

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 156 of 2012

**BETWEEN:**        **SHIU KAMAL SINGH** of Vuci Road, Nausori, Businessman.

PLAINTIFF

**AND:**            **SUVA CITY COUNCIL** a local corporate body instituted under the Local Government Act with the office in Suva.

1<sup>ST</sup> DEFENDANT

**AND:**            **LAND TRANSPORT AUTHORITY** a duly govern under the Land Transport Act, having office in Valelevu, Nasinu.

2<sup>ND</sup> DEFENDANT

**BEFORE:**        **Master Vishwa Datt Sharma**

**COUNSELS:**    **Mr. Maisamoa** - for the Plaintiff  
**Mr. Goundar** - for the 1<sup>st</sup> Defendant  
**Mr. Nandan** - for the 2<sup>nd</sup> Defendant

**RULING:**        **28<sup>th</sup> June, 2017**

**RULING**

*[Application by the 2<sup>nd</sup> Defendant seeking an order to strike out the Plaintiff's Statement of Claim pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules, 1988]*

### APPLICATION

1. This is the 2<sup>nd</sup> Defendant's Summons to Strike Out, seeking for the following orders:
  - (a) *That the Plaintiff's Statement of Claim be struck out against the 2<sup>nd</sup> Defendant;*
  - (b) *That the Costs of this application be paid by the Plaintiff.*

#### On the Ground:

- (i) *That the Statement of Claim does not disclose a reasonable cause of action against the 2<sup>nd</sup> Defendant.*
2. The application is made pursuant to *Order 18 Rule 18 (1) (a) of the High Court Rules 1988* and under *the inherent jurisdiction of the High Court.*
3. The Plaintiff opposed the 2<sup>nd</sup> Defendant's Striking out application.
4. The Affidavit was not filed in support of the Strike out Application because *Order 18 Rule 18 (2)* states that *'No evidence shall be admissible on an application under paragraph (1) (a).*
5. The application was heard in terms of the oral submissions made in this proceeding by the Plaintiff and the 2<sup>nd</sup> Defendant.

### BACKGROUND

6. The Plaintiff's Substantive Claim is seeking for the following Relief:
  - (a) *The sum of \$227,868.78 (Two hundred and twenty seven thousand eight hundred and sixty eight dollars and seventy eight cents) for the loss of business for three (3) years;*
  - (b) *Interest to be decided by the Honourable Court;*
  - (c) *Cost of this action; and*
  - (d) *Such further and/or other relief this Honourable Court may deem just.*
7. The 2<sup>nd</sup> Defendant filed a Statement of Defence denying various paragraphs of the Plaintiff's claim and further stated as follows-
  - (a) *That he is unaware of the dealings between the Plaintiff and the 1<sup>st</sup> Defendant.*
  - (b) *The said vehicle is registered under one Arbind Kumar and he did not apply for the transfer of the said vehicle.*
  - (c) *It is the 2<sup>nd</sup> Defendants duty to administer all the registration of vehicles on Fiji Roads and this includes ensuring that they have valid registration and wheel tax certificates.*

- (d) The said vehicle was registered as a commercial vehicle and not a private one.
- (e) The ownership of any vehicle cannot be transferred without the said vehicle having registration and wheel tax certificates.
- (f) As further Defence the 2<sup>nd</sup> Defendant says that the Plaintiff's Statement of Claim does not plead a reasonable Cause of Action against the 2<sup>nd</sup> Defendant and accordingly seeks Striking Out of the Plaintiff's Claim.

### THE LAW and PRACTICE

8. 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) ...;*

*(c).....;*

*(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).*

9. In Paulo Malo Radrodro vs Sione Hatu Tiakia & Others, HBS 204 of 2005, the Court stated that:

*"The principles applicable to applications of this type have been considered by the Court on many occasions. Those principles include:*

- a. A reasonable cause of action means a cause of action with some chance of success when only the allegations and pleadings are considered - Lord Pearson in Drummond Jackson v British Medical Association [1970] WLR 688.*
- b. Frivolous and vexation is said to mean cases which are obviously frivolous or vexations or obviously unsustainable - Lindley Li in Attorney General of Duchy of Lancaster v L.N.W Ry [1892] 3 Ch 274 at 277.*
- c. It is only in plain and obvious cases that recourse would be had to the summary process under this rule - Lindley MR in Hubbuck v Wilkinson [1899] Q.B. 86.*
- d. The purpose of the Courts jurisdiction to strike out pleading is twofold. Firstly is to protect its own processes and scarce resources from being abused by hopeless*



cases. Second and equally importantly, it is to ensure that it is a matter of justice; defendants are permitted to defend the claim fairly and not subjected to the expense inconvenience in defending an unclear or hopeless case.

- e. "The first object of pleadings is to define and clarify with position the issues and questions which are in dispute between the parties and for determination by the Court. Fair and proper notice of the case an opponent is required to meet must be properly stated in the pleadings so that the opposing parties can bring evidence on the issues disclosed - *ESSO Petroleum Company Limited v Southport Corporation* [1956] A.C at 238" - *James M Ah Koy v Native Land Trust Board & Others* - Civil Action No. HBC 0546 of 2004.
- f. A dismissal of proceedings "often be required by the very essence of justice to be done"..... - Lord Blackburn in *Metropolitan - Pooley* [1885] 10 OPP Case 210 at 221- so as to prevent parties being harassed and put to expense by frivolous, vexations or hopeless allegation - *Lorton LJ in Riches v Director of Public Prosecutions* (1973) 1 WLR 1019 at 1027"

10. His Lordship Mr Justice Kirby in Len Lindon -v- The Commonwealth of Australia (No. 2) S. 96/005 summarised the applicable principles as follows:-

- a. 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 O 26 r 18 or in the inherent jurisdiction of the court, is rarely and sparingly provided.
- b. 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...
- c. An opinion of the Court that a case appears weak and such that 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 arguments and extended time for reflection will sometimes turn an apparently unpromising cause into a successful judgment.
- d. Summary relief of the kind provided for by O.26 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 in circumstances more conducive to deciding a real case involving actual litigants rather than one determined on imagined or assumed facts.
- e. If, notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it has failed to put in proper form, a Court will ordinarily allow that party to reframe its pleading.
- f. The guiding principle 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.



ISSUE for DETERMINATION

11. The following is the only issue which requires determination by this honourable court;-
- (a) Whether the Plaintiff's Writ of Summons and the Statement of Claim discloses any reasonable cause of action against the 2<sup>nd</sup> Defendant?

ANALYSIS and DETERMINATION

*Whether the Plaintiff's Writ of Summons and Statement of Claim discloses any reasonable cause of action?*

12. The following notes to *Order 17 r19 of the Supreme Court Practice (UK) 1979 Vol. 1 or 18/19/11* on what is meant by the term 'a reasonable cause of action' sufficiently provides the answer to the applications.

*".....A reasonable cause of action means a cause with some chance of success when only the allegations in the pleadings are considered (per Lord Pearson in Drummond Jackson v British Medical Association [1970] 1 WLR, 688; [1970] 1 All ER 1094 CA). So 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 out (Moore v Lawson (1915) 31 TLR 418, CA.; Wenlock v Moloney [1965] 1 WLR 1238 1 W.L.R. 1238 [1965] 2 All ER 871, CA)...."*

13. Reference is also made to Lindley M.R. in *Hubbuck & Sons, Ltd v Wilkinson, Heywood & Clark Limited* [1899] 1QB 86 at page 91 said:

*".....summary 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" in rule 4 shows that the summary procedure there introduced is only intended to be had recourse to in plain and obvious cases".*

14. In this instant case, the Plaintiff's Statement of Claim can be summarized as follows-

- That the 1<sup>st</sup> Defendant is a local body corporate duly constituted under the Local Government Act (Chapter 125) and the 2<sup>nd</sup> Defendant is duly constituted under the Land Transport Act of 1998;
- That through a paid advertisement of the 1<sup>st</sup> Defendant, the Plaintiff applied for a tender of motor vehicle Registration No. DC 653. The Plaintiff was awarded the tender;
- That the 1<sup>st</sup> Defendant gave a copy of the transfer form to the 2<sup>nd</sup> Defendant for processing, which was signed by the 1<sup>st</sup> Defendant's Works Manager;
- The 2<sup>nd</sup> Defendant did not affect the transfer of the vehicle due to some outstanding arrears owed by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant;
- That the 1<sup>st</sup> Defendant did not disclose to the Plaintiff that the motor vehicle DC653 has a recurring debt with the 2<sup>nd</sup> Defendant, whilst advertising the said vehicle for sale of tender;

- That the 2<sup>nd</sup> Defendant has acted negligently towards the Plaintiff in not transferring the motor vehicle;
  - That the two Defendants have put the blame on each other regarding the said debt;
  - That because the vehicle cannot be transferred, the Plaintiff has sustained loss of business which the purchase of the motor vehicle would have served;
  - Therefore the Plaintiff now claims the loss of business and costs.
15. The Plaintiff and the 2<sup>nd</sup> Defendant's Counsel appeared in Court and made oral submissions in support of their respective cases defending the 2<sup>nd</sup> Defendant's striking out application.
16. It is for the Plaintiff to establish that he has a **Cause of Action** in this case against the 2<sup>nd</sup> Defendant in terms of the facts and the Pleadings filed herein.
17. On the other hand, the 2<sup>nd</sup> Defendant must establish that the Plaintiff does not have a **Cause of Action** in this case.
18. The Striking out application of the 2<sup>nd</sup> Defendant is a summary proceeding and is only appropriate to cases which are plain and obvious.
19. Bearing in mind the facts of this case and the nature of the pleadings filed by the parties to the proceedings, this case cannot be classed as 'plain and obvious' in nature.
20. It can be ascertained from the pleadings filed herein that the two Defendants are putting the blame on each other regarding the outstanding arrears with the 2<sup>nd</sup> Defendant. Further, the Plaintiff is alleging that the 1<sup>st</sup> Defendant did not disclose to the Plaintiff that the motor vehicle DC653 had a recurring debt with the 2<sup>nd</sup> Defendant, whilst advertising the said vehicle for sale of tender and therefore the 2<sup>nd</sup> Defendant has acted negligently towards the Plaintiff in not transferring the motor vehicle.
21. Obviously, there are tribal issues; some that I thought was obvious have been listed hereunder that ought to be determined at a full hearing-
- (a) Advertisement of the Tender called for the sale of vehicle No DC653;
  - (b) Who was the current owner and did any transfers took place after the award of the Tender to the 1<sup>st</sup> Defendant?;
  - (c) If so, to who was this vehicle transferred to.
  - (d) What were the role and the duties of the 2<sup>nd</sup> Defendant herein, if any?
  - (e) The reasons why the vehicle was not transferred to the rightful person by the 2<sup>nd</sup> Defendant if that was the case herein; and



- (f) Various other questions that this Court needs to be satisfied with in order to arrive at a just and fair decision.
22. This is only possible by testing out the evidence of the parties to the proceedings that will enable the Court to deliberate its decision in a just and fair manner.
23. Having perused and analyzed the issues raised by both the 2<sup>nd</sup> Defendant and the Plaintiff couple with the principles dealing with the present application to Strike out the Plaintiff's Statement of Claim, this court does possess all the requisite material and evidence to reach a definite and certain conclusion.
24. I find as a fact that the Plaintiff has shown a reasonable cause of action within his claim against the 2<sup>nd</sup> Defendant. Therefore, the 2<sup>nd</sup> Defendant must continue to remain a party to the proceedings until the matter is heard and determined for once and for all.
25. Accordingly, I make the following orders-


ORDERS

- (i) That the 2<sup>nd</sup> Defendant's Summons seeking the Striking Out of the Plaintiff's Statement of Claim is hereby Dismissed.
- (ii) That the Matter stands adjourned to 11<sup>th</sup> July, 2017 at 9 am for further directions.
- (iii) The 2<sup>nd</sup> Defendant to pay the Plaintiff summarily assessed cost of \$750 within 14 days.
- (iv) Orders accordingly.

Dated at Suva this 28<sup>th</sup> day of June, 2017



cc: Maisamoa & Associates, RakiRaki  
Reddy & Nandan Lawyers, Suva

  
.....  
MR VISHWA DATT SHARMA  
Master of High Court, Suva