

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC82 of 2020

BETWEEN : **SURENDRA JEET** self-employed of 154 Nailuva Rd,
Raiwaqa, Suva

PLAINTIFF

AND : **COMMISSIONER OF POLICE**, Centrepont, Nasinu

1st DEFENDANT

AND : **MINISTRY OF HEALTH**, Suva Street, Suva

2nd DEFENDANT

AND : **ATTORNEY-GENERAL OF FIJI**, Suvavou House, Suva

3rd DEFENDANT

BEFORE : **Banuve, J**

Counsel : **Plaintiff in Person**
Mr Y. Naidu for the Defendants

Date of Hearing : **23rd May 2024**

Date of Ruling : **10th July 2024**

RULING

Introduction

On 19th April 2023 the Defendants filed a Summons to Strike Out the Writ of Summons and Statement of Claim filed by the Plaintiff on 28th February 2020 and amended on 11th March 2022, pursuant to Order 18, Rule 18 (a), (b) and (d) of the *High Court Rules* 1988, and the inherent jurisdiction of the Court, against the First Defendant, on the grounds that the Claim;

- (a) discloses no reasonable cause of action as it is statute barred pursuant to section 4(1)(d)(i) of the Limitation Act 1971,*
- (b) is frivolous and vexatious, and otherwise,*
.....
- (d) an abuse of the process of the Court.*

No affidavit in support was filed by the Defendants in accord with Order 18, Rule 18(2) of the *High Court Rules* 1988. An Affidavit in Opposition was filed by the Plaintiff on 26th January 2023.

This substantive matter was set for hearing in November 2022 and March 2023, on both occasions the hearing not proceeding due to requests for adjournment by the Plaintiff. On April 2023, the Defendants opted to file the Application to Strike Out leading to the vacation of the hearing date of the substantive matter and the issue of fresh directions. The matter was re-assigned to another judge.

A. Application to Strike Out

1. The Summons to Strike Out were filed on 19th April 2023, on behalf of the Commissioner of Police, against the Writ of Summons and Statement of Claim filed on 28th February 2020.
2. No allowance was made for the fact that leave had been granted by consent to amend the said Writ and Statement of Claim, on 23rd February 2022. The Court bore in mind that the amendments were factual in nature and that the

substantive relief sought in the amended writ remained the same. The Court will deal with this issue, later.

B. Background

3. The Plaintiff did not file written submissions to clarify his position on the Application to Strike Out filed by the Defendants, relying instead on the Affidavit in Opposition filed on 26th January 2023.

4. The Defendants filed written submissions on 13th September 2023 which the Court found most helpful and adopts its summary of the claim made against the 1st Defendant, as follows;

(a) Paragraph 5- *“Between 2012 and 2014 the verbal abuses from the women in question had escalated to a point that the Plaintiff had found it unbearable to stay in the premises as the male tenants from Harry Bans Lal’s other houses had joined in with these women. The Tenants in the Plaintiff’s own building had started to vacate their apartments due to these commotions. Within this period of time the Plaintiff had lodged several complaints to the Raiwaqa Police Station under the auspices of Community Policing Project, the Plaintiff’s complaints were either ignored or if and when the Police had arrived so as to investigate the Plaintiff’s complaint, the police constables would join in with Harry Bans Lal and/or his tenants to either pass mocking remarks or simply gawk at the Plaintiff”.*

(b) Paragraph 6-*“in one incident in or about 2014, a police constable by the name of Joape had come to investigate a similar complaint involving four of these women tenants during weekday. The following day the Police had incarcerated the Plaintiff from 5.00 pm to 1.00 am on a false complaint by Harry Ban Lal and 11 of his women tenants on their allegations of ‘attempted rape’ when there was no possibilities of any physical contact between the involved parties due to heavy fencing between the two properties. The Police had only released the Plaintiff until and only when Constable Joape had testified on the Plaintiff’s behalf”.*

(c) Paragraph 7-*“in early March, 27th, 2014, the Police charged and took into custody the Plaintiff on the counts of: i. Causing Public Nuisance ii. Providing False Information.”*

(d) Paragraph 11-*“both cases of causing public nuisance and providing false information to the police were struck out by the Court on 11th August 2017, respectively.”*

(e) Paragraph 13-*“In or about June 2014 the Plaintiff was lured to Laucala Beach Estate by a person named Sarvoend of Stage 2, Sakoca, an acquaintance of the Plaintiff, introduced to him*

by a police constable. And the Plaintiff was later mobbed and badly beaten up and robbed by five i-Taukei youth at the same spot in the presence of the said Sarvend and lost \$5,000 cash Fijian Dollars."

(f) Paragraph 14-"The complaint was lodged in Valelevu Police Station and to date the Police had failed to identify the suspects and complete the investigations. During the discussions with the police it was also revealed to the Plaintiff that the assailants were known to the Police"

C. Analysis

5. The Plaintiff in his Claim particularized negligence and tortious misconduct against the Police as follows;
 - (i) Failure to take proper action on evidence provided which were lawfully obtained by the Plaintiff while lodging the complaint.
 - (ii) Failure to quickly and completely investigate the complaints to the detriment of the rights of the Plaintiff; and
 - (iii) Neglect to act within the written law and failure to provide fairness, cooperate and acted to the advantage of the suspects by falsely and unlawfully confining the Plaintiff on 3 occasions.
6. The Plaintiff seeks orders compelling the Police to complete all investigations detrimental to it and seeks damages to compensate him for loss of revenue as rent earned from the apartments to the Plaintiff from the year 2012 due to police negligence and failure to act within the time frame of the complaint lodged and for unlawful confinement by the 1st Defendant.
7. In summary, the Defendants position is that the Writ of Summons and Statement of Claim filed on 28th February 2020 against the 1st Defendant be Struck Out pursuant to Order 18, Rule 18 (a), (b) and (d) of the *High Court Rules 1988*, on the basis that no reasonable cause of action has been disclosed, that has some chance of success when only the allegations and pleadings are considered¹; is frivolous and vexatious and otherwise an abuse of the process of the Court.

¹ *Drummond Jackson v British Medical Association* [1970] 1 WLR 688

8. The allegation that no reasonable cause of action has been disclosed is premised on the assertion of the Defendants that the claim is statute barred pursuant to section 4(1) (d) (i) of the *Limitation Act 1971*, which states;
- (1) *The following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued that is to say-*
- (c).....
- (d) *actions to recover any sum recoverable by virtue of any Act other than a penalty or forfeiture of sum by way of penalty or forfeiture, provided that-*
- (i) *In the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or by any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to 6 years were substituted for a reference to 3 years.*
9. The Defendants assert that the claim is statute barred pursuant to section 4(1)(d) of the *Limitation Act 1971*, in that paragraphs 6,7, 11, 13 and 14 of the Claim against the 1st Defendant pleads matters which transpired between 2012 to 2014, whilst the Claim was only filed on February 2020, well after the expiry of the 3 year period mandated under the Act for the claim by the Plaintiff for negligence, nuisance and breach of duty including damages for personal injury to be filed. The Defendants rely on cases like *Prasad v Prakash*-Civil Action No 58 of 2005² and *Naisau v Commissioner of Police* – Civil Appeal Case No HBA 04 of 2018.³
10. The Defendants assert that as the claim against the 1st Defendant are statute barred it ought to be wholly struck out as no reasonable cause of action subsists against the 1st Defendant, further it is frivolous , vexatious and an abuse of the process of the Court, to do otherwise.
11. The Court concurs with the Defendants submissions and grants the orders sought in the Summons filed by the Defendants against the 1st Defendant on 19th

² Per Stuart J at paragraph 7

³ Per Nanayakkara J at paragraph 15, p 8

April 2023, that the claim against the 1st Defendant is statute barred pursuant to section 4(1),(d)(i) of the *Limitation Act* 1971..

D. Crown Proceedings Act, s 3(2)

12. For completion, the Court deems it necessary to clarify its reason for considering the application to strike out the Writ of Summons and Statement of Claim on 28th February 2020, as amended and filed on 11th March 2022.
13. The amendment were factual in nature with the alleged causes of action unaltered, so it is necessary to consider, whether the cause of action pleaded are sustainable also, bearing in mind the law relating to crown proceedings.
14. Section 3 (2) of the *Crown Proceedings Act* [Cap 24] states;

(2) Where the Crown is bound by a statutory duty which is binding also upon persons other than the Crown and its officers, then, subject to the provisions of this Act, the Crown shall, in respect of a failure to comply with that duty, be subject to all those liabilities in tort (if any), to which it would be so subject if it were a private person of full age and capacity.
15. The Court considers that the claim made by the Plaintiff against the Commissioner of Police must relate to the alleged breach of duty or negligent discharge of it, under the *Police Act* [Cap 85]. Even if the Police Act imposed statutory duties which give rise to tortious liability, the Crown could not be liable for a failure of that duty because any such duty is not binding also on persons, other than the Crown. The Police Act only binds the police. That would be sufficient to dispose of the matter also in favor of the Commissioner of Police.⁴

E. Whether the Police Act gives rise to statutory duties sufficient to create a liability in tort?

16. The *Police Act* [Cap 85] is for the protection of the public as a whole and is not intended to protect a limited class. The pleadings filed by the Plaintiff allege neglect (negligence) by the Commissioner of Police, to act within the written law in relation to the investigation of the complaints lodged by the Plaintiff.

⁴ *AG v Fang* – [2009] SBHC 17; HCSI- CC 210 of 2006

17. In *X (Minors) v Bedfordshire County Council* [1995] AC 633, Lord Browne-Wilkinson stated;

“ ... a common law duty of care cannot be imposed on a statutory duty if the observance of such a common law duty of care will be inconsistent with or have a tendency to discourage, the due performance by the local authority of its statutory duties”

18. In *Hill v Chief Constable of West Yorkshire* [1989] AC 53, the mother of a murder victim brought proceedings against the Chief Constable of West Yorkshire for not apprehending the Yorkshire Ripper. The House of Lords found there was no duty owed by the police and laid down what is now known as the *core principle*.

19. Specifically, the *core principle* states that a finding that there was no duty owed by the Police, was premised on *policy* reason, in that the alternative finding that a duty of care subsists, would discourage the due performance by the Police of their statutory duties and that it would be inappropriate to require courts to analyze certain matters involving a variety of decisions relating to the most appropriate way to deploy appropriate resources.

20. The *core principle* was confirmed by the House of Lords in *Brooks v Commissioner of Police for the Metropolis* [2005] UKHL 24; [2005] 2 All ER 489; *Chief Constable of the Hertfordshire Police v. Van Colle* [2008] 3 All ER 977 and *Smith v. Chief Constable of Sussex Police* [2008] UKHL 50

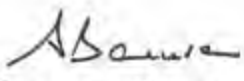
21. It was applied in *Singh v The Fiji Police Force & AG* – JR HBJ 11 of 2018 (per Tuilevuka J).

22. On both these additional grounds pursuant to section 3(2) of the *Crown Proceedings Act* [Cap 8] and on policy grounds articulated in the *core principle*, no reasonable cause of action could be sustained against the 1st Defendant on the facts pleaded by the Plaintiff.

ORDERS

1. Pursuant to the Summons filed on 19th April 2023 , the Plaintiff's Writ of Summons and Statement of Claim filed on 28th February 2020 and amended on 11th March 2022 are struck off and the action dismissed against the 1st Defendant under Order 18, Rule 18(1)(a)(b) and (d) of the *High Court Rules* 1988.
2. Alternatively, the Plaintiff's Writ of Summons and Statement of Claim filed on 28th February 2020 and amended on 11th March 2022 are struck off as;
 - (i) The claim that the 1st Defendant breached his duty under the Police Act must fail, as the Crown cannot be liable for that breach because of section 3 (2) of the *Crown Proceedings Act* [Cap 24], and
 - (ii) No duty is owed by the 1st Defendant to the Plaintiff pursuant to the *core principle identified in Hill v Chief Constable of West Yorkshire* [1989] AC 53, which could give rise to a reasonable cause of action.
3. Costs to be in the cause.




Savenaca Banuve
Judge

At Suva
10th July 2024