

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 316 of 2015

BETWEEN : MORITI SILIKULA of 51 Niudamu Place, Nakasi, Electrical Fitter Mechanic.

PLAINTIFF

AND : FIJI ELECTRICITY AUTHORITY a body corporate having its registered office  
at 2 Marlow Street, Suva.

DEFENDANT

BEFORE: Master V. D. Sharma

COUNSEL: Ms. Salele - for the Plaintiff  
Mr. Devenesh Sharma - for the Defendant

DATE OF RULING: 12<sup>th</sup> July, 2018 @ 9am

RULING

[Defendant's application seeking to strike out the Plaintiff's Statement of Claim pursuant to Order 18 Rule 18 (1) (d) of the High Court Rules, 1988 and the Inherent Jurisdiction of the Honorable court]

APPLICATION

1. This is the Defendant's Summons to Strike Out, and seeks the following orders:
  - (a) *That the Plaintiff's Statement of Claim against the Defendant be dismissed and struck out;*
  - (b) *That costs of this action on an indemnity basis; and*
  - (c) *That such other relief as this Honourable court deems just.*

Upon the Grounds that:

- (i) *That the Plaintiff had already settled his claim with the Defendant and had entered into a Memorandum of Agreement dated 17<sup>th</sup> July, 2015 whereby he had agreed that he could no longer bring any suit or action or proceedings against the Defendant.*
  - (ii) *This action is an abuse of process.*
2. The Plaintiff opposed the Defendant's Striking out application.
3. The application was heard in terms of the oral and written submissions made in this proceedings by the Plaintiff and the 2<sup>nd</sup> Defendant.

THE LAW and PRACTICE

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) .....
- (b) .....
- (c) .....
- (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).*

DEFENDANT'S CASE (In summary)

7. Relied on the written submissions.
8. The Plaintiff on 17<sup>th</sup> July, 2015, entered into a Memorandum of Agreement (MOA) with the Defendant whereby the Plaintiff was paid a sum of \$8,695.96 as full and final settlement for the injuries sustained by the Plaintiff.
9. In consideration of the said sum, the Plaintiff agreed to waive all his rights from commencing any proceedings against the Defendant arising out of the injuries.
10. The Plaintiff disputes the content of the Memorandum of Agreement. However, admits that the cheque was received by him at the office of the Ministry of Labour.
11. The Plaintiff stated that the injuries were reported to the Ministry of Labour by his wife and not by the Defendant.

PLAINTIFFS' CASE (In Summary)

12. Adopted the written submissions.
13. Disputes the contents of the Memorandum of Agreement (MOA) since he alleges that he was not given the opportunity to be explained the contents of MOA nor was told by anyone to seek legal advice on the contents.
14. That he just told to sign on a paper which he now knew was the MOA and was given a cheque of \$8,695-96 at the Ministry of Labour's office.
15. That he was led to believe that signing was merely for release of the cheque to him and was an acknowledgment of receipt.
16. The Defendant's conduct together with that of QBE was dishonest as the Defendant underhandedly underpaid him for the grave injury sustained by him whilst in employment and terminated him.
17. That the Defendant's application to be struck out.

ANALYSIS and DETERMINATION

18. The only issue for this Court to determine is-

*'Whether the Plaintiff's Statement of Claim should be struck out since the claim is an abuse of the process of the court on the ground "that the Plaintiff had already settled his claim with the Defendant and had entered into a Memorandum of Agreement dated 17<sup>th</sup> July, 2015 whereby he had agreed that he could no longer bring any suit or action or proceedings against the Defendant?'*

19. The Plaintiff instituted the current substantive action on 01<sup>st</sup> October, 2015 wherein he alleges negligence against the Defendant and sought, inter alia, special damages arising out of the injuries caused to the Plaintiff as a result of the alleged negligence.
20. The Defendants contention is that the Plaintiff on 17<sup>th</sup> July, 2015, entered into a Memorandum of Agreement (MOA) with the Defendant whereby the Plaintiff was paid a sum of \$8,695.96 as full and final settlement for the injuries sustained by the Plaintiff. In consideration of the said sum, the Plaintiff agreed to waive all his rights from commencing any proceedings against the Defendant arising out of the injuries. Hence, this action is an abuse of process of the court and should be struck out accordingly.
21. The Plaintiff's contention is otherwise and alleges that the contents of the Memorandum of Agreement (MOA) were not explained to him nor was given an opportunity to seek legal advice on the contents. He believed that it was an acknowledgment of receipt of the cheque in the sum of \$8,695-96.
22. I have perused the MOA dated 17<sup>th</sup> July, 2015 between the Plaintiff Moriti Silikula and the Defendant Fiji Electricity Authority and witnessed by a Barrister and Solicitor.
23. The MOA confirms that the Plaintiff was paid a sum of \$8,695-96 as Workmen's Compensation for the injuries sustained by him on 26<sup>th</sup> April, 2014.
24. The Plaintiff undertook not to commence and/or proceed with any further suit or proceedings against the QBE Insurance (Fiji) Ltd and/or Fiji Electricity Authority for personal injuries costs and expenses or in respect of any claim which he now have or might have against the Employer or the said Insurer whatsoever arising out or related to the said accident of 26<sup>th</sup> April, 2014.
25. In light of the undertaking by the Plaintiff within the contents of the MOA, and the receipt of the agreed sum of \$8,695-96 Workmen's Compensation as full and final settlement for the injury sustained by him, the Plaintiff therefore does not have any further relief available to him.
26. Therefore, the Plaintiff cannot proceed with the current Action impending before this court now.
27. In the above circumstances, I find that the Plaintiff's current Writ of Summons coupled with the Statement of Claim is an abuse of the court process and strike out the Writ of Summons and the Statement of Claim accordingly.
28. Taking into consideration the nature of the striking out application and its conduct, I have no alternative but to order a reasonable cost against the Plaintiff summarily assessed at \$500 to be paid within 21 days.

29. Accordingly, I proceed to make the following final orders-

FINAL ORDERS

- (i) The Defendant's application to strike out of the Plaintiff's Writ of Summons and the Statement of Claim succeeds.
- (ii) The Plaintiff's Writ of Summons together with the Statement of Claim against the Defendant is hereby dismissed.
- (iii) Costs against the Plaintiff on this application are summarily assessed at \$500 to be paid by the Plaintiff to the Defendant within 21 days' time frame.
- (iv) Orders accordingly.

Dated at Suva this 12<sup>th</sup> day of July, 2018.



cc: Salele Law, Suva.  
R Patel Lawyers, Suva.

MASTER  
VISHWA DATT SHARMA