

IN THE HIGH COURT OF FIJI  
AT LABASA  
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 45 OF 2006

BETWEEN : SALENDRI DEVI 1<sup>st</sup> Plaintiff

AND : PHUL KUMARI 1<sup>st</sup> Defendant

A N D : MAHARAJI 2<sup>nd</sup> Defendant

AND : CHANDAR BHAN MAHABIR 3<sup>rd</sup> Defendant

COUNSEL : Mr A Sen for the Plaintiff  
Mr A Ram for the Defendant

Date of Judgment : 17<sup>th</sup> October, 2014.

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**JUDGMENT**

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1. There are two applications before me. They are a summons seeking **for the action to be dismissed and strike out for the plaintiff's failure to comply with Justice Amaratunga's order dated 25.3.14** filed on 25.5.14 and a summons to strike out the statement of defence filed on 16.6.14. The first summons has been filed by the defendant and the second summons has been filed by the plaintiff. The said summons filed by the plaintiff seeking a statement of defence to be struck out seeks for the following orders.

(i) *That the defendants statement of defence be dismissed as it:-*

- a) *discloses no reasonable cause of action;*
- b) *it is scandalous, frivolous or vexatious;*

*c) it is an abuse of process of Court.*

*(ii) That the 1<sup>st</sup> defendant be ordered to execute all the necessary documents for transfer of Certificate of title No. 18829.*

The parties were not at variance that the second summons will depend on my ruling on the first summons. The Court will first deliberate on the first summon filed by the defendant to strike out or dismiss the action.

### **Background**

2. The 1<sup>st</sup> defendant had filed summons to serve interrogatories on the plaintiff, the learned Master had allowed it and made an order stating *“in the circumstances I am satisfied that leave should be granted to the defendants to administer the proposed interrogatories as enumerated above more specifically interrogatories 3 to 7, 10 to 15, 31, 32, 34 to 38, 40 and 45 to 47 are to be answered by the plaintiff”*.
3. The plaintiff had filed answers to the interrogatories by an affidavit filed on 12.9.13. However the answers were in-sufficient and a further summons has been filed by the 1<sup>st</sup> defendant on 4.10.13 seeking for an order to fully and sufficiently answer the interrogatories numbered in the said summons. The Master had given a ruling on the matter dated 28.10.13 ordering the plaintiff to further answer or to sufficiently answer interrogatories. This order has been sealed on 31.10.13. The plaintiff had filed a purported answer by affidavit and filed it in 2.12.13.
4. The 1<sup>st</sup> defendant alleges that there was no sufficient compliance of the Master’s order and that the plaintiff was not answering or avoiding answering important questions and filed another summons dated 15.1.14 seeking an order that the action be dismissed or struck out for the plaintiff’s failure to comply with the Master’s order or the plaintiff to be liable to committal.
5. After inquiry before a judge of the High Court, the High Court gave a decision dated 25.3.14. The final orders of the said decision says:

*i) The plaintiff is granted 1 month from today to answer to the interrogatories.*

- ii) *If the interrogatories are not answered sufficiently and properly as stated by the Court, the plaintiff's action will be struck out.*

And cost was awarded. The said order had been sealed on 27.3.14. Thereafter the plaintiff had filed a set of answers on 14.4.14.

6. The 1<sup>st</sup> defendant has now filed the summons before me on 21.5.14 seeking for orders that the action be dismissed and struck out for plaintiff's failure to comply with the High Court order dated 25.3.14.
7. Both Counsels agreed that the 1<sup>st</sup> summon filed will have a bearing on the 2<sup>nd</sup> summons filed and accordingly the 1<sup>st</sup> summons to strike out the plaintiff's action was taken up for hearing.

#### **The Defendant's Case**

8. The defendant submitted that they had filed and served the interrogatories but despite the Master and a High Court judge giving orders the plaintiff has failed to answer or sufficiently answer the interrogatory no. 2 which states: "*was Simon Leddie an Australian citizen and an Australian resident at the time of marriage'.*?"

The defendants further submitted as the plaintiff has not answered the questions sufficiently thus had filed summons before the Master and as the plaintiff failed to answer or sufficiently answer another summons was filed under Order 26 R 6 (1) and (2) of the High Court Rules. Where the High Court had given another opportunity to the plaintiff without striking out the action to answer the interrogatories, it too had not been complied with and the defendant has filed the summons before me under O 26 R 6(1)

#### **The Plaintiff's Case**

9. The plaintiff has deposed that they have sufficiently answered the interrogatories.



### Determination

10. It is pertinent to note that when the interrogatories was first served, the plaintiff had not objected to the said interrogatory that is in question and the Master had ordered the plaintiff to answer the said interrogatories.

The defendant submitted that it was not disputed that Simon Leddie pertaining to whom the interrogatory has been filed was married to the plaintiff in Suva on 23.3.1988, that the plaintiff after marriage had left Fiji and gone to reside in Australia. The plaintiff had obtained permanent residence visa from the Australian Government after her marriage to Simon Leddie and that the plaintiff had obtained Australian citizenship and a passport.

11. In this background the court has now been asked to examine whether the plaintiff has answered the interrogatory and answered it sufficiently after the court had on two occasions ordered to do so, there had been several interrogatories involved as the last summons is for not sufficiently answering one specific interrogatory, the court will now consider the answers submitted.
12. Pursuant to the orders of the Master dated 25.7.12, the plaintiff had answered the particular interrogatory on the following manner.

*Q: Was Simon Leddie an Australia citizen and an Australian resident at the time of marriage?*

*A: The above question is incomprehensive and nonsensical.*

Thereafter the defendant had filed the summons' dated 4.10.13 for an order asking the plaintiff to fully and sufficiently answer the interrogatories on 28.10.13. the Master had given an order stating that the plaintiff ought to have given an answer to the said interrogatories and given an order for plaintiff to again further answer or to sufficiently answer said interrogatories among which was the specific interrogatory which is the subject matter of the this application.

13. The said order of the Master had not been appealed and the plaintiff has filed further answers pursuant to the Master's order which had been filed on 2.12.13. The interrogatories and the answer is reproduced here.

*Q: Was Simon Leddie an Australian citizen and an Australian resident at the time of marriage?*

*A: "I cannot answer the above question as I cannot remember if Simon Leddie was an Australian citizen or a resident and further I do not have any dealings with him any manner whatsoever".*

14. Subsequent to this answer the defendant filed a further summons pursuant to O26 R 6 (1) & (2) of High Court rules seeking for the action to be dismissed or struck out. The said summon was filed before a judge and the High Court has given an order. It was submitted that as per the said order the High Court had found that the plaintiff had failed to answer the vital issues and held that to consider an answer proper and sufficient the plaintiff should answer the vital issues.

15. The High Court had given the orders that is mentioned earlier in this judgment whereby plaintiff had been asked to answer the interrogatories within 1 month and in the absence of such the plaintiff's action was to be struck off and a cost of \$1000 had been ordered; the cost too had to be paid within a month.

16. Pursuant to the said High Court order the plaintiff had filed a reply to the interrogatories which is reproduced.

*Q: Was Simon Leddie an Australian citizen and an Australian resident at the time of marriage.*

*A: I do not know the status of Simon Leddie.*

Subsequent to this reply the defendant has filed this summons seeking for dismissal and to strike out, the plaintiff's action for failure to comply with a High Court order and pursuant to O 26 R 6 (1).



The plaintiff answered the allegation by stating that the plaintiff did not know the status of Simon Leddie and that she did not know whether Simon Leddie was a resident of or a citizen of Australia.

17. In determining whether the answer given is sufficient or not Court will have to decide it in the context of the plaintiff's answers to the interrogatories as a whole. The plaintiff on the 1<sup>st</sup> instance has completely rejected to answer the said interrogatory. When the Court ordered the plaintiff to answer the same, the plaintiff had answered stating that she cannot remember whether Simon Leddie was an Australian citizen or a resident. When the Court ordered for the 3<sup>rd</sup> time she contradicted her earlier answer and said that she doesn't know the status of Simon Leddie. If the plaintiff was unaware of the status of Simon Leddie, she should have said so at the outset. As submitted by the defendant, in observing the pattern of replies that the plaintiff has given the defendant has established that the answers given are evasive contradictory and insufficient. It is also pertinent to note that on too previous occasions the Court has ordered the plaintiff to give sufficient and proper answers.
18. The defendant submitted in deciding whether answer was sufficient or proper, the answer to this particular interrogatory should be considered in the context of the other answers given. It was also submitted that the plaintiff was not going to marry a person whom she did not know, belongs to what nationality or his place of residence. The plaintiff also submitted that as per the answers to the interrogatories which are filed of record the plaintiff after marriage had gone to Australia and lived in Queensland obtaining a permanent resident visa.
19. The defendant also submitted that the plaintiff has bluntly violated the High Court orders by not paying or taking no attempt to pay the cost of \$1000 that had been ordered to pay within one month. It was also submitted the plaintiff had acted high handedly and disregarded and violated the Master's order and the High Court orders. It was further submitted that the plaintiff had failed to comply with the High Court order dated 25.3.14 and sought the action to be struck out as per the said High Court order under O 26 R 6 (1).
20. The plaintiff's counsel submitted in answers to Court that the cost was not paid, but the defendant's counsel had not taken steps to enforce the court order.

21. The said court order gives a specific time period to pay the cost. When a court makes an order it has to be complied with. When there is a court order, a responsible law abiding citizen is not going to wait till it is enforced specially when time period is given it has to be complied within that time period. It is pertinent to note that orders of Courts are not meant to be disregarded or to be complied on the whims and fancies of a litigant.

22. In considering Order 26 Rule 6 it states:

*6.-(1) If a party against whom an order is made under rule 1 or 5 fails to comply with it, the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.*

*(2) If a party against whom an order is made under rule 1 or 5 fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.*

*(3) Service on a party's solicitor of an order to answer interrogatories made against the party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.*

*(4) A solicitor on whom an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.*

23. The said order contemplates a situation as that is before this Court. It is pertinent to note that Court has given several opportunities to the plaintiff to comply. Unfortunately the plaintiff has not only failed to comply with the court order, it appears to this Court that the plaintiff has totally and high handedly disregarded the Court orders.

As stated earlier in this order both parties agreed that the defendant's summons under Order 26 will have a direct bearing on the plaintiff's summons to strike out the



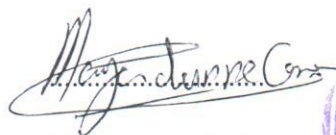
defence. In that context the 2<sup>nd</sup> summons to strike out was heard by Court. There was a preliminary objection by the defendant for maintainability of the said summons under Order 86. The parties sought liberty to file written submissions only pertaining to the maintainability of plaintiff's summons under Order 86. Both parties have filed their respective written submissions. However as I have stated earlier the determinations of the second summons was going to be depended on the court's determination of the first summons.

### Conclusion

24. The Court is mindful that the striking out of a case should be the last resort the Court should consider. However, in this instance taking into consideration all facts before me pertaining to the issue in the summons and in view of the order that has been made by the High Court compelling the plaintiff to sufficiently answer the interrogatory or the plaintiff's action to be struck out. I hold that the plaintiff had failed to sufficiently comply with the orders of court, also I hold that the defendant has satisfied Court to obtain the relief that is sought in the summons. As the defendant has succeeded in his summons, answering the questions in the second summons filed by the plaintiff dated 16.6.14 for striking out the defence will not arise.

Accordingly for the above stated reasons, the defendant succeeds in his summons dated 21.5.14 and the plaintiff's action is dismissed and struck out.

I also award the defendant a cost of \$3500 summarily assessed.



Mayadunne Corea

JUDGE

17.10.2014

