

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 380 of 2004

BETWEEN : **ATUNAI SA LACABUKA RASOKI**

PLAINTIFF

AND : **THE ATTORNEY-GENERAL OF FIJI or STATES or GOVERNOR; LANDS MINISTER or CHIEF SURVEYOR or REGISTRAR**

FIRST DEFENDANTS

AND : **NATIVE RESERVE COMMISSIONER AND NATIVE LAND TRUST BOARD**

SECOND DEFENDANTS

AND : **SALESI TEMO**

THIRD DEFENDANT

BEFORE : **Hon. Justice Kamal Kumar**

COUNSEL : Plaintiff in Person
Mr J. Pickering for First Defendants
Ms L. Komaitai for Second Defendant

DATE OF JUDGMENT : 24 June 2014

RULING

(Application to Strike Out Plaintiff's Claim)

1.0 Introduction

1.1 On 23 November 2004, First Defendant filed Application by way of Summons

dated 19 November 2004 to strike out Plaintiff's claim against the First Defendants on the grounds that:-

- “(a) it discloses no reasonable cause of action; or
- (b) it is scandalous; frivolous or vexatious; or
- (c) it is otherwise abuse of the process of the court.”

1.2 On 24 November 2004, being returnable date of the Application, parties were directed to file Affidavits by his Lordship Justice Jitoko (as he then was) and the Application was adjourned to 18 February 2005.

1.3 On 18 February 2005, parties were directed to file and serve Submissions and the Application was adjourned to 18 April 2005 for Oral Argument.

1.4 On 18 April 2005, the above Application was called before Justice Jitoko. There are no notes as what transpired on that day. It appears that the Application was adjourned.

1.5 On 3 April 2010, the Application by First Defendants was called before her Ladyship Justice Wati who adjourned the Application to 9 September 2010 at 2.45 p.m. for hearing before his Lordship Justice Hettiarachchi (as he then was).

1.6 On 13 August 2010, Second Defendants filed Application to strike out Plaintiff's claim against it on the following grounds:-

- “1. That it discloses no reasonable cause of action.
- 2. That it is frivolous and vexatious, and
- 3. It is an abuse of the process of the Court.”

1.7 Both Applications were called on 9 September 2010, before his Lordship Justice Hettiarachchi (as he then was) when Plaintiff was directed to file Affidavit in Opposition to Second Defendants Application and the Application was adjourned to 28 October 2010, for hearing.

1.8 On 28 October 2010, Counsel for the Applicants and Plaintiff informed the Court that they rely on Submissions filed and such the Applications were adjourned for Ruling.

1.9 No ruling having been delivered this matter was referred to this Court.

1.10 On 19 June 2013, Counsel for the Applicants and the Plaintiff informed the Court that they rely on Affidavits and Submissions filed and that Ruling can

be delivered on notice and at Plaintiff's request he was granted time until 5 July 2013 to file further Submissions with liberty for Defendants to file Submissions in Reply by 19 July 2013.

2.0 Application to Strike Out

2.1 Both First Defendant and Secondnamed Second Defendants Applications is made under Order 18 Rule 18 of the High Court Rules and both rely on the same grounds as stated in paragraphs 1.1 and 1.6 of this Ruling.

2.2 It is well established that jurisdiction to strike out claim or pleadings should be used very sparingly and only in exceptional case **Timber Resource Management Limited v. Minister for Information and Others** [2001] FJHC 219; HBC 212/2000 (25 July 2001).

2.3 In **National MBF Finance (Fiji) Ltd v. Buli** Civil Appeal No. 57 of 1998 (6 July 2000) the Court stated as follows:-

“The Law with regard to striking out pleadings is not in dispute. Apart from truly exceptional cases the approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be proved. If a legal issue can be raised on the facts as pleaded then the Courts will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention. it follows that an application of this kind must be determined on the pleadings as they appear before the Court....”

2.4 In **Razak v. Fiji Sugar Corporation Ltd** [2005] FJHC 720; HBC 208. 1998L (23 February 2005) his Lordship Justice Gates (current Chief Justice) stated as follows:-

*“A reasonable cause of action means a cause of action with “some chance of success” per Lord Pearson in **Drummond-Jackson v. British Medical Association** [1970] 1 All ER 1094 at p.1101f. The power to strike out is a summary power “which should be exercised only in plain and obvious cases”, where the cause of action was “plainly unsustainable”; Drummond-Jackson at p.110b; **A-G of the Duchy of Lancaster v. London and NW Railway Company** [1892] 3 Ch. 274 at p.277.*

2.5 On 30 August 2004, Plaintiff filed Writ of Summons with Statement of Claim.

2.6 On 24 September 2004, Plaintiff filed Amended Statement of Claim.

- 2.7 It is obvious as rightly submitted by the Applicants that the manner in which the Claim is made, it is impossible to determine the cause of action against the Applicants and the relief being sought by the Plaintiff.
- 2.8 From the contents of the Statement of Claim it seems that the Plaintiff on behalf of Mataqali Vunimoli is seeking injunctive Orders for return of freehold land at Pacific Harbour and for Defendants to allocate a new burial site for the Mataqali.
- 2.9 In **Rasoki v. Attorney-General of Fiji** [2010] FJHC 266 HBC 107.2009 (12 February 2010 his Lordship Justice Calanchini (as he then was) current President of Fiji Court of Appeal in dealing with Application to Strike Out Originating Summons by Plaintiff stated as follows:-

“... the relief sought by the Plaintiff against the state (the First Defendants) is for the Court to make orders for the return of the lands claimed, it is prevented from doing so by virtue of section 15 of the State Proceedings Act. Furthermore, if the court were to make a declaration concerning ownership of the lands in question, then I am satisfied that the Court would be determining the same issues that are currently before the Court in action No. 121 of 2000.”

- 2.10 It is noted that:-
- (i) The relief sought by the Plaintiff which of course is ambiguous in Civil Action No. 107 of 2009 is same as those sought in this action;
 - (ii) Civil Action No. 121 of 2000 was struck out by his Lordship Justice Amaratunga.
- 2.11 No reasonable cause of action is pleaded or ascertainable against the First Defendant and Secondnamed Second Defendant.
- 2.12 Even though the Plaintiffs action can be dismissed on the ground that there is no reasonable cause of action I will deal with other grounds as well.

Frivolous or Vexatious

- 2.13 At paragraph 18/19/15 of Supreme Court Practice 1993, Vol 1 (White Book) it is stated:-

*“By these words are meant cases which are obviously frivolous or vexatious or obviously unsustainable per Lindley LJ in **Attorney General of Duchy of Lancaster v. L. & N.W.Ry** [1892] 3 Ch. 274;.... The Pleading must be “so clearly frivolous that to put it forward would be an abuse of the Court” (per **Juene P. in Young v. Halloway** [1895]*

P 87, p.90;”

- 2.14 The Oxford Advanced Learners Dictionary of Current English 7th Edition defines “frivolous” and “vexatious” as:-

frivolous: “having no useful or serious purpose”

vexatious: “upsetting” or “annoying”

- 2.15 In view of what was said in by his Lordship Justice Calanchini in Civil Action No. 107 of 2004 Plaintiffs claim lacks merit and is doomed to fail.

Abuse of Process

- 2.16 It is well settled that this Court has inherent jurisdiction to strike out the claim or pleadings for abuse of Court process as well as under Order 18 Rule 18(1)(d) of High Court Rules (paragraph 18/19/18 of Supreme Court Practice 1993 Vol. 1).
- 2.17 At paragraphs 18/19/17 and 18/19/18 of Supreme Court Practice 1993 (White Book) Vol 1 it is stated as follows:-

“Abuse of Process of the Court” - Para. (1)(d) confers upon the Court in express terms powers which the Court has hitherto exercised under inherent jurisdiction where there appeared to be “an abuse of the process of the Court.” This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation (see **Castro v. Murray** (1875) 10 P.59, per Bowen L.J. p.63). See also “Inherent jurisdiction”, para.18/19/18.”

*“Inherent Jurisdiction - Apart from all rules and Orders and notwithstanding the addition of para.(1)(d) the Court has an inherent jurisdiction to stay all proceedings before it which are obviously frivolous or vexatious or an abuse of its process (see **Reichel v. Magrath** (1889) 14 App.Cas.665) (para 18/19/18).”*

- 2.18 The Statement of Claim filed by the Plaintiff is in blatant disregard of the High Court Rules and Rules of Pleading or filed without any appreciation of the High Court Rules.
- 2.19 After careful analysis of the contents of the Statement of Claim as amended it is apparent that Plaintiff’s claim is not bona fide and is more of political in nature and an attempt for Court to make Orders to direct the Defendants to direct certain acts without any legal basis for seeking such Order.

2.20 This action in my view is at the pinnacle of abuse of court process.

2.21 To avoid any doubt I uphold First Defendant's submission that Application for Leave to Enter Judgment filed on 1st November 2004 has no merit and therefore should be dismissed and struck out.


3.0 Conclusion

3.1 I hold that the Plaintiffs Amended Statement of Claim filed on 24 September 2004 and discloses no reasonable cause of action it is frivolous and vexatious and abuse of court process.

3.2 Accordingly I make following Orders:-

- (i) Plaintiffs claim against the First Defendants and Second Defendants is struck out;
- (ii) Plaintiff to pay First Defendants costs assessed at \$750.00;
- (iii) Plaintiff is to pay Second Defendants costs assessed at \$750.00;
- (iv) Application for Leave of Court to Enter Judgment filed on 1st November 2004 is dismissed and struck out.




Kamal Kumar
JUDGE

At Suva
24 June, 2014

Plaintiff: In Person
Solicitors for the 1st Defendants: Office of the Attorney-General of Fiji
Solicitors for the 2nd Defendants: In House, Legal Department