

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 327 of 2022

BETWEEN : **1. SHAH MOHAMMED**
 2. SHAN MOHAMMED both of Korovou off Nadarivatu Road, Tavua,
 Farmers.

PLAINTIFFS

A N D : **1. DIRECTOR OF LANDS** of the Ministry of Lands.
 2. THE REGISTRAR OF TITLES, of the Ministry of Justice.
 3. ATTORNEY GENERAL is being sued pursuant to Crown Proceeding
 Act Cap 24.
 4. WAJID ALI of Rabulu, Tavua.
 5. GULAM BAMJI KHAN of 2616 53rd Avenue, Sacramento,
 California, 95822, USA.

DEFENDANTS

Before : Master U.L. Mohamed Azhar

Counsels : Mr. K. Maisamoa for the Plaintiffs
 Mr. S. Kant for the First to Third Defendants
 Ms. Rhadia for the Fourth Defendant
 Fifth Defendant absent

Date of Ruling: 10.04.2024

RULING

01. This is the summons filed by the fourth defendant pursuant to Order 18 rule 18 (1) (a) of the High Court Rules, immediately after acknowledging the writ taken by the plaintiffs in this case.

02. The law on striking out of 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)

03. 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. Even though the court is satisfied on any of those grounds mentioned in the above rule, the pleadings should not necessarily be struck out as the court can, still, order for amendment. The underlying rationale is that, the access to justice should not, merely, be denied by glib use of summary procedure of pre-emptory striking out.

04. 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 18 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”.

05. The plaintiffs filed the amended statement of claim after the summons for striking out was filed and served by the fourth defendant. The fourth defendant still maintained their position in the summons despite the amendment of statement of claim by the plaintiffs.
06. No evidence is required when a summons is filed pursuant to Order 18 rule 18 (1) (a) of the High Court Rules. It is the allegations in the pleadings alone that are to be examined **Razak v. Fiji Sugar Corporation Ltd** [2005] FJHC 720; HBC208.1998L (23 February 2005).
07. It appears from the amended statement of claim filed by the plaintiffs on 24 January 2023 that, they are challenging the issue of two new leases to 4th and 5th defendants by the first defendant. However, the way the allegations are drafted, in both the statement of claim and the amended statement of claim, is totally complicated and confusing. This was accepted by the counsels for the defendants.
08. The pleading is the precise written statement of a party's claims or defences to a civil suit. The pleadings primarily serve two purposes. The first is to give fair notice of the case which has to be met so that the opposing party may direct his evidence to the issue disclosed by them (**Esso Petroleum Corporation v Southport Corporation** [1956] A.C. 218, p. 238). Second is to inform the court the real matters that are to be adjudicated by the court between the parties, because the cases must be decided on the issues on the record and if it is desired to raise other issues they must be placed on record by amendment (**Blay v Polland and Morris** [1930] 1 K.B. 628 p. 634).
09. On perusal of the entire statement of claim it reveals that, some of the questions that may be put to the witnesses at trial are pleaded in the plaintiffs' statement of claim. The plaintiffs alleged fraud; however, the way it is pleaded in various paragraphs is puzzling. The defendants will not be able to fairly formulate the defence. Nor the court would be in a position to identify the real questions that need to be adjudicated among the parties. The plaintiffs have an arguable case. There seems to be legal questions of importance and difficulty and the jurisdiction of striking out should not be exercised in these circumstance (**Attorney General v Halka** [1972] 18 FLR 210).
10. However, the manner in which their case is presented will not help identifying the correct questions to be determined. The entire amended statement of claims needs to be pruned down and should be made precise. The questions that are to be put to the witnesses at trial should be removed and or changed into statement/narration of allegations or claims. There are several heading of “Fraud & Bias” for several paragraphs. Furthermore, the particulars of fraud is again brought under another heading as “Amended Particulars of

Fraud”. There is another heading as “Particulars of Bias”. The statement of claim needs to be streamlined. Therefore, amended statement of claim of the plaintiffs cannot be struck out as moved by the fourth defendant, but it is proper to require the plaintiffs to amend their statement of claims accordingly. The fourth defendant was compelled to bring the current summons due to the manner in which the statement of claim is drafted. Hence, the plaintiffs should bear the cost for this application.

11. In result, I make the following orders,

- a. The plaintiffs’ statement of claim should be amended, and
- b. The plaintiffs should pay a summarily assess costs in sum of \$ 1,000.00 to the fourth defendant within a month from today.

At Lautoka
10.04.2024




U.L Mohamed Azhar
Master of the High Court