

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 90 of 2013

BETWEEN : AMITESH CHAND of Lot 5, Nabou, Nasinu.

PLAINTIFF

AND : MAHESH CHAND of Waituri, Nausori.

1ST DEFENDANT

AND : NATIONAL FIRE AUTHORITY a Statutory body established under the National Fire Service Act of Fiji.

2ND DEFENDANT

AND : MINISTER FOR HEALTH & MEDICAL SERVICES of Dinem House, 88 Amy Street, Toorak, Suva.

3RD DEFENDANT

AND : THE ATTORNEY GENERAL OF FIJI of Suvavou House, Victoria Parade, Suva.

4TH DEFENDANT

BEFORE: Master V. D. Sharma

COUNSEL: Ms. A. Swamy - for the Plaintiff
Mr. Tirath Sharma - for the 1st & 2nd Defendants
Ms. Ramoce - for 3rd & 4th Defendants

DATE OF RULING: 24th July, 2018 @ 9am

RULING

[Summons to strike out the Plaintiff's Statement of Claim by the 3rd & 4th Defendants and alternatively for 3rd & 4th Defendants to file and serve Amended Statement of Defence pursuant to Order 18 Rule 18 (1) (a) (b) & (d) of the High court rules, 1988]

APPLICATION

1. This is the 3rd and 4th Defendant's Summons to Strike Out, and seeks the following orders:
 - (a) *That the Plaintiff's Writ of Summons and the Amended Statement of Claim be struck out under Order 18 Rule 18 (1) of the High Court Rules 1988 and/or under the inherent jurisdiction of this honourable Court Upon the following Grounds:*
 - (i) *That it discloses no reasonable cause of action.*
 - (ii) *That it is scandalous, frivolous and vexatious.*
 - (iii) *That it is an abuse of the process of the Court.*

THE LAW and PRACTICE

2. 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. 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 LJ 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"*

3rd & 4th DEFENDANT'S CASE

7. Relied on the affidavit evidence and their written submissions.
8. Submitted that the Plaintiff's Claim discloses no reasonable cause of action, Frivolous Vexatious and is an abuse of the process of the court and should be struck out.
9. That the provisions of the National Ambulance Decree No. 20 of 2010 clearly states that no ambulance officer or honorary ambulance officer who is the subject of a reportable incident is civilly liable for an act done or omission made honestly and without negligence on his part.
10. That the Decree stipulates that all drivers of vehicles are to give clear and uninterrupted passage to any ambulance with warning devices activated.
11. That the Plaintiff was aware that the 1st Defendant was driving an ambulance that had its warning devices (sirens) activated and did not give way to the ambulance even though other vehicles on the road were giving the Ambulance a clear passage.

1st & 2nd DEFENDANTS

12. 1st and 2nd Defendants supported the 3rd and 4th Defendants striking out application.
13. The Defendants stated that the Plaintiff's claim is an abuse of the court process and the Defendants have clearly stated in their submissions their reasons for the striking out of the Plaintiff's claim.

PLAINTIFFS' CASE

14. Adopted the written submissions.
15. The claim by the Plaintiff against the Defendants is based on personal injuries which was sustained by the Plaintiff due to a motor vehicle accident due to the careless and negligent driving of the 1st Defendant.
16. There is no dispute as can be ascertained from the affidavits filed.

17. The issue before the court is whether the Plaintiff can sustain this action in light of section 20 of National Ambulance Decree No. 20 of 2010, which is a general exemption from liability clause for officers and personals not the institution. Exception of the Exemption of civil liability will be discussed later.
18. The Writ of Summons and Statement of Claim is very clear that there is a cause of action, not frivolous and vexatious or an abuse of the process of the court.
19. The claim clearly properly pleads particulars of negligence.
20. The Defendants are relying on the provisions of the National Ambulance Decree No. 22 of 2010.
21. The Defendants have failed to 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 or is an abuse of the process of the court.
22. That the Defendant's summons be struck out with costs.

ANALYSIS and DETERMINATION

23. The issues for court's determination are *Whether the Plaintiff's Statement of Claim"-*

- *Discloses no reasonable cause of action;*
- *Is Scandalous, Frivolous or Vexatious;*
- *Is an abuse of the court process?*

Further, whether the Defendant is entitled to any costs of this application?

Reasonable Cause of Action

24. It is for the Plaintiffs to establish that they have a **Cause of Action** in this case against the **Defendant** in terms of the **facts** and the **Pleadings** filed herein.
25. On the other hand, the 3rd and 4th **Defendant** must establish that the **Plaintiffs** do not have a **Cause of Action** in this case against the Defendant.
26. Reference is made to 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)...."

27. 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"

28. The Plaintiff's substantive claim is based on **Tort of Negligence**. The Plaintiffs are alleging that on 12th September, 2011, whilst in control of the motor vehicle, 1st Defendant drove the said vehicle so carelessly, negligently and dangerously so as to collide with motor vehicle DA 888 on the Kings Road, Laqere. As a result of this accident, the Plaintiff suffered personal injuries.
29. The **Defendant** in his Statement of Defence has denied each and every allegation except as expressly admitted therein.
30. I find that the **Plaintiffs** are generally claiming for the personal injuries under several heads Special and General Damages, allegedly sustained during the alleged accident as set out in their Statement of Claim and the prayers at paragraph 6 a-e inclusive.
31. In light of above, I find that prima facie, the **Plaintiffs** have a **Cause of Action** within their Statement of Claim as filed herein. It is for the Plaintiffs to prove their case on the balance of probability at the full hearing.

Scandalous, Frivolous and Vexatious

39. It is well established that jurisdiction to strike out claim or pleadings should be used very sparingly and only in exceptional cases: **Timber Resource Management Limited v. Minister for Information and Others** [2001] FJHC 219; HBC 212/2000 (25 July 2001).
40. 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...."

33. **Whether the claim is Scandalous in nature?**

Reference is made to the Supreme Court Practice 1993 (White Book) Vol. 1 at paragraph 18/19/14 states as follows-

"The Court has a general jurisdiction to expunge scandalous matter in any record or proceedings (even in bills of costs, Re Miller (1884) 54 L.J.Ch. 205). As to scandal in affidavits, see O.41, r.6."

Allegations of dishonesty and outrageous conduct, etc., are not scandalous, if relevant to the issue (Everett v. Prythergch (1841) 12 Sim. 363; Rubery v. Grant (1872) L.R. 13 Eq.443).

"The mere fact that these paragraphs state a scandalous fact does not make them scandalous" (per Brett L.J. in Millington v. Loring (1881) 6 Q.B.D. 190, p.196). But if degrading charges be made which are irrelevant, or if, though the charge be relevant, unnecessary details are given, the pleading becomes scandalous (Blake v. Albion Assurance Society (1876) 45 L.J.C.P. 663)."

34. **Whether the nature and contents of the Plaintiff's Claim** in terms of the Writ of Summons and the Statement of Claim tantamount to **scandalous** facts and are irrelevant and therefore makes the Plaintiff's Claim **Scandalous**?
35. The **Plaintiff's Claim** is yet to be put to the **Test** in terms of the **evidence** to be tendered at the hearing and then for the determination of the Claim.
36. Therefore, the **Defendant** cannot submit that the **Plaintiff's** Summons and the Statement of Claim at this stage of the proceedings is **scandalous in nature**.
37. The **issue** of whether the Plaintiff's Claim is **frivolous** or **vexatious**?

Reference is made to paragraph 18/19/15 of the Supreme Court Practicce1993, Vol. 1 (White Book) which reads as follows:-

"By these words are meant cases which are obviously frivolous or vexatious or obviously unsustainable per Lindley LJ in Attorney General of Duchy of Lancaster v. L. & N.W.Ry [1892] 3 Ch. 274, 277; The Pleading must be "so clearly frivolous that to put it forward would be an abuse of the Court" (per Juene P. in Young v. Halloway [1895] P 87, p.90:"

38. **In Devi v. Lal [2014] FJHC 75; HBC 120.2008** (7th February, 2014) - It was held as follows-

"The Oxford Advanced Learners Dictionary of Current English 7th Edition defines the words "frivolous" and "vexatious" as:-

Frivolous: "having no useful or serious purpose"

Vexatious: "upsetting" or "annoying"

'Therefore, for a claim to be frivolous or vexatious, the Appellants must establish that the claim lacks merit (i.e. has no useful purpose) and is only to upset or annoy the Applicants'.

39. Taking into consideration the above matters together with the **written submissions** and **oral arguments** raised in Court by both Counsels, the Defendant need to establish that the Plaintiff's Claim **lacks merits**. This Court needs to hear and determine the same in terms of the law and the evidence that the Parties to the proceedings may and or intend to produce at the hearing proper in

order to allow this Court to deliberate and determine the substantive issues of alleged Tort of Negligence claiming Damages for alleged injuries sustained during the alleged accident.

However, this claim **prima facie** cannot be judged summarily to be **frivolous** or **vexatious**; it needs to be appropriately investigated, examined and determined in terms of the availability of evidence before a court of law accordingly.

40. Therefore, in the given circumstances, the Plaintiff's claim cannot be said to be **frivolous** or **vexatious**.

Abuse of Court Process

41. It is well settled that this Court has inherent jurisdiction to strike out the claim or pleadings for **abuse of Court process** and reference is made to paragraph 18/19/18 of the Supreme Court Practice 1993 Vol. 1.-

At paragraphs 18/19/17 and 18/19/18 of Supreme Court Practice 1993 (White Book) Vol 1 it is stated as follows:-

"Abuse of Process of the Court"- Para. (1) (d) confers upon the Court in express terms powers which the Court has hitherto exercised under its inherent jurisdiction where there appeared to be "an abuse of the process of the Court." This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation (see Castro v. Murray (1875) 10 P. 59, per Bowen L.J. p.63). See also "Inherent jurisdiction," para.18/19/18."

"It is an abuse of the process of the Court and contrary to justice and public policy for a party to re-litigate the issue of fraud after the self-same issue has been tried and decided by the Irish Court (House of Spring Gardens Ltd. v. Waite [1990] 2 E.R. 990, C.A)."

Inherent Jurisdiction - Apart from all rules and Orders and notwithstanding the addition of para.(1)(d) the Court has an inherent jurisdiction to stay all proceedings before it which are obviously frivolous or vexatious or an abuse of its process (see Reichel v. Magrath (1889) 14 App.Cas. 665). (para 18/19/18)

42. The phrase "**abuse of process**" is summarized in Walton v Gardiner (1993) 177 CLR 378 as follows:

"Abuse of process includes instituting or maintaining proceedings that will clearly fail proceedings unjustifiably oppressive or vexatious in relation to the defendant, and generally any process that gives rise to unfairness"

Again, the **summary procedure** should not be used to determine the "**abuse of process of the court**", rather the substantive matter needs to be heard to determine the issue within the writ and the statement of claim making a claim whether it is **groundless** and **unfounded** in the sense that the plaintiff does not know of any facts to support it.

IN CONCLUSION

43. For the aforesaid rationale, I do not find that it can be found and ascertained from the Plaintiff's Statement of Claim that it has no reasonable cause of action, is Scandalous, Frivolous, and Vexatious and/or is an abuse of the Court process.
44. Therefore, the 3rd and 4th Defendant's application seeking an order to strike out the Plaintiff's Statement of Claim against the Defendant fails.
45. It is only appropriate for obvious reasons that as a result of my finding not to proceed to strike out the Plaintiff's Writ of Summons and the Statement of Claim against the 3rd and 4th Defendants that I decline to grant costs at this stage of the proceedings.
46. Each party to therefore bear their own costs of this application.
47. Accordingly, I proceed to make the following orders-

FINAL ORDERS

- (i) The 3rd and 4th Defendant's application to strike out of the Plaintiff's Writ of Summons and the Statement of Claim fails.
- (ii) The Plaintiff's Writ of Summons together with the Statement of Claim against the 3rd and 4th Defendants remains intact.
- (iii) Each party to bear their own costs.
- (iv) The matter to proceed between the Plaintiffs and the Defendants and stands adjourned for further directions on the next cause.
- (v) Orders accordingly.

Dated at Suva this 24th day of July, 2018



MASTER
VISHWA DATT SHARMA

cc: Patel & Sharma Lawyers, Nadi
Attorney General's Chambers, Suva