

IN THE HIGH COURT OF FIJI AT SUVA
CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No: HBA 14 of 2022

BETWEEN: **UMESH CHAND**

APPLICANT

AND: **SUVA CITY COUNCIL**

RESPONDENT

For the Applicant : **Mr. Kete. P**
For the Respondent : **Mrs. Devi. I**
Date of Hearing : **10 June 2025**
Before : **Waqainabete-Levaci, S.L.T.T, Puisne Judge**
Date of Judgment : **28 November 2025**

J U D G E M E N T

(APPEAL FROM MAGISTRATE COURT)

PART A - BACKGROUND

1. The appeal against the learned Magistrates Decision stems from a claim filed by the Appellant against the Respondents in the Small Claims Tribunal on 17 May 2017 and was later transferred to the Suva Magistrates Court. An amended Writ of

Summons and Statement of Claim was filed on 18 September 2019. The Claim was for an accident caused by a tree branch falling on the plaintiff's vehicle causing damages to the vehicle. The Respondent thereafter filed their Statement of Defence denying all claims.

2. The Respondent filed a striking out application against the Writ of summons and Statement of Claim.
3. In his decision, the learned Magistrate determined that all roads were now within the ambit and responsibility of the Fiji Roads Authority and not the Respondents and thereafter struck out the Writ of Summons for want of a reasonable cause of action.
4. The Appellants, appealed against the determination of the learned Magistrate relying on the following Grounds:
 - i. The Learned Magistrate erred in law by relying on Order 3 Rule 8 of the Magistrates Court Rules 1945 in allowing the Appellants claim to be struck out for want of a reasonable cause of action pursuant to Order 18 rule 18 (a) of the High Court Rules 1988 instead of hearing the merits of the substantive matter.
 - ii. The Learned Magistrate erred in law by holding that all road networks in Suva is vested under the Fiji Roads Authority when:
 - (a) Section 108 and 88(1) of the Local Government Act 1972 is still in operation and vests responsibility for care, maintenance and repair and control of streets within the municipality to the Respondent.
 - iii. The Learned Magistrate erred in law by determining that the Respondent was not responsible/liable which falls within the ambit of the merits of the claim rather than whether there was a reasonable cause of action against the Respondent.
5. The Court thereafter directed for copy records and heard the parties on their submissions.

PART B: SUBMISSIONS

6. In their submissions, Counsel for the Appellant relied upon 3 grounds of Appeal. She argued that the claim must be clearly untenable or undefended not to possibly succeed. Hence the striking out powers were discretionary and must be exercised

with caution. She argued that there were proper claims that should have been dealt with at trial. The claim should have been dealt with on its merits rather than the matter being struck out when the learned Magistrate had not conducted trial to hear the evidences.

7. Secondly, she argued that there were two competing legislations which the learned Magistrate had failed to consider for which empowered the Council to also take responsibility for the roads. That Edinburgh Drive is responsibility of the Suva City Council and not FRA.
8. In response, Counsel for the Respondents argued that the learned Magistrate was correct in determining that there was no reasonable cause of action as Order 3 of the Magistrates Court Rules allows for the application of the High Court Rules. Thereafter the learned Magistrate found no reasonable grounds to argue the Claim in law.
9. Secondly, as to the merits of the claim, the Fiji Roads Authority Act ("FRA Act) transferred all liabilities and interests in the Municipal council for all road responsibilities. Section 18 (4) of the FRA Act requires the Minister to certify to confirm whether or not an asset has been transferred to FRA or otherwise.

PART C: LAW AND ANALYSIS

10. For the purposes of the Appeal the Court refers to the court records as well as the provisions of the Fiji Roads Authority Act and the Local Government Act.
11. The powers exercised by the learned Magistrate to invoke Order 18 Rule 18 (1) of the High Court Rules was Order 3 rule 8 of the Magistrates Court Rules 'MCR'. The provision is as follows:

In the event of there being no provision in these Rules to meet the circumstances arising in any particular cause, matter, case or event, the court and/or the clerk of the court and /or the parties shall be guided by any relevant provisions contained in the High Court Rules 1988.

12. The provisions of Order 3 Rule 8 of MCR allows for the Magistrates to be guided by the High Court Rules if there are no provisions in the MCR.

13. The Application pertaining to the appeal, arises from the striking out of the Claim by the Appellant pursuant to Order 18 Rule 18 (1) of the High Court Rules that there is no reasonable action.
14. Having considered cases pertaining to the exercise of powers under Order 3 Rule 8 of MCA, the learned Magistrate exercised his powers to consider and strike out the Claim on the basis that there was no reasonable cause of action.
15. The Magistrates Court Rules provides limited instances where the learned Magistrate can exercise their powers to strike out a matter. They are as follows:
 - (1) Mis-joinder or non-joinder – to strikeout for improperly joining a party or parties.
 - (2) Order 30 rule 1 – where there is non-appearance of either parties; may strike out;
 - (3) Order 30 r 2 – where the plaintiff does not appear, with reasonable excuse strike out the application except where there is a counter claim by the Defendant;
 - (4) Order 30A - unreasonable delay in conduct of proceedings, Court may given notice to parties show cause why should not be struck out and strike out proceedings.
16. It must be noted that with these powers to strike out, the learned Magistrate has a corresponding power in the same Order to restore the claim or cause, if it deems fit.
17. Therefore, the powers to strike out prescribed by the MCR is limited to procedural matters and enables the Magistrates to restore the causes, matters or claims as it deems fit.
18. Hence there are no similar powers for striking out in the MCR to that of Order 18 rule 18 (1) of the High Court Rules where the MCR provides striking out powers for the merits of the claim.
19. The wordings of Order 3 rule 8 of MCR requires the Magistrates Court to adopt the provisions as guidance and only if there are no provisions similar to that applied for.
20. There are already provisions provided for in the MCR dealing with striking out procedurally. Given that they are summary proceedings, the MCR provisions on striking out was drafted with the purpose of hearing parties swiftly.
21. In the matter on Appeal, the court records show that the learned Magistrate conducted preliminary hearings on the striking out application pursuant to Order 18

rule 18 (1) of the High Court Rules where the learned Magistrate exercised his powers to strike out the matter.

22. The Learned Magistrate determined that because the FRA was granted statutory responsibilities of all roads that was previously handled by municipal councils, there was no reasonable cause of action for the Plaintiff and thereafter struck out the matter. He made this decision based on the pleadings before him. In Razak -v- Fiji Sugar Corporation Limited [2005] FJHC 720; HBC 208 of 1998L (23 February 2005) Gates J stated:

'8] 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.

[9] A reasonable cause of action means a cause of action with "some chance of success" per Lord Pearson in Drummond-Jackson v British Medical Association [1970] 1 All ER 1094 at p.1101f. 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] UKLawRpCh 134; [1892] 3 Ch. 274 at p.277.'

23. This Court finds that the learned magistrate had erred in law and in facts by interpreting that the provisions of Order 3 Rule 8 of the MCR with the presumption that the provisions enable the learned Magistrate to exercise powers under Order 18 Rule 18 91) of the HCR.
24. Order 3 Rule 8 of the MCR does not extend the jurisdiction of the High Court nor does it enable the Magistrates Court to usurp powers of the HCR that already exist in the Magistrates Court.
25. There are powers for striking out of matters in the MCR, they may not be on similar footing as O18 rule 18 (1) (d) of HCR, but they are discretionary powers in themselves.
26. If the legislators had intended that the Magistrates court should have similar powers to that of Order 18 Rule 18 (1) of the HCR, then the MCR would have provided such powers.

27. Secondly, the manner in which the provisions of striking out were included into the MCR was so that trials and hearings would proceed on its merits if there were no procedural defects by either party.
28. The usurpation of Order 18 Rule 18 (1) (d) of the HCR, if it was intended, would have denied the parties or lay persons the opportunity to present their best evidences, dealing with the claims or defences at preliminary stages.
29. The Court therefore finds that the learned Magistrate erred in law and in facts by striking out the matter for no reasonable cause of action in excess of jurisdiction.
30. The Court will therefore overturn the decision of the learned Magistrate and allow the parties to proceed to trial before a learned Magistrate.
31. The parties had made oral and written submissions on the issues. The Court will award the Appellant \$700 as costs.

32. **COURT ORDERS**

33. **The Court Orders as follows:**

- (a) All grounds of the Appeal is granted and the decision of the learned Magistrate is overturned;*
- (b) The matter is reverted back to the Magistrates Court for a learned Magistrate to proceed to trial;*
- (c) Costs of \$700 awarded to the Appellant.*



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Ms Senileba LTT Waqainabete-Levaci
Puisne Judge