IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 100 of 2024

BETWEEN:

ANA MASIKETE FINEMATEAKI
1ST PLAINTIFF

AND:

JONE LOMANI DOMONI
2ND PLAINTIFF

AND:

JOSESE TURAGAVA
1ST DEFENDANT

AND:

VILIAME LOUKEU
2ND DEFENDANT

AND:

ATECA MA'ATA
3RD DEFENDANT

AND:

TIKIKO KOROCAWIRI
4TH DEFENDANT

BEFORE:

Acting Master L. K. Wickramasekara

COUNSELS:

M/S Tupou Draunidalo for the Plaintiffs

Sherani & Company for the Defendants

Date of Hearing:

07th April 2025

Date of Ruling:

11th September 2025

RULING

The Application

01. Defendants in this action on 21/08/2024 filed Summons to Strike Out the Writ of Summons and the Statement of Claim and for Filing of Statement of Defence to be Stayed, pursuant to Order 18 Rule 18 (1) (a), (b), and (d). However, there was no Affidavit filed in support of the said Summons.

02. The Writ and the Statement of Claim of the Plaintiffs had been filed on 05/04/2024.

03. Plaintiff has opposed the said application and upon the directions of the Court, the Defendants filed and served written submissions on 04/10/2024 and the Plaintiffs filed and served their written submissions on 11/11/2024.

04. A short Hearing was conducted on 07/04/2025 whereas the counsels for the parties submitted further case authorities and further relied on the written submissions already filed.

05. Having read the comprehensive written submissions tendered, and having heard the parties on their oral submissions, I now proceed to make my Ruling on the Summons to Strike Out as follows.

The Plaintiff's Claim

06. The Plaintiffs' claim is grounded upon a cause of action for defamation. It is alleged by the Plaintiffs that the Defendants have made defamatory statements implicating the Plaintiffs, asserting that the Plaintiffs are practicing witchcraft and are possessed by evil spirits. Furthermore, it is alleged that said defamatory statements were made within a Facebook Messenger group, which also includes other family members. The specific defamatory statements, as alleged by the Plaintiffs, are detailed in the Statement of

Claim. The Plaintiffs contend that they have suffered significant emotional distress and harm as a result of these statements and consequently seek a public apology from the Defendants, general and punitive damages, and recovery of legal costs.

Defendants Submissions

07. The Defendants submit that the Plaintiffs lack a reasonable cause of action in defamation against the Defendants, as the Plaintiffs have failed to plead and/or particularize the element of 'publication,' which is a fundamental and essential component of a cause of action for defamation.

08. The Defendants contend that the Facebook Messenger group, within which the Plaintiffs allege the defamatory statements were made, is a private communication among relatives, with membership strictly by invitation. Consequently, the Defendants argue that the element of 'publication' has not been established, thereby negating any cause of action in defamation. The Counsel for the Defendants has relied upon the judgment in ***Dayal v Prasad; HBC237.2016 (26 September 2016)***, particularly on paragraph 16 of the said judgment, in support of this position.

09. The Defendants further submit that the Plaintiffs have failed to plead that the alleged defamatory statements were made with the intention or effect of causing pecuniary damages to the Plaintiffs. In the absence of such allegations, the Defendants contend that no reasonable cause of action exists in this matter. In support of this contention, the Defendants rely on the judgment in ***Dayal v Prasad*** (Supra), which references the case of ***Trade Air Engineering (West) Ltd v Mechanical Services Ltd, Civil Action No. 338.2003 (16 November 2012)***.

10. Accordingly, the Defendants have moved to have the Writ and the Statement of Claim struck out subject to a cost of $ 5000.00.

Plaintiffs Submissions

11. The Plaintiffs submit that the Defendants' contention that there is no cause of action is frivolous, as the element of 'publication' has been duly pleaded and specifically articulated in the Statement of Claim. The Plaintiffs contend that the Statement of Claim clearly alleges that the defamatory statements were published within a Facebook Messenger group via written messages, in which third parties—other than the Plaintiffs and Defendants, whether relatives or otherwise—were members. Accordingly, the Plaintiffs assert that these third parties read the statements, thereby establishing the element of 'publication'. The Plaintiffs rely upon the judgment of Chief Justice Cardozo in ***Ostrowe v Lee (1931) 175 NE 505, at 505***, and argue that if the defamatory statements were read or heard by third parties other than the Plaintiffs and Defendants, it constitutes publication within the meaning of the law.

The Relevant Law

12. Order 18 Rule 18 of the High Court Rules 1988 reads 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.*
>
> *(2) No evidence shall be admissible on an application under paragraph (1)(a).*
>
> *(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.*

13. Master Azhar, in the case of ***Veronika Mereoni v Fiji Roads Authority:*** *HBC 199/2015 [Ruling; 23/10/2017]* has succinctly explained the essence of this Rule in the following words.

> *"At a glance, this rule gives two basic messages, and both are salutary for the interest of justice and encourage the access to justice which should not be denied by the glib use of summery procedure of pre-emptory striking out. Firstly, the power given under this rule is permissive which is indicated in the word "may" used at the beginning of this rule as opposed to mandatory. It is a "may do" provision contrary to "must do" provision. Secondly, even though the court is satisfied on any of those grounds mentioned in that rule, the proceedings should not* ***necessarily*** *be struck out as the court can, still, order for amendment. In* ***Carl Zeiss Stiftung v Rayner & Keeler Ltd*** *(No 3) [1970] Ch. 506, it was held that the power given to strike out any pleading or any part of a pleading under this rule is not mandatory but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending plea.* ***MARSACK J.A.*** *giving concurring judgment of the Court of Appeal in* ***Attorney General v Halka*** ***[1972] FJLawRp 35; [1972] 18 FLR 210 (3 November 1972)*** *held that:*

> *"Following the decisions cited in the judgments of the Vice President and of the Judge of the Court below I think it is definitely established that the jurisdiction to strike out proceedings under Order 18 Rule 19 should be very sparingly exercised, and only in exceptional cases. It should not be so exercised where legal questions of importance and difficulty are raised".*

14. Pursuant to Order 18 Rule 18 (2), no evidence shall be admissible upon an application under Order 18 Rule 18 (1) (a), to determine if any pleading discloses no reasonable cause of action or defence. No evidence is admissible for this ground for the obvious reason that, the Court can conclude absence of a reasonable cause of action or defence 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".*

15. Citing several authorities, Halsbury's Laws of England (4th 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.*

16. Given the discretionary power the Court possesses to strike out pleadings under this rule, it is to be highlighted that the Court cannot strike out an action for the reasons it is weak, or the plaintiff is unlikely to succeed, rather the subject pleading should obviously be 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."*

17. It was held in ***Ratumaiyale v Native Land Trust Board [2000] FJLawRp 66; [2000] 1 FLR 284 (17 November 2000)*** 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** [1972] 18 FLR 210; **Bavadra v Attorney-General** [1987] 3 PLR 95. The principles applicable were succinctly dealt by Justice Kirby in **London v Commonwealth [No 2]** 70 ALJR 541 at 544 - 545. These are worth repeating in full:*

*1. It is a serious matter to deprive a person of access to the courts of law for it is there that the rule of law is upheld, including against Government and other powerful interests. This is why relief, whether under O 26 r 18 or in the inherent jurisdiction of the Court, is rarely and sparingly provided (**General Street Industries Inc v Commissioner for Railways (NSW)** [1964] HCA 69; (1964) 112 CLR 125 at 128f; **Dyson v Attorney-General** [1911] 1 KB 410 at 418).*

*2. To secure such relief, the party seeking it must show that it is clear, on the face of the opponent's documents, that the opponent lacks a reasonable cause of action (**Munnings v Australian Government Solicitor** (1994) 68 ALJR 169 at 171f, per Dawson J.) or is advancing a claim that is clearly frivolous or vexatious; (**Dey v. Victorian Railways Commissioners** [1949] HCA 1;(1949) 78 CLR 62 at 91).*

*3. An opinion of the Court that a case appears weak and such that it is unlikely to succeed is not alone, sufficient to warrant summary termination. (**Coe v The Commonwealth** (1979) 53 ALJR 403; (1992) 30 NSWLR 1 at 5-7). Even a weak case is entitled to the time of a court. Experience reaches that the concentration of attention, elaborated evidence and argument and extended time for reflection will sometimes turn an apparently unpromising cause into a successful judgment.*

*4. Summary relief of the kind provided for by O 26, r 18, for absence of a reasonable cause of action, is not a substitute for proceeding by way of demurrer. (**Coe v The Commonwealth**(1979) 53 ALJR 403 at 409). If there is a serious legal question to be determined, it should ordinarily be determined at a trial for the proof of facts may sometimes assist the judicial mind to understand and apply the law that is invoked and to do so in circumstances more conducive to deciding a real case involving actual litigants rather than one determined on imagined or assumed facts.*

*5. If notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it has failed to put in proper form, a court will ordinarily allow that party to reframe its pleadings. (**Church of Scientology v Woodward** [1982] HCA 78; (1980) 154 CLR 25 at 79). A question has arisen as to whether O 26 r 18 applies only part of a pleading. (**Northern Land Council v***

> ***The Commonwealth*** *(1986) 161 CLR 1 at 8). However, it is unnecessary in this case to consider that question because the Commonwealth's attack was upon the entirety of Mr. Lindon's statement of claim; and*
>
> *6. The guiding principle is, as stated in O 26, r 18(2), doing what is just. If it is clear that proceedings within the concept of the pleading under scrutiny are doomed to fail, the Court should dismiss the action to protect the defendant from being further troubled, to save the plaintiff from further costs and disappointment and to relieve the Court of the burden of further wasted time which could be devoted to the determination of claims which have legal merit".*

18. If the Statement of Claim or the Defence contains degrading charges which are irrelevant, or if, though the charge be relevant, unnecessary details are given, the pleading becomes scandalous *(see:* ***The White Book*** *Volume 1 (1999 Edition) at para 18/19/15 at page 350).*

19. Likewise, if the proceedings were brought with the intention of annoying or embarrassing a person or brought for collateral purposes or irrespective of the motive, if the proceedings are obviously untenable or manifestly groundless as to be utterly hopeless, such proceedings becomes frivolous and vexatious (*per: Roden J in* ***Attorney General v Wentworth*** *(1988) 14 NSWLR 481, said at 491).*

20. In The **White Book** in Volume 1 (1987 Edition) at para 18/19/14 states that,

> *"Allegations of dishonesty and outrageous conduct, etc., are not scandalous, if relevant to the issue (Everett v Prythergch (1841) 12 Sim. 363; Rubery v Grant (1872) L. R. 13 Eq. 443). "The mere fact that these paragraphs state a scandalous fact does not make them scandalous" (per Brett L.J. in Millington v Loring (1881) 6 Q.B.D 190, p. 196). But if degrading charges be made which are irrelevant, or if, though the charge be relevant, unnecessary details are given, the pleading becomes scandalous (Blake v Albion Assurance Society (1876) 45 L.J.C.P. 663)".*

21. On the other hand, if the action is filed without serious purpose and having no use, but intended to annoy or harass the other party, it is frivolous and vexatious. Roden J in ***Attorney General v Wentworth*** *(1988) 14 NSWLR 481, said at 491* that:

> 1. *Proceedings are vexatious if they instituted with the intention of annoying or embarrassing the person against whom they are brought.*
>
> 2. *They are vexatious if they are brought for collateral purposes, and not for the purpose of having the court adjudicate on the issues to which they give rise.*

3. *They are also properly to be regarded as vexatious if, irrespective of the motive of the litigant, they are so obviously untenable or manifestly groundless as to be utterly hopeless.*

22. In *Halsbury's Laws of England (4th Ed) Vol. 37* explains the abuse of process in para 434 which reads.

> *"An abuse of the process of the court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purposes, or more simply, where the process is misused. In such a case, even if the pleading or endorsement does not offend any of the other specified grounds for striking out, the facts may show that it constitutes an abuse of the process of the court, and on this ground the court may be justified in striking out the whole pleading or endorsement or any offending part of it. Even where a party strictly complies with the literal terms of the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of abuse of process, and where subsequent events render what was originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court."*

23. In considering the arguments advanced by the Defendants that the Plaintiffs have failed to plead and/or particularize the element of 'publication', I find the following case authorities provide guidance to Court.

24. In the recent case of ***Alfaaz Mallam v Krishneel Krishan Kumar; Civil Action No. HBC 258/2021 (04 September 2025)***, His Lordship Justice Banuve has held,

"8. ***Publication***[1]

i. *No action can be maintained for libel or slander unless there is a publication, that is,* ***a communication of the statement complained of to some person other than the claimant****. Moreover, in order to bring an action against a particular defendant it is necessary to prove that the defendant published the statement or, though the defendant was not themselves the publisher, that, in the circumstances, they were responsible for the publication. (Emphasis added)*
ii. *The burden of proving that the statement complained of was published to a third-party rest on the claimant. Publication takes place at the point where the statement complained of is heard or read by the recipient.*
iii. *Every person who knowingly takes part in the publication of defamatory*

[1] Duncan and Neill on DEFAMATION and other media and telecommunication claims-Chapter 8

matter is prima facie liable in respect of the publication. It is not necessary that the person be, or ought to have been, aware of the specific defamatory content.- ***Bunt v Tilley*** *[1937] 1 KB 818."*

25. Moreover, in respect of the position of the Defendants with regard to the alleged statements being calculated to cause pecuniary damage to the Plaintiff, I have considered in full the case authority submitted by the Defendants, ***Dayal v Prasad; HBC237.2016 (26 September 2016)*** where His Lordship Justice Sharma has based the finding on the case of ***Trade Air Engineering (West) Ltd v Mechanical Services Ltd, Civil Action No. 338.2003 (16 November 2012)***.

26. In the case of ***Trade Air Engineering (West) Ltd v Mechanical Services Ltd*** (Supra) the impugned comment had been made only in the context of a claim for pecuniary damages based on 'malicious falsehood' and not as an essential element of a causse of action for defamation. I shall quote herein, in its entirety, the passage in the above case which had been referred to by His Lordship Justice Sharma in ***Dayal v Prasad*** (Supra).

"5.4 ***Malicious falsehood***

The 1st plaintiff's second cause of action is malicious falsehood. The particulars of falsity are set out in the statement of claim, which I have reproduced above. I have found that the statements made by the 2nd defendant are false. The next question is whether the 2nd defendant was actuated by malice, in making the statements.

Gatley on Libel and Slander, *(op cit, page 585) states as follows:*

"..the defendant will be guilty of malice if he is actuated by some improper motive, and knowledge or recklessness as to the falsity of the statement will be virtually conclusive as to malice." (footnotes omitted)

The evidence establishes that the 1st defendant is a trade rival of the 1st plaintiff. The 2nd defendant, in his evidence stated that he did not consider the 1st plaintiff to be a competitor. However, the 1st defendant was admittedly the unsuccessful party in respect of the tender for the airport project. Philip Temo also testified that the three main contractors for air-conditioning works were the 1st plaintiff, 1st defendant and Kooline. In my judgment, the 2nd defendant made the statements knowing them to be false and was actuated with the motive of damaging the 1st plaintiff and its said business. It is pertinent in this regard, that the defendants made no apology or remorse to the 1st plaintiff.

With regard to the claim for damages on this ground, the authorities provide that pecuniary damage must be established. (Emphasis added)

Duncan and Neill on Defamation,*(op cit, at paragraph 26.08) states:*

"In an action for libel, it is not necessary for the claimant to prove that he has suffered damage as damage is presumed: ***in an action for malicious falsehood the claimant has to plead and prove as part of the cause of action that the publication has caused him pecuniary damage or that he is exempted from doing*** *so by the provisions of s 3 of the Defamation Act 1952 (equivalent of section 10 of the Defamation Act (cap 34) in Fiji, which provides that special damage need not be proved in the case of slander)". (emphasis added, footnotes omitted)*

Stuart-Smith L.J, ***Khodaparast v. Shad*** *(C.A) [2000] 1 WLR 618 at pages 630 to 631:*

"Malicious falsehood is a species of defamation. It is well established that aggravated damages can be awarded for defamation of character for the additional injury to feelings caused by the defendant's conduct both before and after the issue of proceedings. In my judgment, once the plaintiff is entitled to sue for malicious falsehood, whether on proof of special damage by reason of section 3 of the Act of 1952, I can see no reason why, in an appropriate case, he or she should not recover aggravated damages for injury to feelings. As Sir Donald Nicholls V. C. Pointed out in Joyce v. Sengupta [1993] 1 W.L.R. 337, justice requires that it should be so".

Analysis and Findings

27. The Plaintiffs have duly pleaded and particularized the element of 'publication' in their Statement of Claim, demonstrating that the alleged statements were published within a Facebook Messenger group and were read by third parties who are neither Plaintiffs nor Defendants. Accordingly, based on the authorities cited in the preceding paragraphs, I find that the Defendants' argument that the Plaintiffs have failed to plead or particularize the element of 'publication' lacks merit. Consequently, the argument is rejected and dismissed, and it is determined that there remains a sufficient cause of action in this matter.

28. Moreover, after careful consideration of the case authorities relied upon by the parties and a thorough review of the Judgment in ***Trade Air Engineering (West) Ltd v Mechanical Services Ltd*** (Supra) in its entirety, I find that there is no legal requirement for the Plaintiffs to specifically plead and particularize 'pecuniary damages' in order to establish a cause of action in defamation. Therefore, the Court finds no merit in the Defendants' argument that, on this ground alone, the Plaintiffs' claim should fail.

29. Furthermore, this Court is of the view that the Plaintiffs, having duly pleaded and particularized their claim for a cause of action in defamation, bear the burden of proof to substantiate their allegations through the adducing of evidence at a proper trial. In light of the pleadings before the Court, I find that there exists a reasonable cause of action as disclosed by the Plaintiffs, and that there are substantive triable issues to be determined at a full trial before a competent Court.

30. In view of the above discussion, the Court, having considered all pleadings before this Court and the written submission of the parties, does not find the Statement of Claim or any part thereof to fall within the definitions of scandalous, frivolous, or vexatious.

31. Neither do I find, under any circumstances as discussed above, the claim of the Plaintiff to be an abuse of the Court process.

32. The concept of fair trial is fundamental to the rule of law and to democracy itself. The right to a fair trial applies in both criminal and civil cases, and it is an absolute right which cannot be limited. It requires a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

33. Thus, the courts are vested with the power to strike out any such proceeding or claim which is detrimental to or delays the fair trial. Likewise, the rule of law and the natural justice require that, every person has access to justice and has a fundamental right to have their disputes determined by an independent and impartial Court or tribunal.

34. In view of the above analysis and findings, I further find that this application by the Defendants to Strike Out the Plaintiffs Writ of Summons and the Statement of Claim has no merit at all and is frivolous and an abuse of the Court's process.

35. I shall reiterate my findings that the Plaintiffs have disclosed a reasonable cause of action in defamation and that there are substantive triable issues between the Plaintiffs and the Defendants in this matter.

36. Thus, I conclude that the Defendants have not been able to pass the threshold for allowing an application to strike out the Statement of Claim pursuant to Order 18 Rule 18 (1) of the High Court Rules 1988.

37. In the outcome, the following orders are made.

    1. The Summons to Strike Out as filed by the Defendants on 21/08/2024 is hereby refused and struck out subject to the following orders of the Court,

    2. Defendants shall pay a cost of $ 2500.00 to the Plaintiffs, as summarily assessed by the Court, as costs of this application. The costs shall be paid within 21 days from today (That is by 02/10/2025).

    3. Defendants shall file and serve a Statement of Defence within 07 days from today (That is by 22/09/2025).

    4. In failure by the Defendants to file and serve a Statement of Defence as ordered above, the Plaintiffs shall be at liberty to enter a Default Judgment pursuant to the High Court Rules 1988.

5. The Plaintiff shall file and serve a Reply to Statement of Defence and/or Defence to Counter Claim (if any) and the Summons for Directions within 07 days from the service of the Statement of Defence. (That is by 01/10/2025).

6. In failure to comply with any of the above orders of the Court, the pleadings of the defaulting party shall stand struck out subject to the payment of a cost of $ 3000.00, as summarily assessed by the Court, which shall be paid to the other party.

7. Summons to Strike Out filed on 21/08/2024 is accordingly struck out and dismissed.

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

At Suva,
11/09/2025.