Mr. ASHNEEL SUDHAKAR, is out of the Office on account of his Mother's recent diagnose of cancer and having to take her to India immediately for treatment and he will be away in India for 6 months to 1 year. This is evidenced by the viber Message marked and tendered as "SRK-1" with Mr. Krishna's Supplementary Affidavit.
15. The last communication Mr. Krishna seems to have had with Mr. Sudhakar was on 11th March 2016 and 13th March 2019(after Court's proceedings) marked as "SRK-2" and "SRK-4" respectively, which are only one-way. Mr. Krishna has also sent an email marked as "SRK-5" and none of these have been responded by Mr. Sudhakar. As such, no evidences of Mr. Sudhakar's travel and his Mothers intended medical treatment in India have come forth to be submitted to the Court as undertaken by Mr. Krishna at the hearing on 13th March 2026. This has put Mr. Krishna in this predicament, with the unpreparedness on his part too to conduct the trial on the scheduled dates as he is busy elsewhere on account of his pre-booked professional commitments. Mr. Krishna has cited the case law authority in *Gaffar Ahamed & Others v Ilisoni Lagairi & Others- Civil Action No-HBC 0100 of 2003* in support of his Application.
16. The Plaintiff VIRENDRA SINGH, in opposition to this Application, has filed his Affidavit supported by annexures marked as "VS-1" to "VS-11", particularly referring to the expenses he had to incur in terms of Air and Land travelling, food & accommodation, and professional charges to his Counsel and Solicitors. However, the Plaintiff has moved for costs in a sum of \$50,000.00 (Fifty Thousand) to be paid if the adjournment is to be sanctioned.
17. Mr. Young, Counsel for the Plaintiff has drawn my attention to various case law authorities on the subject, among others, *General Machinery Hire Ltd v New India Assurance Co Ltd [2017] FJHC 929; HBC 248.2014 (7 December 2017)*, and *Sheetal Pritika Chand v Vision Trading Ltd HBC – 128 of 2014 (29th March 2018)* wherein this Court had declined the Application for adjournment.
18. This is an action filed on 16th August 2013 and the parties are said to be family members. The dispute revolves around the business under the name and style of Western **Land Development and Investment Company Limited**, which is named as the 4th Defendant.
19. Perusal of the record shows that substantial time has been taken on account of some interlocutory proceeding before the Master at that time, then before the Judge and thereafter before the Court of Appeal, which had caused some substantial delay.
20. The record also shows the Trial initially fixed for 25th to 27th March 2019 was vacated by consent in view of the pending Court of Appeal Judgment on the 1st Defendant's Appeal, and thereafter fixing of trial dates was further delayed due to the recusal


Application preferred by the Plaintiffs' Solicitors for the recusal of the Solicitors for the Defendants- Messrs. Samuel K. Ram Lawyers. It was when the Ruling was pronounced allowing the recusal Application, Messrs. Krishna & Co. came on record for the 1st and 4th Defendants in May 2025. It appears that Messrs. Krishna & Co are relatively new on record for the 1st and 4th Defendants.

21. This Court also considers the fact that the 1st to 4th Defendants have already settled the matter with the 2nd named Plaintiff and the Notice of discontinuance in this regard has been filed on 26th November 2025. When the matter has been settled with one of the Plaintiff, this Court is of the view that the 1st and 4th named Defendants should be given an opportunity to have their day in court as the Plaintiffs and 1st to 3rd Defendants are said to be the members the same family.
22. I am sure that had there been some evidence to substantiate that the Defence Counsel Mr. Sudhakar was traveling to India on account of his Mothers treatment, learned Counsel for the Plaintiff Mr. Young, most probably, would not have objected to this Application. Although, Mr. Krishna on 13th March 2026 undertook to furnish the same, his Supplementary Affidavit sworn on 16th March 2026 and the annexures there to clearly shows that he had made genuine attempts to obtain such evidence, but failed due to no response from Mr. Sudhakar, probably owing to the fact that he was still engaged in traveling.
23. When a senior counsel in the caliber of Mr. Krishna swears an Affidavit explaining the plight of Mr. Sudhakar and that of his firm in getting ready for the forthcoming trial, and in consideration of the other circumstances discussed above, in my view, it is not judicious to refuse the adjournment. Therefore, I am inclined to allow the application, subject to the payment of a reasonable amount out of the total cost claimed by the plaintiff.
24. The 1st named plaintiff has come for the trial all the way from USA along with his wife, incurring colossal sum of money on travelling, food & accommodation, transport and charges for his Counsel for preparation of trial. He is claiming \$50,000.00 if the trial is to be vacated. This Court is not in a position to order such an amount unless after a hearing on it or after the main trial.
25. However, in fairness to the Plaintiff, I am of the view, that allowing a sum of \$10,000.00 (Ten Thousand Dollars) as pre-payment on account of the expenses averred in paragraphs 3, 4 and 5 and in terms of paragraph 11 of his Affidavit in response is warranted.
26. I also consider the fact that no adjournments had been previously obtained by the Defendants, except for the adjournments obtained by consent on account of the pending Appeal. Delay also has occurred due to change of new Solicitors for the defence owing to the recusal of their former Solicitors/ counsel.
27. I urge counsel for both the parties to have early dates for trial in this year itself, if possible, however subject to the availability of them and a free dates in Court's diary.

ORDERS.

1. The Summons for the vacation of Trial, filed by the Defendant's Solicitors on 13th March 2026, is allowed, subject to following conditions.
2. The Defendants shall pay a sum of **\$10,000.00** (Ten Thousand Dollars) being the part of the immediate costs incurred by the Plaintiff, as averred in paragraphs 3,4,5 and 11 of the Plaintiff's Affidavit filed today 16th March 2025.
3. However, there will be a hearing on further costs moved by the Plaintiff.
4. The trial is to be re-fixed finally on dates convenient to the parties, their counsels and the Court.
5. The said sum of cost be paid within 14 days from today.
6. Matter be mentioned on 7th April 2026 at 10.00 am to fix new trial dates.




A.M. Mohamed Mackie
Judge

At the High Court of Lautoka on this 16th day of March, 2026.

SOLICITORS:

For the Plaintiff

For the 1st and 4th Defendant

Messrs. Young & Associates – Barristers & Solicitors

Messrs. Krishna & Co- Barristers & Solicitors