

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 6 of 2007

BETWEEN : BAHADUR ALI of Laucala Beach Estate, Suva Company Director and
Businessman.

1ST PLAINTIFF

AND : KAMRU DEAN of Labasa, Businessman.

2ND PLAINTIFF

AND : SAFIRA ALI of Labasa, Businesswoman.

3RD PLAINTIFF

AND : VALLEY ARTESIAN WATERS (FIJI) LIMITED presently known as
Balebasoga Natural Waters (Fiji) Limited (In Receivership) having registered office
in Suva.

4TH PLAINTIFF

AND : CREDIT CORPORATION (FIJI) LIMITED a limited liability having its
registered office at Suva

1ST DEFENDANT

AND : NALIN PATEL and PRADEEP PATEL of Suva, Accountants, Receivers
appointed in respect of the fourth named Plaintiff.

2ND DEFENDANT

AND : THE DIRECTOR OF LANDS of iTauki Trust Fund, Complex Nasese, Suva.

3RD DEFENDANT

AND : ATTORNEY GENERAL of the Republic of Fiji.

4TH DEFENDANT

AND : WESTERN BUILDERS LIMITED a limited liability company having its
registered office at Lot 1 Loula Road, Ba.

5TH DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSELS: Mr. Varun Prasad - for the Plaintiff (Not Present).
Mr. V. Kapadia - for the First Defendant.
Mr. A. Prakash - for 3rd and 4th Defendants.

Date of Hearing: 02nd May, 2016

Date of Ruling: 02nd May, 2016

RULING

(Summons seeking striking out orders pursuant to Order 18 Rule 18 of the High Court Rules, 1988 and the Inherent Jurisdiction of this Court)

INTRODUCTION

1. The **3rd and 4th Defendants** filed a **Summons** on 17th November, 2015 and sought for an order that the pleadings against the 3rd and 4th defendants be struck out on the following grounds that it-
 - (i) Discloses no reasonable cause of action;
 - (ii) Is scandalous, frivolous and vexatious; and
 - (iii) It is otherwise an abuse of the process of the court.
2. Subsequently, the **Plaintiff** filed a **Summons** on 24th November, 2015 and sought for an order that the Statement of Defence of the 3rd and 4th Defendants dated 17th November, 2015 be struck out or amended on the grounds that the same-
 - (i) Discloses no reasonable defence; and
 - (ii) Tends to prejudice, embarrass or delay the fair trial of the action; andAnd that the costs of this application be paid by the 3rd and 4th defendants.
3. Both applications were made pursuant to **Order 18 Rule 18 of the High Court Rules, 1988 and the Inherent Jurisdiction of this Honourable court.**
4. It is noted that both parties to the proceedings did not intend to file any affidavit in support to their respective striking out applications.

5. Further, the case was scheduled for hearing at 11.30 am but noting the Plaintiff Counsel's nonappearance, the court stood the matter down till 11.40 am granting an opportunity to the Plaintiff/Counsel to be present to represent the Plaintiff's case. He failed to appear and did not inform the court of his reason for absence as was required of him.

THE LAW

6. The law on **striking out pleadings and endorsements** is stipulated at **Order 18 Rule 18 of the High Court Rules 1988** which states as follows-
- 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 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.*
9. It is well established that jurisdiction to strike out claim or pleadings should be used very sparingly and only in exceptional case **Timber Resource Management Limited v. Minister for Information and Others** [2001] FJHC 219; HBC 212/2000 (25 July 2001).
10. In **National MBF Finance (Fiji) Ltd v. Buli** Civil Appeal No. 57 of 1998 (6 July 2000) the Court stated as follows:-

"The Law with regard to striking out pleadings is not in dispute. Apart from truly exceptional cases the approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be proved.

If a legal issue can be raised on the facts as pleaded then the Courts will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention. it follows that an application of this kind must be determined on the pleadings as they appear before the Court...."

11. Justice Jitoko in the case of **"Prasad v Home Finance Company Limited [2003] FJHC 322; HBC0116D.2002S (23 January 2003)"** has discussed the issue of reasonable cause of action where his lordship stated 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 Person stated in Drummond Hackson 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. Bentick: (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 no 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. (a 210 at p.221, if and when required by the very essence of justice to be done".

12. The test of reasonable cause of action does not require the court to determine whether the cause of action in the pleadings will eventually succeed. The only issue to be considered is that the facts pleaded in the pleadings disclose some cause of action or a dispute fit to be decided by the court as per the case of **Bano v Rashid [2014] FJHC 266.**

ANALYSIS and DETERMINATION

13. Both Summons were scheduled for hearing on 02nd May, 2016 at 11.30 am.
14. The 3rd and 4th Defendant's Counsel made an application to this court seeking withdrawal of the two (2) grounds of their application in terms of

Order 18 Rule (1) (b) and (d), court to proceed with his application on one (1) ground only in terms of **Order 18 Rule 18 (1) (a)**.

15. Since there was no objection to his withdrawal of application in part, the court acceded to Counsels application and granted the withdrawal of the grounds at **Order 18 Rule 18 (1) (a) and (b)** only.
16. The Counsel representing the First Defendant was present since he was also served with the pending Summons seeking the striking out application as well.
17. Counsels representing the **First** as well as the **3rd and 4th Defendants**, made simultaneous application and submissions to strike out the Plaintiff's Summons filed on 24th November, 2015 seeking an striking out order on the grounds that the Plaintiff/and or Counsel was not present at the scheduled hearing to pursue his case.
18. The Counsel representing the **3rd and 4th Defendants** further sought orders be made in terms of his pending striking out Summons on the ground that the pleadings against the 3rd and 4th defendants **discloses no reasonable cause of action**. Their Summons was also scheduled for simultaneous hearing and determination before this court accordingly.
19. The Plaintiff was not present in court to defend the Striking out Summons filed by the 3rd and 4th Defendants against the Plaintiff.
20. I have considered the nature of both pending Summons before me coupled with the oral and written submissions by defence Counsels. There was no oral or written submissions received from the Plaintiff's Counsel. Further, I have noted the absence of the Plaintiff's Counsel from this case.
21. In the given circumstances, I uphold the submissions of both the First and 3rd and 4th Defence Counsels and accordingly make the following orders.

ORDERS

1. **The 3rd and 4th Defendants Summons filed on 17th November, 2015 seeking an order that the pleadings against the 3rd and 4th defendants be struck out is hereby acceded to and granted accordingly.**

2. **The Plaintiffs Summons filed on 24th November, 2015 and sought for an order that the Statement of Defence of the 3rd and 4th Defendants be struck out or amended is struck out for non-appearance.**
3. **Costs is summarily assessed at \$500 in favour of the First Defendant and \$500 (Total) in favour of 3rd and 4th Defendants.**
4. **Case is adjourned to Wednesday 1st June, 2016 at 9 am for further directions.**



DATED AT SUVA THIS 02nd DAY OF MAY 2016


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MR. VISHWA DATT SHARMA
Master of High Court, Suva

CC: *Mr. Varun Prasad of V.P Lawyers, Suva*
Mr. V. Kapadia of Sherani & Co., Suva
Mr. A. Prakash of AG's Chambers, Suva