

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 190 of 2024

BETWEEN: **SATISH CHANDRA GOSAI** of Northern Press Road, Nadi,
Businessman.

PLAINTIFF

AND: **BIREND SINGH** of Nasau, Nadi Backroad, Nadi, Fiji, Businessman.

1ST DEFENDANT

AND: **HASRAT ALI** of Ali Brothers Road, Nasau, Nadi, Fiji, Businessman.

2ND DEFENDANT

AND: **SHER ALI & SONS PTE LIMITED** (Company no. 8726) a limited liability
company having its registered office at Level 3, Aliz Centre, 231 Martintar,
Nadi, Viti Levu.

3RD DEFENDANT

BEFORE : **Master P. Prasad**

Counsels : Messrs Janend Sharma Lawyers for Plaintiff
 : Messrs Prikans Law for 2nd & 3rd Defendants

Date of Hearing : By way of submissions.

Date of Decision : 4 April 2025

RULING

(Strike out)

1. The Plaintiff brings this action as the owner of all that land comprised in Certificate of Title No. 42847, land known as Nasou and being Lot 28 on DP 10933 containing an area of 2 hectares, 1970 square meters in the District of Nadi (**Property**).

2. The Plaintiff through his Statement of Claim (**Claim**) states as follows:
 - a. The Defendants between 1 August 2021 to 31 September 2021 either by themselves, their servants and/or agents, wrongfully and without any lawful authority from the Plaintiff, entered on the Property and caused or authorised soil to be extracted from the Property.
 - b. As a result of the Defendants' actions, the Plaintiff's Property suffered damages and the Plaintiff suffered loss and damages in particular:
 - i. Heavy machinery used for extraction damaged natural bearing of the Property;
 - ii. Removal of topsoil resulted in damage/loss of natural fertile soil;
 - iii. Unlawful extraction led to the land becoming less productive;
 - iv. Extraction polluted natural waterways and natural landscapes, potentially making flooding more common.
 - c. The Plaintiff engaged a land surveyor at a cost of \$850.00 to evaluate the damage to the Property and it was assessed that 9676.75 cubic meters of soil had been extracted from the Property.
 - d. The unlawful and wrongful extraction of soil by the Defendants has caused damage to the Property worth approximately \$174,181.50 (at \$18.00 per cubic meter).
3. The Plaintiff claims:
 - a. 1st and 2nd Defendants jointly and severally pay the sum of \$174,181.50 as special damages.
 - b. 1st and 2nd Defendants jointly and severally pay the sum of \$850.00 for the cost of survey.
 - c. 1st and 2nd Defendants jointly and severally pay General Damages.
 - d. The Defendants jointly and severally pay interest at the rate of 13.75% per annum on all sums due and owing.
 - e. The Defendants jointly and severally pay post judgment interest on the sum awarded.
 - f. Costs on full Solicitor Client Indemnity basis.
 - g. Any further relief Court deems fit.
4. On 25 September 2024, the 2nd and 3rd Defendants (**Defendants**) filed a Summons to strike out the Plaintiff's claim pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules (**HCR**).
5. Both parties have filed written submissions pertaining to the application and on 5 February 2025 they mutually moved the Court to have the Ruling made on the written submissions.

Order 18 Rule 18 (a), (b) and (d)

6. The relevant rule which the Defendants are relying on is Order 18 Rule 18 (1) (a).

7. Order 18 rule 18 provides:

“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 case 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,*

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”

8. The following excerpts from the 1997 Supreme Court Practice provide the scope of the rule together with guiding factors when dealing with an application for the strike out of a pleading.

9. Footnote 18/19/3 of the 1997 Supreme Court Practice reads:

“Striking out or amendment—The rule also empowers the Court to amend any pleading or indorsement or any matter therein. If a statement of claim does not disclose a cause of action relied on, an opportunity to amend may be given, though the formulation of the amendment is not before the Court (CBS Songs Ltd v. Amstrad [1987] R.P.C. 417 and [1987] R.P.C. 429). But unless there is reason to suppose that the case can be improved by amendment, leave will not be given (Hubbuck v. Wilkinson [1899] 1 Q.B. 86, p.94, C.A.). Where the statement of claim presented discloses no cause of action because some material averment has been omitted, the Court, while striking out the pleading, will not dismiss the action, but give the plaintiff leave to amend (see “Amendment,” para. 18/12/22), unless the Court is satisfied that no amendment will cure the defect (Republic of Peru v. Peruvian Guano Co. (1887) 36 Ch.D. 489).”

10. Footnote 18/19/7 of the 1997 Supreme Court Practice reads:

“Exercise of powers under this rule—It is only in plain and obvious cases that recourse 18/19/7 should be had to the summary process under this rule, per Lindley M.R. in Hubbuck v. Wilkinson [1899] 1 Q.B. 86, p.91 (Mayor, etc., of the City of London v. Horner (1914) 111 L.T. 512, C.A.). See also Kemsley v. Foot [1951] 2 K.B. 34; [1951] 1 All E.R. 331, C.A., affirmed [1952] A.C. 345, H.L. It cannot be exercised by a minute and

protracted examination of the documents and facts of the case, in order to see whether the plaintiff really has a cause of action (Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.).”

11. Footnote 18/19/11 of the 1997 Supreme Court Practice on no reasonable cause of action or defence reads:

“Principles—A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered (per Lord Pearson in Drummond-Jackson v. British Medical Association [1970] 1 W.L.R. 688; [1970] 1 All E.R. 1094, C.A.). So long as the statement of claim or the particulars (Davey v. Bentinck [1893] 1 Q.B. 185) disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out (Moore v. Lawson (1915) 31 T.L.R. 418, C.A.; Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.);...”

12. The legal principles regarding striking out pleadings are clear and widely understood. The Court of Appeal in **National MBF Finance v Buli** [2000] FJCA 28 determined the principles for strike out. In **Attorney-General v Shiu Prasad Halka** 18 FLR 210 at 214 Justice Gould V.P. in his judgment expressed “*that the summary procedure under O.18, r.19 is to be sparingly used and is not appropriate to cases involving difficult and complicated questions of law.*”

13. Justice Winter (as his Lordship then was) in **Ah Koy v Native Land Trust Board** [2005] FJHC 49 aptly stated:

“The practice in Fiji of preemptively applying to strike out a claim is wrong and must cease. Counsels ability to overlook the purpose of this summary procedure is astounding. The expense to the administration of justice, let alone clients, is a shameful waste of resources....

Apart from truly exceptional cases the remedy should not be granted. The approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be provided at trial. If a legal issue can be raised on the facts as pleaded then the courts will not strike out a pleading and will certainly not do so upon a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of such a factual contention....

The rule of law requires the existence of courts for the determination of disputes and that litigants have the right to use the court for that purpose. The courts will be alert to their processes being used in a way that results in an oppression or injustice that would bring the administration of justice into disrepute. However, the court cannot and must not deny proper access to justice by the glib use of a summary procedure to pre-emptorily strike out an action no matter how weak or poorly pleaded the Statement of Claim supporting the case is....

It is not for the court in deciding whether there is a reasonable cause of action to go into the details of the issues that are raised by the parties. This summary jurisdiction of the court was never intended to be exercised by a detailed examination of the facts of the case at a mini hearing to see whether the plaintiff really has a good cause of action merely a sufficient one. This is not the time for an assessment of the strengths of either case. That task is reserved for trial. The simple fact that these parties engaged in argument by opinion over statutory interpretation must bring into existence a mere cause of action raising some questions fit to be decided by a judge.”

14. The clear and unambiguous wording of Order 18 Rule 18 indicates that the power to strike out pleadings is discretionary rather than obligatory.
15. The Defendants' legal counsel in his submissions states that the SOC fails to disclose a reasonable cause of action as the allegations against the Defendants are “vague, lack substantive evidence, and does not establish any direct or indirect liability” against the Defendants. The submission further states that there is no specific act or omission attributed to the 2nd Defendant which establishes his involvement in authorising, directing, or participating in the alleged extraction of soil from the Property. In relation to the 3rd Defendant, the Defendants submit that there is no connection between the 3rd Defendant and the specific acts alleged in the SOC.
16. Moreover, the Defendants state that the inclusion of the Defendants in the SOC appear to be “speculative and lacks substantive legal or factual grounds”, and that the SOC fails to disclose a *prima facie* case.
17. Finally, the Defendants relying on ***Saloman v Saloman & Co. Ltd*** (1987) A.C. 22, submitted that the 3rd Defendant acted on instructions of the 1st Defendant and as such the 3rd Defendant was protected from personal liability for the actions undertaken as part of its corporate function. The Defendants further submitted on this ground that the 3rd Defendant was a separate legal entity from its shareholders and directors and as such the Plaintiff has failed to demonstrate any basis for piercing the corporate veil or holding the 3rd Defendant liable beyond its corporate obligations.
18. To ascertain if there is a reasonable cause of action, this Court needs to first determine whether the pleading, as it stands, establishes a reasonable cause of action against the Defendants or not.
19. The Plaintiff's legal counsel in his written submissions addressed all the grounds raised by the Defendants and stated that the Plaintiff's claim was validly pleaded, and it disclosed the following causes of action:
 - a. Unlawful interference with the Plaintiff's Property.
 - b. Causing damage and loss to the Property.

- c. The Defendants unlawfully entering the Plaintiff's Property and removing soil without consent, interfering with the Plaintiff's exclusive possession rights.
 - d. The Defendants wrongfully removed and appropriated approximately 9,676.75 cubic meters of soil, depriving the Plaintiff of its possession and economic value.
 - e. The Defendants' action's caused environmental damage and diminished the Plaintiff's value of the Property and his enjoyment and use of the same.
20. The Plaintiff's counsel further submitted that the 2nd Defendant is personally liable for his own actions and the cause of action in the SOC is that of 'trespass to land', which is established by the following pleadings:
 - a. The Plaintiff as the registered owner enjoys exclusive possession of the Property;
 - b. The Defendants without permission entered the Plaintiff's Property and extracted 9676.75 cubic meters of soil; and
 - c. The 1st Defendant directed the act while the 2nd Defendant authorised it and the 3rd Defendant carried out the extraction using machinery.
21. In rebutting the issue of corporate veil raised by the Defendants, the Plaintiff's counsel correctly submitted that the corporate veil exists primarily to protect the shareholders from personal liability for the debts and obligations of the company. It does not exist to shield the company itself from liability for its actions. When a company acts unlawfully or improperly, it remains liable for its actions, and the corporate veil does not offer it protection.
22. It is an established legal principal that a company after incorporation is regarded as a separate legal entity capable of owning assets, entering contracts and sue and be sued in its own name.
23. I agree with the Plaintiff's submissions that the Defendants attempt to invoke the corporate veil to shield the 3rd Defendant is a clear misapplication of this principle. The 3rd Defendant cannot claim protection under the corporate veil for its own actions as a limited liability company.
24. Whether or not the Plaintiff will be successful in attributing any liability to the 3rd Defendant is something to be decided at trial proper wherein the Court will delve into inquiries such as the role of each Defendant so far as it relates to the alleged damage caused to the Plaintiff's Property.
25. As far as this application is concerned, the 3rd Defendant is a separate legal entity and is capable of being sued.

26. I also find that the SOC as it stands provides sufficient particulars of trespass to the Plaintiff's Property by all the Defendants, and that trespass is a valid cause of action against the Defendants.

27. It may be that the allegations in the SOC could be weak or unlikely to succeed. However, it is not the consideration for the purpose of Order 18 rule 18. In **Ratumaiyale v Native Land Trust Board** [2000] FJLawRp 66; [2000] 1 FLR 284 (17 November 2000) the Court held that:

*"It is clear from the authorities that the Court's jurisdiction to strike out on the grounds of no reasonable cause of action is to be used sparingly and only where a cause of action is obviously unsustainable. **It was not enough to argue that a case is weak and unlikely to succeed**, it must be shown that no cause of action exists (**A-G v Shiu Prasad Halka** [supra]; **Bavadra v Attorney-General** [1987] 3 PLR 95". (Emphasis added).*

28. For an application under Order 18 Rule 18 (1) (a) – no reasonable cause of action - the Court may only conclude an absence of a reasonable cause of action on the pleadings itself with no evidence being admissible. His Lordship Chief Justice Mr. A.H.C.T. Gates (as His Lordship then was) held in **Razak v Sugar Corporation Ltd** [2005] FJHC 720 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] UKLawRpCh 186; (1887) 36 Ch.D 489 at p.498".*

29. At this stage, it cannot be definitively stated that the Plaintiff's claims against the Defendants are completely unsustainable, as the outcome relies on how well the Plaintiff substantiates the allegations presented in the SOC at trial. Considering the reasons outlined earlier, I find that the Plaintiff's SOC establishes a reasonable cause of action against the Defendants. Therefore, the Court cannot use its discretion under Order 18 rule 18 to strike out the Plaintiff's SOC.

30. Accordingly, I make the following orders:

(a) The application is dismissed;

(b) The Plaintiff is entitled to costs summarily assessed in the amount of \$2,000.00, payable by the 2nd and 3rd Defendants within 21 days;

- (c) The 2nd and 3rd Defendants to file and serve their Statement of Defence within 21 days from today (by 29 April 2025); and
- (d) The matter shall be mentioned before the Court on 13 May 2025 for normal course to follow.



A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

P. Prasad
Master of the High Court

At Lautoka
4 April 2025