

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO: HBC 49 OF 2015

BETWEEN : **AJAY KUMAR** of Tavua Town, Tavua, Market Vendor.

PLAINTIFF

A N D : **TAVUA TOWN COUNCIL** a statutory body under the Local Government Act.

DEFENDANT

Counsel : Mr Krishna for defendant/applicant
Ms N Khan for plaintiff/respondent

Date of Hearing : 23 October 2015

Date of Ruling : 03 December 2015

R U L I N G

Introduction

[01] This is an application to strike out originating summons filed by the plaintiff (hereinafter may be referred to as '*the respondent*').

[02] By summons filed 20 May 2015 (*the application*) the applicant seeks the following orders:

1. *THAT the Plaintiff's Originating Summons filed herein be struck out and dismissed with costs against the Defendant for want of compliance of the High Court Rules, 1988.*
2. *FURTHER in the alternative the Plaintiffs Originating Summons filed herein be struck out and dismissed with costs against the Defendant.*
3. *THAT there be abridgment of Service of this Summons filed herein.*

On the following grounds:

1. *The Plaintiff has filed to include a Statement of Questions on which the Plaintiff seeks determination.*
2. *THE Plaintiff's failure to provide sufficient particulars to identify the cause or caused of actions in respect of which the Plaintiff's claim against the Defendant.*
3. *DISCLOSES no reasonable cause of action against the Defendant.*
4. *IS an abuse of process.*

[03] The application is made pursuant to Order 18, rule 18 (1) (a) and Order 7, rule 3 (1) of the High Court Rules, 1988 (*the HCR*) and inherent jurisdiction of the court.

[04] The application is supported by an affidavit sworn by Temalesi Henfiro, Chief Executive Officer of the applicant.

[05] The matter was argued on 23 October 2015. Both parties made oral submissions, and only the applicant tendered written submissions. The respondent did not tender or file written submissions.

Background

[06] On 10 March 2015 the applicant filed an originating summons and sought an injunction to restrain the defendant from removing the plaintiff's extended stall at the Tavua Market and/or interfering with the smooth operation of the plaintiffs business, declaration that the plaintiffs extended stall has been duly approved by the Defendant and a declaration that the defendant do not have powers to demand that the plaintiff to remove the extended stall.

Analysis

[07] The defendant applies to strike out the originating summons filed by the plaintiff on the ground that it discloses no reasonable cause of action. The applicant relies on O 18 r 18 (1) (a) of HCR which provides that

18.-(1) *The Court may 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 endorsement, on the ground that-*

(a) It discloses no reasonable cause of action or defence, as the case may be; or”.

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

(3) So this rule shall, so far as applicable, applied to an originating summons and a petition as if the summons or petition, as the case may, were a pleading.

[08] It is apparent that the originating summons filed by the plaintiff is a pleading for the purpose of r. 18 (1) (a), and therefore that rule applies to originating summons as well.

[09] At hearing, counsel for the applicant argued that the originating summons should be struck out on the grounds that the originating summons discloses no reasonable cause of action against the defendant. He relied on (1) (a) only. Therefore I will consider the originating summons itself as the application has been made under r.18 (1) (a). I will not consider affidavit evidence adduced by the parties for the purpose of this application. Because no evidence is admissible on an application under paragraph (1) (a), see r.18 (2).

[10] Counsel for the applicant also submits that there is no statement of the question on which the applicant seeks the determination of the court and that originating summons includes no particulars to identify his claim.

[11] An originating summons must include statement of questions on which the plaintiff seeks the determination of the court, and it must also

incorporate sufficient particulars the cause of action in respect of which the plaintiff claims that relief or remedy. O. 7, r. 3.-(1) states that:

3.-(1) **Every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the High Court or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the case or causes of action in respect of which the plaintiff claims that relief or remedy.**
(Emphasis added)

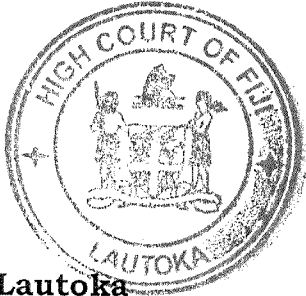
[12] It is mandatory for an originating summons to include question for determination of the court, to identify a cause or causes of action against the defendant, upon which relief or remedy is sought, see **Ram Reddy & Ors v the Then India Sanmarga Ikya Sangam & Ors** [2012] HBC 163/12L 29 October 2012.

[13] The originating summons filed by the plaintiff contains only the relief sought. It does not include questions for determination of the court; it also does not include sufficient particulars to identify a cause or causes of action against the defendant.

[14] O.7, r.3 is mandatory and must be complied with. The plaintiff's originating summons is filed contrary to this rule, in that it includes no question for determination of the court, and it states no particulars to identify the cause of action against the defendant upon which the relief or remedy is sought. This is not a mere irregularity that could be cured seeking recourse to O. 2. In the circumstances, I would strike out the originating summons filed on 10 March 2015 by the plaintiff as it discloses no reasonable cause of action against the defendant with summarily assessed costs of \$500.00 which is to be paid within 28 days to the defendant.

Orders of the court

1. The originating summons filed by the plaintiff is struck out.
2. The plaintiff will pay summarily assessed costs of \$500.00 to the defendant in 28 days.



At Lautoka

03 December 2015

M H Mohamed Ajmeer 3/12/15

M H Mohamed Ajmeer

JUDGE