

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 289 of 2015

BETWEEN : JAYANT PRATAP businessman of Koroqaqa, Baulevu Road, Nausori.

PLAINTIFF

AND : NAIPOTE VERE barrister and solicitor of Koroqaqa, Baulevu Road, Nausori.

DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSEL: Mr. Sunil Kumar for the Plaintiff
Mr. Naipote Vere as the Defendant

Date of Ruling: 1st June, 2017

RULING

*[Plaintiff's Summons to Strike out the Defendant's Statement of Defence
pursuant to Order 18 Rule 18 (1)(a) of the High Court Rules, 1988
and inherent Jurisdiction of Court]*

APPLICATION

1. This is the Plaintiff's Summons seeking the following order-
 - (i) That the Defendant's Statement of Defence be struck out as it discloses no defence but admissions and judgment be entered in favour of the Plaintiff with the damages to be assessed.

2. *The application is made pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules, 1988 and inherent Jurisdiction of Court.*
3. *The application is opposed by the Defendant.*

THE LAW

4. *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); or*
- (c); or*
- (d)*

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.

PLAINTIFF'S CASE (In Summary)

5. *The Plaintiff commenced proceedings by filing a Writ of Summons on 24th August, 2015 2014 and sought damages for Defamation of Character, liable, costs and other relief as set out therein.*
6. *That the Defendant's affidavit breaches Order 41 of the High Court Rules, 1988 and is defective as no leave of the Court was obtained by the Defendant to use the defective affidavit and as such the Court has to disregard the same.*
7. *That it is apparent from the evidence submitted by the Defendant that he tried to cover up the defamatory statements he wrote to the Commissioner of Police and distributed*

the same in the community of the Plaintiff to tarnish his character as per his statement of Claim.

8. That the Plaintiff has established his case within the Statement of Claim by the fact of the admission in the Defendant's Statement of Defence.
9. The Plaintiff prays that judgment be entered in favour of the Plaintiff with costs on Solicitor Client basis.

DEFENDANT'S CASE (In Summary)

10. The Defendant in his Defence claims that the Plaintiff's Claims is an abuse of the Court process in that he claimed general damages of one million dollars against the Defendant and in doing so, he is usurping the role of a Judge.
11. That the comments made were in the public interest because it affects the public at large due to the Plaintiff's position as a Justice of the Peace and Commissioner for Oaths and President of the Police Post.
12. That the statements were based on facts and made due to the legitimate interest and expectation or concern of the public who are concerned with what is going on.
13. That the Defendant will apply for the Plaintiff's claim is struck out for want of prosecution and costs.

Issues for Determination

9. Following are the **issues** which require determination by this honourable court-

First Issue

- (i) Whether the Defendant's Statement of Defence discloses no defence but admissions? AND

Second Issue

- (ii) Whether Judgment be entered in favour of the Plaintiff with damages to be assessed?

ANALYSIS and DETERMINATION

First Issue

10. I will now proceed to determine the First Issue whether the Defendant's Statement of Defence discloses no defence but admissions?
11. No doubt the Defendant has admitted in his Statement of Defence several paragraphs of the Plaintiff's Statement of Claim but does not admit the substantial issue of Defamation.
12. Further, according to the affidavit in Opposition filed by the Defendant raises Defence of Justification and absolute privilege as a complete Defence to an action of libel or slander.
13. It is too early in the stage of the proceeding that the Statement of Defence of the Defendant should be struck out.
14. The Plaintiff needs to prove the substantive issue of Defamation at a full hearing and the Defendant should be given a day in Court to put forward his case to the Court.
15. In short, the evidence needs to be tested at a full hearing and determined once and for all, rather than be decided at an interlocutory stage.
16. I find there is material evidence in the Defendant's Statement of Defence and the substantive matter should proceed to a full hearing and determination.

Second Issue

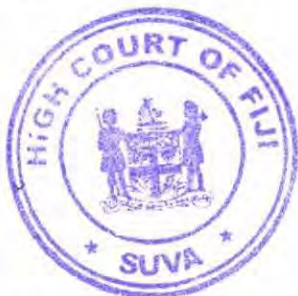
17. **Whether Judgment be entered in favour of the Plaintiff with damages to be assessed?**
18. The Plaintiff's application is seeking Judgment be entered against the Defendant since the Defendant has admitted in his Statement of Defence evidence without pleading any Defence known to law in Defamation cases which consists of admissions.
19. Reference is made to *Section 27 Rule 3 of the high Court Rules, 1988* which provides as follows-

'Where admissions of fact or of part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without

waiting for the determination of any other question between the parties and the Court may give such judgment or make such order on the application as it thinks just.'

20. Firstly, the Plaintiff does not show under which provisions of the law, he has made this application seeking Judgment be entered against the Defendant.
21. Secondly, I reiterate that the Defendant has raised Defence of Justification and absolute privilege as a complete Defence against him of libel or slander.
22. Therefore, it will be for the Court to hear the case on a full hearing and test out all the evidence of the parties to this proceedings to determine the pending issues. It cannot be just dealt with on prima facie evidence as the Plaintiff is now seeking.
23. For the aforesaid reasons, this Court is hesitant and reluctant to accede to the Plaintiff's application seeking judgment prima facie.
24. In Conclusion, I make the following orders-
 - (i) That the Plaintiff's Summons seeking to Strike out the Defendant's Statement of Defence and to enter Judgment in favour of the Plaintiff with Damages to be assessed fails and is hereby dismissed.
 - (ii) That the Plaintiff to pay the Defendant a sum of \$500 as costs of this application within 14 days.
 - (iii) This Court will now make further directions in terms of the next cause which should be undertaken by the parties accordingly.

Dated at SUVA this 1ST day of JUNE, 2017



MR VISHWA DATT SHARMA
Master of High Court, Suva

cc: Sunil Kumar Esq, Nausori
Naipote Vere & Associates, Suva