

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

Civil Action No. HBC 222 of 2022

**BETWEEN:**

**HASMUKH LAL**  
**PLAINTIFF**

**AND:**

**THE UNIVERSITY OF THE SOUTH PACIFIC**  
**DEFENDANT**

**BEFORE:**

Acting Master L. K. Wickramasekara

**COUNSELS:**

Messrs. Nambiar Lawyers for the Plaintiff  
Haniff Tuitoga for the Defendant

**Date of Hearing:**

By way of Written Submissions

**Date of Ruling:**

30 July 2024

**RULING**

- 01.** Defendant in this action filed Summons to Strike Out the Writ of Summons and the Statement of Claim of the Plaintiff filed on the 26/07/2022. This Summons was filed pursuant to Order 18 Rule 18 (1) of the High Court Rules 1988 and under the inherent jurisdiction of the High Court.

- 02.** The Defendant's grounds for striking out the claim is as follows,
- a) That the Statement of Claim discloses no reasonable cause of action
  - b) That it is scandalous, frivolous, or vexatious on the grounds that the Republic of Nauru is the more convenient forum to hear this claim,
  - c) That it is otherwise an abuse of the process of the Court as matters pleaded in the Statement of Claim are domestic in nature and not justiciable in the High Court of Fiji.
- 03.** Defendant had filed a comprehensive written submission in support of its summons to strike out on the 25/01/2023.
- 04.** Plaintiff has opposed the said summons by the Defendant. Plaintiff has filed its written submissions on the 28/02/2023. After several adjournments, the matter was then fixed for a Hearing on the 29/02/2024 and on this day, the counsels for both the parties relied upon the written submissions filed and moved the Court to make its ruling based on the written submissions already filed.
- 05.** Having duly considered the submissions of the parties, the Court shall make its ruling on the summons to strike out as follows.
- 06.** As per the Statement of Claim, the Plaintiff's claim that he was the Chief Executive Officer of the Pacific Technical and Further Education (TAFE) at the University of South Pacific. In 2019, there had been an investigation against the previous management of the University of South Pacific including the Plaintiff, for allegations of misconduct, abuse of office and mismanagement.
- 07.** It is further submitted that a New Zealand forensic accounting firm, BDO, had compiled a report in this regard, known as the BDO Report. The Plaintiff then claims further as follows,

*"9. On the 27<sup>th</sup> of April 2021, the Council carried out a meeting to discuss the contents of the report wherein a consensus was made that the contents of the BDO report would not be released to the public.*

*10. However, on or about the 9<sup>th</sup> of September 2021, the President of Nauru, the Honorable Lionel Aingimea, who was the Chancellor of the Council Body from July 2020 until June 2021, breached the Council's directive and its Code of Conduct and tabled part of the BDO report in Nauru's Parliament about the contents of the BDO report during a parliamentary speech in Nauru.*

*11. The tabling of part of the BDO Report by Honorable Lionel Aingimea as well as his accompanying speech in the Parliament of*

*Nauru breached the obligation of confidentiality that is expected of the USP Council.*

12. *Under the Code of Conduct, the Defendant had a responsibility to ensure to never disclose confidential information such as the BDO report.*
13. *The Defendant has yet to formally release the entire content of the BDO report.*
14. *Since the leak of part of the BDO report, the Plaintiff has faced continuous contempt and reputational harm from the public.*

**WHEREFORE THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT:**

1. *A Declaration that the USP Council had breached the USP Code of Conduct;*
2. *Damages against the University of the South Pacific for the leak of the BDO report;*
3. *Costs of this action on a suitable indemnity basis plus taxes; and*
4. *Such further and other relief as this Court may deem just.”*

08. The Defendant in their submissions has claimed that the release of the BDO report was done by Honorable Lionel Aingimea, as per the Plaintiff’s own admission, whilst he was no longer the Chancellor of the USP, but in his personal capacity as the ‘President of Nauru, and/or either as a member of the Nauruan parliament and/or at the least as an individual’.
09. The Defendant therefore submits that the Plaintiff has simply failed to disclose any reasonable cause of action against the Defendant. It is further submitted that it was the Defendant itself that had directed the Council members not to disclose the BDO report.
10. Plaintiffs’ contention as per his submissions appears quite dubious. I shall therefore reproduce *in verbatim* the Plaintiff’s submissions in this regard.

“1.8 *The defendant under clause 4 of the USP Council-Code of Conduct, had a responsibility to ensure to never disclose confidential information such as the BDO report.*

1.9 *The defendant was under a duty of care to take the necessary steps to prevent the leak of the BDO report as members are required to exercise reasonable care skill and diligence as outlined under Clause 1 of the USP Council-Code of Conduct.*

1.10 *Since the leak of the BDO report the plaintiff has faced continuous contempt and reputational harm from the public for*

*which he has now instigated the current action before the honorable Court.”*

11. Plaintiff then goes on to make submissions on the Code of Conduct of the USP and the ‘reasonable care, skill and diligence’ expected of the Council members. Plaintiff thereupon submits as follows,

“2.1.3 *The Defendant had failed to comply with clause 1 (b) (f) and (g) in failing to take reasonable steps necessary to ensure that the BDO report was not released.*

2.1.4 *Mr. Aingimea had gained access to the BDO report by way of his affiliation with the Defendant.*

2.1.5 *The Defendant claims to have directed its council members not to release the BDO report to the public in the first place.*

2.1.6 *The defendant fails to establish if they took any reasonable steps to encourage full compliance in light of the critical awareness of the nature and the reasonably expected outcomes resulting from the release of the BDO report.”*

12. Order 18 Rule 18 (1) (a) of the High Court Rules 1988 reads as follows,

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-*

*It discloses no reasonable cause of action or defence, as the case may be; or*

13. No evidence is admissible when considering the above ground of ‘no reasonable cause of action’ for the obvious reason, that the court may only come to a conclusion of an absence of a reasonable cause of action, merely on the pleadings itself, without any extraneous evidence. His Lordship the Chief Justice A.H.C.T. GATES (as His Lordship then was) in **Razak v Fiji Sugar Corporation Ltd [2005] FJHC 720; HBC208.1998L (23 February 2005)** held that:

*“To establish that the pleadings disclose no reasonable cause of action, regard cannot be had to any affidavit material [Order 18 r.18(2)]. It is the allegations in the pleadings alone that are to be examined: Republic of Peru v Peruvian Guano Company (1887) 36 Ch.D 489 at p.498”.*

14. Citing several authorities, Halsbury’s Laws of England (4<sup>th</sup> Edition) in volume 37 at para 18 and page 24, defines the reasonable cause of action as follows:

*“A reasonable cause of action means a cause of action with some chance of success, when only the allegations in the statement of case are considered” Drummond-Jackson v British Medical Association [1970] 1 ALL ER 1094 at 1101, [1970] 1 WLR 688 at 696, CA, per Lord Pearson. See also Republic of Peru v Peruvian Guano Co. (1887) 36 ChD 489 at 495 per Chitty J; Hubbuck & Sons Ltd v Wilkinson, Heywood and Clark Ltd [1899] 1 QB 86 at 90,91, CA, per Lindley MR; Hanratty v Lord Butler of Saffron Walden (1971) 115 Sol Jo 386, CA.*

15. The Court may not use its discretionary power to strike out a claim under this Rule, for the reasons it is weak, or the plaintiff is unlikely to succeed. The power should rather be used when the claim is obviously unsustainable. His Lordship the Chief Justice A.H.C.T. GATES in ***Razak v Fiji Sugar Corporation Ltd*** (supra) held that:

*“The power to strike out is a summary power “which should be exercised only in plain and obvious cases”, where the cause of action was “plainly unsustainable”; Drummond-Jackson at p.1101b; A-G of the Duchy of Lancaster v London and NW Railway Company [1892] 3 Ch. 274 at p.277.”*

16. The Plaintiff is seeking damages from the Defendant for the alleged leak of the BDO report by a third party. The Statement of Claim is, however, absurdly ambiguous on what grounds the Plaintiff is seeking damages from the Defendant, for a breach allegedly committed by a third party of a Code of Conduct, that was apparently set up by the Defendant itself, obviously to safeguard its own interests.
17. Plaintiff in his Statement of Claim totally fails to state any basis for the claim on damages against the Defendant, USP. It is nothing but incoherent whether the Plaintiff’s claim against the Defendant is based on a breach of any duty of care owed by the Defendant to the Plaintiff or as a result of a breach of any contract between the parties or if not as any alleged act of slander and/or libel committed by the Defendant.
18. In this case, there is simply no ground articulated in the Statement of Claim of the Plaintiff which can be identified as the basis for the claim of damages against the Defendant. As such, this Court, is unable to identify any nexus between the Plaintiff’s claim and the Defendant’s liability in this action.
19. However, as per the material facts revealed in the Statement of Claim, it appears that, if at all there is a claim, it is, in fact, for the Defendant, USP, as against the third party who had allegedly committed the leak of the BDO report, despite the USP’s direction and/or ‘consensus’ not to release the said BDO report to the public, thus giving rise to a claim for a ‘breach of the confidentiality clause’ of the USP Code of Conduct by such third party.

20. In the above context, I see no sanity in the claim of the Plaintiff for damages against the Defendant, USP, for an alleged breach of the USP's Code of Conduct committed by a third party.
21. Thus, having carefully considered all facts before this Court, I do not find, based on the facts pleaded therein the Statement of Claim, that the alleged action of a third party in leaking the BDO report can be considered as giving rise to any cause of action in law to the Plaintiff to claim damages against the Defendant.
22. Accordingly, it is the Court's considered view that this claim discloses no reasonable cause of action against the Defendant and that this claim is therefore obviously unsustainable and has no chance of success at all.
23. Based on the above findings of the Court, I am satisfied that this is a fit case to exercise the discretionary power of the Court under Order 18 Rule 18 (1) (a) and strike out the action of the Plaintiff wholly.
24. In view of the above findings and conclusions of the Court, I do not find it significant and/or expedient to deal with the issue of the appropriateness of the jurisdiction of this Court to hear this matter for the obvious reason that the Court has already found there's no reasonable cause of action disclosed in the Plaintiff's Statement of Claim to warrant the matter to be proceeded with any further.
25. Consequently, the Court makes the following orders.
  1. The Summons to Strike Out as filed by the Defendant on 12/08/2022 is hereby allowed.
  2. Plaintiffs Writ Summons and the Statement of Claim filed on 26/07/2022 is hereby wholly struck out and dismissed pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules 1988,
  3. Plaintiff shall pay a cost of \$ 3000.00 to the Defendant within 28 days, as summarily assessed by the Court, as costs of these proceedings.
  4. This cause is accordingly dismissed.



**L. K. Wickramasekara,**  
**Acting Master of the High Court.**

**At Suva,**  
**30/07/2024.**