

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

**Civil Action No. 230 of 2009**

**BETWEEN : NIGEL RAJ PAL SINGH** (f/n Raymond Raj Pal) of 14/2 Bruce Street, Blacktown 2148, Australia, Unemployed

**PLAINTIFF**

**A N D : AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED**  
having its registered office at Level 2, 100 Queen Street,  
Melbourne, Victoria, Australia

**DEFENDANT**

**Counsel:**

Mr Mishra Prakash for the plaintiff  
Mr J Apted for the defendant

**Date of Hearing :** 30 April 2014  
**Date of Ruling :** 9 September 2014

**R U L I N G**

**INTRODUCTION**

- [1] This ruling concerns to a summons of the Defendant (“**ANZ**”) filed on 29 January 2014 to strike out the statement of claim and dismiss the action (“**summons**”).
- [2] The summons seeks to strike out the statement of claim on the following grounds:
- (a) the Plaintiff has failed to provide sufficient particulars in the statement of claim in breach of the Order of the Master of the High Court made on 27 February 2013;
  - (b) the statement of claim discloses no reasonable cause of action;

(c) the failure to provide sufficient particulars in the statement of claim prejudices the Defendant and prejudices, embarrasses and delays the fair trial of this action; and

(d) the statement of claim is frivolous and vexatious.

[3] Ground (a) relies on the order for the delivery of particulars. However, grounds (b), (c) and (d) are general grounds based on the statement of claim itself.

[4] The Plaintiff opposes the summons.

[5] There is only one affidavit before the Court namely the affidavit of Andrew Miriklis filed on 24 January 2014 in support of the summons. Although on 5 February 2014, the plaintiff sought and was granted time to file and serve an affidavit in reply, but the plaintiff did not file any.

## **BACKGROUND**

[6] The Plaintiff filed a writ of summons with a statement of claim annexed on 29 December 2009, claiming against the defendant as follows:

(a) Judgment in the sum for:-

i)	Expense on property in Lautoka	\$16,000.00
ii)	Fiji National Provident Fund	\$45,228.00
iii)	Tax Equalization deduction	\$20,686.00
iv)	Contract for three (3) years as Manager Fiji at Lautoka	\$391,770.00
	<b>TOTAL</b>	<b><u>\$473,684.00</u></b>

a) Further damages for breach of contract as assessed by this Court.

b) Damages for breach of contract

c) Damages and Interest under the Law Reform (Miscellaneous Provisions) (Death Interest) Act, Cap. 2 of the Laws of Fiji.

- d) Any declaration that the termination of the Plaintiffs employment was unlawful and unfair.
  - e) Costs
  - f) An order that the defendant given an unconditional apology to the Plaintiff for its conduct.
- [7] On 26 August 2010 the defendant filed its blanket holding defence stating that, it therefore reserves the right to file an amended statement of defence on: (a) delivery by the plaintiff of further and better particulars requested by the defendant's solicitors letter of 8 February 2010; or the filing of an amended statement of claim following the grant of leave to do so.
- [8] The defendant then on 1 October 2010 filed summons, pursuant to Ord. 18, r.11 of HCR and under inherent jurisdiction of the court, for further and better particulars. The plaintiff opposed the summons for further and better particulars and filed affidavit in reply. On 27 February 2013, Master Tuilevuka (as he was then) having considered the summons ordered the plaintiff to serve on the defendant within 14 days further and better particulars as sought in the summons.
- [9] The plaintiff did not provide particulars within the time allowed by the court. The plaintiff should have provided further and better particulars ordered to serve on the defendant. But, nonetheless, the plaintiff filed and served the ordered particulars on 11 October 2013. Solicitors for the defendant took the position that this did not comply with the requirements of the High Court Rules, Ord. r.11 (7). Subsequently, on 26 November 2013 the court gave the plaintiff a final 7 days to comply with pre-emptory order that failing which statement of claim would be dismissed.

[10] The defendant has filed the current summons to strike out, as the plaintiff's solicitors refused to deliver further particulars on the basis that their answer "AM7" complied.

[11] At hearing, counsel for the defendant indicated that the defendant does not seek to have the matter struck out because of the failure to comply the ordered particulars. It therefore does not rely on ground (a) of its summons. He also indicated that the summons is filed under O.18 r.11 and 18 of the High Court Rules 1988 and inherent jurisdiction of the court. However, the defendant relies only on O. 18, r.18 and the inherent jurisdiction of the court. It will not rely on O.18, r.11.

#### **RELEVANT LAW ON PLEADINGS**

[12] Under O.18 r6 of the High Court Rules 1988, a pleading must contain and contain only a statement in summary form of the material facts on which the party pleading relies for his claim or defence. At paragraph 18/7/11 of the *Supreme Court Practice 1999* ("**White Book**"), the principle is stated as follows:

*"All material facts – it is essential that a pleading, if it is not to be embarrassing, should state those facts which will put those against whom it is directed on their guard, and tell them what is the case which they will have to meet (per Cotton L.J. in Philipps v. Philipps (1878) 4 Q.B.D. 127, p. 139. "Material" means necessary for the purpose of formulating a complete cause of action; and if any one material statement is omitted, the statement of claim is bad (per Scott L.J. in Bruce v. Odhams Press Ltd [1936] 1 All E.R. 287 at 294. Each party must plead all the material facts on which he means to rely at the trial; otherwise he is not entitled to give any evidence of them at the trial. No averment must be omitted which is essential to success. Those facts must be alleged which must, not may, amount to a cause of action (West Rand Co. v. Rex [1905] 2 K.B 399; see Ayers v. Hanson [1912] W.N. 193."*

[13] Paragraph 18/12/1 of the White Book states:

*“Whenever either party is imputing fraud, negligence, or misconduct to his opponent, the facts must be stated with especial particularity and care. .... “The Court will require of him who makes a charge that he shall state that charge with as much definiteness and particularity as may be done, both as regards time and place” (per Lord Penzance in Marriner v. Bishop of Bath and Wells [1893] P.145; and see the remarks to Thesiger L.J. in Saunders v. Jones (1877) 7 Ch.D. 435 at 452).*

[14] Paragraph 18/12/5 of the White Book states in relation to claims relying on contracts and agreements:

*“Agreement – The pleading should state the date of alleged agreement, the names of all parties to it, and whether it was made orally or in writing, in the former case stating by whom it was made and in the latter case identifying the document, **and in all cases setting out the relevant terms relied on** (Turquand v. Fearon (1879) 48 L.J.Q.B 703). If the agreement be not under seal, the consideration also must be stated. The precise words used in the making of an oral agreement need not be stated. Where a contract is alleged to be implied from a series of letters or conversations or otherwise from a number of circumstances, the contract should be alleged as a fact, and the letters, conversations or circumstances set out generally, and further particulars requiring details will not generally be ordered. For instances or implied contracts, see Brogden v. Metropolitan Ry. (1877) 2 App. Cas. 666; Hussey v. Horne-Payne (1879) 4 App. Cas. 311.” (emphasis added)*

[15] The requirement under O.18 r6 to plead all material facts necessary for the cause of action and the need under O.18 r11 for particulars are separate things. However, where a pleading is defective because it fails to state all the material facts, the other party can, as a matter of practice, instead of moving to strike out, take the more lenient approach of seeking particulars. This does not prejudice the right of the party to apply to strike out the claim if the necessary material particulars are not

thereafter supplied. In *Bruce v Odhams Press Ltd* [1936] 1 ALL ER 287 Scott LJ when considering the English predecessors of the O.18, r6 and O.18, r11 said at page 294:

*“The cardinal provision in rule 4 is that that statement of claim must state the material facts. The word ‘material’ means necessary for the purpose of formulating a complete cause of action; and if any one ‘material’ statement is omitted, the statement of claim is bad; it is ‘demurrable’ in the old phraseology, and in the new law is liable to be ‘struck out’ under RSC Order 25, rule 4 (see *Phillips v Phillips* (1878) 4 QBD 127) or a ‘a further and better statement of claim’ may be ordered under rule 7.*

*The function of ‘particulars’ under rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim – gaps which ought to have been filled by appropriate statements of various material facts which together constitute the plaintiffs’ cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleadings, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff’s cause of action with information sufficiently detailed to put the defendant on his guard as to the case he has to meet and to enable him to prepare for trial. Consequently in strictness particulars cannot cure a bad statement of claim. But in practice it is often difficult to distinguish between a ‘material fact’ and a ‘particular’ piece of information which it is reasonable to give the defendant in order to tell him the case he had to meet; hence in the nature of things there is often overlapping. And the practice of sometimes delivering them afterwards either voluntarily, or upon request or order, without any reflection as to the true legal ground upon which they are to be given has become so common that it tended to obscure the very real distinction between them.*

*In a case where there is no omission of material facts under rule 4, whether particulars should be ordered, is very often a matter of pure discretion – because it depends*

*on a view of fairness or convenience which is essentially a matter of degree. But where particulars are asked because the statement of claim is defective in that it omits some essential averment i.e. some 'material fact' – the question is not one of discretion, and the adoption by the defendant of the lenient remedy of an application for particulars instead of the more stringent remedy of striking does not turn an issue of the right into an issue of discretion'."*

- [16] It has been held by the English Court of Appeal in *Davey v Bentinck* [1892] 1 QB 185, at p 188 that where a party delivers inadequate particulars, then the particulars may be considered as part of the pleadings in determining whether there is a reasonable cause of action and whether the action is frivolous and vexatious. Lord Esher MR stated at pages 187-188:

*"As to the question whether an order dismissing the action as frivolous and vexatious is right, such an order might be supported on either of two grounds – that is, either directly under Order xxv., r. 4, or under the inherent jurisdiction of the Court to prevent oppression. Whether the case can be brought within Order xxv., r. 4, depends on whether for that purpose such particulars as have been ordered in this case can be considered as part of the pleadings. I incline to that opinion, and to the view that the rule should be construed in its largest sense, so that where particulars show that grounds on which a party is either bringing or defending an action are frivolous or vexatious that is sufficient to warrant an order to dismiss the action or to strike out the defence, as the case may be. It is not necessary finally to decide this point, because I have no doubt that the action is frivolous or vexatious or that the defence is so, has by its inherent jurisdiction power to stop the proceedings or to strike out the defence. If so, there is no question in my mind on the facts of this case that the action was oppressive. The plaintiff has been asked for particulars of the services rendered, and all he has done is to repeat the statement that services were rendered, without giving any further particulars as to what they were; and as to the libel he says he is not in a position to*

*give particulars of the persons to whom it was published. The conclusion is irresistible that there were no such services and no such publication, and without these there is no cause of action and the action is frivolous and vexatious and oppressive.”*

- [17] In **British Airways Pension Trustees Ltd v Sir Robert McAlpine & Sons** (1994) 72 BLR 26 the Court of Appeal emphasised that the basic question is whether the pleadings allow the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare an answer to it. Although an action will not be struck out if there is a willingness to supply further particulars, it will be struck out if the plaintiff’s claims were fundamentally flawed in the sense that no further particulars could assist their case or there had been an express refusal to supply particulars or a contumelious disregard of court orders.

#### **LEGISLATURE ON STRIKING OUT**

- [18] O.18, r. 18 governs the court’s general powers to strike out and provides as follows:

‘Striking out pleadings and indorsement (O. 18, rule 18)

18.-(1) **The court 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).

[19] In addition to its powers under the High Court Rules, the court has an inherent jurisdiction to strike out pleadings and other documents which are shown to be frivolous, vexatious or scandalous, stay or dismiss an action or strike out a defence which is an abuse of the process of the court. So under its inherent jurisdiction the court may strike out the whole or part of the indorsement on a writ or stay or dismiss an action which the plaintiff cannot prove and which is without solid basis, or which seeks to raise anew a question already decided by a court of competent jurisdiction, even though the plea of res judicata may not strictly be an answer to the claim. Equally, the court may strike out a sham defence as an abuse of process, see Halsbury’s Laws of England Fourth Edition Volume 37 at para 435.

## **THE PRINCIPLES ON STRIKING OUT**

[20] **Paulo Malo Radrodro vs Sione Hatu Tiakia & others, HBC 204 of 2005.** In that case, the High Court exhaustively explained the principles, citing several case authority, that are applicable to the exercise of jurisdiction under HCR Order 18 rule 18 application:-

***“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 Li 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*”.

## **DEFENDANT'S SUBMISSION**

[21] Mr J Apte counsel for the defendant submitted that the statement of claim discloses no reasonable cause of action when considered in its own terms, but even considered with the particulars, there remains no reasonable cause of action. He further submitted that the statement of claim is embarrassing and the absence of particulars will prejudice the fair trial of the action and also that the action is frivolous and vexatious.

## **PLAINTIFF'S SUBMISSION**

[22] Counsel for the plaintiff, Mr Prakash submitted that there is considerable amount of evidence will have to be discovered. The plaintiff has compiled and filed an extensive affidavit giving particulars. He further submitted that the onus of this application is upon the defendant, and the defendant has not met the high standard required for striking out the plaintiff's claim and driving it from the judgment seat.

## **DISCUSSION & DECISION**

[23] The defendant applies to have the claim of the plaintiff struck out. Under Ord. 18, r. 18, claim may be struck out on the grounds that, (a) the claim discloses no reasonable cause of action; (b) it is scandalous, frivolous or vexatious; (c) it may prejudice, embarrass or delay the fair trial of the action; or it is otherwise an abuse of the process of the court.

[24] A party making an application to strike out a pleading under Ord. 18, r. 18 may rely on one or all of the grounds stated in that rule. In this case the defendant does not indicate under which ground of r. 18 this application is made. But, nonetheless, it seems that the defendant relying on all the grounds contemplated in that rule.

[25] It is worthy of note that affidavit evidence is inadmissible on an application made under ground 1 (a), that the claim discloses no reasonable cause of action. Ord. 18, r. 18 (2) prohibits affidavit evidence

on an application made under r. 18 (1) (a). Ord. 18 r. 18 (2) states that, 'no evidence shall be admissible on an application under paragraph 1(a)'.

[26] Mr Mishra Prakash, counsel for the plaintiff submits that the affidavits filed are not able to be used as the sub rule under which this application is made not stated. This submission, in my opinion, carries no force. The defendant relies on all the grounds stated under r. 18. I would therefore consider the affidavit evidence when I review the claim in relation to other grounds relied on by the defendant, but not in relation to ground 1 (a) that the claim does not disclose reasonable cause of action.

[27] The plaintiff has formulated his claim on the following causes of action namely, (a) breach of service contract; (b) expenditure on house; (c) performance management; (d) Fiji National Provident Fund Contributions (FNPF); (e) Tax Equalization. I will deal with each one of the claims separately.

### **Breach of Contract of service**

[28] The plaintiff pleads that he was employed by the defendant under various contracts of service for a period of 22 years. He does not provide the dates and places at which each contract was made. He was ordered to provide particulars of the dates and places at which each contracts was made. He only gave the positions that he held and the places where he held them. Under paras 3, 4, 5, 6, 7 & 8 of the statement of claim the plaintiff states as follows:

1...

2...

3. (a) *The Defendant encouraged the Plaintiff to take overseas posts representing to him that he will bring back additional skills to Fiji which are need n Fiji and same will be assistance to him in his future career with the Defendant.*

(b) *As a result and in reliance of those representations the Plaintiff served as a Chief Operating Officer in the islands of Kiribati*

*and Manager Risk & Compliance and Audit in Papua New Guinea and as an Accountant in Solomon Islands with the defendant with the Defendants branches there at the request of the Defendant.*

4. *The Plaintiffs post was Manager Risk & Compliance and Audit at Papua New Guinea at a salary of FJ\$44,486.00. Head post of Chief Operating Officer at Kiribati at a salary of FJ\$74, 6523.00.*
5. *The Plaintiff came back to Fiji in July 2007 and was advised that he will be given a contract and a position of Manager Fiji at Lautoka, Fiji for a period of at least three (3) years by the Defendant and was told to report to duty. He was given long service leave for six months which was up to November 2007 which he took in the belief he had employment with the Defendant of the post of Manager Fiji.*
6. *The Plaintiff spent \$16,000.00 on a property in Lautoka on a basis that he would have a post for at least three years at Lautoka, Fiji.*
7. *The Plaintiff was asked to go to Suva for Project Work but found out there was no position of Manager Fiji. The Defendant then without any just course made the Plaintiff redundant and/or terminated his services and contract despite his objections.*
8. *The defendant is in breach of its contract with the Plaintiff and in breach of the provisions of the Employment Act...'*

[29] The plaintiff says all of his contracts were oral. He was required to give particulars of the terms of the oral contracts. He has provided some particulars of the service contracts.

[30] If the contract or agreement is oral, the pleading should state the date of the alleged agreement and set out the terms relied on. However, the precise words used in the making of an oral agreement need not be stated, Para 18/12/1 of the White Book cited at para 14 of this ruling.

[31] At para 5 of the statement of claim states that he was advised that he will be given service contract to work in Lautoka as Manager. He states the date (July 2007) of the alleged advice, the nature of the position

promised (Manager Fiji at Lautoka) and the period of the contract (three years).

[32] Through the summons for further and better particulars, the defendant requested particulars as follows:

*'... (d) if oral, identifying:-*

- (i) The person whom it is alleged entered into the contract on behalf of the defendant; and*
- (ii) The terms of the contract alleged to have been entered into...'*

[33] The defendant provided the particulars, inter alia:-

*'(1) Discussions and briefing about my appointment pay and conditions was done by Mr. Robert Collings HR Manager Fiji, Mr Suresh Gandhi Manager ANZ Bank Lautoka and Robert Goudswaard the Managing Director ANZ Bank of the Soloman Islands.'*

[34] In the particulars provided as per court order the plaintiff states whom he entered into the alleged oral agreement with, though not providing terms and conditions of the contract. In the case of oral contract the precise words used in the making of an oral agreement need not be stated.

[35] In my judgment, when plainly reading the statement of claim coupled with the particulars provided in relation to contract of service, it discloses a reasonable cause of action about breach of contract of service which has some prospect of success. I have formed this opinion on the basis that the pleadings as alleged by the plaintiff are true and not disputed.

### **Expenditure on house**

[36] At paragraph 16 - it is alleged that the Plaintiff spent \$16,000 on a property at Lautoka on the basis that he was to have a 3 year position at Lautoka. He does not give basis of this claim. He fails to state why the defendant is legally liable for this expenditure. In the further and better

particulars the plaintiff identifies only the property upon which the sum was allegedly spent and its ownership but gives no other particulars. He says he has lost the evidence. The claim does not contain material facts necessary to raise a cause of action against the defendant.

[37] It will be noted that the plaintiff has failed to provide all material facts on which he means to rely at the trial regarding his claim on house expenditure. This may prejudice, embarrass or delay the fair trial of the action. Rule 18 (c) empowers the court to strike out any pleading or indorsement of any writ in the action. Additionally, the court has inherent jurisdiction to strike out the whole or part of the indorsement on a writ or stay or dismiss an action which the plaintiff cannot prove and which is without solid basis.

[38] In my judgment, the plaintiff's claim on expenditure on house should be struck out as it is formulated without solid basis and he cannot prove it as he has lost evidence.

### **Performance Management**

[39] In paragraph 9 of the statement of claim, the plaintiff pleads that the defendant failed to put him on a performance management plan. He alleges that there was salary review done by the defendant on or about 30 September 2007. No Performance Management Report was done for him. Therefore there was a breach of contract. The plaintiff fails to state which contract and which term allegedly required the defendant to put the plaintiff on a performance management plan. The particulars supplied do not refer to any contract and they appear to concede that there was no contractual right to the review. This claim has no solid basis and discloses no reasonable cause of action. It is also frivolous and vexatious. Therefore the claim based on performance management is liable to be struck out pursuant to r. 18 (a) & (b) and under inherent jurisdiction of the court.

## **Fiji National Provident Fund contributions**

[40] In paragraphs 10-12 the plaintiff claims specific amounts of Fiji National Provident Fund contributions. It is apparent that he claims them as short payments to the FNPF. The Plaintiff through further and better particulars has clarified that it is based on the legislation. If it is based on the legislation (FNPF Act), then the following case would be applicable.

[41] In ***Colonial Insurance Agents Association v BSP Life (Fiji) Ltd*** [2011] FJHC 410; HBC479.2006 (29 July 2011), Calanchini J (as he then was) held that only the Fiji National Provident Fund can enforce the provisions of the Fiji National Provident Fund legislation where there has been a failure to make a contribution. He said:

*“In relation to contributions that are required to be made by the First Defendant to the Fund on behalf of its employees (insurance agents) the FNPF Act provides both a criminal and civil remedy for any breach of the obligation imposed by the Act. The remedies are set out in section 49 and section 56 of the Act. **As a result, in my judgment, the intention of the FNPF Act is that there is no right to enforce the statutory obligation or to bring an action for a breach of that statutory obligation available by a private cause of action commenced by third parties such as the plaintiffs.** This conclusion is supported by section 57 of the Act which in effect makes provision for the recovery of any loss of benefit to the employee that results from the employer's breach of its statutory obligation to contribute to the Fund in the amount and at the time required by the Act. This conclusion is also consistent with the decision of this Court in ***Fiji National Provident Fund –v- Shri Datt*** (1988) 34 FLR 67.”* (Emphasis provided).

[42] The plaintiff alleges that the defendant was not paying the eight cents per every dollar earned by the plaintiff and although the plaintiff's contribution of Fiji National Provident Fund monies of eight cents of every dollar earned were deducted, the same was not paid in full by the defendant to the National Provident Fund, see para 10. (b) of statement



of claim. Undoubtedly, this claim is based on statutory obligation under FNPF Act. As Calanchini J held in **Colonial Insurance Agents Association** case (supra) there is no private right of action available to the plaintiff to enforce the statutory obligation or to bring action for breach of that statutory obligation. The claim for various FNPF amounts in paragraph 10-12 is clearly not sustainable on the basis of that decision. Therefore the claim for FNPF amounts is frivolous and vexatious [r.18 (b)]. As such that claim is liable to be struck out.

### **Tax equalisation**

[43] In paragraphs 13.1 to 13.5 of the statement of claim, the plaintiff alleges that as part of the terms of its contract with the plaintiff engaged its Accountants Price water House Cooper to attend to the plaintiff's tax requirements. The defendant failed to ensure that the plaintiff's tax requirements were properly carried out with the result that he stands to be penalized and perhaps prosecuted. The defendant deducted monies from the plaintiff's salary for taxation requirements and/ or illegally did not pay the same to the Tax Authorities. The plaintiff claims from the defendant in the sum of \$20,685.00 in this regard.

[44] It is alleged that the defendant deducted monies from the plaintiff's salary in tax but failed to pay out to the tax authorities. The plaintiff fails to give particulars of the amounts deducted and dates and the amounts of any short payment. In my judgment, the plaintiff has brought this claim without any solid basis. I therefore strike out this claim on the ground that it discloses no reasonable cause of action (r.18 (a)).

### **Costs**

[45] This is an application filed by the defendant to have the action struck out. The defendant succeeds partially. This means the plaintiff also succeeds. I therefore order that the costs of these proceedings shall be in the cause.

## **Conclusion**

[46] For the foregoing reasons, acting under O. 18. r.18 of the High Court Rules and exercising the court's inherent jurisdiction, I strike out the plaintiff's claims relating to expenditure on house; performance management; Fiji National Provident Fund Contributions (FNPF); and Tax Equalization with costs in the cause. However, I allow the plaintiff to proceed with his claim on breach of contract of service only. The plaintiff should amend the claim accordingly within 21 days incorporating the particulars supplied in that regard pursuant to the summons for further and better particulars. The defendant will within 14 days thereafter file and serve its amended statement of defence. The plaintiff may file and serve reply to the amended statement of defence within 14 days after service of the amended statement of defence, if necessary. The matter is now adjourned to 31 October 2014 for mention only.

## **Final orders**

- i. The plaintiff's claims relating to expenditure on house; performance management; Fiji National Provident Fund Contributions (FNPF); and Tax Equalization are struck out;
- ii. The plaintiff may proceed with his claim on breach of the contract of service only;
- iii. The plaintiff is to file and serve within twenty one (21) days from today an amended statement of claim relating to breach of the contract of service incorporating the particulars supplied in Table Form by the plaintiff on 11 October 2013 relating to that contract;
- iv. The defendant will file and serve its amended statement of defence within fourteen (14) days thereafter;
- v. The plaintiff will file and serve reply to the amended statement of defence within fourteen (14) days thereafter, if need be;

- vi. If the plaintiff fails to file and serve the amended statement of claim within the time limit as ordered, his action will stand as struck out with costs to be assessed;
- vii. The cost (of this summons/application) shall be cost in the cause;
- viii. The matter is now adjourned to 31/10/2014 for mention only;
- ix. Orders accordingly.



At Lautoka

9 September 2014

Messrs Mishra Prakash & Associates, Barristers & Solicitors for the plaintiff  
Messrs Munro Leys Solicitors for the defendant

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