IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action # HBC 364 of 2017

BETWEEN: **PUSHPA DEVI** of Lot 4 Manuka Street, Nakasi Park Estate, Domestic Duties as Executrix and Trustee of the **ESTATE OF NARAYAN NAIR** aka **NARAIN NAIR**.

First Plaintiff

AND: **AVISHESH NAVNIT NAIR** of Lot 4 Manuka Street, Nakasi Park Estate, Clerk as Executor and Trustee of the **ESTATE OF NARAYAN NAIR** aka **NARAIN NAIR**.

Second Plaintiff

AND: **WASU DEWAN NAIR** aka **VASU DEWAN NAIR** aka **BASUDEWAN NAIR** of 5987 Leonardo Way, Elk Grove, CA 95757, Retired Machine Operator.

Third Plaintiff

AND: **NARAINI NAIR** of Vitogo, Lautoka, Domestic Duties.

Fourth Plaintiff

AND: **NAIR'S TRANSPORT CO. LTD** a limited liability company having its registered office at Lot 81, 9 miles, Nasinu (alongside Kings Road – Wainibuku Road Junction).

First Defendant

AND: **KUNJAN NAIR** of Lot 81, Wainibuku Road, 9 Miles, Company Director.

Second Defendant

AND: **VINOD NAIR** of 1 Corin Road, Manurewa, Auckland, New Zealand, Retired.

Third Defendant

AND: **SARITA DEVI NAIR** of Lot 81, Wainibuku Road, 9 Miles, Nasinu, Domestic Duties as the trustee of the Estate of **RAJESHWAR NAIR.**

Fourth Defendant

AND: **KUNJAN NAIR** of Lot 81, Wainibuku Road, 9 Miles, Company Director as the Trustee of the Estate of **SARADA NAIR** aka **SHARDA DEVI NAIR** aka **SARDA DEVI NAIR.**

Fifth Defendant

Representation:

Plaintiffs: Mr. V. Singh (Parshotam Lawyers).
1st Defendant: **Mr. S Nandan & Ms. A. Prasad** (Reddy & Nandan).
3rd Defendant: Mr. A. Davetanivalu.

Date of Hearing: 23rd January 2026.

Ruling

A. Introduction

[1] The Plaintiffs filed amended summons pursuant to Order 45 Rule 5 (2) of the High Court Rules seeking the following orders:

> *"A. That the court grant 14 days to all parties after service of an order made herein to comply with the orders contained in the judgment of this Honorable Court delivered on 25 November 2024.*
>
> *B. For clarification on whether the Judgment of the Court entered on 25 November 2024 where the following order was made;*
>
> *(d) A Declaration that any other Resolution purportedly passed by the Board of the First Defendant (Nair's Transport Co Ltd) since 6th May 2015 is null and void and contrary to the Companies Act 2015 and the Articles of Association of the first Defendant (Nair's Transport Co Ltd).*
>
> *Has set aside all appointments of officers (directors and secretary) of the First Defendant who were appointed on or after 6 May 2015."*

[2] An affidavit of Avishesh Navnit Nair was filed in support of the application.

B. The Submissions

[3] Briefly the submission for the Plaintiff was that the Court was not functus officio. Reliance was placed on Supreme Court cases, **Ambaram Narsey Properties Ltd v Khan [2016] FJSC 13; CBV0003.2015 (22 April 2016)** and **Fiji Industries Ltd v National Union of Factory and Commercial Workers [2017] FJSC 30; CBV0008.2016 (27 October 2017)** and High Court Decision in **Sunbeam Transport Ltd v Paradise Transport Ltd [2021] FJHC 165; HBA13.2017 (12 March 2021).**

[4] The submission for 1st Defendant was that the application should have been made before committal proceedings were initiated. That the principles of latches apply. The court is functus.

C. Determination

[5] I would very briefly set out the history of this matter. Following a trial I delivered a judgment on 25th November 2024. Stay pending appeal was refused. The Plaintiff's sought leave to initiate committal proceedings. It was granted. Summons were filed to set aside leave to issue committal proceedings. Setting aside was refused.

[6] Stay and leave of the refusal to set aside committal proceedings was sought. I granted stay and leave to appeal the ruling.

[7] The orders sought in this application pursuant to Order 45 Rule 5 (2) relate to the judgment I delivered on 25th November 2024. The judgment was delivered after witnesses were heard following a 3-day trial. Various orders were made. The question that arises now in this application is whether I can revisit or clarify the orders I made or I am functus officio.

[8] ***Functus officio*** is a Latin expression. It has existed for many centuries. The Roman jurist Ulpian (c. 170–228 AD) had written about it. His edict was later transposed into Justinian's Digest. The Digest is the largest compilation of doctrinal commentaries in the Western world. The Western legal systems borrowed from it: ***(Sheldon Amos, The History and Principles of the Civil Law of Rome: An Aid to the Study of Scientific and Comparative Jurisprudence (London, UK: Kegan Paul, Trench & Co., 1883) at 450.)*** According to Ulpian, after a judge has delivered his judgment, he immediately ceases to be the judge: "***hoc jure utimur ut judex qui semel vel pluris vel minoris condemnavit, amplius corrigere sententiam suam non posset; semel enim male vel bene officio functus est.***": *(Alexandr Koptev, "Digestae Justinian" The Latin Library at Book 42, Title 1, Note 55, online: https://www.latinlibrary.com./justinian./digest/42.shtml.)*

[9] The essence of Ulpian's words is: **"[A] judge who has given judgment, either in a greater or a smaller amount, no longer has the capacity to correct the judgment because, for better or for worse, he will have discharged his duty once and for all**.": *(Translation in Daniel Malan Pretorius, "The Origins of the Functus Officio Doctrine, with Specific Reference to Its Application in Administrative Law" (2005) 122:4 SALJ 832 at 836).*

[10] The significance of a judicial officer being functus officio is threefold.

[11] **First**, functus officio lends finality to the conduct of proceedings. It marks a definitive endpoint. A valid and final decision is the summit of all judicial proceedings. Administration of justice requires a clear stopping place, a point of no turning back. Failing which there would no end to the case, nor any start of enforcement. The law of functus officio, together with the law of res judicata (Latin for "a thing adjudged"), defines what constitutes a valid and final decision, from which point the parties and the decision-maker are bound and enforcement may be had, in case the decision be struck on appeal or judicial review.

[12] **Second**, functus officio enables effective appeal. Deterrence from changing a decision is necessary to ensure a stable basis for appeal and judicial review. Being functus officio lends finality and forbids decisions from being easily undone. It prevents judicial officers from changing their decisions as they like and as many times as they like. An appeal would shift. The appeal process would drag on. The appellate process itself will be ending through which appellants have indefinite entry, coming through whenever the underlying decision is changed.

[13] **Third**, out of the various common-law finality doctrines, functus officio is the only doctrine that is directed at the judicial officer, rather than the parties, or in the case of res

judicata and the parties. The doctrine operates like an injunction pointed at every judicial officer. It kicks in when a final and valid decision is made. Upon the rendering of a final and valid decision, the judicial officer is enjoined from reconsidering the decided matter and rescinding or varying the decision in any manner. The doctrine limits the jurisdiction of a judicial officer by delineating when his jurisdiction is exhausted. Once the jurisdiction is spent, the decision is fixed. With no going back, finality is achieved. With finality comes legal certainty.

[14] To trigger the functus doctrine, the judicial officer must have made a decision that is both final and valid. Decision being final and valid are prerequisites. Finality does not have the same meaning for functus officio as it does for res judicata. Finality in the context of functus officio has two aspects to it, a substantive one and a formal one. Substantively, a decision is final when the decision-maker has completely fulfilled her task in disposing of issues raised in the proceeding: **(Chandler v Alberta Association of Architects, [1989] 2 SCR 848 at 867, 62 DLR (4th) 577 [Chandler] at 862)** and has not reserved the right to exercise any of her powers at a later time**: (Huneault v Central Mortgage and Housing Corp (1981), 41 NR 214, 1981 CarswellNat 566 (WL Can) (FCA)).** Formality wise, final means there is nothing more to be done to perfect the decision so as to render it effective and capable of execution: (**(G Spencer Bower & AK Turner, The Doctrine of Res Judicata, 2d ed (London, UK: Butterworths, 1969) at 132)**). For court decisions, a decision becomes final when a formal judgment or order is drawn up, issued and entered: (**In re Suffield and Watts, Ex parte Brown (1888), 20 QBD 693 at 697; Re Dingman and Hall et al, [1889] OJ No 332 (QL), 13 PR 232 (HC) at para 14**)

[15] The judgment of 24th November 2024 did not require anything else to be done by the Court at a later date. The decision was final. There is nothing more to be done to perfect the decision to render it effective and capable of execution. The orders are clear and capable of execution.

[16] I note that over time some exceptions have been created, the two notable ones being the slip exception and the manifest intent exception. Justice Rinfret laid them out neatly in **Paper Machinery Ltd v JO Ross Engineering Corp [1934] SCR 186**, at 188:

> "*[T]here is no power to amend a judgment which has been drawn up and entered, except in two cases: (1) Where there has been a slip in drawing it up, or (2) where there has been error in expressing the manifest intention of the Court*."

[17] The slip exception is part of our High Court Rules 1988 which is Order 20 Rule 10. That is neither applicable nor sought by the Plaintiffs in their application. It has been clearly established by our Courts that the slip exception is limited to fixing "minor" or "non-substantive slips." The first exception cannot be relied upon.

[18] The manifest intent exception, for its part, is reserved for instances where "it is obvious from a reading of the first decision that the Court intended but failed to accomplish a certain specific result.": **(Prince Edward Island (Department of Health and Wellness) v Canadian Union of Public Employees Local 805, 2011 PESC 1 at para 52.)** It

cannot be used to supplement or enhance the decision. Additionally, I cannot provide any clarification of a Judgment I have already delivered.

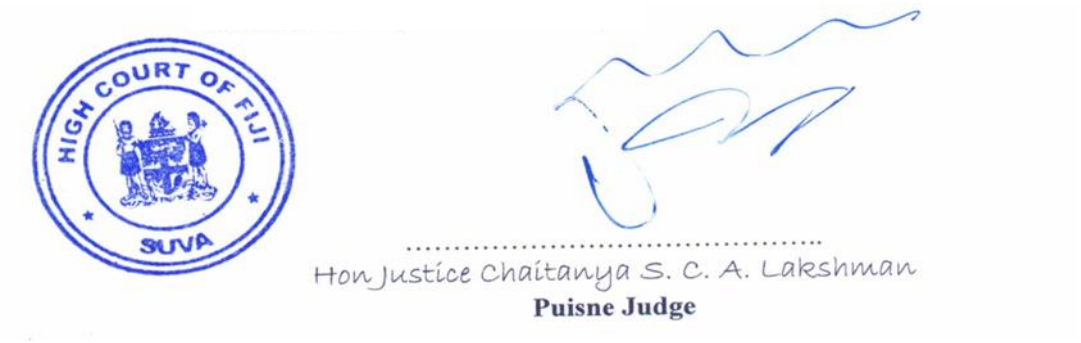
[19] In the judgment I gave reasons for my decision. What is being asked of me now is to supplement and provide a clarification. I have delivered a judgment. It is a final judgment. For the reasons I have provided in this ruling, I am functus officio.

[20] The application is dismissed. The Plaintiffs are to pay the 1st Defendants $1000.00 as costs within 21 days. The costs have been summarily assessed.

D. Court Orders

(a) The application is dismissed.

(b) The Plaintiffs are to pay the 1st Defendant, $1000.00 as costs within 21 days. The costs have been summarily assessed.



30th January 2026