

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

CIVIL ACTION NO.: HBC 156 of 2019

**BETWEEN : FIJI PORTS CORPORATION LIMITED
PLAINTIFF**

**AND : VENU SHIPPING LIMITED
DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr. E. Narayan [Patel Sharma Lawyers]

DEFENDANT : Mr. N. Lajendra [Lajendra Lawyers]

RULING BY : Master Ms Vandhana Lal

DELIVERED ON : 15 August 2023

INTERLOCUTORY RULING

1. The Defendant seeks orders that the action be struck out as it is an abuse of the court process.
2. According to the Defendant the Plaintiff has made reference to civil action HBC 57 of 2016 which relates to the same facts and circumstances and the same parties as the current proceedings.

They subject that it is an abuse of court process on the part of the Plaintiff to seek the relief that it is seeking in current proceedings by way of a separate and new action.

The Plaintiff should have sought an amendment in Civil Action 57 of 2016 to seek relief they are seeking in current proceedings.

There are two separate actions on foot arising out of the same facts and circumstances and involving the same parties.

3. The claim in the current proceeding is outlined as follows:

The Plaintiff operates the Ports of Suva along (with 3 other ports) by virtue of the Seas Ports Management Act and Sea Ports Management Regulations.

Pursuant to the said Act and Regulation, the Plaintiff is empowered to issue removal orders as part of its statutory functions for the safety of other users and sustainability of the environment including removing, repositioning, pulling any vessel to clear any passage and/or clear the sea route for the safety of the users.

The Defendant is the registered owner of vessel "MV Suliven".

On 24th November 2015 the Plaintiff received a distress call from the vessel when the vessel was tilting and taking in water at the Suva passage and as a result the Plaintiff had to use the tags to clear the vessel from the Suva Passage.

On 10th March 2016 the Plaintiff filed a claim via High Court Action No. 57 of 2016 seeking orders as follows:

- (i) Order that the vessel be removed forthwith by the Defendant;
- (ii) Order that the Defendant pay all costs incurred by the Plaintiff to date and any further costs to be incurred;
- (iii) Damages for and to the environment.

On 24th November 2015 as a result of the use of tags to clear the vessel the Defendant owes to the Plaintiff tug services charge amounting to \$75,210.

Hence the Plaintiff claims the said sum with cost incurred by the Plaintiff till todate.

4. The claim in HBC 57 of 2016 which was initiated in March 2016 is outlined as follows:

On 24th November 2015 MV Suliven sank within the boundaries of the Port of Suva.

On 08th December 2015 the Plaintiff issued a removal order on the Defendant pursuant to Section 27 of the Sea Port Management Act.

The Defendant informed the Plaintiff they will not remove the vessel and cargo until they received an investigation report from the Maritime Safety Authority.

On 27th August 2019, the Plaintiff became aware of investigation report by Maritime Safety Authority of Fiji and the Defendant were provided with the same.

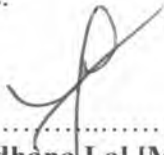
The Plaintiff is seeking order for

- *Vessel to be removed by the Defendant;*
- *Incurred by Plaintiff till to date;*
- *Damages for and to the environment;*

5. The said matter is fixed for trial in November 2023. Order 34 was allocated to a judge on 13th March 2019.
6. The current proceeding was filed on 23rd May 2019 and pleadings are yet to be completed.
7. The expense for the Tag Services by the Plaintiff was incurred on 24th November 2015 due to the incident that is sinking of the vessel.
8. I agree with the Defendant and express same sentiment as outlined by Fatiaki J. in *Pickering and others v. National Bank of Fiji and others* [1998] 44 FLR 76 (delivered on 22 May 1998) where His Lordship deprecated the practice of instituting multiple proceedings against the same or related defendants based on the same factual circumstances.

9. However, in the said case the one of the Plaintiff sought similar orders in other actions instituted by the Plaintiffs in the matter before Fatiaki J. The Court found the actions to be duplicitous in nature and the relief claimed might have been already considered in other application.
10. In the current proceedings the Plaintiff is claiming for tag charges and in HBC 57 of 2016 for removal of the vessel with other charges.
11. I do not find the claim in this proceeding warrants for a dismissal order.
12. Order 4 Rule 2 allows court to consolidate matters if “*rights to relief claimed therein are in respect of or arise out of the same transaction or series of transaction*”.
13. Hence exercising my discretion under Order 4 Rule 2 of the High Court rules I make orders for consolidation of action HBC 156 of 2017 with HBC 57 of 2016.
14. For case management purpose, I find it proper that File HBC 156 of 2017 should to be placed before the relevant Judge handling HBC 57 of 2016 for further directions in terms of completing pleadings; filing affidavit verifying list of documents and pre-trial conference minutes, since HBC 57 of 2016 is already fixed for Hearing.
15. Cost of this application to be in cause.




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Vandhana Lal [Ms]
Master of the High Court
At Suva.

15 August 2023

TO:

1. Suva High Court Civil File No. HBC 156 of 2019;
2. Patel Sharma Lawyers, Solicitors for the Plaintiff;
3. Lajendra Lawyers, Solicitors for the Defendant.