

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Civil Action No. HBC 24 of 2025

BETWEEN: **DHANESHWAR PRASAD** of Laqere, Tabia, Labasa, Businessman.

Plaintiff

AND: **RISHI CHAND** of Korovatu, Labasa in the Republic of Fiji Islands.

Defendant

Representation:

Plaintiff: Mr. S. Sharma (Sushil Sharma Lawyers).

Defendant: Mr. A. Sen (Sen Lawyers).

Date of Hearing: 26th May 2025.

Ruling

A. Introduction

- [1] A writ of summons has been filed on behalf of the Plaintiff seeking a number of orders against the Defendant. It relates to the termination of the special lease agreement between the parties.
- [2] On 7th May 2025 the Plaintiff's lawyer filed a **notice of motion** and affidavit of the Plaintiff seeking injunctive relief against the Defendant, his agents, servants, employees and others in relation the property subject to the special lease agreement.
- [3] An affidavit in opposition of the Defendant has been filed. On 22nd May 2025 the Defendant's lawyer filed **summons to strike out**.
- [4] I have heard the **motion** and the **summons to strike out** applications.

B. Determination

- [5] I would deal with the summons to strike out first. This application was filed later and heard second. I shall now explain the rationale as to why I am dealing with the summons to strike out first. The strike out application has a bearing on the whole matter. The injunction relates to an interlocutory issue and is an interlocutory application. If the strike

out application succeeds the matter will terminate. This matter will end. It will render the injunction application nugatory.

- [6] The submission for the Defendant seeking to strike out the matter is that this matter is identical to another matter filed in Civil Action No. 13 of 2025. It is therefore scandalous, frivolous and an abuse of the process of the court.
- [7] For the Plaintiff the contention is that it is not an abuse of the process of the court. They state that the other action was by originating summons. That following the Defendant closing off the area, the Plaintiff filed a writ seeking damages.
- [8] **Order 18 Rule 18 (1)** of the High Court Rules 1988 provides for the striking out of pleadings and endorsements. The power to strike out is discretionary. It is used sparingly and in exceptional cases.
- [9] Lord Diplock stated at the outset of his speech in **Hunter v Chief Constable of West Midlands** [1981] 3 All ER 727 at 729, [1982] AC 529 at 536, that an:

“inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power”.

- [10] I now move on to the **question whether to strike out or not**. The parties in HBC 13 of 2025 and this matter are the same. The Plaintiff and the Defendant are the same. HBC 13 of 2025 is initiated by originating summons. Six (6) orders are being sought by the Plaintiff in HBC 13 of 2025. Four (4) of the orders sought in HBC 13 of 2025 are identical to the orders sought in this matter. This matter is by way of writ.
- [11] The Plaintiff in this matter is litigating the same issues that are in HBC 13 of 2025. The issues are identical. It relates to a special lease agreement between the parties. I further note that a few other issues have been added for the Court to determine in this matter.
- [12] Lord Neuberger observed in **Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud v Apex Global Management Ltd** [2014] UKSC 64, [2015] 1 All ER (Comm) 1183, [2014] 1 WLR 4495 at [16]) that:

“the striking out of a statement of case is one of the most powerful weapons in the court’s case management armoury and should not be deployed unless its consequences can be justified”.

- [13] I note that the categories of abuse of process are numerous and open. The few issues that are raised in this matter could be added to and dealt with in HBC 13 of 2025. Two separate identical actions, seeking similar reliefs are not needed. It is an abuse of process when another matter is filed seeking identical reliefs to a matter filed earlier. Lawyers

should know that filing identical actions seeking similar reliefs are an abuse of the process of the court. Such matters clog up the judicial system. Time and resources are wasted. Parties end up paying more. A party and their lawyers cannot be allowed to misuse or abuse the process of the court by seeking to raise before it identical issues in two separate matters.

- [14] I note what Lord Bingham said when dealing with abuse of process in **Johnson v Gore Wood & Co (a firm) [2000] All ER (D) 2293** that:


*“thus the abuse in question need not involve the reopening of a matter already decided in proceedings between the same parties, as where a party is estopped in law from seeking to re-litigate a cause of action or an issue already decided in earlier proceedings, but (as Somervell LJ put it in **Greenhalgh v Mallard [1947] 2 All ER 255** at 257) may cover—*

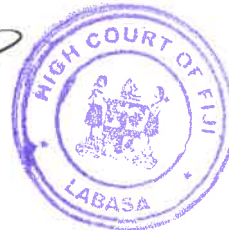
‘issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.’” (My Emphasis)

- [15] It is required of the Plaintiff to put forward the whole case and not (unless under special circumstances) open up few other issues in another case, which could be dealt with by the initial case. There is no need for another matter to be initiated. HBC 13 of 2025 can deal with all the issues. It is open to the Plaintiff to convert the action to writ action. Amendments can be made to the pleadings. The manner in which this matter has been filed and pursued is an abuse of the process of the court.
- [16] Having considered the question of whether to strike out or not with great care, and after weighing the factors identified by each party in the balance for the purpose of the exercise of my discretion, I am satisfied that this is an appropriate case for a strike out.
- [17] This matter (HBC 24 of 2025) is struck out. The Plaintiff is to pay the Defendant \$2000.00 as costs. It is summarily assessed. It is to be paid within 30 days.

C. Court Orders

- (a) This matter (HBC 24 of 2025) is struck out.
- (b) The Plaintiff is to pay the Defendant \$2000.00 as costs. It is summarily assessed. It is to be paid within 30 days.


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Chaitanya S.C.A Lakshman
Puisne Judge



28th May 2025