

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO: HBC 362 of 2014

BETWEEN : KUNJUMBU NAIR
Plaintiff

A N D : DIRECTOR OF LANDS AND SURVEYOR GENERAL
First Defendant

A N D : DIRECTOR OF FIJI HUMAN RIGHTS COMMISSION
Second Defendant

COUNSEL : Ms. N. Karan for the Plaintiff
Ms. S. Chand for the first Defendant
Ms. T. Sharma for the second Defendant

Date of Ruling : 22nd September, 2015

RULING

[1] The plaintiff filed this originating summons praying *inter alia*, for the following reliefs;

- 1) Extension of time to file statement of claim against the 1st and 2nd defendants for damages and compensation.

2) An interim injunction restraining the 1st defendant whether by themselves, their servants or agents from carrying out or doing any dealings on the land known and described as Lot – 2 DSS 1594 part of Vucimaca; which was previously part of lot 1 on SO 2048 being LD ref No. 4/14/1624 Crown Lease No. 112973.

[2] The 1st defendant filed summons to strike out the application of the plaintiff on the following grounds that;

1. it discloses no reasonable cause of action.
2. it is scandalous, frivolous and vexatious.
3. it is an abuse of the process of Court.

[3] At the conclusion of the hearing the learned counsel for the plaintiff sought time to file written submissions and the Court directed him to file written submissions if any, on or before 04th September 2015 but the learned counsel did not file written submissions.

[4] Order 18 Rule 18(1) of the High Court Rules provides as follows;

- (1) The Court may at any stage of the proceedings order to be struck out or amend 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;

[5] It is only in plain and obvious cases that the recourse should be had to the summary process under this rule. [*Lindley M.R. in Hubbuck vs. Wilkinson [1899] 1 Q.B. 86, 91*]. The summary procedure under this rule can only be

adopted when it can be clearly seen that a claim or answer is on the face of it “unsustainable”. {*Attorney General of Duchy of Lancaster v. L & N.W. Ry. Co.* [1892] 3 Ch. 274, C.A.}.¹

- [6] A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleadings are considered. {*Drummond-Jackson v. British Medical Association* [1970] 1 W.L.R. 688; [1970] 1 All E.R. 1094, C.A. 1101}. So long as the statement of claim or the particulars disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak and not likely to succeed is no ground for striking out. {*Moore vs. Lawson* (1915) 31 T.L.R. 418c C.A.; *Wenlock vs. Moloney* [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.}. Striking out is employed only in plain and obvious cases. [*Kemsley v. Foot and Ors.* [1951] 2 K.B. 34; [1951]1 All E.R. 331, C.A.].²
- [7] It was held in the case of **Walters v. Sunday Pictorial Newspapers Limited** [1961] 2 All ER 761, it is well established principle of law that the drastic remedy of striking out a pleading or part of a pleading cannot be resorted to unless quite clear that the pleading objected to discloses no arguable case. Indeed, it has been conceded before us that the rule is applicable only in plain and obvious cases.
- [8] In the case of **Radrodro v Church of Jesus Christ of Latter Day saints** {[2005 FJHC 694; HBC0204.2005L (11 November 2005)} it was held that, the purpose of the Court’s jurisdiction to strike out pleading is twofold. Firstly, is to protect its own processes and scarce resources from being abused by hopeless cases, Secondly and equally importantly, it is to ensure it is a matter of justice, defendants are permitted to defend the claim fairly and not subjected to the expense and inconvenience in defending an unclear or hopeless case.

¹ The Supreme Court Practice 1988 (White Book) 18/19/3

² The Supreme Court Practice 1988 (White Book) 18/19/7

- [9] In **Singh v Attorney General of Fiji** [2003] FJHC 305; HBC0221.998s it was held-

An abuse of the process of the Court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purpose or more simply, where the process is misused. In such a case, even if the pleading or indorsement does not offend any of the other specified grounds for striking out, the facts may show that it constitutes an abuse of the process of the court and on this ground the Court may be justified in striking out the whole pleading or indorsement or any offending part of it.

- [10] The plaintiff came to Court alleging that the 1st defendant failed to renew the lease of the agricultural land described as lot 1 on SO 2048 being LD ref No. 4/14/1624 Crown Lease No. 112973.

- [11] It is the position of the defendants that the plaintiff had no *locus standi* to bring this action for the reasons that there was no lease granted to the plaintiff in respect of the land which is the subject matter of this action on the basis that the plaintiff was never the registered proprietor of the property in question.

- [12] In the case of **Lok v Ram** [2014] FJHC 4; CBV001 of 2013 at page 13 the Supreme Court held as follows;

The concept of *locus standi* connoted the meaning of “stand”. In other words the applicant must have such interest in the matter to which his claim relates. Where a person has no interest at all or no sufficient interest to support a particular legal claim or action such person will not have *locus standi* and thus not standing to sue another person. To put in a nutshell the test for *locus standi* is whether the applicant has sufficient interest. It is needless to stress that “sufficient interest” may

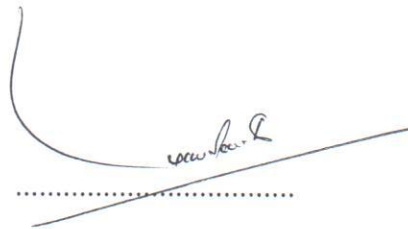
defer from case to case depending on the facts and circumstances of each case. It must be viewed both in legal and factual context and “sufficient interest means” nothing but “sufficient interest” in the matter in which the proceedings relate to.

- [13] Having discussed the law relating to striking out of statements of claim or statements of defence I will now proceed to consider whether the plaintiff has *locus standi* to bring this action.
- [14] In his affidavit filed in support of the originating summons the plaintiff does not state in whose name the lease sought to be extended was issued nor does he say that it was granted to him. He has, in the affidavit deposed to various other matters which are irrelevant to the issue before the Court for determination.
- [15] The plaintiff becomes entitled to bring this action only if he is the person in whose name the lease has been issued. The position of the 1st defendant is that the lease was originally granted to the mother of the plaintiff as the administratrix of the estate Shankaran Menon. This position is supported by the letter dated 18th October 2002, attached to the affidavit of the plaintiff, terminating the lease on the grounds that the lease had expired, non-payment of rent and for deserting and leaving the land uncultivated. Since the plaintiff is not the lessee of the land in question he has no legal right to seek an extension of the lease. Lease is an agreement, the parties to which are bound by its terms. The relationship between the lessee and the plaintiff does not confer any right on him to sue the defendants for the extension of the lease. Any application for extension of an existing lease must be brought by the lessee and not by any third party.
- [16] In view of reasons aforementioned I hold that the plaintiff had no *locus standi* to bring this action and the action must therefore necessarily fail.

[17] Accordingly, I make the following orders;

Orders.

- (1) I strike out the summons of the plaintiff.
- (2) The plaintiff shall pay the 1st defendant \$ 1500 as (summarily) assessed costs.



Lyone Seneviratne

