

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

Civil Action No. HBC 16 of 2013

**BETWEEN** : **CHANDRESH ARUN PRASAD** also known as  
**CHANDRESH ARUN** also known as **ARUN CHANDRESH**  
**PRASAD** of Varadoli, Ba, Fiji, Special Administrator.

**Plaintiff**

**AND** : **ZARSHBINA COMPANY LIMITED** a limited liability  
company having its registered office at the office of Divendra  
Singh and Company Accountants being Office No. 10 at Tukani  
Street, Lautoka, Fiji.

**1<sup>st</sup> Defendant**

**AND** : **FIFA HOLDINGS (FIJI) LIMITED** a limited liability  
company having its registered office at Rarawai Road, Ba, Fiji.

**2<sup>nd</sup> Defendant**

Counsel : Samuel K Ram for the Plaintiff  
Nacolawa & Company for the 1<sup>st</sup> Defendant  
Natasha Khan & Associates for the 2<sup>nd</sup> Defendant

## **R U L I N G**

1. Before me is an application by Dr. Sahu Khan seeking the leave of this court to allow him to remain in New Zealand during the trial of this matter and to give evidence via Skype.
2. In his supporting affidavit, Dr. Sahu Khan explains the reason for his inability to travel to Fiji thus at paragraph 3:

That I cannot be present in person at the hearing of this proceeding because I cannot travel to Fiji for political reasons.

3. I have already expressed certain sentiments on the last call over date that the Affidavit is not sufficient.

4. Despite strong submissions from Mr. Padarath on the last call over date that I should just dismiss the application on the basis of the above affidavit, I did give Dr. Sahu Khan (through his counsel Mr. Nacolawa) time to file a supplementary affidavit to explain fully what he meant by “political reasons”.
5. Dr. Sahu Khan has not bothered to file a supplementary affidavit. Mr. Padarath urges this Court to dismiss the application on the basis of the first affidavit filed.
6. I will now deal with the application.
7. The general rule under the High Court Rules 1988 is that a party must be present personally at the trial of a matter concerning him or her. This is implied in Order 35 and Order 38 of the High Court Rules.

**ORDER 35  
PROCEEDINGS AT TRIAL**

**Failure to appear by both parties or one of them (O.35, r.1)**

- 1.-(1) If, when the trial of an action is called on, neither party appears, the action may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of a judge.
- (2) If, when the trial of an action is called on, one party does not appear; the judge may proceed with the trial of the action or any counterclaim in the absence of that party.

**ORDER 38  
EVIDENCE**

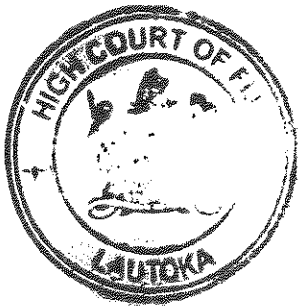
**I: GENERAL RULES**

**General rule: witnesses to be examined orally (O.38, r.1)**

1. Subject to the provisions of these Rules and of the Evidence Act and any other enactment relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.
8. Having said that, a party to an action who is unable to attend trial and who seeks the leave of the Court to allow him or her to give evidence by skype, must depose in an affidavit reasons strong enough to compel the court to exercise its discretion accordingly.
9. In the absence of any clarification from Dr. Sahu Khan as to what “political reasons” there are which are rendering it impossible for him to travel to Fiji to

to Fiji to attend the trial of the matter in October 2018, there is simply no basis for this court to begin the deliberation process involved in the exercise of the discretion as to whether or not to allow him to give evidence by skype in lieu of his personal attendance at the trial.

10. In addition to the above, the words "political reasons" are simply courting scandal.
11. I dismiss the application. Costs to the Plaintiff which I summarily assess at \$1,000.



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Anare Tuilevuka  
**JUDGE**  
LAUTOKA

26 June, 2018