

**IN THE HIGH COURT OF THE REPUBLIC OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 75 OF 2013**

**BETWEEN** : **SHIU KUMAR SINGH** of Martintar, Nadi Farmer

***Plaintiff***

**AND** : **SESH PAL SINGH** of Martintar, Nadi, Driver.

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

**AND** : **THE CIVIL AVIATION AUTHORITY OF FIJI ISLANDS** a limited liability company having its registered office at Nadi Airport.

***Nominal Defendant***

**Appearances:**

Mr P Naidu for the plaintiff  
Mr E Maopa for the 1<sup>st</sup> defendant  
Mr R Singh for the nominal defendant

**Date of Hearing** : 5 March 2014

**Date of Ruling** : 6 May 2014

**R U L I N G**

**Introduction**

[1] There are two applications before me filed by the parties. They are:-

(a) By an inter parte notice of motion dated 28 August 2013 supported with affidavit and supplementary affidavit both sworn by the plaintiff, Shiu Kumar Singh (the application). The application is filed pursuant to Ord. 18, r.18 of the High Court Rules 1988 (the HCR) and under inherent jurisdiction of the Court. Whereby the plaintiff seeks the following orders:

*(a) That the Statement of Defence of the defendant Sesh Pal Singh does not disclose a defence to the Plaintiff's claim and his (sic) frivolous, scandalous or vexatious and is otherwise an abuse of process of court.*

*(b) Order for immediate vacant possession against the defendant Sesh Pal Singh.*

*(c) Order that the Defendant pay the costs on a solicitor/client indemnity basis.*

(b) By a summons to strike out action dated 25 August 2013 and filed on 5 September 2013 accompanied by an affidavit sworn by the first defendant, Sesh Pal Singh the 1<sup>st</sup> defendant seeks to strike out the plaintiff's statement of claim and accordingly dismiss the action for want of jurisdiction. His application too, is filed pursuant to Ord. 18, r.18 of the HCR and under inherent jurisdiction of the Court.

[2] The first defendant on 5 September 2013 filed a summons dated 28 August 2013 accompanied by an affidavit of Sesh Paul Singh, the 1<sup>st</sup> defendant pursuant to Ord. 18, r.18 and pursuant to inherent jurisdiction to strike out and dismiss the plaintiff's claim for **want of jurisdiction**. I will deal with this summons shortly. Furthermore, he also filed an affidavit in reply sworn by him to the affidavit in support of the inter-parte notice of motion.

[3] The nominal defendant, THE CIVIL AVIATION AUTHORITY OF FIJI ISLANDS (sometime may be referred to as "the second defendant") filed affidavit in reply of Ajai Kumar, Manager Corporate Services of the second defendant in response to the plaintiff's application to strike out stating that the plaintiff enjoys a **"tenancy at will"** of Lot 26 on DP 2157 and that the plaintiff was not in a position nor did he have any authority or right to bring the first defendant onto the said land without the express consent of the second defendant.

## **Background**

[4] By writ of summons dated and filed on 3 March 2013 the plaintiff claims vacant possession of the land occupied by the first defendant, damages and costs. For the sake of convenience I would reproduce the statement of claim, which reads:

1. “ **THAT** the Plaintiff is a tenant of the Nominal Defendant since the 22<sup>nd</sup> day of June 1984 over land known as Lot 26 on deposited Plan 2157 part of Certificate of Title No. 11668 situated at Nadi known as Cawa having an area of twelve and one half (12 ½ ) acres. (hereinafter referred to as the said land)
  
2. **THAT** the said land is used for agricultural purpose and has been so utilized by the Plaintiff’s grandfather the late Lal Singh who had a lease from Nominal Defendant since 1946 and upon his death to his wife and the Plaintiff’s grandmother Ram Raji from sometime in 1977 and since 1984 by the Plaintiff.
  
3. **THAT** the plaintiff has been paying rental to the Nominal Defendant on an annual basis for the said twelve and one half acre.
  
4. **THAT** the Nominal Defendant has accepted and continues to accept rental from the Plaintiff for the said property and recognizes the Plaintiff as its legal tenant of the said property.
  
5. **THAT** the Plaintiff allowed the Defendant to occupy a portion of the said property which is less than one quarter acre for residential basis upon pleas by the defendant for temporary shelter as the defendant has no place to go but would move out when asked to move or once they found alternative accommodation.

6. **THAT** the plaintiff felt sympathetic about the defendant's predicament and agreed to give temporary shelter until they found a place or their own free of rental.
7. **THAT** the defendant after sometime refused to vacate and became a nuisance to the Plaintiff and his family.
8. **THAT** the defendant did cause notice dated the 3<sup>rd</sup> day of March, 2009 and 29<sup>th</sup> day of September 2009 to be served on the defendants but they have refused to vacate.
9. **THAT** the Plaintiff has revoked and withdrawn or terminated any permission, authority or invitation given to the Defendant and his family.
10. **THAT** as a consequence of the occupation by the Defendant and his family the Plaintiff is suffering loss of use of the said property and claims damages for such loss".

[5] First defendant filed acknowledgement of service on 7 May 2013 while the second defendant filed on 21 May 2013 and the first defendant filed his statement of defence on 28 May 2013 while the second defendant filed its statement of defence on 29 May 2013. The plaintiff applies to strike out the first defendant's statement of defence as it discloses no defence to the plaintiff's claim. It would be appropriate to reproduce what the first defendant states in his statement of defence. His statement of defence read thus:

1. *"As to paragraph 1 of the Statement of Claim, the defendant denies the contents and state that they both are living in squatter.*

2. As to paragraph 2 of the Statement of Claim, the defendant denies the contents and state that the late Lal Singh is his father and the plaintiff is his nephew.
3. As to paragraph 3 of the Statement of Claim, the defendant denies the contents and state that **the lease is expired. There is no lease of the said land.**
4. As to paragraph 4 of the Statement of Claim, the defendant denies the contents and state that when the lease of the said land expired, **the Nominal Defendant allowed us to occupy the present land.**
5. As to paragraph 5 of the Statement of Claim, the defendant denies the contents and state that the land was given to him by the late Lal Singh when lease was valid until to date. **That lease land was for the whole family but now the plaintiff claim as his.**
6. As to paragraph 6 of the Statement of Claim, the defendant denies the contents and state that the Nominal Defendant allowed the defendant to stay on the land after the lease was expired.
7. As to paragraph 7 of the Statement of Claim, the defendant denies the contents. The plaintiff blocked access road to the defendant's house.
8. As to paragraph 8 of the Statement of Claim, the defendant admits receiving notice but such notice was illegal. **The plaintiff does not hold any title of the said land.**
9. As to paragraph 9 of the Statement of Claim, the defendant states that the Plaintiff has no title of the land. **He has no right to institute this action.**

10. As to paragraph 10 of the Statement of Claim, the defendant states that the plaintiff does not hold any right to evict or seek to give vacant possession. Hence this action be dismissed with costs (My emphasis)".

### **The Law and analysis**

[6] The plaintiff in his application seeks to strike the defence as it does not disclose a defence to the plaintiff's claim and is frivolous, vexatious, and is otherwise an abuse of process.

[7] The application is filed under Ord. 18, rule 18 of the High Court Rules 1988. That rule provides:

**"18.-(1) The court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-**

a) **It discloses no reasonable cause of action** or defence, as the case may be; or

b) It is scandalous, frivolous or vexatious; or

c) It may prejudice, embarrass or delay the fair trial of the action; or

d) It is otherwise an abuse of the process of the court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

**(2) No evidence shall be admissible on an application under paragraph (1) (a).**

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading" (Emphasis added).

**The principles applicable to the striking out application:**

[8] In **Paulo Malo Radrodro vs Sione Hatu Tiakia & others**, HBC 204 of 2005, a case where the High Court extensively and perhaps exhaustively explained the principles relating to striking out jurisdiction under the High Court Rule O.18, r.18. The Court stated that:

***“The principles applicable to applications of this type have been considered by the Court on many occasions. Those principles include:***

***(a) A reasonable cause of action means a caution of action with some chance of success when only the allegations and pleadings are considered – Lord Pearson in Drummond Jackson v British Medical Association [1970] WLR 688.***

***(b) Frivolous and vexation is said to mean cases which are obviously frivolous or vexations or obviously unsustainable – Lindley LJ in Attorney General of Duchy of Lancaster v L.N.W Ry [1892] 3 Ch 274 at 277.***

***(c) It is only in plain and obvious cases that recourse would be had to the summary process under this rule – Lindley MR in Hubbuck v Wilkinson [1899] Q.B 86.***

***(d) The purpose of the Courts jurisdiction to strike out pleading is two fold. Firstly is to protect its own processes and scarce resources from being abused by hopeless cases. Second and equally importantly, it is to ensure that it is a matter of justice, defendants are permitted to defend the claim fairly and not subjected to the expense inconvenience in defending an unclear or hopeless case.***

(e) *“The first object of pleadings is to define and clarify with position the issues and questions which are in dispute between the parties and for determination by the Court. fair and proper notice of the case an opponent is required to meet must be properly stated in the pleadings so that the opposing parties can bring evidence on the issues disclosed- ESSO Petroleum Company Limited v Southport Corporation [1956] A.C 218 at 238” – James M Ah Koy v Native Land Trust Board & Others – Civil Action No. HBC 0546 of 2004.*

(f) *A dismissal of proceedings “often be required by the very essence of justice to be done”..... – Lord Blackburn in Metropolitan – Pooley [1885] 10 OPP Case 210 at 221 – so as to prevent parties being harassed and put to expense by frivolous, vexatious or hopeless allegation – Lorton LJ in Riches v Director of Public Prosecutions (1973) 1 WLR 1019 at 1027” (My emphasis).*

[9] Learned counsel for the plaintiff submitted that the defendant’s statement of defence must be struck out as it is frivolous and scandalous. The first defendant has not shown any right to the land nor obtained the consent of the nominal defendant who is the landlord to remain on the property. Any consent given by the plaintiff has been revoked. He cited cases such as (1) **Adrenalin (Fiji) Proprietary Ltd v Denarau Investment Ltd** [2013] FJHC 690; HBC 17/2013 (13 December 2013) and **Timber Resource Management Limited v The Minister for information, the Minister for Agriculture, Fisheries and Forests, the Attorney General of Fiji and others**,(HBC212 of 2000).

[10] If I were to consider whether the statement of defence (a pleading) discloses a reasonable defence (apparently a ground for striking out a pleading under (Ord.18, rule 18-1 (a)), I would not look at the affidavits filed by the parties. Because no evidence shall be admissible



on an application to strike out a pleading (in this case defence) on the ground that it discloses no reasonable defence, see Ord.18, r.18.-(2). But nonetheless, when I consider other ground that whether the defence is frivolous, scandalous or vexatious and is otherwise abuse of power, I have to look at their affidavit.

[11] A reasonable defence would mean a defence with some chance of success when only the allegations and pleadings are to be considered. The plaintiff in this regular action seeks vacant possession of the property in dispute on the ground that he is a tenant at will of the second defendant and the first defendant is occupying part of the land without any permission. The first defendant in his statement of defence states that the lease that the plaintiff relies on had expired and after that the second defendant had given him permission to occupy the land. The statement of claim states that the plaintiff allowed the first defendant who is plaintiff's brother to occupy a portion of the property as he had no place to reside. True is that the first defendant's statement of defence does not indicate that he has a right or interest to occupy the land. Instead, he relies on the expiry of the lease and the plaintiff's status to bring this action against him. However, he may apply to court to amend his statement of defence so as to incorporate such defence.

[12] In Timber Resource Management Ltd (supra) the court held that:

*"...Time and again the courts have stated that the jurisdiction to strike out proceedings under Order 18 rule 18 should be very sparingly exercised and only in exceptional cases where legal questions of importance and difficulty are raised..."*

[13] The plaintiff seems to argue that defence should be struck out as it is weak and unlikely to succeed. The plaintiff is not entitled to rely on this ground. In my opinion the first defendant's statement of defence when reading plainly discloses a reasonable defence which has some

chance of success. Therefore I decline strike out the defence on the ground that it discloses no reasonable defence.

[14] I now move on to consider whether the defence could be struck out on the ground that it is frivolous, scandalous or vexatious and is otherwise an abuse of process of court.

[15] Frivolous and vexation is said to mean cases which are obviously frivolous or vexations or obviously unsustainable. In his affidavit in support the plaintiff indicates that the first defendant is now in unlawful occupation of the land occupied by him as any permission given by him (plaintiff) is withdrawn and that he (plaintiff) is the lawful tenant. In contrast, the first defendant states that the plaintiff has no rights to the said land, for he does not hold the title nor does he hold a valid lease to reside on the said land. It should be noted that the plaintiff could not deny the allegation advanced by the first defendant that the lease had expired. But, nonetheless the plaintiff in his supplementary affidavit states that the land, of which he is the lawful tenant, was transferred to the second defendant on the 16 May 2002 whereby he became a tenant of the second defendant.

[16] The parties are at variance with the facts as alleged by them in their pleadings. It is the second defendant as nominal defendant that says that the plaintiff is their tenant at will by virtue of an oral agreement. Interestingly, the plaintiff does say in the statement of claim that he is the tenant of the second defendant. The first defendant also alleges that he is occupying the land with the permission of the second defendant, which the second defendant denies. The issue that the first defendant occupies the land with leave and licence of the second defendant is a question of fact that can be decided at the trial after leading evidence by the parties. It is not an issue that can be decided summarily without evidence.

[17] Defences which may be struck out under Ord. 18, r.18 include those consists of a bare denial or otherwise set out no coherent statement of

facts. In this case the first defendant in his statement of defence sets out coherent facts that need to be investigated at the trial.

[18] For the foregoing reasons, I also decline to strike out the defence on the ground that it is frivolous and vexatious and otherwise is abuse of process of the court.

**First defendant's summons to strike out action**

[19] The first defendant applies to strike out the action **for want of jurisdiction**. But the summons states that the application is made pursuant to Ord.18, r.18. Presumably, the first defendant applies to strike out the claim on the ground that it does not disclose reasonable cause of action against him.

[20] If the first defendant had intended to dispute the jurisdiction of the court, he would have applied within the time limited for service of defence under Ord. 12, r.7 of the HCR for a declaration that in the circumstances of the case the Court has no jurisdiction over the defendant in respect of the subject matter of the claim or the relief or remedy sought in the action. The first defendant did not do so. Hence it is obvious that he seeks to strike out the claim as it discloses no reasonable cause of action.

[21] The first defendant in the affidavit in opposition states that the plaintiff has no title to the land in issue and that the lease which the plaintiff is going to rely on had expired. Therefore it would appear that the first defendant challenges the plaintiff's *locus standi* to bring this action against him.

[22] The registered proprietor of the land in dispute is the second defendant. The second defendant did not initiate proceedings to evict the first defendant from the land. For one reason or the other it is the plaintiff as the tenant/ tenant at will under the second defendant has initiated the action. The second defendant says it has an oral agreement with the plaintiff. The first defendant also says that he is

occupying part of the land with the permission of the second defendant. According to the plaintiff, he entered into an agreement with the first defendant that they would vacate the premises and find alternative place depending on the efforts made by the first defendant. The second defendant states the plaintiff could not have entered into any agreement with the first defendant without their consent.

[23] As a tenant at will or as person entitled to possession of the land, the plaintiff may bring action against any trespasser to recover possession. Whether the plaintiff is a tenant at will of the second defendant must be investigated and decided at trial after adducing evidence. In my opinion the claim discloses a reasonable cause of action against the first defendant.

[24] It is important to be clear that the claim sets out facts indicating what the claim is about and discloses a legally recognisable claim against the first defendant.

[25] For the reasons given above, I dismiss and accordingly strike out the first defendant's summons to strike out the action/claim.

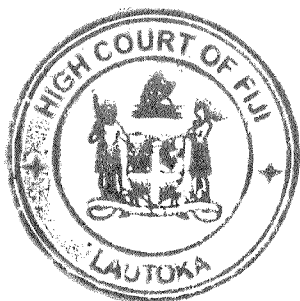
### **Cost**

[26] Both the parties had filed application to strike out. The plaintiff filed application to strike out the first defendant's defence as it discloses no reasonable defence while the first defendant filed application to strike out the claim as it discloses no reasonable cause of action. They both filed affidavits and affidavits in reply. Hence, in all circumstances I make no order as to costs.

### **Final Orders**

- 1) The plaintiff's application filed on 28 August 2013 to strike out the statement of defence of the first defendant and to order for immediate vacant possession against the first defendant is dismissed and struck out accordingly.

- 2) The first defendant's application filed on 5 September 2013 to strike out the action is also dismissed and struck out accordingly.
- 3) The matter shall take its normal course.
- 4) Each party to file and serve list of document and affidavit verifying list of document in 14 days.
- 5) There will be no order as to costs.
- 6) The matter will be adjourned to 26 May 2014 for mention only.
- 7) Orders accordingly.



*M H Mohamed Ajmeer*

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**M H Mohamed Ajmeer**  
**Master of the High Court**

**At Lautoka**  
**06 May 2014**