

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No: HBC 298 of 2013

BETWEEN: SUSHILA MANI

PLAINTIFF

A N D: JAI MALA and THOMAS SUGHRIM CHAND

DEFENDANT

Before: Master Thushara Rajasinghe

Counsel: Mr. Nand for the Plaintiff
Ms. S Narayan for the defendant

Date of Hearing: 23rd September 2014

Date of Ruling: 30th January 2015

R U L I N G

A. INTRODUCTION

1. This Summons was filed by the Defendants pursuant to Order 15 rule 6 (1) & 2 (a) and 18 rule 18 (1) (a) (b) and (d) of the High Court Rules seeking following orders inter alia;

- i. *That the writ of summons and statement of claim filed by the Plaintiff on 16th of October 2013 be dismissed on the basis that it does not disclose a reasonable cause of action, is scandalous, frivolous or vexatious or it is otherwise an abuse of the process of the court,*
- ii. *The cost of this action be paid by the Plaintiff,*
- iii. *Any other order that this court deems just and expedient,*

2. This summons was supported by the affidavit of Jai Mala the first Defendant. It appears from the affidavit of Jai Mala, that this application for strike out the statement of claim is founded on two main grounds. The first is the absence of locus to bring this action. The second is no reasonable cause of action and abuse of the court process.
3. In respect of the first ground Jai Mala deposed that the Plaintiff is not the true administrator of the estate of Chandra Mani as Sales Narayan Raman has appointed as the administrator of the estate on 8th of July 2009. Wherefore, the Plaintiff has no locus to institute this action as the legal administrator of the estate of late Chandra Mani.
4. In view of the second ground, that is no reasonable cause of action, Jai Mala deposed in the affidavit that the Plaintiff's claim is based on her interest in the 1/3 undivided share of the estate property, however, that 1/3 undivided share has already been transferred to Radika Archana Mani, the daughter of the late Chandra Mani. The Defendant further deposed that the Plaintiff was never entitled to any benefits under the estate as she had given up the possession of the estate property and left the premises since 2001 by her own will.
5. Upon being served with this Summons, the plaintiff filed her affidavit in opposition, where the Plaintiff stated that she was granted a letter of administration in respect of the estate of late Chandra Mani on 26th of March 2001 and is not aware of the letter of administration issued on 8th of July 2009 to Sales Narayan. She reiterated that she is the legally appointed administrator of the estate of late Chandra Mani. She further deposed that she has already instituted an action to challenge the validity of the said letter of administration issued on 8th of July 2009.
6. In response to the second ground of the Defendants, the Plaintiff deposed that her claim is founded on the ground that the two defendants being the registered co- owners of undivided 2/3 of the property, have deprived her enjoying her undivided 1/3 share of the property.

7. Subsequent to the filing of respective affidavits, this summons was set down for hearing on 23rd of September 2014, where the learned counsel for the Defendant and the Plaintiff made their respective arguments and oral submissions. The counsel for the Plaintiff tendered his written submissions during the hearing. Upon careful perusal and consideration of the Summons, respective affidavits, oral submissions and written submissions of the parties, I now proceed to pronounce my order as follows.

B. BACKGROUND,

Pleadings,

8. The Plaintiff instituted this proceeding by way of writ of summons together with her Statement of Claim seeking following orders inter alia,

- i. Special damages in the sum of \$ 18,533.34,*
- ii. An order for the sale of property by calling of tenders to the highest bidder and distribution of 1/3rd of the proceeds to the Plaintiff,*
- iii. General Damages,*
- iv. Cost of this Action,*
- v. Such further relief as this honourable court deems fit and expedient,*

9. The Plaintiff's claim is based on her allegation that the two defendants being the registered co-owners of 2/3 undivided share of the property, forcefully evicted the Plaintiff and deprived her any benefit from it since 2001. She claims that she is the lawful administrator of the estate of her late husband Chandra Mani and entitled to 1/3 undivided share of this property.

10. The Defendants denied such allegation and stated in their statement of defense that she abandoned the property by her own will leaving her sick daughter since 2001, wherefore she is not entitled to any benefit of this property. Moreover, they claim that in pursuant of

the letter of administration issued on 8th of July 2009, the 1/3 undivided share of the property has already been transferred to the daughter of the Plaintiff.

C. THE LAW ON STRIKING OUT.

11. Having briefly outlined the background of this proceeding, I now turn to discuss the applicable laws on the issue of striking out pleadings and endorsements under Order 18 rule 18 of the High Court rules.

12. Order 18 rule 18 (1) (a) and (d) states that

“the court at any stage of the proceedings order to be struck out or amend any pleading or the endorsement, on the ground that –

- a. It discloses no reasonable cause of action or defence as the case may be,*
- b. It is scandalous, frivolous or vexatious or,*
- c. It may prejudice, embarrass or delay the fair trial of the action,*
- d. It is otherwise an abuse of the process of the court,*

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

13. Moreover, Order 18 rule 18 (2) provides the scope of the hearing of applications made under O 18 r 18 (1) (a) where it states that

“No evidence shall be admissible on an application under paragraph (1) (a)”.

14. Justice Byrne held in *Timber Resource Management Limited v The Minister for Information, The Minister for Agriculture, Fisheries and Forests, The Attorney General of Fiji and others* (HBC 0212 of 2000) that

“Time and again the court 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 – per Marsack J.A. in Attorney General v Shiu Prasad Halka (1972) 18 FLR 210 at page 215

In Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Ltd (1899) 1 Q.B.86 at page 96 Lindley M.R. said “the ...Procedure is only appropriate to cases which are plain and obvious, so that any master or judge can say at once that the statement of claim as it stands is insufficient even if proved to entitle the plaintiff to what he asks. The use of the expression “reasonable cause of action” shows the summary procedure.... Is only intended to be had recourse to in plain and obvious cases”.

15. Master Tuilevuka (as he then was) having observed Justice Kirby’s findings in Len Lindon v the Commonwealth of Australia (No 2) S. 96/005 held in Sugar Festival Committee 2010 v Fiji Times Ltd (2012) FJHC 1404;HBC78.2010 (1 November 2012) that

“Court rarely strike out a proceedings on this ground. It is only in exceptional cases where, on the pleaded facts, the plaintiff could not succeed as a matter of law or where the cause of action is so clearly untenable that it cannot possibly succeed will the court act to strike out a claim. If the facts as pleaded do raise legal questions of importance, or a triable issue of fact on which the rights of the parties depend, the court will not strike out the claim. His Lordship Mr. Justice Kirby in Len Lindon v The Commonwealth of Australia (No 2) S.96/05 summarized the applicable principles as follows:-

- i. *It is a serious matter to deprive a person of access to the courts of law for it is there that the rule of law is upheld,*

including against Government and other powerful interests. This is why relief, whether under O26 r 18 or in inherent jurisdiction of the court, is rarely and sparingly provided.

- ii. To secure such relief, the party seeking it must show that it is clear, on the face of the opponent's documents, that the opponent lacks a reasonable cause of action...or is advancing a claim that is clearly frivolous or vexatious....*
- iii. An opinion of the court that a case appears weak and such that it is unlikely to succeed is not alone, sufficient to warrant summary termination...even a weak case is entitled to the time of a court. Experience teaches that the concentration of attention, elaborated evidence and argument and extended time for reflection will sometimes turn an apparently unpromising cause into a successful judgment,*
- iv. Summary relief of the kind provided for by O26 r 18, for absence of a reasonable cause of action, is not a substitute for proceeding by way of demurrer... if there is a serious legal question to be determined, it should ordinarily be determined at a trial for the proof of facts may sometimes assist the judicial mind to understand and apply the law that is invoked and to do so in circumstances more conducive to deciding a real case involving actual litigation rather than one determined on imagined or assumed facts,*
- v. If, notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it had failed to put in proper form, a court will ordinarily allow that party to reframe its pleading... a question has arisen as to whether O 26 r 18 applies to part only of a pleading,*
- vi. The guiding principles is, as stated in O 26 r 18 (2), doing what is just. If it is clear that proceedings within the concept of the pleading under scrutiny are doomed to fail, the court should dismiss the action to protect the defendant from being*

further troubled, to save the plaintiff from further costs and disappointment and to relieve the court of the burden of further wasted time which could be devoted to the determination of claims which have legal merit.”

16. The scope of the hearing of applications in this nature under o 18 r 18 (1) (a) and (d) was discussed in *Khan v Begum* (2004) FJHC 430; HBC0153.2003L (30 June 2004) where Justice Connors held that

“it is said that the fact the court has this inherent jurisdiction is one of the characteristics which distinguishes the court from other institutions of the government. It is a jurisdiction, to be exercised summarily and as I have said, is in addition to the jurisdiction conferred by the rules. It is not in issue that if a party relies solely upon Order 18 rule 18 there no evidence may be considered by the court in making its determination but that limitation does not apply where the applicant relies upon the inherent jurisdiction of the court”.

D. THE LAW ON THE ISSUES OF REASONABLE CAUSE OF ACTION AND ABUSE OF COURT PROCESS

17. Having carefully considered the respective affidavits and submissions of the parties, it appears to me that the Defendants’ summons for strike out the statement of claim is based on two main grounds. The first is the lack of locus of the Plaintiff to institute this action and the second is no reasonable cause of action. I now turn to review the laws pertaining to the issues of reasonable cause of action.
18. Justice Jitoko in *Prasad v Home Finance Company Ltd [2003] FJHC 322; HBC0116D.2002S (23 January 2003)* extensively discussed the issue of reasonable cause of action where his lordship held that;

“what constitutes a reasonable cause of action or defence does not mean that the Court should delve into whether the claim or defence is likely to succeed. As Lord Pearson stated in Drummond Jackson v. British Medical Association [1970] 1 WLR 688, [1970] 1 ALL ER 1094 CA at P.1101: No exact paraphrase can be given, but I think a reasonable cause of action means a cause of action with some chance of success, when (as required by r.19 (2)) only the allegations in the pleading are considered.....

The Courts view and many decisions on this matter is clear: As long as the statement of claim or the particulars (Davey v. Bentinck: (1893) 1 QB 185) 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 it out. (Supreme Court Practice 1985 Vol. 1 p.306).....

It is therefore very clear that in both the exercise of its powers under O.18 r.18 and under its inherent jurisdiction, a Court may only strike out a Statement of Claim and dismiss the action if in the words of Lord Blackburn, in Metropolitan Bank v. Pooley (1885) 10 App. (As 210 at p.221, if and when required by the very essence of justice to be done”.

19. It appears that the authorities discussed above have repeatedly affirmed that the discretion of striking out pleadings should be exercised sparingly. The court is required to consider the right of the litigant to access to the proper and complete judicial process while keeping in mind the fact that to prevent the Defendant to get unnecessarily involve in an action which is plainly and obviously has no cause of action or abuse of process of the court.


E. ANALYSIS,

20. The first ground of the Defendant for this application for strike out is lack of locus of the Plaintiff to institute this action in the capacity of administrator of the estate of late Chandra Mani. The Plaintiff in her affidavit in response specifically stated that she was granted a letter of administration for the estate of late Chandra Mani on 26th of March 2001. She was unaware of the letter of administration granted to Sales Narayan for the same estate on 8th of July 2000. However, she has already instituted an action challenging the validity of this subsequent letter of administration. I am not going to determine the validity of the letter of administration granted to the Plaintiff, however it is my opinion that she has a locus to institute this action in the capacity of administrator of the estate of late Chandra Mani as her letter of administration has not being revoked or canceled.
21. I now turn to the second ground of the Defendant's application that is no reasonable cause of action. The Defendants argue that they are only the co-owners of the estate property and the claim of benefit from the share of the Plaintiff's entitlement should be claimed from the present owner of the said share.
22. It appears that the Plaintiff instituted this action against the co-owners to claim her share of benefit from the undivided property, which she claims were deprived by the Defendants. Wherefore, the cause of action is based on the dispute between the co-owners of the property regarding the sharing of benefits of it. It appears that there is a dispute between the Plaintiff and the Defendants to determine whether the Plaintiff is entitled to 1/3rd share of the benefit from the property and has she been deprived from it by the Defendants. It is my opinion that these two issues are tribal issues and need to be determined in a proper hearing before a judge. The rights of the parties depend on the determination of these main issues. I accordingly hold that the statement of claim discloses a reasonable cause of action against the Defendants.
23. In Conclusion, I make following orders that;
 - i. The Defendant's summons for strike out the Statement of claim of the Plaintiff made pursuant to Order 15 rule 6(1) & 2(a) and Order

18 rule 18 (1) (a) (b) and (d) of the High Court rules is hereby refused and dismissed.

ii. The Plaintiff is granted a cost of \$ 750 assessed summarily

Dated at Suva this 30th day of January 2015


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R.D.R Thushara Rajasinghe
Master of High Court, Suva

