

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Civil Case No. 286 of 2023

BETWEEN: **RUSIATE TUBUNARUARUA & MEREONI DOBUI; ERONI BALE; VELOGO SENIKALONI; VASEMACA KOLINIO; SERA NASILIVATA; DRON KUMAR; MOSESE IRANASAU; TERIBATE TAUTERE; HIRENDRA SINGH; KISHORE LAL; CAGILABA S BESETIMOALA; SAUIA LAWA; PENINA MATASERE; DEVA NAND; ASHNEEL SHARMA; PRAMESH PRASAD; SEMITI RARAWA; KELERA RAILIKU; ORISI KALOKALO; PREM CHAND; RATI BHAN; SEKOVE RATINI; JONA MATANIKOROVATU; FILIMONI MURIMURI; INOKE VALU; JOSEVATA GONENITOKO; JOSESE MIRA; SAKIUSA MOROIWAITUI, SOTIA BOGIDRAU; ABDUL FAIYAZ; DOMSINO DOLOMOKA; NIMILOTE KASANIBULI; WAISALE DRUGU; AVINESH NATH; ASENACA VALERIA; ULAMILA SAQAKULU; SAINI DONU; AMINIASI RATULOALOA; JONA TALAWA; SELEVA MUDUNAVOSA; SAMISONI NAYACAROGO; TAWARAICI RARAWA; SEREANA QEREQERETABUA; RATU KISI L TAVAGA; GANESHWAR PRASAD, RANJEET SINGH, KARALO AUKA; SUNIA ROKO; SAMUELA LEDUA; ASHWENN KUMAR; SAKIUSA BAINIVALU; STEPHEN ANDREW, MOHAMMED FAIYAZ; RONALD AVINASH JEET; MUEKSH CHAND; ANESH AVNIT PRASAD, SIGA TAVO, TAVIN NARAYAN, NAIMAT ALI; SEMISI TAWAKE**

PLAINTIFFS

AND: **PERMANENT SECRETARY MINISTRY OF PUBLIC WORKS, COMMUNICATIONS, TRANSPORT & METEREOLOGICAL SERVICE**

1st DEFENDANT

AND: **ATTORNEY GENERAL**

2nd DEFENDANT

For the Plaintiff: Mr. J. Seniroqa

For the Defendants: Ms. J. Raman

Date of Hearing: 7th August 2024

Date of Ruling: 4th September 2024

RULING ON APPLICATION TO STRIKE OUT
Pursuant to Order 18 Rule 18 (1) (a) (b) and (d) of the High Court
Rules 1988

1. The Plaintiff instituted this action on the 22nd of September 2023 by way of Writ of Summons filed at the High Court in Suva.
2. The Plaintiff also filed a Statement of Claim setting out their cause of action for their alleged unilateral termination by the 1st Defendant. They further claim that they have suffered damages as a result of that unilateral and unlawful termination and they seek compensation for the same.
3. The Plaintiffs therefore seek the following remedies from the Court: -
 - (i) The sum of \$150, 000 (one hundred and fifty thousand dollars) to be paid per employee for 61 employees. To cover the loss of wages and other benefits calculated from their net pay per week from the day of termination to current date. These include unpaid retirement benefits that each employee was entitled to receive a 3 months paid leave after 10 years of service.
 - (ii) Any further interest and relief that seem just to this Honourable Court.
4. The Defendants filed an Acknowledgement of Service on the 13th of October 2023 indicating that they intended to defend the Action.
5. There were no further pleadings filed and the Plaintiff then filed a Summons for Direction pursuant to Order 25 Rule 8 of the High Court Rules 1988.
6. On the 15th January 2024, the Defendants filed the Summons to Strike out the Writ of Summons and the Statement of Claim filed on the 22nd of September 2023 be struck out on the following grounds: -
 - (a) It discloses no reasonable cause of action;

(b) It is scandalous, frivolous or vexatious;

(c) It is an abuse of the process of the Court.

7. The application is supported by the Affidavit of Ruci Lusiana Daulako, Director Corporate Services, Ministry of Public Works, Communications, Transport and Meteorological Services.
8. The Application to strike out is opposed and the plaintiffs have filed the affidavit of Rusiate Tubunaruarua in opposition and the matter was then fixed for hearing on the 7th of August 2024.
9. At the hearing the parties submitted oral arguments and also supplemented their initial submissions later with written submissions.

Submissions for the Applicant

10. The Defendants have filed this Summons to strike out the Writ and Statement of Claim pursuant to Order 18 Rule 18 (1) of the High Court Rules 1988. The relevant Rule provides as follows: -

“Striking out pleadings and indorsements (O.18, r.18)

18.–(1) The Court may at any stage of the proceedings order to be struck out or amended 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;
- (b) it is scandalous, frivolous or vexatious;
- (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”

11. The Defendants’ Striking out application relies on Order 18 Rule 18 (1) (a), (b) and (d) of the High Court Rules, arguing that the Plaintiff’s claim, consisting of the Writ of Summons and Statement of Claim filed on 22 September 2023, should be struck out on the following grounds:

- (a) It fails to disclose a reasonable cause of action;
- (b) It is scandalous, frivolous or vexatious; and
- (c) It constitutes an abuse of the process of this Honourable Court.

12. The Defendants further state that the claim is also statute barred by virtue of section 4 of the Limitation Act 1971.

13. The Defendants rely on the following case authorities: -

- (i) Paula Malo Radrodrdo vs Sione Hatu Takia & others HBC 204 of 2005
- (ii) NBF Asset Management Bank vs Taveuni Estates Ltd [2011] FJHC 755; HBC 543 of 2004 (19 November 2011).
- (iii) Razak vs Fiji Sugar Corporation Ltd [2005] FJHC 720; HBC 208 of 1998L (23 February 2005)

14. The Defendants submit that the Writ and Statement of Claim filed by the Plaintiffs discloses no reasonable cause of action for the following reasons: -

- (a) There are 62 individuals indicated as the Plaintiffs, purportedly the former employees of the Defendants at various periods of employment.
- (b) The Plaintiffs' Writ and Statement of Claim do not indicate that the proceedings are instituted in a representative capacity on behalf of the Plaintiffs. If this were the case, this should have been made clear as required under Order 6 Rule 3 (a) of the High Court Rules which provide that before a Writ is issued it must be indorsed where the Plaintiff sues in a representative capacity, with a statement of the capacity in which he or she sues.
- (c) The individual Plaintiffs are all suing in their individual capacities, in which case they have failed to particularise a concise statement of the nature of their individual claims or the reliefs, remedies sought in the claim, as required in the High Court Rules.
- (d) The Plaintiff's pleadings do not contain any factual allegations, let alone any claims that raise a legal issue.
- (e) The Defendants further state that, even if the Court were to find that there is a cause of action related to the alleged unlawful termination of the Plaintiffs'

employment from between 2011 and 2012, this is lacking in detail for each individual Plaintiff and their claim.

- (f) If that were the basis for any action, then these contractual claims are now barred by virtue of section 4 of the Limitations Act, as such actions ought to be brought within 6 years.

15. With respect to the second head of “Abuse of Process” the Defendants submit as follows: -

- (a) The claims which are clearly statute barred represents a blatant abuse of the Court’s processes. The claim arose from events from 13 years ago demonstrating a significant delay which undermines the integrity of the legal processes.
- (b) The lack of transparency in the Plaintiffs’ Writ and Statement of Claim raises serious questions about the bona fides of their application.
- (c) The Defendants had also instituted a judicial review in 2012, namely Rusiate Tubunaruarua & others vs Permanent Secretary for Works, Transport and Public Utilities HBJ 2 of 2012. The issue raised in this action are identical to this case and that case was dismissed.
- (d) The Plaintiffs, instead of appealing from the above case, have now instituted another new case and attempted to re litigate the issues in this new case. This is an abuse of the Court’s processes.

16. The Defendants submit that it is evident that the Plaintiffs’ Writ and Statement of Claim should be regarded as frivolous, vexatious and scandalous by reference to the other grounds for a strike out.

17. These issues have been litigated already and the Plaintiffs should now be stopped from continuing with an action that constitutes an abuse of the Court process.

The submissions from the Plaintiffs

18. The Plaintiff submits that this claim concerns 60 employees from the Public Works Department, who were unilaterally terminated from employment between 2011 and 2012. They were accused of an offence called the “sick sheet scam” and

they were terminated without any warning or lawful reason, nor were they given any time to defend themselves.

19. The Plaintiffs maintain that their termination was unlawful, unjust and wrong. No worker must be put through such an inhumane and degrading situation whenever and whatsoever.

20. This action was properly brought, and the Defendants are now in breach of the following High Court Rules: -

(i) Failure to file a Statement of Defence even though they have filed an Acknowledgement of Service.

(ii) The Defendants have failed to file a Statement of Defence and instead have now filed the Striking out Application to evade the default judgment ordered by the Master of the High Court on 13th March 2024.

21. The Plaintiff submits that striking out should only be exercised in plain and obvious cases. The claim brought by the Plaintiffs is brought properly and should be heard as it has some chances of success.

22. The Plaintiffs submits the authority of Nasim Ali vs SCC & AG HBC 311 of 2008 where the Court has held that: -

“For a claim to be scandalous, the Applicant must prove that the allegations pleaded are defamatory or would be disgraceful if the facts are not relevant to the issues before the Court.”

23. The Plaintiffs also deny that this application is an abuse of Court process and states that this application is aimed at defeating the legitimate claims of the Plaintiffs.

24. The application for Striking out should therefore be refused with costs.

Analysis

25. The High Court has the power conferred by Order 18 Rule 18 to strike out pleadings and the relevant Order provides as follows:-

“Striking out pleadings and indorsements (O.18, r.18)

18.-(1) The Court may at any stage of the proceedings order to be struck out or amended 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.”

26. The application to strike out the claim against the Defendants is based on the provisions of Order 18 Rule 18 (1).

27. The Applicant relies on the principle of res judicata, stating that the issues raised in the claim have already been heard and adjudicated upon by the High Court and to continue with the same constitutes an abuse of the Court processes.

28. In the case of Reserve Bank of Fiji vs Gallagher [2006] FJCA 37; ABU 30; ABU 31; ABU 32 of 2005S (14 July 2006) the Court of Appeal stated: -

“[65] The high point of strictness for the Henderson Rule is found in the Privy Council in Yat Tung Investment Co. Ltd. v. Dao Meng Bank Ltd and Anor. [1975] UKPC 6; [1975] AC 581, Lord Kilbrandon, giving the advice of the Privy Council, noted at 589 that it becomes an abuse of process to raise in subsequent proceedings matters an issue which could and therefore should have been litigated in earlier proceedings.

[66] His Lordship stated at 590

"The shutting out a "subject of litigation" – a power which no court should exercise but after a scrupulous examination of all the circumstances – is limited to cases where reasonable diligence would have caused a matter to be earlier raised; moreover, although negligence, inadvertence or even accident will not suffice to excuse, nevertheless "special circumstances"; are reserved in case justice should be found to require the non-application of the rule."

29. Another ground for the striking out application is that this claim appears to be a representative action although they have not specifically stated so in the Writ itself. Representative actions are provided for at Order 15 Rule 14, and which provides as follows: -

“Representative proceedings (O.15, r.14)

14.-(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 15, the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.”

30. In this case, the Writ contains no such indication that it is a representative action and the cause of action that has been raised, is very general and does not set out their individual causes of action and the basis in which each individual Plaintiff is seeking relief from the Defendants.

31. The Pleadings such as they are, require comprehensive amendments so that the Defendants can ascertain what they need to answer with respect to each individual Plaintiff.

32. In its current form, the Writ and Statement of Claim is too general and in its current form it discloses no reasonable cause of action on behalf of each individual Plaintiff against the Defendants.

33. I therefore find that it is appropriate to grant the application sought and I therefore strike out the Writ and Statement of Claim filed herein as it discloses no reasonable cause of action on behalf of each of the individual Plaintiffs.

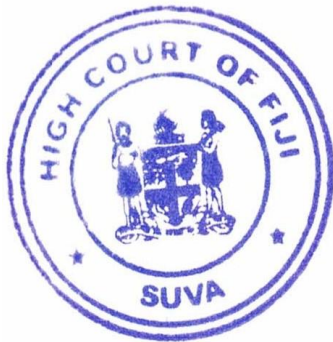
34. The Defendants will be embarrassed and there will be unreasonable delays if the action is allowed to continue in its current format.

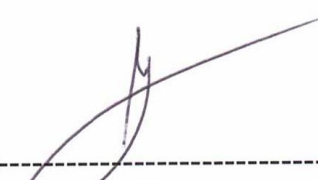
35. Since costs follow the cause, I will allow costs summarily assessed for the successful applicants.

This is the Ruling of the Court: -

- 1. The Writ and Statement of Claim is hereby struck out.**
- 2. The Plaintiff will pay costs of \$700 to the Defendants summarily assessed.**

There is a right of appeal





Mr. Justice U Ratuville
Puisne Judge

- cc:*
- 1. Office of the Attorney-General*
 - 2. Seniroqa Law, Nasinu*