

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

CIVIL ACTION NO.: HBC 95 of 2025

**BETWEEN : FEIZAL YOUNAS HANIFF and TOMASI
TUITOGA t/a HANIFF TUITOGA
PLAINTIFFS**

**AND : VUNIMOLI SAWMILL LIMITED
FIRST DEFENDANT**

**: BASHIR KHAN
SECOND DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFFS : Mr. F Haniff [Haniff Tuitoga]
DEFENDANTS : Mr. M. Navunisaravi on instruction [Redwood Law]
RULING BY : Master Ms Vandhana Lal
DELIVERED ON : 03 February 2026

INTERLOCUTORY RULING

[Striking out of claim on the ground that the claim is statute barred]

1. The Plaintiffs' claim is for legal services it provided to the Defendant's in the case of Vunimoli Sawmill Limited, Bashir Khan v. Mohd Shamshood trading as Sam Civil Services and Home Finance Group Limited Labasa High Court Civil Action 34 of 2013.

They rely on a letter agreement dated 05 November 2014 between the parties. Furthermore, in support of their claim for 12% interest the Plaintiffs refers to the terms of engagement dated 18 November 2014.

2. The writ was served on the Defendants on 11 March 2025.
3. The Defendants have not acknowledged service, nor has their solicitors filed a Notice of Appointment of Solicitors.
4. They have however filed a summons seeking order to have the claim struck out on the ground that it shows no reasonable cause of action as the claim is statute barred.
5. According to the Plaintiffs the legal services were provided by the Plaintiffs between November 2014 till May 2017.

Can the Defendant seek to have the action struck out without acknowledging service?

6. Order 12 of the High Court Rules requires a Defendant who *wishes to conduct the proceedings, either on the merits or on a point jurisdiction or regularity, he must return the acknowledgement of service to the Court giving notice whether he intends to or not contest the proceedings.*
7. Order 12 rule 5 also allows a defendant (except where judgment has been entered) to acknowledge service after the time limited for doing so.
8. I find this irregularity can be cured with directing the Defendants to file an acknowledgment of service out of time under O12r5. I do not find the Plaintiffs will be prejudiced by the late filing of the same.

When did the Plaintiffs cause of action arise?

9. In **Coburn v College [1897] QB 702**, it was held that the cause of action for a claim for a solicitor's fee arose as soon as the work was completed.

Esher MR set out the basic principle that, in the absence of a special term of the agreement to the contrary a service provider's right to payment arises as soon as the work is done.

10. At this stage this court is not privy to the agreement dated 05 November 2014 or the terms of engagement dated 18 November 2014. The Plaintiffs' claim is for payment of sum due under a letter agreement / terms of engagement.
11. Under Section 4 of the Limitation Act, actions founded on simple contract cannot be brought after the expiration of 06 years from the date on which the cause of action accrued.
12. The invoice period is from 01 March 2016 till 15 May 2017.
13. On paragraph 5 of the Claim the Plaintiffs plead:

“5. Between November 2014 and May 2017, the Plaintiff provided the services to the Defendant's on the Defendant's instructions.”
14. Mr. Haniff submits that the cause of action accrued on 13 September 2019, the date they sent the demand letter seeking repayment of the outstanding invoice.

He relied on the case of **Aleems Investment Limited v Khan Buses Limited, Lautoka High Court Civil Action HBC 102 of 2011** (delivered on 13 February 2017)

15. In Aleem's (supra) the Plaintiff was claiming to recover monies it paid to Habib Bank on behalf of the Defendant to assist the Defendant who was facing a winding up petition.

Sapuvuda J on paragraph 17 held:

“A cause of action to recover loan debt doesn’t arise until and unless there has been a default. The default is the trigger for the cause of action to accrue. The borrower must be given Notice that monies are due and owing and once such notice is given and the borrower fails to pay the debt within time allocated for payment then it is considered to be in default.”

16. Dyson LJ in **Henry Boot Limited v Alstom Limited [2005] EWCA CIV 814, [2005] 1 WLR 3850** has said:

“Where A does work for B at B’s request on terms that A is entitled to be paid for it, his right to be paid for it (i.e. his cause of action) arises as soon as the work is done unless there is some special term of the agreement to the contrary”

17. In **Consultancy Concepts International Inc. v. Consumer Protection Association (Sandi Arabia) [2022] EWCA CIV 1699** the Court of Appeal found that:

“in such circumstances, the right to payment does not depend on the making of a claim for payment or demand by the party that provided the work or services (example by service of an invoice).”

It went on to find that:

“33. The debt accrues when the work is done; the time at or by which the debt must be discharged is a different matter altogether.

Indeed, a provision in a contract which sets a time for payment for services rendered is implicitly premised on the existence of a liability to pay for those services. The right to sue for the payment may not arise until time has elapsed, but that does not affect the accrual of the right to payment.

34. *Accordingly, even in a contract for services which provide for the delivery of an invoice and payment on a particular date or within a certain time thereafter, the starting point of the analysis is the established principle that the right to payment accrues as soon as the work is complete.”*

18. In **Reed v Brown (1888) 22 QBB 128** Lord Esher M. R defined “*cause of action*” as follows:

“it is “every fact which it would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgement of the Court.”

19. I do not agree with the Plaintiffs submission that their cause of action “*accrued on 13 September 2019, the date they set the demand letter seeking repayment of the outstanding invoices.*”


20. The cause of action arose when the Plaintiffs had completed providing their legal services to the Defendant in the case of *Vunimoli Sawmills Limited, Bashir Khan v.*

Mohammed Shamshood t/a Sam Civil Services and Home Finance Company Limited, High Court Civil Action No. 34 of 2013 (Labasa).

21. On paragraph 5, the Plaintiffs pleaded they provided services between November 2014 and May 2017.
22. I find that the cause of action accrued in May 2017 and under Section 4 of the Limitation Act the limitation period expired in May 2023.
23. Plaintiffs claim was filed on 05 March 2025 which is out of the limitation period and ought to be struck out.

ORDERS

24. The Defendant file its acknowledgment of service by 4pm on 04 February 2026.
25. The Plaintiffs' claim is statute barred under Section 4 of the Limitation Act and is struck out.
26. Parties to bear own costs.


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



03 February, 2026

TO:

1. **Suva High Court Civil File No. HBC 95 of 2025;**
2. **Haniff Tuitoga, named Plaintiffs;**
3. **Redwood Law, Solicitors for the Defendants.**