

**IN THE MAGISTRATES COURT AT NADI
CIVIL JURISDICTION**

Civil Case No. 160 of 2020

**BETWEEN : ALI SHER aka SHER ALI in personam and also SHER ALI
trading as GENNUINE SPARES of Main Street, Nadi Town**

Plaintiff

**AND : FIJI ROADS AUTHORITY having its registered office at Level 4,
Fiji Development Bank Building, 360 Victoria Parade**

1st Defendant

**AND : FLETCHER BUILDING (FIJI) LIMITED trading as HIGGINS (FIJI)
LIMITED having its principal place of business at Lot 11
Wailada Subdivision, Lami, Vitilevu.**

2nd Defendant

RULING ON PRELIMINARY ISSUE

(Renewed Application Under Section 38A(1), *Fiji Roads Authority Act 2012*)

Introduction

This claim was initially filed on 23 October 2020 by the Plaintiff against the First Defendant alone, seeking compensation for:

1. compulsory acquisition of land; and
2. damage to property, specifically vehicles, a billboard, wiring, and lights.

After pleadings closed, the First Defendant brought a preliminary application to strike out the claim on the ground that it was statute-barred under **Section 38A(1) of the Fiji Roads Authority Act 2012**.

Submissions were filed by both parties and the Court issued a ruling on 4 April 2022, dismissing the First Defendant's preliminary objection. The Court also granted the Plaintiff leave to join Higgins (Fiji) Limited as a Third Party. That order was sealed on 26 May 2022.

However, prior to this, on 19 May 2022, the Plaintiff amended its claim, naming Higgins (Fiji) Limited as the Second Defendant instead of the Third Party. I acknowledge that it is not for the Court to dictate the form in which a party elects to advance its case; the manner of pleading remains the Plaintiff's prerogative.

The amended claim still contains two distinct limbs. The first relates to compensation for compulsory acquisition (paragraphs 1 to 8), which the Plaintiff has confirmed has been settled by the First Defendant. This was also reflected in the Pre-Trial Conference Minutes filed on 14 April 2024. What remains for determination is the second limb, paragraphs 9 to 12, where the Plaintiff seeks damages for property loss allegedly caused by road construction works undertaken by the Second Defendant on behalf of the First Defendant.

According to the parties, the Ruling dated 4 April 2022 dealt only with the issue of compensation for compulsory acquisition, as the Court's reasoning was anchored in **Section 27 of the Constitution**. It did not address the separate claim for property damage allegedly caused by negligent roadworks. This distinction forms the basis for the renewed application now before the Court.

This ruling deals with a renewed preliminary objection raised by the Defendants on 26 February 2025, seeking dismissal of the remaining claim pursuant to Section 38A(1) of the Act. The Defendants submit that the alleged acts or omissions fall squarely within the statutory immunity provided by the Act.

Background

The Plaintiff claims damages totalling \$30,997.60 for loss allegedly sustained during roadworks conducted in or about 2015. The works were managed by the Fiji Roads Authority (**FRA**) and executed by Higgins (Fiji) Limited as its contractor. The breakdown of damages includes \$22,497.60 for tar spillage on motor vehicles, \$6,000 for damage to a billboard, and \$2,500 for affected electrical wiring and lights.

The Plaintiff contends that the damage arose from negligent workmanship, specifically a failure to take reasonable precautions to avoid foreseeable harm. The FRA is sued vicariously.

The Defendants maintain that Section 38A(1) provides complete statutory immunity for both the FRA and its contractor in relation to such claims.

The Preliminary Issue

The question for determination is whether Section 38A(1) bars the Plaintiff's claim for damages allegedly arising from negligent acts or omissions during the performance of statutory functions in 2015.

The Statutory Framework

Section 38A(1) of the Fiji Roads Authority Act 2012 provides:

"Neither the Committee, the Change Manager, the Authority nor any officer, servant, workman or labourer employed or engaged by the Committee, the Change Manager or the Authority shall be liable for any action, suit, proceeding, dispute or challenge in any Court, Tribunal or any other adjudicating body for or in respect of any act or omission done in the exercise or non-exercise of the powers conferred by or duties prescribed under the provisions of this Act or any other written law."

Section 38A(2) allows for a discretionary, ex gratia remedy:

"Notwithstanding anything contained in subsection (1), the Minister may on an ex-gratia basis grant compensation to any person who has suffered any injury or damage to property, caused either directly or indirectly by any act or omission done in the exercise or non-exercise of the powers conferred by or duties prescribed under the provisions of this Act or any other written law."

Further, **Section 4(a)** of the Act, read with **Section 11 of the Interpretation Act** (Cap 7), establishes the FRA as a legal entity capable of suing and being sued. This provision has been considered in the cases of **Mereoni v Fiji Roads Authority** [2017] FJHC 776 and **Lala v Fiji Roads Authority** [2016] FJHC 399.

In **Mereoni**, the Court held that acts or omissions within the scope of road maintenance fall within the immunity provided under Section 38A(1).

In **Lala**, the Court clarified that the immunity does not extend to conduct before the establishment of the FRA in 2012.

Submissions

The Defendants submit that the alleged conduct namely, tar spillage and failure to safeguard surrounding property occurred during the execution of statutory road construction works as prescribed under **Section 6** of the Act. As such, they argue that Section 38A(1) applies.

The Plaintiff contends that the acts complained of amount to common law negligence and fall outside the intended scope of statutory immunity. The Plaintiff also argues that public interest and constitutional access to justice require a narrower reading of the provision.

It was submitted that the earlier ruling of 4 April 2022 related solely to the constitutional claim for compensation under Section 27, and not the common law claim for negligence. The Court's express reference to Section 27 of the Constitution in that ruling supports this view, and explains why the Defendants have renewed their application in relation to the remaining claims at paragraphs 9 to 12 of the Amended Claim.

Analysis

The core issue is whether the impugned acts or omissions took place in the exercise or non-exercise of statutory powers or duties. If so, Section 38A(1) operates to bar the action.

The pleadings confirm that the events in question occurred in 2015 post-enactment of the Act and arose in the course of executing roadworks. Relying on **Mereoni**, negligence arising during routine construction or maintenance is protected by the statutory immunity.

The Plaintiff invokes **Allen v Gulf Oil Refining Ltd** [1981] 1 All ER 353, a case in which the House of Lords held that statutory authority does not shield negligent execution. However, *Allen* dealt with implied immunity in the context of nuisance. Here, the immunity is explicit. Section 38A(1) immunises acts or omissions within statutory functions regardless of whether the harm was avoidable. Unless gross negligence or conduct outside statutory powers is alleged, the protection stands.

The Plaintiff has not pleaded gross negligence or recklessness. Therefore, the exception discussed in **Smith v South Gloucestershire Council** [2002] EWCA Civ 1131 which recognises that immunity may not extend to grossly negligent or reckless acts is not applicable.

Further support comes from **Gorringe v Calderdale MBC** [2004] UKHL 15 and **Stovin v Wise** [1996] AC 923, which underscore the principle that statutory duties do not, by themselves, create private law causes of action unless Parliament clearly intends them to do so.

Public policy also plays a role. While the idea of corrective justice suggests that negligent parties should be held accountable, Section 38A(1) reflects Parliament's intent to protect essential public functions from being disrupted by litigation. This is balanced by Section 38A(2), which allows for discretionary compensation in deserving cases.

The Court must apply the law as enacted. While immunity may seem harsh where actual financial loss has occurred, it is not the role of the Court to override a clear legislative mandate.

Determination

On the facts as pleaded, the Court finds that the alleged acts and omissions occurred within the scope of the FRA's statutory functions. Section 38A(1) applies and operates to bar the Plaintiff's claim.

Orders

1. The Defendants' application under Section 38A(1) of the Fiji Roads Authority Act 2012 is granted.
2. The Plaintiff's claim is struck out in its entirety.
3. Each party shall bear their own costs.
4. Liberty is reserved to the Plaintiff to pursue any remedy available under Section 38A(2). For clarity, the operation of Section 38A(2), being discretionary and administrative in nature, is not constrained by statutory limitation periods applicable to judicial proceedings.

Conclusion

The Court is mindful of the need for accountability and access to justice. However, where Parliament has clearly expressed an intent to confer immunity for acts carried out in the performance of statutory functions, that intent must prevail.

Immunity under Section 38A(1) is not absolute but is confined to acts done within the boundaries of statutory authority. It does not extend to grossly negligent or malicious conduct, which has not been alleged in this case.

It is so ordered.

Any party aggrieved by this decision has the right to appeal within one month under Order 37 Rule 3 of the Magistrates Court Rules 1945.



Setavana Saumatua
Resident Magistrate
18 June, 2025

