**IN THE HIGH COURT OF FIJI**
**AT LABASA**

**CIVIL JURISDICTION**

Civil Action No. HBC 006 of 2006

Between: QIONIBARAVI RAVUNIDAKUA

*Plaintiff*

And : THE ATTORNEY GENERAL sued on behalf of the State and soldiers of the Fiji Military Forces

*Defendant*

Before : Master Udit

Counsel : Mr H. Robinson for the Plaintiff
: Mr Rabuku for the Defendant

Date of Hearing: 11th August, 2006
Date of Decision: 8th March, 2007

# DECISION

*(Limitation period- intentional tort-personal injury)*

## Introduction

[1] On 20th March, 2006, the defendant filed a Summons seeking to summarily strike-out this action. The application is based upon all the traditional grounds provided for under *O. 18, rule 8(1) of the High Court Rules 1988.* Substantively, the defendant argues that the action is statute barred.

## Background

[2] In the attempted coup of 2000, some members the Parliament including the Cabinet Ministers of the democratically elected government were taken hostage by some civilians. They remained captives of the attempted usurpers for 56 days in the Parliament complex, at Veiuto Suva. The insurrection spread from Suva to other parts of the country. Even the friendly Northern Division was not spared. The civil uprising, supported by some members of the Royal Fiji Military Forces, took over the command and Sukanivalu barracks.

[3] It is pleaded in paragraph 5 of the Statement of Claim that on 30 July, 2000, *"rebel"* soldiers laid down the arms. Following which the control of the command and barracks was taken back by the Fiji Military Forces.

[4] At all material times, the plaintiff claims, he was employed as driver by the Commissioner Northern's Office. On 5th August, 2000, he was allegedly apprehended from his home, without any *"reasonable"* or *"probable cause"* *by* the members of the Military Forces. After apprehension, it is alleged that he was assaulted, and left beside a drain without any medical treatment.

[5] As a result of the above incident, the plaintiff suffered a personal injury which is pleaded in considerable detail in *paragraph 9* of the Statement of Claim. Further it is claimed that he was wrongfully apprehended. Adamantly, he denies being part of the members of the civilians, who had support the mutiny at Sukanaivalu Barracks.

[6] An action was instituted by the plaintiff on 25th May, 2004. It was voluntarily discontinued by the plaintiff. The discontinuance was consented to by the Director Army Legal Services. The *Notice of Discontinuance* states:-

*"TAKE NOTICE, that the above named plaintiff shall not proceed further in this matter and the plaintiff hereby wholly discontinues this action against the defendant".*

[7] Even though the initial action was discontinued, the plaintiff contrary to the *Notice of Discontinuance* commenced this proceeding.

[8] Returning to the application before me, on behalf of the defendant, Mr. Rabuku submits that the action is statute barred under the proviso to *S. 4 (1)* of the *Limitation Act (Cap 35), ("the Act").* It was submitted that the action is a *"simple"* claim for damages for personal injury, for which the limitation period is three years. To the contrary, the plaintiff's Counsel argued that this is a claim for battery and assault *(trespass),* which is a *"simple tort"* falling within the ambit of *S. 4 (1) (a)* of the *Act. S. 4 (1) (a)* prescribes a six years limitation period for such actions. A number of authorities were referred to me by both the counsel.

## Consideration

[9] It is not in dispute that the claim is for damages for personal injury. The central issue for deliberation by the court is whether a three or six year's limitation period is applicable.

[10] Mr. Rabuku, in his submissions relied on ***Letang -v- Cooper [1965] 1 QB 232.*** Mr. Robinson, during the submission primarily relied on *S. 4 (1) (a)* of the *Limitation Act.* However, subsequently, as he undertook to do, referred me ***Stubbing -v- Web [1993] 1 ALLER 498,*** which is a decision of the House of Lords.

Let me discuss these authorities in some detail.

## Letang -v- Cooper [1965] 1 QB 232.

[11] The facts were that the plaintiff whilst holidaying in Cornwall stayed in a hotel. On 10th July 1957, she was sun bathing on a patch of grass, normally used for parking motor vehicles. Coincidently, the defendant drove in to the park. *Without noticing the plaintiff, the defendant drove the car over the* plaintiff's leg causing injuries. An action was commenced on 2nd February, 1961, in trespass to person. This was after a lapse of over 3 years and 7 months. A limitation defence was advanced by the defendant. On the other hand, the plaintiff claimed that the action was for trespass, thus the three years limitation period was inapplicable. A six years limitation period applied. In the first instance, the plaintiff succeeded. The defendant appealed. In overturning the decision, the Court of Appeal held that the action was for personal injuries, caused by negligence of the defendant. Limitation period for commencing any such action is three years. In support of the six years limitation period, on behalf of the plaintiff, it was submitted, that the phrase *"breach of duty"* does not include intentional tort. It merely refers to claims for 'breach of duty', 'negligence' or 'nuisance' which is caused unintentionally.

[12] On this distinction, *Lord Denning* said:-

> *"So we come back to construe the words of the statute with reference to the law of this century and not of past centuries.* So construed, they are perfectly intelligible. The tort of negligence is firmly established. So is the tort of nuisance. These are given by the legislature as signposts. *Then these are followed by words of the most comprehensive description*: 'Actions for ... breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statute or independently of any contract or any such provision).' Those words seem to me to cover not only a breach of any duty under the law of tort. *Our whole law of tort today proceeds on the footing that there is a duty owed by every man not to injure his neighbour in a way forbidden by law. Negligence* is a *breach* of such a *duty.* So is nuisance. *So is trespass to the person.* So is false imprisonment, malicious prosecution or defamation of character".

*(emphasis added)*

*Lord Diplock*, on the subject said:-

> "But it is clear that ***breach of duty cannot be restricted*** to those giving rise to causes of action in which the ***infliction of actual damage is an essential element***, for the ***words in parenthesis expressly extend to a duty*** which exists by virtue of any contract and the infliction of ***actual damage is not an essential element*** in an action for breach of contractual duty. Really, the only argument for cutting down the plain and wide meaning of the words breach of duty is that to do so render the inclusion of the specific torts of negligence and nuisance unnecessary. ***But economy of language is not invariably the badge of parliamentary draftsmanship.*** Negligence and nuisance are the commonest causes of action which give rise to claims for damages in respect of personal injuries. To mention them specifically without adding the word 'other' to any inference the wide general words were not intended to cover all causes of action which give rise to claims for damages in respect of personal injuries; particularly when the same combination of expressions in a similar context had already been given a very wide interpretation by the Court of Appeal".

*(emphasis added)*

[13] Their Lordships *(Lord Denning, Lord Diplock and Lord Danckwerts)* concurred that trespass to person is a *'breach of duty'* like negligence or nuisance. That breach of duty, if results in an injury to person, it is actionable *per se*. It will be a claim for damages for 'personal injury' which phrase is defined under the Act. That, being the case, the breach of duty referred to in the *proviso* to the Act applies to an action for trespass. As long as an action was for a damages claim for personal injury arising out of negligence, nuisance or breach of duty, *'whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or any such provision'* the limitation period for instituting any such action was three years.

[14] Their Lordship's expressed their approval of a decision from Victoria Australia. In ***Kruber -v- Grzesiak, [1963] V. R. 621,*** at *623, as Adam J* stated:-

> "But even if, to those familiar with the history of traditional forms of action, *it may seem an undue straining of language to treat as covered by the expression 'action for damages for negligence'* (itself incidentally a non-technical expression) a cause of action for *trespass to the person* in which proof of *negligence is an essential ingredient,* I would see *no sufficient reason for excluding* such *an action* from the *description of an action* for *damages for breach of duty,* especially when it is provided that the duty may be one existing independently of any contract or any provision made by or under a statute. *After all, do not all torts arise from the breach of a general duty not to inflict direct and immediate injury to the person of another either intentionally or negligently in the absence of lawful excuse*?
>
> *(emphasis added)*

[15] These three excerpts from the judgments of three different judges to which I have just referred summed up the law on this subject. It is comprehensively discussed in ***Letang -v- Copper.*** This leading authority on this subject stood untempered for over 30 years. As long as an action was for damages for personal injury, the limitation period stood firm at 3 years.

## Stubbing –v- Webb *[1993] 1 ALLER 322*

[16] In 1993, the House of Lords, in ***Stubbing –v- Webb*** reconsidered and partially overruled the ratio of ***Letang -v- Cooper***.

[17] In ***Stubbing –v- Webb,*** the plaintiff claimed damages for personal injury. She alleged that as a child, she was constantly abused, both sexually and physically, by her step father and step brother. At the time of the commencement of the action, the last of the abusive acts occurred was more than 18 years from the commencement of this action.

[18] A sole defence of statutory limitation was with great force pressed upon by the defendants. *Potter J* and later Court of Appeal held that the claim was one of personal injuries for which the limitation period is 3 years. Even though, the last of the incidents occurred was 18 years ago, their Lordships, *held* that the action was filed within the requisite 3 years from the date of on which the plaintiff acquired the knowledge of the cause of action. Thus, filed within the limitation period.

[19] To the contrary, on appeal, the House of Lords *held* that the applicable limitation period was 6 years. Their Lordships distinguished between intentional and unintentional torts causing personal injuries

[20] Lord Griffiths, after reviewing the leading the authorities including ***Letang -v- Cooper,*** *Report of the Committee on the Limitation of Action* (known as "*Tucker Committee Report*) and *Hansard Reports* on the amendment of the English *Limitation Act 1980,* at *page 329 (para a – c)* concluded:-

> "I accept that *Letang -v- Cooper was correctly decided in so far as it held that negligent driving is a cause of action* falling within S. 2(1) of the 1954 Act. But I *cannot agree* that the words *'breach of duty'* have the *effect of including* within the scope of the section *all actions* in which *damages* for *personal injuries* are claimed which is the other ground upon which the Court of Appeal decided *Letang –v- Cooper.* If that had been the intention of the draftsman, it would have been easy enough to say so in the section. On the contrary, the draftsman it would have been easy enough to say so in the section. On the contrary the draftsman has used words of limitation; *he has limited the section to action for negligence, nuisance and breach of duty* and *the reason he did so was to give effect to the recommendation of the Tucker Committee that the three-year period should not apply to a number of causes of action in which damages for personal injury* might be claimed, namely damages for *trespass to the person,* false imprisonment, malicious prosecution or defamation. There can be no doubt that rape and indecent assault fell within the category of trespass to the person".
>
> *(emphasis added)*

[21] Before me, Mr. Robinson *firstly* submitted that trespass being an intentional tort is not a cause of action based on *"breach of a duty"*. *Secondly,* in a

forceful submission he stressed that *"breach of duty"* in the section refers to the cause of action as opposed to the *residual injury*.

[22] In regard to Mr Robinson's submissions, I need only refer to a passage from *Lord Griffiths'* judgement *(with whom their Lordships concurred)* where his Lordship said:-

> "Even without reference to Hansard, I ***should not myself have construed 'breach of duty' as including a deliberate assault.*** The phrase lying in juxtaposition with *'negligence'* and *'nuisance'* carries with it the ***implication of a breach of duty of care not to cause personal injury, rather*** than ***an obligation not infringe any legal right*** of another person. If I invite a lady to my house one would naturally think of a duty to take care that the house is safe but would one really be thinking of duty not to rape her".
>
> [emphasis added]

[23] His Lordship *conclusively held* that the cause of action for sexual abuse and rape was an intentional tort. The issue of any duty does not arise. So, it is not a cause of action to which the *proviso* applies. That is to say that for such a cause of action a six instead of three years limitation period is applicable. *Lord Ackner* and *Lord Slynn* concurred with *Lord Griffiths*.

[24] So, plainly their Lordships unanimously distinguished an intentional and unintentional tort. The former subjected to 6 and latter to 3 years limitation. Further, trespass to person is an intentional tort for which neither a duty exists thus nor can one be breached.

[25] Before, considering the position under our *Act*, I find it important to refer to the position in Australia. In July last year, the *High Court of Australia* on an appeal from the *Supreme Court of Victoria* declined to follow ***Stubbing –v- Webb.*** In ***Carol Anne Stingel –v- Geoffrey Clerk [2006] HCA 37,*** the High Court Comprising of *Gumonow, Kirby, Hayne, Gallinan, Heydon* and *Brennan JJ* considered a limitation defence on an allegation of rape and assault. The appellant alleged that she was raped and assaulted by the

Respondent in 1971. However, it was alleged that she is still suffering from post traumatic disorder in 2000. It was during that year that she realised that her condition was connected with the incident of 1971.

[26] An action was commenced in 2002, for incidences of rape and assault which took place when the plaintiff was a minor. In 1976, she attained the majority age. Under *S. 5(1)* of the State of Victoria, *Limitation of Action Act 1958*, the appellant had six years from attainment of majority age to commence proceedings. The action in *Victoria County Court* was begun in 2002, that is, it was well out of the limitation period. The action should have been filed by 1982.

[27] The *High Court*, considered the earlier decisions of *Adams J* in ***Kruber -v- Grzesiak [1963] VR 621***, and the Court of Appeal of Victoria, in ***Mason –v- Mason [1997] 1 VR 325***. Both these cases held that the limitation period for an action for damages for personal injury was six years under *S. 5 (6)* of the *Limitation of Action Act, 1958.* This period applied to both intentional *(trespass etc)* and unintentional *(negligence etc)* torts.

[28] Here, I will add that Lord Denning in ***Letang -v- Cooper*** also relied on ***Kruber -v- Grzesiak [1963] VR 621.***

[29] ***Stubbing –v- Well*** was critically considered by the majority judgment, their Lordship's concluded that there was no difference between a breach of duty arising from intentional or unintentional tort. Thus, limitation period was constant, applying uniformly to all personal injuries arising from nuisance, negligence, or beach of a duty.

[30] The majority's deference was on a number of cardinal grounds which is worthy of being briefly mentioned in this judgment. *Firstly*, the court acknowledged the difference of opinion between Lord Diplock and Lord

Griffiths. Their Lordships said *"it is clear that eminent judges may disagree about whether upon jurisprudential analysis, the expression 'breach of duty' is opt in case of trespass, but statutes of limitation are more concerned with practical justice than with jurisdictional analysis".* *Second,* was the difference in the legislative history of the *Limitation Act* in the State of Victoria and United Kingdom. *Thirdly,* in particular the Court in Australia was not required to consider extrinsic material such as the *Tucker Committee Report* as well as the *Hansard Reports* of England. These were used as tools of interpretation by the House of Lords. Of importance, and also relevant to the issue before me, their Lordships *held* that the alternative construction preferred by the House of Lords, would *'result in anomalies':-*

> *"it attributes to Parliament an intention to draw a distinction which defends, rather than advances, the purpose of the legislation. The evident purpose of both S. 23 A and S. 5(1A) is to relieve the position of victims of tort: the former by giving a court a discretionary power to extend the time bar; the latter by providing for an automatic extension in cases of injuries of delayed onset. There is no discernible difference, in point of legislative policy, between victims of intentional and unintentional torts. No legislative purpose is served by putting the perpetrators of intentional torts in a better position than the perpetrators of unintentional torts. There being, as the Supreme Court of Ireland said, two constructions reasonably open, that should be preferred which produces a fair result that promotes the purpose of the legislation".*
>
> *(emphasis added)*

[31] Now, returning to the position in this Country. ***Stubbing -v- Webb*** was considered by our Court of Appeal in ***Neil Maloney –v- AG & Tamsuk Chong Tammie, Civil Appeal No. ABU 002 of 1997.*** On 4th November, 1994, the Respondent commenced proceedings against the Appellants for assault, false imprisonment, unlawful arrest and misfeasance in public office and conspiracy to injure. It was pleaded that the aforementioned acts or omissions were committed between 9th and 12th November, 1988. A preliminary issue of limitation period of 3 years was unsuccessfully raised by the appellants in the High Court. In fact the action was filed just over six years from the date of the first act or omission was

committed. But it was within six years before the last of the act or omission was committed.

[32] On appeal, the Court of Appeal considered at length, both the authorities, that is, **Letang -v Cooper** and ***Stubbing -v- Webb***. Precisely, the court was asked to decide, whether Fiji should follow ***Letang -v- Cooper*** or ***Stubbing -v- Webb***. In other words, should there be a distinction drawn between an intentional and unintentional tort?

[33] After citing a passage from the judgement of Lord Griffiths *(for the relevant passage, see para 20 above)*, at page 7 of the judgment the Court of Appeal held that:

> "Having regard to *the inclusion of section 3* in the *Act* and to its terms, we are *persuaded* that it was *not the intention of the Parliament of Fiji* that, by *including proviso (i) to section 4 (1)* in terms of the *same as the English statute*, it was *necessarily to be interpreted in the way established for England by the decision in Letang".*
>
> *(emphasis added)*

[34] S. 3 of the *Limitation Act* provides:-

> *"3. The provisions of this Part shall have effect subject to the provisions of Part III which provide for the extension of the periods of limitation in the case of disability, acknowledgement, part payment, fraud and mistake, and in the case of certain actions in respect of personal injuries."*
>
> *(emphasis added)*

[35] Their Lordship at *page 9* convincingly said:-

> *"In our view it clearly means "some" as distinct from "all". That being so, it is not possible to interpret "breach of duty" in proviso (i) to section 4(1) in a way which results in the proviso applying to all actions for damages for personal injuries, as was done in Letang.* We readily accept that the phrase should be constructed as bearing its natural meaning, if that is possible and does not result in absurdity or conflict with another provision of the Act. However, the natural meaning of any expression used in a statute is to be ascertained by reference to the context in which it is used. *In proviso (i) it is*

*used in a context in which clearly it cannot bear its broadest meaning in respect of personal injuries coming within its terms. That is a meaning which it cannot bear in the context".*

*(emphasis added)*

[36] Further, in the penultimate paragraph, their Lordships noted:-

> "The *conclusion* to which *we* have come is *consistent* with the views expressed by *Lord Griffiths* in the passage which we have set out above. *As he expressed those views in respect of the English statute, which does not contain a provision such as section 3 of the Act, a fortiori they can be seen to support our conclusion*".
>
> *(emphasis added)*

[37] Thus, as can be seen from the above judgment, the Court of Appeal has followed the English approach. Undoubtedly it makes a distinction between an intentional and unintentional tort. The Court relied upon the existing provisions of the *Limitation Act* to lend support for the conclusion which it reached. That, in my view even makes our position stronger than United Kingdom, which relied upon extrinsic material such as the *Hansard Reports* and the *Tucker Committee Report,* to extract the proposition after elasticising the natural meaning of the words.

**Application of the principle**

[38] I am bound by the decision of the Court of Appeal, which leads me to conclude that the limitation period in such an action is 6 years.

[39] Thus the issue for my deliberation is whether the claim is based as intentional or unintentional tort. Paragraph 7 of the *Statement of Claim* is self explanatory. It is an intentional tort. There is no controversy as to this fact.

[40] As such, ***Stubbing –v- Webb*** and ***Neil Maloney & AG -v- Tamsuk Chong Tammie*** applies. The limitation period to commence this action is six years. The cause of action is alleged to have crystallised on 5th August, 2000. As such, the plaintiff had until 5th of August 2006 to file this action. It was filed within time on 26th January, 2006.

## Conclusion

[41] In light of the conclusion to which I have reached, I see no merit in the defendant's application such it is dismissed with costs summarily assessed at $300.00.

Accordingly so ordered.

HIGH COURT OF FIJI
SUVA

J. J. Udit
Master