IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 112 of 2016

BETWEEN: **HARISH CHAND** trading as **ITAUKEI FOOD INDUSTRIES** of Level 1 Unit 1/9 Lot 9, Bila Street, Carreras Road, Votualevu, Nadi.

Plaintiff

AND: **RAJ SAMI INVESTMENTS LIMITED** a limited liability company having its registered office at Stage 2, Baadal Place, Makoi, Nasinu, Fiji.

1st Defendant

AND: **RAM SAMI & SONS (FIJI) LIMITED** having its registered office at 37 Badal Place, Makoi, Nakasi.

2nd Defendant

AND: **RAJENDRA SAMI** of 8 Miles, Makoi, Nasinu, Director.

3rd Defendant

Before : Master U.L. Mohamed Azhar

Counsels: Ms. H. F. Fa for the Plaintiff
Ms. E. M. Wakowako for the Defendants on instruction of Neel Shivam Lawyers

Date of Ruling: 05th May 2020

RULING

(Lessee's right to sue for trespass, striking out and further and better particulars)

01. The plaintiff entered into a lease agreement with Bula Island Food Supplies Limited over the property known as Lot 9 on DP No. 10093 in Certificate of Title No. 40402 situated at Bila Street, Carreras Road, Votualevu, Nadi (hereinafter referred to and called as **the demised premises**) for the period of one year from 24.07.2015 on monthly rental of $ 2,500.00. The agreement had an automatic renewal clause for a maximum period of three years if required by the plaintiff. The plaintiff operated a business of processing agricultural produce from Fiji to export to Australian market. The plaintiff also lodged a

Caveat on the Title of the demised premises on 19.10.2015 pursuant to the arrangements made with his lessor - Bula Island Food Supplies Limited. The plaintiff arranged a meeting on the demised premises with his suppliers on 24.04.2016 as part of his business. On the same day the defendants wrongfully and without just cause trespassed and broke into the demises premises. The defendants locked out the plaintiff's staff and his security guards and placed their (defendants') security guards to prevent re-entry by the plaintiff and his staff.

02. Owing to the alleged trespass by the defendants, the plaintiff suffered loss and sued the defendants for damages which had been particularized as (a) loss of business, (b) loss of contract with suppliers and buyers overseas and local (c) tarnish of reputation and (d) long term business suffering. Therefore, the plaintiff claimed special damages in sum of $ 217,000.00 with interest at the rate of 6% and general damages together with cost on solicitor/client indemnity basis. The plaintiff thereafter filed the amended writ and sought injunctions against the defendants preventing them from interfering with possession of the plaintiff. The injunction application was heard by a judge and the plaintiff was granted ex-parte injunctions against the defendants. However, the injunctions were dissolved later by the judge. In the meantime, the plaintiff further amended his writ two times and filed the amended writs on 29.06.2016 and on 02.08.2016 respectively, without leave of the court.

03. The defendants, without filling their statement of defence, filed the summons pursuant to Order 18 rule 18 (1) (a), (b) and (d) and Order 20 rule 3 (1) of the High Court Rules and inherent jurisdiction of this court. The summons is supported by an affidavit sworn by the third defendant who is the director of both first and second defendant companies. The defendants sought the following orders in their summons:

1. That the Plaintiff's claim against the Defendants be struck out on the grounds that:

   (a) it discloses no reasonable cause of action;
   (b) it is scandalous, frivolous or vexatious;
   (c) it is otherwise an abuse of the process of the Court; and
   (d) that the Plaintiff has failed to provide full and proper particulars of his claim to the Defendants as requested in a letter dated 21 July 2016.

2. That the Plaintiff's amended statement of claim issued on 29 June 2016 and 2 August 2016 be disallowed on the grounds that the amendments to the pleadings were carried out without the leave of the High Court.

04. The defendants also filed another summons, few days before the present summons was filed, seeking the same order they sought in paragraph 2 of the present summons and it was dealt with by the then Master. Thus the present summons is limited to the orders sought in paragraph 1. The plaintiff filed the affidavit in opposition and the defendants replied to that affidavit with an affidavit sworn by the third defendant. At hearing of the summons, the counsels appeared for both parties urged the court to dispose this matter by way of written submission without an oral hearing. The court allowed their application and they filed their respective written submissions elaborating the law on striking out under Order 18 rule 18 with the facts of this case.

05. The essence of the argument put forward on behalf of the defendants through their affidavits that, the first defendant company entered into a sale and purchase agreement with Bula Island Food Supplies Limited on 03.02.2016 for the purchase of two properties described as Certificate of Title No.40402 being Lot 9 on Deposit Plan No. 10093 and Certificate of Title No. 40401 being Lot 8 on Deposit Plan No. 10093. The purchase was for the purpose of expanding the business of the second defendant company. The sale was affected for the consideration of $ 1.5 million and the defendants' solicitors lodged transfer at the office of Registrar of Title. The defendants then found the plaintiff had been occupying the properties and the previous owner advised them that, the plaintiff was illegally occupying the same. The defendants then issued the notice to quit on the plaintiff on or about 30.03.2016 and after expiry of that notice, they took possession of the same. The defendants further admitted in their affidavit that, the plaintiff had lodged two caveats against the title and they (defendants) got them removed.

06. Basically, the argument of the defendants is that, the defendants purchased two properties mentioned above and took the possession of them after serving a quit notice to plaintiff who had been illegally occupying the same. Therefore there is no reasonable cause of action for the plaintiff to sue the defendants and if any such caution of action is available to him it would be against the previous owner.

07. The court has to look at mere pleadings to decide whether a reasonable cause of action is available or not [**Razak v Fiji Sugar Corporation Ltd** [2005] FJHC 720; HBC208.1998L (23 February 2005)]. Since the defendants have not filed their statement of defence yet in this matter, the court has to consider the statement of claim only. It must be stated here that, the plaintiff first filed the writ with statement of claim on 15.06.2016 and thereafter filed the amended writ on 17.06.2016 seeking injunctive reliefs. Later, the plaintiff amended his writ two times and filed the amended writs on 29.06.2016 and on 02.08.2016 respectively, without leave of the court. However, both were disallowed by the then Master. The only valid writ before this court is the one that was filed on 17.06.2016 (first amended writ). According to the statement of claim in that writ and as briefed above, the plaintiff's claim is that the defendants on 24.04.2016 trespassed to his demised premises and caused damages. On the other hand, the defendants in paragraph

31 (ii) of their affidavit admitted taking over of the possession of the properties they claimed to have purchased on the same day, i.e. 24.04.2016. The said properties claimed by the defendants include the demised premises claimed by the plaintiff. Thus there is no dispute in relation to description of the demised premises as both the plaintiff and the defendants are referring to the same property. Furthermore the peaceful possession as claimed by the defendants and or the alleged trespass as claimed by the plaintiff also took place on the same day, i.e. 24.04.2016. Therefore, the question whether it was a peaceful taking over of possession of demised premises by defendants or trespass by them is arguable.

08. The defendants claimed in their affidavit that, they entered the demised premises on 24.04.2016 after the plaintiff vacated the same upon the notice of quit issued by the defendants' solicitors. However, this is the main contentious point in this matter. The defendants further claimed that, the plaintiff had been illegally occupying the demised premised which they purchased. The paragraphs 14 to 17 of the affidavit filed on 18.08.2016 on behalf of the defendants are as follows:

> 14. Prior to settlement of our sale transaction, we were not informed by the previous owner of the properties that the said properties were occupied by the Plaintiff.
>
> 15. The sale and purchase agreement that we executed with the previous owner expressly stated that vacant possession of the properties will be given to us upon settlement.
>
> 16. After settlement had been effected and upon inspection, we found out that the Plaintiff was occupying the building.
>
> 17. Upon subsequent liaisons with the previous owner, we were advised that the Plaintiff was in illegal occupation of the said property.

09. However, the defendants in some other paragraphs of the same affidavit admitted the plaintiff was running an export business at that premises and the business was set up on July 2015. The paragraphs 18 of the said affidavit is evident to their own admission and that paragraph is as follows:

> 18. Suffice to state that the Plaintiff appears to have previously run an export business which was recently set up on July 2015, I am unaware of the Plaintiff's business background. A copy of his business registration is annexed hereto marked **"RS-8"**

10. The document marked as **"RS-8"** and annexed by the defendants in their affidavit is the copy of the application for individual business made by the plaintiff and the copy of certificate of registration of his business. The certificate of registration which is on reverse page of that **"RS-8"** stipulates that, the business of import and export pf agricultural and consumer products by the name of ITAUKEI FOOD INDUSTRIES was registered on 24.07.2015 and the business location was Lot 9, Carrears Road, Nadi which is the address of the demised premises. Thus, the defendants in their own affidavit adduced a documentary evidence for the proof of the fact that, the plaintiff was trading as ITAUKEI FOOD INDUSTRIES at the demised premises, almost a year before the purchase of the demised premises by the defendants. Further, the plaintiff attached a copy of his lease agreement with the previous owner Bula Island Food Supplies Limited which later sold the demised premises to the first defendant company. Thus the previous owner, who leased out the demises premises to the plaintiff by a written lease agreement with the covenant to automatically renew it for three years, could not have advised the defendants that, the plaintiff was illegally occupying the demised premises. It appears that, the defendants knowing very well of the possession of plaintiff on the demised premises and the business conducted by him thereon, claimed in their affidavit that, the plaintiff was an illegal occupant of the demised premises. This clearly indicates that, the averments of the defendants' affidavit contradict each other and therefore, they are untrustworthy.

11. The paragraph 34 of the affidavit of the defendants too has self-contradicting sub-paragraphs in relation to plaintiff's possession over the demised premises. On one hand, the defendants claimed that the plaintiff had been forcibly and unlawfully in occupation of the building which is situated on Lot 9 (demised premises). On the other hand, they admitted that, the plaintiff was a mere tenant or licensee of the said building. The said paragraphs read:

> 31. I am legally advised that the Plaintiff has no cause of action and its legal action is frivolous and vexatious and /or otherwise an abuse of the Court process. This advice is grounded on the following matters:
>
> (i) The plaintiff has been forcibly and unlawfully in occupation of the building which is situated on Lot 9
>
> .....
> .....
> .....
>
> (viii) The Plaintiff was a mere tenant or licensee of the said building but no longer holds any legal rights to the said property. At most the Plaintiff is entitled to claim damages

> for the unexpired term of his lease but his claim lies in damages only against the previous owner. (Emphasis added).

12. If the plaintiff was a tenant or licensee as admitted by the defendants in the last mentioned paragraph of their affidavit, he could not have been an illegal occupant on the demised premises. Thus, admission of the defendants itself discredits their own allegation of illegal occupancy by the plaintiff. The plaintiff's claim for damages for alleged trespass against the defendants is based on his right to possess the demised premises pursuant to the lease agreement with the previous owner of the demised premises - Bula Island Food Supplies Limited. The defendants too admitted the tenancy of the plaintiff in their affidavit as mentioned above. However, the defendants raised in the last mentioned paragraph of their affidavit another issue that, the plaintiff did not hold any legal right over the property for him to sue the defendants. The defendants raised the same issue in paragraph 34 (vi) of their affidavit which reads:

> (vi). the plaintiff's action cannot be sustained in law as we as the equitable owners of the land are legally entitled to enter and take possession and control of the said property.

13. The question is whether a person should hold the title to a property to sue for trespass. It is settled law that, it is the possession of a property that entitles a person to sue for trespass. The claimant should not necessarily be a title holder to accrue a cause of action against any trespasser. The leading authority is the decision of the House of Lords in **J A Pye (Oxford) Ltd and Others v Graham and Another** [2003] 1 AC 419, [2002] 3 All ER 865 [2002] 3 WLR 221, [2002] UKHL 30. In that case Lord Browne-Wilkinson approved the dictum of Slade J in **Powell v McFarlane** (1977) 38 P & CR 452. Accordingly, a person who has the legal right and exclusive possession may sue for trespass. In **Cooper v. Crabtree** (1882) 20 Ch.D 589, the English Court of Appeal unanimously held that, it is the tenant and not the landlord, to sue if a third party trespasses on the demised land. In **Marcroft Wagons Ltd v. Smith** [1951] 2 K.B 496, the English Court of Appeal again held at page 501 that:

> "A person may have such a right of exclusive possession of property as will entitle him to bring an action for trespass against the owner of that property but which confers no interest whatever in the land".

14. In the case before me, the plaintiff had exclusive over the demised premises by virtue of the lease agreement he entered into with Bula Island Food Supplies Limited and he was also appointed as the manager of that property for the period of one year since 24.07.2015. The plaintiff was also allowed to lodge caveats on the demised premises upon their agreement between them. Admittedly, the defendants took possession of the

demised premises on 24.04.2016 during the tenancy between the plaintiff and Bula Island Food Supplies Limited. Though the defendants claimed that the first defendant finalized the sale of the properties including the demised premises with Bula Island Food Supplies Limited, on 22.03.2016, the transfer was not registered at that time. The paragraph 22 of the affidavit of the defendants states that, on or about 23.05.2016, nearly a month after lodgment of transfers, the Registrar of Titles returned them as there were two caveat filed by the plaintiff. According to Exhibit marked as **"RS11"** and tendered by the defendants, the first caveat on Lot 9 (demised premises) was cancelled on 10.06.2016 and the second one was cancelled on 02.08.2016. Therefore, the registration of defendants' transfers should have been done only after 02.08.2016. However, there is no evidence before the court as to when the transferred were registered and the first defendant company became the registered proprietor of the demised premises. What is important is that, at the time the notice to quit (**"RS 9"**) was sent on 30.03.2016 by the solicitors of the defendants to the plaintiff and even at the time the defendants took possession on 24.04.2016 as they claimed, the first defendant company was not the registered proprietor of both demised premises at Lot 9 and the adjoining premises at Lot 8 in DP No. 1003.

15. The correct procedure that should have been followed by the defendants in this situation was to bring an application under section 169 of the Land Transfer Act against the plaintiff after becoming the registered proprietor of both the demised premises and the other adjoining land they alleged to have been purchased by them. However, the defendants opted to take the possession of the demised premises by an extrajudicial way, which cannot be permitted. The defendants admitted the tenancy of the plaintiff over the demised premises in paragraph 34 (viii) of their affidavit as mentioned above; however they claimed that, the lease agreement was not registered. Thus, the right of the plaintiff to possess the demised premise, the extent of his right to sue the defendants for alleged trespass, the validity of the alleged possession by the defendants and dispossession of plaintiff are the serious issues that should be determined at trial.

16. The law on striking out the pleadings is well settled. The Order 18 rule 18 of the High Court Rule gives the discretionary power to strike out the proceedings for the reasons mentioned therein. The said rule reads:

> *18 (1) The Court **may** at any stage of the proceedings **order to be struck out** **or** **amend** 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) 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 (emphasis added)

17. The unambiguous wording of the above rule makes its effect very clear that, the power to strike out the pleadings is permissive and not mandatory and even though the court is satisfied on any of those grounds mentioned in that rule, the proceedings should not necessarily be struck out as the court can, still, order for amendment. The underlying rational is that, the access to justice should not, merely, be denied by glib use of summery procedure of pre-emptory striking out.

18. Lord Pearson in **Drummond-Jackson v British Medical Association** [1970] 1 ALL ER 1094 held at page 1101 that;

> "Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases. The authorities are collected in The Supreme Court Practice 1970 Vol 1, p 284, para 18/19/3, under the heading 'Exercise of Powers under this Rule' in the notes under Ord 18, r 19. One which might be added is Nagle v Feilden [1966] 1 All ER 689 at 695, 697; [1966] 2 QB 633 at 648, 651. Reference has been made to four Recent cases: Rondel v Worsley [1967] 3 All ER 993, [1969] 1 AC 191, Wiseman v Borneman [1969] 3 All ER 275, [1969] 3 WLR 706, Roy v Prior [1969] 3 All ER 1153, [1969] 3 WLR 635, and Schmidt v Secretary of State for Home Affairs [1969] 1 All ER 904, [1969] 2 Ch 149 .....There was no departure from the principle that the order for striking out should only be made if it becomes plain and obvious that the claim or defence cannot succeed, but the procedural method was unusual in that there was a relatively long and elaborate instead of a short and summary hearing".

19. MARSACK J.A. in his concurring judgment in **Attorney General v Halka** [1972] 18 FLR 210, explained how the discretionary power to strike out should be exercised by the courts and held that:

> "Following the decisions cited in the judgments of the Vice President and of the Judge of the Court below I think it is definitely established that the jurisdiction to strike out proceedings under Order 18 Rule 19 should be very sparingly exercised, and only in exceptional cases. It should not be so exercised where legal questions of importance and difficulty are raised".

20. Every person has access to the justice and has fundamental right to have his or her disputes determined by an independent and impartial court or tribunal. This fundamental right guaranteed by the supreme law of the country should not lightly be taken away unless the case is unarguable. Salmon LJ said in **Nagle v Feilden** [1966] 1 All ER 689 at 697:

> 'It is well settled that a statement of claim should not be struck out and the plaintiff driven from the judgment seat unless the case is unarguable'.

21. It follows from the above discussion that, the plaintiff has a reasonable cause of action against the defendants in this case and his case should not be struck out. The defendants submitted that, the plaintiff might have a cause of action against the previous owner Bula Island Food Supplies Limited and not against them. The plaintiff's cause of action against Bula Island Food Supplies Limited as the lessor is based on the alleged breach of the agreement to lease between them. That cause of action is completely different from the cause of action against the defendants, which is based on alleged trespass to plaintiff's demised premises.

22. The defendants also invoked the jurisdiction of this court under other grounds of striking out under Order 18 rule 18 that, pleadings or claim is scandalous, frivolous or vexatious. If the statement of claim contains degrading charges which are irrelevant, or if, though the charge be relevant, unnecessary details are given, the pleading becomes scandalous (see: **The White Book** Volume 1 (1999 Edition) at para 18/19/15 at page 350). Likewise, if the proceedings were brought with the intention of annoying or embarrassing a person or brought for collateral purposes or irrespective of the motive, if the proceedings are obviously untenable or manifestly groundless as to be utterly hopeless, such proceedings becomes frivolous and vexatious (per: Roden J in **Attorney General v Wentworth** (1988) 14 NSWLR 481, said at 491). The pleadings in the statement of claim filed by the plaintiff on 17.06.2016 do not fall in any of the above categories, but simply set out a clear cause of action against the defendants as discussed above.

23. Though the defendants tendered a copy of business registration of plaintiff's business marking as **"RS8"** in their affidavit, they later in paragraphs 41, 42 and 43 claimed that, the plaintiff was not given business license by the Nadi Rural Local Authority. It seems that, the defendants raised this matter in order to show that, there was no loss of business for the plaintiff due to dispossession from the demised premises. In fact, this matter to be determined by the trial court when determining the quantum of damage if any and not at this interlocutory level. Therefore, it is not relevant to the summons filed under Order 18 rule 18 for striking out.

24. The defendants in their instant summons sought the last order in relation to further and better particulars. The order they sought is:

> (d) that the Plaintiff has failed to provide full and proper particulars of his claim to the Defendants as requested in a letter dated 21 July 2016.

25. The basis for seeking the above order is justified in the affidavit of the defendants that, they, through their solicitors, wrote to the plaintiff's solicitors on 21.07.2016 seeking further and better particulars; however, the plaintiff instead of giving those particulars, amended the statement of claim two time without the leave of the court. The defendants marked the said letter as **"RS 8"** and annexed with their affidavit. The way the defendants sought the above order reveals that, they seek a declaratory order that, the *plaintiff* ***has failed*** *to provide* the particulars sought by them. There should be an order by the court under Order 18 rule 11 (3) of the High Court Rules on the plaintiff before declaring that, he ***failed*** to provide such particulars. Therefore the way the order drafted by the defendants and sought in their summons is prima facie incorrect. The instant summons too does not have any reference to the Order 18 rule 11 (3), but it was filed pursuant to Order 18 rule 18 only.

26. However, I think it is prudent to briefly consider here whether circumstances of the plaintiff's case warrant exercise of discretionary power of this court to order the plaintiff to serve on the defendants the particulars in relation to his claim. As this court held in another case, the pleadings in civil suits serve several purposes and some of the important purposes are (a) identifying the issues between the parties, (b) giving the opponent an adequate notice of the case for him to prepare his defence and meet the trial, (c) informing the court the real issues between parties and (d) forming the basis for an estoppel in any future litigation between the same parties on the same issues. In order to achieve these purposes, the court is given the discretionary power to order any party to serve on any other party particulars of any claim or defence or other matters stated in their pleadings on such terms as the court thinks just. However, the particulars need be given only of facts and not of evidence.

27. Evidently, the plaintiff's claim against the defendants is for alleged trespass on 24.04.2016 and thereby causing damages. The defendants described the possession of the plaintiff as illegal; however, contracting their view admitted that, the plaintiff was a tenant at the demises premises. In any event, the defendants admitted the tenancy of the plaintiff and taking possession of the demised premises on date alleged by the plaintiff. Therefore, the claim of the plaintiff is straightforward and particulars in the statement of claim filed on 17.06.2016 are sufficient to elucidate the issues to be tried and to prevent the defendants from being ambushed at trial.

28. On the other hand, the defendants by their solicitors' letter marked as **"RS 8"** have requested the particulars, and most of them relate to the evidence the plaintiff may adduce at trial. The said letter contains the queries of four full pages in relation to almost all 9 paragraphs of the statement of claim. However, for the purpose of this ruling I produce below some of the particulars sought by them.

Paragraph 1

1. Provide a full copy of the lease dated 24 July 2015 referred to in paragraph 1 of your client's statement of claim.
2. Provide full particulars of when and how the lease agreement was renewed.

Paragraph 2

1. Provide a copy of export license and evidence of renewal.

Paragraph 4

1. Please specify the names and details of the "suppliers" you refer to in paragraph 4.
2. Please provide particulars of how "arrangements" were made to hold a meeting with your suppliers.
3. What time was the meeting scheduled?
4. Please specify:
    i. What time you allege the Defendants entered the subject premises.
    ii. How did the Defendants "break" into the premises. Please provide full particulars of the act of "breaking".
    iii. Names of staff who were present on the subject premises ho were allegedly locked out.

iv. Details of the security guards hired by your client who were locked out and their names and security ID numbers/licence numbers.

v. Details of which security company the Defendant's hired who were place at the subject premises.

Paragraph 6 (c)

1. Please provide full particulars of the alleged act of "force" used by the Defendants to evict your client's staff and security.

Paragraph 6(f)

1. You have pleaded "res ipsa loquitor". Please explain the application of this principle to your client's claim for trespass.

29. It is evident from the above request made by the solicitors for the defendants that, they seek evidence from the plaintiff for the facts pleaded in his statement of claim. It must be noted that, the defendants' solicitors even requested the plaintiff to explain application of *Res Ipsa Loquitor* pleaded by him in his statement of claim. In fact, the *Res Ipsa Loquitor* is the Latin maxim which means "the thing speaks for itself". It is the method of reasoning, which is applied in some circumstances where the mere fact that, the incident occurred raises an inference of negligence against the defendant, in the absence of direct evidence on how the defendant behaved. It is not even necessary to plead this maxim for the court to consider the same. This is the position in English jurisdiction and other several jurisdictions, including Fiji (see: **Bennett v. Chemical Construction Ltd** [1971]1.W.L.R 1571 for the position of English law and the decision of the Fiji Court of Appeal in **Ali v Ali** [2009] FJCA 41; ABU0029.2006 (3 December 2009) for the position in Fiji). Thus, I am of the view that, the pleadings in the statement of claim filed on 17.06.2015 do not warrant the exercise of discretionary power of this court under Order 18 rule 11 (3) to order the plaintiff to provide further particulars.

30. A discussed above, it reveals that, the plaintiff has reasonable cause of action against the defendants in this case and his case should proceed for trial. In fact, the judge who dissolved the injunction in this case clearly observed in his written ruling that, there are serious issues to be tried. However, the defendants still proceeded with this summons despite the said findings of judge in this case and thereby caused cost to the plaintiff. Though the conduct of the defendants does not warrant imposition of indemnity cost, the plaintiff must be compensated with reasonable cost.

31. In result, I make the following orders,

a. The summons filed by the defendants under Order 18 rule 18 of the High Court Rules is struck out and dismissed,

b. The defendants should file their statement of defence on or before 19.05.2020

c. The plaintiff should file the reply to statement of defence on or before 02.06.2020

d. All three defendants should jointly pay a summarily assessed cost of the $ 3,000 on or before 02.06.2020, and

e. The matter to be mentioned on 26.06.2020 to check the compliance by both parties.

U.L Mohamed Azhar
Master of the High Court

At Lautoka
05/05/2020