

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 304 of 2016

BETWEEN : YOGENDRA RAVINESH SHARMA of 47Howell Road, Suva, Fiji Businessman.

PLAINTIFF

BETWEEN : ADI KAVUNONO ILOILOVATU ULUIVUDA of 1 Loloma Street, Namadi Heights, Suva.

DEFENDANT

BEFORE : Master Vishwa Datt Sharma

COUNSEL : Ms. Jackson - for the Plaintiff
Mr. Rayawa - for the Defendant

Date of Hearing: 05th July, 2016

Date of Ruling : 18th July, 2016

RULING

[Dispensation of Pre-Trial Conference pursuant to Order 34 Rule 2(3) of the High Court Rules, 1988 and the Inherent Jurisdiction of this Court]

APPLICATION

1. On the outset, it is important to state that the substantive matter was commenced by the Plaintiff in 2012. Some 4-5 years has lapsed and this case has only reached the Pre-Trial Conference stage.

2. The Plaintiff filed and served a Summons seeking the following orders-
 - (a) *That the requirements to convene a pre-trial conference be dispensed with;*
 - (b) *That the costs for this application to be paid by the Defendant's Solicitor on an indemnity basis; and*
 - (c) *Any further orders this Court deems just, fit and expedient.*
3. The Defendant opposed the application.

THE LAW

4. **Order 34 Rule 2 of the High Court Rules, 1988** deals with Pre-Trial Conference and provides as follows-

Pre-trial conference (O.34, r.2)

2.-(1) The provisions of this rule apply only in proceedings in which all the parties are represented by solicitors.

(2) Before an action may be set down for trial the solicitor acting for any of the parties shall make a written request to all the other solicitors acting for other parties to the action to attend a conference at a mutually convenient time and place, with the object of reaching agreement as to possible ways of curtailing the duration of the trial, and, in particular, as to all or any of the following matters-

- (a) the possibility of obtaining admission of facts or documents;
- (b) the holding of inspections and examinations;
- (c) the discovery of documents;
- (d) the exchange between parties of reports of experts;
- (e) the plans, diagrams, photographs, models and similar articles to be used at the trial;
- (f) the quantum of damages; and
- (g) the consolidation of trials.

(3) If any solicitor refuses to attend such a conference, the solicitor requesting the same may apply to the Court for an order that such conference be held, and the Court may order that such conference be held at such time and place and for such purpose as shall be specified in the order, or may order that such conference need not be held.

(4) At the conclusion of any such conference the barristers and solicitors attending it shall draw up and sign a minute of the matters, if any, on which they are agreed.

(5) When a barrister and solicitor sets an action down for trial or makes a written request for a date for the hearing thereof he must state in writing whether a pre-trial conference under this rule has been held and also state the particulars of any order made under paragraph (3) a pre-trial conference under this rule has been held and also state the particulars of any order made under paragraph (3).

ANALYSIS and DETERMINATION

5. The issue for this Court to determine is whether the requirement to convene a **Pre-Trial Conference (PTC)** should be dispensed with, as sought by the Plaintiff?
6. The whole purpose of a pre-trial conference is to look at the totality of the evidence to be adduced in the trial together with the pleadings. This will definitely ensure that the issues are considered and condensed in the pre-trial conference.
7. ***It is compulsory for the parties to convene pre-trial conference.*** It will very rarely be the case that the Court may dispense with the pre-trial conference. Time and again the Courts have reminded parties of the importance of convening a pre-trial conference. The Court of Appeal in ***George Transport Limited -v- Laisa Vosawale Civil Appeal No. ABU 0035/2004 (11 November, 2005)*** in respect of a **pre-trial conference minutes** at paragraph 18 of the judgment said:-

"Ord. 34, r. 2 of the High Court Rules requires a pre-trial conference to be held before an action may be set down for trial. It appears that no such conference was held although we were told that draft minutes had been prepared. It does not seem that any of the matters set out in Ord. 32, r. 2 (2) were properly addressed. In view of the short comings in the manner

in which this litigation was conducted, the omission to comply with the rules was serious and cannot be condoned".

8. *Scott J in Viliame Namino v Attorney General Suva High Court Civil Action No: HBC 34/1995 (17th February, 2000) on pre-trial at page 5 had this to say:-*

"The rules of the Court Summons for Directions and the Pre-trial are conferences are all there to for a serious purpose which is to help secure a swift, efficient and just disposal of matters at issue. They are not mere formalities. "

9. *Ord. 34, r. 3 is mandatory. It expressly states that a solicitor who refuses to attend such a pre-trial conference may be forced to convene a pre-trial conference upon an application by the opposing party. It a timely reminder to solicitors that every application made in Court incurs expenditure. Obviously, it needs to be mentioned that non-compliance is a serious cause for concern. The Master of Rolls, Lord Woolf in The English Court of Appeal in Lownes v Babcock Power(1198) TLR 84 Ltd(8.2.98) at 85 on the issue of delay said:*

"Inordinate and inexcusable delay in civil litigation caused by default on the part of solicitors was totally unacceptable. Prejudice to the client resulting from the striking out of his action had to be balanced against the prejudice to the other party, other litigants and the administration of justice in general."

His Lordship further said:-

"It was in the interests of solicitors to handle cases in the business-like way. Delay had an effect in extra work on the plaintiff's solicitors, the defendants' solicitors and client. Additional costs were incurred"

10. The Defence Counsel informed this Court that the Pre-Trial Conference was not convened because the Plaintiff's Writ had a fundamental defect. He added that there was an issue of conflict of interest.
11. The proceedings were commenced by a Writ of Summons on 23rd October, 2013 by Diven Prasad Lawyers who represented the Plaintiff then.
12. Mr. Rayawa representing the Defendant informed Court continuously about the issue of conflict of interest on the part of the Plaintiff's Counsel but made no formal application to Court to deal with the issue of the conflict of interest, if

there was any.

13. On 22nd July, 2015 this Court was informed that Vakaloloma & Associates have filed a notice of change of Solicitors and will now represent the Plaintiff.
14. Subsequently, Messrs Faktaufon & Bale Lawyers filed a Change of solicitors on 26th August, 2015 to represent the Plaintiff.
15. After noting that the Plaintiff had changed his initial counsel, thereafter Vakaloloma & Associates were representing and now that Messrs Faktaufon & Bale Lawyers were representing the Plaintiff, the question that now I pose to the Defence counsel is whether there is still the issue of conflict of interest as raised earlier?
16. The Defence counsel is yet to make a decision on this issue of conflict of interest and inform the Court accordingly.
17. On 22nd February, 2016, parties informed Court that they will convene a Pre-Trial Conference within the next 14 days. Since then nothing transpired between the parties in terms of the Pre-Trial Conference until 09th May, 2016.
18. On 09th May, 2016 this Court made a directions for parties to formalise the Pre-Trial Conference minutes within the next 14 days.
19. On 12th May, 2016, the Plaintiff's Counsel wrote to the Defendant's law firm enclosing the Plaintiff's draft Minutes of the Pre-Trial Conference (PTC) for his consideration and review if any. Further, request was put in place asking the Defence Counsel's availability to meet and discuss the enclosed PTC minutes.
20. According to the Plaintiff's Counsel, there was no response from the Defence Counsel regarding formalisation of the Draft PTC minutes and this prompted the Plaintiff to file and serve a Summons seeking an order that the requirement to convene a Pre-Trial Conference be dispensed with pursuant to Order 34 Rule 2 (3) of the High Court Rules, 1988.
21. After hearing both sides arguments on the current application, it became obvious that the Defence Counsel was not putting in any effort to cooperate with the

Plaintiff's Counsel in convening a Pre-Trial Conference and formalising the PTC minutes accordingly, still bringing in the issue of the conflict of interest when a change of Solicitors has been filed and a new Counsel representing the Plaintiff now and further that he intended to file and serve a striking out of the Plaintiff's substantive action.

22. The Draft Pre-Trial Conference minutes prepared by the Plaintiff Counsel and sent to the Defence Counsel could have been the basis for a Pre-Trial Conference. I find from the Court records that the Defence Counsel is to be blamed for dragging the formalisation of the Pre-Trial Conference minutes and not the Plaintiff.
23. In view of my finding and that unnecessary delay is being cause by the Defence Counsel in formalising the draft PTC minutes, I will now order for both parties to convene a Pre-Trial Conference at its earliest. I may, if I have to in the given circumstances draw up a suitable PTC timetable accordingly.
24. The Plaintiff would not have been prompted to file the current application and seek for an order to dispense with the requirements of a Pre-Trial Conference (PTC) and minutes, if the Defence Counsel had corporated with the Plaintiff's Counsel. Since the court record shows the utmost delay on the part of the Defence Counsel, I will award an indemnity costs against the Defence Counsel personally in the sum of \$750. This Cost has been imposed for the failure on the part of the Defence Counsel to incorporate and effectively participate or convene a conference as per the requirements in law.
25. This Cost to be paid within 14 days time frame.

FINAL ORDERS


- (i) Both parties to convene a Pre-Trial Conference at its earliest.
- (ii) Court to draw up a timetable to convene a Pre-Trial Conference if it becomes necessary to do so.
- (iii) Order indemnity cost against the Defence Counsel in the sum of \$750.

(iv) Cost to be paid to the Plaintiff within 14 days.

(v) Matter stands adjourned to 3rd of August 2016.

DATED AT SUVA THIS 18TH DAY OF JULY 2016




.....
VISHWA DATT SHARMA
Master of the High Court
Suva

cc: Faktaufon & Bale Lawyers, Suva
Rayawa Law, Suva