

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 88 of 2012**

**BETWEEN:**            **SETAVANA SAUMATUA** of Lot 7 Niranjaan Place, Namadi Heights,  
Barrister & Solicitor

**PLAINTIFF**

**AND:**                  **SUVA CITY COUNCIL** a statutory body established pursuant to the  
Local Government Act, Cap 125 of the Laws of Fiji, whose Head  
office is located at 196 Victoria Parade, Suva

**DEFENDANT**

**Counsel**                  :    **Plaintiff: Mr. I. Fa**  
                                      :    **Defendant: Mr. D. Sharma**

**Date of Hearing**          :    29.1.2020

**Date of Judgment**       :    28.2.2020

**JUDGMENT**

**INTRODUCTION**

1. The Defendant through summons made this application to Strike out the Statement of Claim filed by the Plaintiff on 15<sup>th</sup> March, 2012. Application for strike out was made on 28.8.2019.

**FACTS**

2. The facts of this matter are not disputed.
3. The Plaintiff was employed by the Defendant under an employment contract. The said contract was a contract of service.
4. On 8.01.2010 the Defendant received a directive from the Permanent Secretary of the Prime Minister to immediately dismiss the employment of a number of persons. The reason was alleged anti-Government blogging activities during office hours.

5. Defendant received a directive from its line Minister on 2.2.2010 to terminate employment of employees including Plaintiff.
6. Defendant terminated the employment of the employees on 4.2.2010 acting on the directive given on 8.1.2010 and in accordance with the directive and decision given by line Minister on 2.2.2010.
7. Plaintiff filed a civil action against the Defendant on 15.3.2012, inter alia for breach of contract, by Defendant.
8. Summons for strike out is based on interpretation of Section 30 of Essential National Industries (Employment) Decree No 35 of 2011.
9. As an alternative ground of strike out Defendant states that Section 188(4) of Employment Relations Act 2007, was not complied with, hence statement of claim needs to be struck off.

#### ANALYSIS

10. The Defendants argument is based on legal interpretation of Section 30 of Essential National Industries (Employment) Decree 2011(ENI). There is an alternate ground in terms of Section 188 of Employment Relations Act 2007, but it will be considered later.
11. Section 30 of ENI states;

*“Certain decisions not to be challenged*

*30.-(1) No court, tribunal, commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain any proceeding, claim, challenge or dispute by any person or body which seeks or purports to challenge or question—*

*(a) the validity, legality or propriety of this Decree;*

*(b) any decision of any Minister, the Registrar or any State official or body, made under this Decree; or*

*(c) any decision of any designated corporation made under this Decree.*

*(2) Any proceeding, claim, challenge or dispute of any nature whatsoever in any court, tribunal, commission or before any other person or body exercising a judicial function, against any designated corporation that had been*

*instituted under or involved the Employment Relations Promulgation 2007 before the commencement date of this Decree but had not been determined at that date or is pending on appeal, shall wholly terminate immediately upon the commencement of this Decree, and all orders whether preliminary or substantive made therein shall be wholly vacated and a certificate to that effect shall be issued by the Chief Registrar or the registrar of the Employment Relations Tribunal.*

*(3) Where any proceeding, claim, challenge, application or dispute of any form whatsoever, is brought before any court, tribunal, commission or any other adjudicating body, in respect of any of the subject matters in subsection (2), then the presiding judicial officer, without hearing or in any way determining the proceeding or the application, shall immediately transfer the proceeding or the application to the Chief Registrar or the registrar of the Employment Relations Tribunal for termination of the proceeding or the application and the issuance of a Certificate under subsection(2).*

*(4) A certificate under subsection (2) is, for the purposes of any proceedings in a court, tribunal, commission or any other person or body exercising a judicial function, conclusive of the matters stated in the certificate.*

*(5) A decision of the Chief Registrar or the registrar of the Employment Relations Tribunal to issue a certificate under subsection (2) is not subject to challenge in any court, tribunal, commission or any other adjudicating body." (emphasis added)*

12. The counsel for the Defendant stated that in terms of Section 30(2) of ENI, High Court does not have jurisdiction to hear this action since the Defendant was a designated corporation that falls under the purview of Section 30 of the ENI.
13. It is admitted fact that the Defendant had been included as designated corporation in Essential National Industries & Designated Corporations (Amendment) (No.2) Regulation 2013.
14. Defendant is governed by Section 30 of ENI. So section 30 of ENI is applicable to the Defendant, as well as to Plaintiff. This provision does not prevent civil litigation by a party against Defendant. In order to strike out in terms of that provision there are further requirements to be fulfilled.
15. The mere fact that application of Section 30 of ENI to the Defendant not necessarily terminates all the actions against the Defendant. If that was the intention that could have been stated in the said provision, but it did not do so.

16. Only a designated types of actions are ousted from the jurisdiction of courts, tribunals etc. As the heading of the Section 30 of ENI indicates only '*Certain decisions*' of the Defendant will '*not to be challenged*'. So there is no ouster of jurisdiction of all decisions.
17. The types of actions or decisions are exclusively spelt out in the Section 30 of ENI. In order to strike out this action it needs to be included in any of the specified actions.
18. Defendant relies on Section 30(2) of ENI and this provision terminated all proceedings instituted in terms of Employment Relations Act 2007.
19. Counsel for Defendant relied on Court of Appeal decision in *Vinod v Fiji National Provident Fund* [2016] FJCA 23; ABU0016.2014 (decided on 26 .2. 2016). It was an appeal from a decision to terminate a matter before Employment Relations Tribunal hence there was no qualm as to applicability of Employment Relations Act 2007 hence application of ENI.
20. An action filed under common law for breach of contract is not governed by Employment Relations Act 2007, hence the ratio of the above case had no application to the matter before this court.
21. In *Vinod* (supra) was not an appeal of an action filed in High Court regarding a civil claim by an employee for breach of contractual obligations. So there was no determination before Court of Appeal as to whether jurisdiction is ousted from all civil claims filed by employees against a designated institution in terms of ENI.
22. So, no arguments were considered in Court of Appeal, as to civil claims before High Court. At paragraph 4 of the judgment in *Vinod* (supra) stated as follow

*"In the meantime, the Essential National Industries (Employment) Decree 2011 (ENI) came into operation on 9th September 2011 which provided for the concept of the 'designated corporations'. According to which, any matter pending before any court, Tribunal, Commission or any other adjudicating body stood terminated with the coming in-to force of the new Act. It was the duty of the Chief Registrar under Section 30(2) of the ENI to issue a certificate of termination. Initially FNPF was not a 'designated corporation' at the time ENI Decree came into force on 9th September 2011. However, subsequently by Legal Notice 20 of 2013 i.e. by the amending regulations FNPF was also brought under designated corporations and such fact was published in the Gazette on 5th March 2013. At the time of FNPF was designated corporation i.e. on 5th March 2013, the inquiries into the grievance application and an application against dismissal of the Appellant had been pending before the ERT. By virtue of Section 30(2) **all pending applications are terminated and***

*upon such termination the Chief Registrar was obliged to issue a certificate of termination as per the requirements of the legislation.*<sup>5</sup>

Further, at paragraph 11 stated

*“Hence it is manifestly clear that the legislature intended to end all matters pending before a Court against designated corporations. Such objective was propelled by the need to replace all the dispute related matters pending before courts or any other judicial body with a new mechanism to provide for the prompt and orderly settlement of all disputes. The necessity for urgency or the need to terminate proceedings with immediate effect, arose as a corollary of introducing the new mechanism in order to prevent overlap of proceeding and to resolve matters urgently. The intention of the legislature was to replace the old system with a new mode of mechanism with immediate effect and therefore it is apparent that there was some urgency, as such the new law sought all the matters pending before the court also to be terminated with **immediate effect**.” (underlining is mine).*

23. So any reference to all civil litigations in High Court in the said Court of Appeal decision was not an issue before appeal and was not an appeal ground in that case. Hence, an *obiter dicta*.
24. Counsel for Defendant contends that Defendant being a local authority is bound by provisions of Employee Relations Act 2007. There is no dispute as to application of Employment Relations Act 2007 to Defendant, but there is nothing in said Act that precludes an employee from seeking civil remedy for breach of contract in High Court, for termination of employment.
25. This is a common law remedy for breach of contract, which is not expressly excluded from jurisdiction through Employment Relations Act 2007. Hence a party who elected to institute a civil action, cannot be terminated through Section 30(2) of ENI which applied only to proceedings commenced in terms of Employment Relations Act 2007.
26. Counsel for Defendant also relied on Section 266(1) of Employment Relation Act 2007.
27. This provision was repealed by Section 18 of Act no 4 of 2015<sup>1</sup> which came in to operation on 11.9.2015.
28. Section 266 was introduced to Employment Relations Act 2007 through an amendment in 2011, but this was subsequently fully repealed in 2015.

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<sup>5</sup> Laws of Fiji Vol 14 at 313,694

29. This provision was operational when Plaintiff filed this action. This action was a claim for breach of contract by Defendant. It was a separate legal entity, which was outside the scope of said repealed provision.
30. As an alternate ground, Defendant relied on Section 188 (4) of Employment Relations Act 2007. This provision cannot be applied to present civil litigation for breach of contract.
31. The choice was with the Plaintiff to file an action under Employment Relations Act 2007 either in the Employment Relations Tribunal or Employment Relations Court regarding a breach of contract, or in a court that exercise civil jurisdiction (i.e High Court). Since this action was filed for breach of contract under common law this was not a matter instituted or involved with Employment Relations Act 2007 and provisions contained in repealed Sections 266 of Employment Relations Act 2007 and Section 188(4) of the same Act had no application.

### CONCLUSION

32. Section 30(2) of ENI only terminated matters that were instituted under or involved the Employment Relations Act 2007 and if not, the action is outside the purview of Section 30(2) of ENI. Sections 188(4) of Employment Relations Act 2007 has no application to this action as it came into operation in 2015 and there was no retrospective application of the same. Considering the circumstances of case I do not wish to award any cost.

### FINAL ORDERS

- a. Summons for strike out filed by Defendant on 28.8.2019 is struck out.  
b. No costs.

Dated at Suva this 28<sup>th</sup> day of February, 2020.



Justice Deepthi Amaratunga  
High Court, Suva