

IN THE HIGH COURT OF FIJI
CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. ERCC 09 of 2024

BETWEEN: **VISHWA REDDY** of 17 River Drive, Pacific Harbour, unemployed.

PLAINTIFF

AND: **BLUESCOPE PACIFIC FIJI (PTY) LIMITED** of Lot 1, Leonidas Street, Walu Bay, Suva (Bluescope Fiji)

DEFENDANT

Date of Hearing : **18 September 2025**

For the Plaintiff : **Mr. Nair D.**

For the Defendant : **Mr. Koya S. A.**

Date of Decision : **6 March 2026**

Before : **Waqainabete-Levaci SLTT, Puisne Judge**

RULING

(Preliminary issue of Law – Whether the Application is within the jurisdiction of the Employment Relations Court)

BACKGROUND

1. The Plaintiff had filed a Writ of Summons in the Employment Relations Court claiming that whilst in employment with the Defendant from 10 January 2022 under the existing terms and conditions of employment as manager, he was paid out a bonus for his performance and an increase in his base salary to \$314,496.

2. On 25th October 2023 the Plaintiff met the Chief Executor Officer in Suva with the General Counsel/Regulatory Affairs for NZFI where a draft letter was served on him containing 7 allegations which were later re-sent by email whilst his laptop and mobile was confiscated. He was also suspended from work.
3. He was interviewed by the investigator, Joelle Grover on 1st December 2023 and a letter sent dated 8 February 2024 referred to investigations by the same investigator raising 8 allegations of misconduct. On 16 December 2023 the investigator sought for further communications by way of written responses and the Plaintiff thereafter sought an investigation report.
4. The parties made offers and counter offers for mutual separation until 12 April 2024 when settlement failed and thereafter the Defendant issued a notice of summary dismissal on 10 May 2024 based on 6 allegations, two substantiated and four partially substantiated. The allegations included failure to follow Workplace, Health and Safety procedures, making false or inaccurate representations, selling rejected materials potentially unsafe to customers, giving preferential treatment to customers and failing to manage perceived conflict of interest and managing communication with employees disrespectfully, inappropriately and in an unsafe workplace.
5. The Plaintiff alleges breach of contract and unfair or wrongful or unlawful termination of contract contrary to section 220 (1) (b) of the Employment Relations Act 2007 claiming for losses of livelihood i.e special damages of unpaid contractual obligations, bonus pay and superannuation and general and exemplary damages of depression and injury, mental anguish and loss of dignity, trauma, feeling of despair and self-worth, humiliation, physical and emotional suffering.
6. In their Statement of Defence, the Defendant stated that the Plaintiff was originally employed by Fletcher Steel Limited as Roll Manager at the Rolling Mill which was later acquired by the Defendant in 2014.
7. The Defendant denied that the Plaintiff was entitled to a benefit, it was discretionary based on performance and compliance with the business conduct of the Defendant and he was not entitled to a bonus payment in 2023 as he was under investigation for his performance.
8. The Defendant also alleged that the Plaintiff underwent investigation when serious allegations were made from a whistleblower conducted by the independent

investigator for allegations of failing to comply with Workplace, Safety and Health procedures, making false and inaccurate representation of there being no LTI with the company in Fiji, selling rejected materials that were potentially unsafe to customers, giving preferential treatment to certain customers and managing communications and acting disrespectful and inappropriately creating unsafe workplace, allegations that between 2020 to 2023 failing to take appropriate measures to avoid situations were perceived conflict of interest, Reprimanding staff for raising genuine concerns and business practices and a pattern of inconsistency contrary to what was expected of leadership.

9. The Defendant in their Statement of Defence, admitted that the investigator informed the Plaintiff fully of the allegations and gave him an opportunity to response to the initial allegations as well as the additional allegations. The Plaintiff was not entitled to the investigation report as it was legal privilege, and it contained names of complainants and witnesses which could be targeted.
10. The Defendant admitted that there was settlement negotiations conducted twice and that the Defendant conducted it without prejudice with offers for more than what the Plaintiff was entitled to.
11. The Defendant admitted to issuing a Notice of termination on the basis of summary dismissal based on two substantiated allegations and four unsubstantiated allegations and denied the identity of the complainants be revealed to the Plaintiff.
12. The Defendant alleges that the Plaintiff was found to breach clauses 10 and 13 of the Employment Contract of 2002 and its 2021 Addendum when investigations were conducted and Plaintiff had acted in conflict of interest for allegations 4,6,7,8 which were partially or fully substantiated. Since clause 13 was a serious misconduct, the Defendant immediately terminated his employment.
13. On 1 April 2025 after all pleadings were filed and directions complied with, the Defendants filed a Summons seeking for the Court to decide on preliminary questions of law and thereafter affix for Trial or dismiss for want of jurisdiction the following:

(1) Whether the Plaintiffs claim is an Employment Grievance for unfair dismissal.

- (2) Whether the Employment Relations Court has original jurisdiction to hear the Plaintiffs claim for unfair dismissal under the Employment Relations Act 2007.

AFFIDAVITS

14. The Defendant filed their supporting Affidavit to the Summons alleging that there were 8 allegations against the Plaintiff arising from investigations conducted by Joelle Grover of Minter Ellison. The Final Report confirmed that Allegations 1,4,5, and 6 were partially substantiated, allegations 2 and 3 were not substantiated and allegations 7 and 8 were substantiated in breach of the Defendants Code of Conduct.
15. The Defendant deposed that the Plaintiff was issued a termination letter on 10 May 2024 after several failed attempts to settle and the letter cited the findings of the independent investigation as well as the summary dismissal and termination.
16. The Defendant deposes that they were advised and verily believe that the alleged claims are grievances for unfair dismissal rather than breach of contract which should be matters dealt with by the Employment Relations Tribunal and not the Employment Relations Court in the first instance as the Plaintiff failed to refer to any specific clause or term of the Agreement and that the plea of breach of contract is an attempt to circumvent the Employment Relations Act 2007.
17. The Plaintiff filed their Affidavit in reply arguing that there was no contract when he became a General Manager but for an appointment letter for the post of Rolling Mill Manager and that the position was distinctly different from that of the position of General Manager.
18. The Plaintiff deposed that he was terminated on allegations that were not fully substantiated and that the allegations which were partially substantiated were not disclosed fully to him.
19. The Plaintiff deposed that the Defendant failed to disclose the statements for which established the basis of the substantiated findings for serious misconduct against the Plaintiff.

20. The Plaintiff deposed that the termination notice was prematurely issued without negotiations completed.
21. That the Plaintiff was not accorded procedural fairness in the manner of dismissal and there was no basis for establishing gross misconduct.
22. The Plaintiff deposes that the Employment Relations Court has the jurisdiction to determine the claim for breach of contract both implied and expressed.

SUBMISSIONS

23. The Application seeking for courts opinion on questions of law arises from Orders 33 Rule (3) and Rule (7) of the High Court Rules which empowers the Court to try a preliminary matter prior to trial proper. In Rule (7), the Court is the matter if the matter can be dealt with as part of substantive issues at trial or alternatively deliver a judgement if the matter will ultimately deal with the issues of the proceedings once and for all.
24. Hence, based on these discretionary powers, the Court called upon submissions by parties on the preliminary issue of law and facts.
25. The Defendant/Applicant relied upon the case of ANZ Banking Group PTE Limited -v- Ajendra Sharma [2024] FJCA 29; ABU 030.2022 (29 February 2024) and the case of which certain commentaries were made but it was not overturned. Both decisions consider section 230 of the Employment Relations Act establishing the powers for which the Employment Relations Court can determine employment grievances under 3 grounds i.e. enforcing a settlement reached by mediation, secondly on appeal from Employment Relations Tribunal and lastly a transfer of the case proceedings from the Employment Relations Tribunal. Section 220 of the Employment Relations Act furthermore confirms that the Tribunal is empowered to hear employment grievances in the first instance.
26. In their submissions, the Defendant/Applicant argued that Section 220 of the Employment Relations Act can only be invoked if the employment is founded on contract. There were commentaries by Premlatika JA in Mohammed Khan -v- Coca Cola Amital (Fiji) Limited [2025] FJCA 112; ABU0127.2023 (25 July 2025) full bench of Court of Appeal stating that the Contract of employment must be central to the issue in dispute. Perusing the pleadings the Defendant/Applicant argues that the

actual breaches nor the clauses of the Contract breached are not identified but there are claims that the plaintiff is unfairly treated and summarily dismissed. Despite the Statement of Claim referring to an appointment to be General Manager by letter on the same terms and conditions executed earlier for a Rolling Manager in Fiji, he admits there was no specified employment contract for the position of General Manager which is contrary to the case of ANZ Banking (Supra) and Coca Cola Amital (Supra), that there is no contract at all whereas in the abovementioned cases, the contract of employment was interwoven with the claim for unfair dismissal.

27. Lastly, the Defendant/Applicant argued that regulation 16 of the Employment Relations (Administration) Regulation 2008 requires that all employment relations grievances or any other employment matter **referred** to the Employment Relations Court must be made in accordance with the Employment Relations Promulgation 2007 (now referred to as the Employment Relations Act 2007).
28. The Plaintiff/Respondent has argued that the Coca Cola Amital (Supra) expanded the ANZ (Supra) case on issues that the Employment Relations Court can deliberate upon. This includes the breach of contract which has been pleaded in the Statement of Claim. Reference is made to the cases of Wallace -v- United Grain Growers Limited which discussed the characteristics of an employment contract being a commercial contract. The employment relationship raptures and employee requires protection from unfair dealings with obligations of good faith. This was later raised in the case of Ronald -v- FNU.
29. Lastly the Plaintiff/Respondent submitted that the implied terms of contract for an employer to deal with the employee as stipulated by Central Manufacturing Limited -v- Kant [2003] FJSC 5;CBV 0010.2002 (24 October 2003).
30. In reply, the Defendant/Applicant argued that some of Premlatika JA decision in the Coca Cola (Supra) case was obiter and contrary to what was submitted by Counsel, determined that section 230 of the Employment Relations Act contained no exclusive jurisdiction or original jurisdiction created for the Employment Relations Court. Furthermore, despite the Plaintiff/Respondents argument of breach of contract, there are no expressly stated particulars of the clauses of contract that have been breached and furthermore the Affidavit of the Plaintiff/Respondent admits that the contract of General Manager cannot be relied upon putting the employment grievance the central issue.

LAW AND ANALYSIS

31. The Court has had the benefit of perusing the relevant provisions of sections 220, section 230, section 195 of the Employment Relations Act which stipulates and demarcates the boundaries, powers and responsibilities of the two adjudicating institutions, the Employment Relations Tribunal and the Employment Relations Court.
32. Both Counsels drew the Courts attention to a number of Court of Appeal decisions which carefully considered analyzed the existing legislations and its applications to the cases before it.
33. In the case of ANZ Banking Group PTE Limited -v- Ajendra Sharma [2024] FJCA 29; ABU 030.2022 (29 February 2024) Premlatika J stated:

45. The answer is “no”. The ERC has no jurisdiction to entertain an employment grievance claim as such (unless transferred from the Tribunal or on appeal). The ERC does have jurisdiction to hear claims founded on contract where, as a matter of pleading and evidence, the contract will necessarily be central. Crucially, Mr Sharma’s statement of claim before the ERC made no mention of a contract.

46. *Odger’s Principles of Pleading and Practice* states^[30]:

Where the action is brought on a contract, the contract must first be alleged, and then its breach. It should clearly appear whether the contract on which the plaintiff relies is express or implied, in the latter case the facts should be briefly stated from which the plaintiff contends a contract is to be implied. If the contract be by deed, it should be so stated; if it be not by deed, then a consideration should be shown, which must not be a past consideration.

Wherever the contract sued on is contained in a written instrument, the pleader should shortly state what he conceives to be its legal effect; he should not set out the document itself verbatim unless the precise words of the document, or some of them, are material.

...

The breach of contract, of which the plaintiff complains, must be alleged in the terms of the contract, or in words co-extensive with the effect or meaning of it.

[Emphasis added]

47. In Salim Buksh v Bred Bank Fiji Ltd Mansoor J heard and determined similar issues to those before Wati J. Having concluded that the plaintiff was

not entitled to file an employment grievance in the ERC, His Honour turned to s 220(1)(h):

The phrase, “action founded on an employment contract”, can, therefore, be taken to include reference to a cause for dismissal based on breach of contract like the common law wrongful dismissal action. Where an action is founded on an employment contract the Court would have jurisdiction to determine a claim for damages for dismissal from employment. Such an action would attract the usual principles attendant on damages claim including the principles of mitigation. An action founded on an employment contract can be heard and determined by the Court. Importantly, in proceedings founded on an employment contract, subject to section 220(2) of the Act 18, the Court has jurisdiction to make any order that the Tribunal may make under any written law or the law relating to contracts.

48. I respectfully endorse His Honour’s analysis and conclusions.

Answer: The ERC has no jurisdiction to hear employment grievances but if a claim for unjustified or unfair dismissal is “founded on a contract of employment”, and properly pleaded as such, the ERC has jurisdiction under s 220(1)(h) to hear and determine such a claim.

34. Stepping back a year prior, the Court of Appeal had dealt with a similar claim for breach of employment that had commenced in the High Court. In Suva City Council -v- Saumatua [2023] FJCA 131; ABU 056.2020 (28 July 2023) the full bench determined that:

[23] The ERA does not remove the jurisdiction of High Court to hear claims involving employment contracts. The Appellant contends that the Respondent’s employment with the Appellant was governed by her contract of employment and the ERA. The contract does not say this. All it says is that the contract shall be construed and interpreted in accordance with the laws of Fiji which does not mean that it is governed by the ERA. The Appellant further contends but there was nothing in the Contract that provided that the terms and conditions of the contract would be governed by common law. This is a strange argument. The Contract provided that the contract would be construed and interpreted in accordance with the laws of Fiji. It is unquestionable that the laws of Fiji recognise the common law.

[24] The Appellant argues that the Employment Relations Court was created and provided for in the ERA to deal with employment matters. Therefore, there is no need to invoke the general jurisdiction of the High Court for employment matters. I do not agree with this contention.

[25] The jurisdiction of the High Court in such matters has not been excluded by the ERA. It is a claimant’s choice whether to institute an action under the ERP or under the Common Law. As the learned counsel for the Respondent pointed out

at the hearing of this appeal there may be causes of action and remedies available under either of the processes that are not available under the other. The decision where to institute an action depends on the facts and circumstance of each case. For the reasons expressed herein, I determine that the Respondent was not precluded from bringing an action in common law in the High Court for breach of her employment contract.’

35. Given these two cases, it has become apparent until the start of 2025 the position of the Courts pertaining to the precedence established in the Mohammed -v- ANZ case (Supra) until the decision of Mohammed Salim Khan -v- Coca Cola Amital (PTE) Limited [2025] FJCA 112; ABU0127.2023 (25 July 2025) where the full bench held there is some doubt by the Court when considering the pleadings to determine whether or not the central theme of the claim is based on a breach of contract. This has brought further observations requiring the Courts to determine further.
36. The Court agrees that the Court of Appeal in Coca Cola case (Supra) has pronounced that allegations for unlawful dismissal can bring about a claim for breach of contract but also as an employment grievance as well. The form and pathway for legal proceedings differs within these claims. Whilst employment grievance requires that mediation be the first step prior to adjudication and that persistence grievance without settlement from mediation be conducted by the Employment Relations Tribunal, where the central theme is a breach of contract, the High Court is identified in common law as having the jurisdiction to determine the matter.
37. Although ultimately it is upon the legislature to review the employment relations laws from observations raised in the Court of Appeal, the court cannot be held in abeyance and must determine in accordance with the submissions and law before it.
38. Counsel for the Defendant/Applicant have argued that the Court need only to review the pleadings to affirm that the provisions of the Contract has not been particularized in order to establish the claim is not centered upon a breach of contract and urges the Court to dismiss the claim as it's only purpose is to avoid the requirements for compliance under the Employment Relations Act as an employment grievance.
39. When considering the main purposes of the Employment Relations Act 2007 and the objectives of Part 10 which creates the institutions, there are general objectives to ensure the exercise of good faith in employment relations. Reference is made to the first few paragraphs as follows:

'IN EXERCISE of the powers conferred upon the Interim Government, and upon the exercise of my own deliberate judgement as President of the Republic of Fiji as to what is best and good for the people of the Republic of the Fiji Islands, and by the exercise of the executive authority of the State in accordance with section 85 of the Constitution, and such other powers as may appertain, and with approval of Cabinet, I, Josefa Iloilovatu Uluivuda, hereby make this Promulgation—

TO PROVIDE A STATUTORY FRAMEWORK WHICH PROMOTES THE WELFARE AND PROSPERITY OF ALL FIJI'S PEOPLE BY—

(C) PROVIDING A STRUCTURE OF RIGHTS AND RESPONSIBILITIES FOR PARTIES ENGAGED IN EMPLOYMENT RELATIONS TO REGULATE THE RELATIONSHIP AND ENCOURAGE BARGAINING IN GOOD FAITH AND CLOSE OBSERVANCE OF AGREEMENTS AS WELL AS EFFECTIVE PREVENTION AND EFFICIENT SETTLEMENT OF EMPLOYMENT RELATED DISPUTES.'

40. Part 20 of the Employment Relations Act which sets up the Employment Relations Tribunal and Employment Relations Court under the sub-title 'Institutions' provides the objectives of the part as follows:

Objects of this Part

192. The objects of this Part are to establish institutions and procedures that—

- (a) support successful employment relationships and the obligations of good faith;
- (b) recognize that employment relationships are more likely to be successful if differences in those relationships are resolved promptly by the parties themselves;
- (c) recognize that if differences in employment relationships are to be resolved promptly, information and assistance need to be available at short notice to the parties to the employment relationships;
- (d) recognize that the procedures for problem solving need to be flexible;

- (e) recognize that there will always be some cases that require judicial intervention;
 - (f) recognize that judicial intervention needs to be that of a decision making body that is not inhibited by strict procedural requirements; and
 - (g) where the parties are unable to resolve differences, provide for mediation and adjudication to be invoked to resolve such matters in a timely manner.
41. When considering the objectives of the law and the provisions of Part 20 of the relation to the statutory powers and responsibilities of the Employment Relations Tribunal and the Employment Relations Court, the legislation in itself requires that the interpretation of the provisions in a manner that reflects the obligations of good faith by parties when entering into employment contracts.
42. Despite these forward-looking objectives, the Court agrees with Court of Appeal's observations that when perusing the Employment Relations Act, it does not specifically demarcate the boundaries and powers for which the appropriate adjudicating institution may determine matters pertaining to breaches of contract that also contain characteristics of employment grievances.
43. This court has had the benefit of perusing FMV -v-TMB [2021] NZSC 102; [2021] 1 NZLR 466 (20 August 2021) which was referred in great length by the Court of Appeal in Khan -v- Coca Cola Amital (PTE) Limited (Supra) in determining the approach of the New Zealand Supreme Court on a claim for breach of a settlement agreement for an employment contract. The Supreme Court of New Zealand discussed the changes in legislation that enabled powers and identified the two approaches adopted in order to determine on the facts whether an employment related dispute squarely fell within the Employment Relations Act 2000 as opposed to the Employment Contracts Act 1991. The two approaches were the broad-brush approach, where any employment relation dispute fell within the ambit of the Authority and the essential character approach to determine whether employment relations was the essential factor of the claim for a breach of the employment contract.
44. Counsel for the Plaintiff/Respondents in this case admits that even if the Claim does not specifically stipulate the clauses breached in the contract and generally refers to it, is sufficient to argue that the claim falls within the ambit of a breach of contract.

Furthermore, counsel also argued that Employment Relations Act focused predominantly on relationships of the employee and employer and obligations of good faith much more than just the Court considering the terms of the Contract in black and white.

45. Despite the submissions, the Court however must be governed by precedent decisions, more particularly the case of ANZ Pte Limited -v- Sharma (Supra) which required the Court to peruse and determine whether the pleadings stipulated specifically the breach of contract, which was central to its theme.
46. This approach was applied in the case of Praveen -v- Mindpearl Limited [2025] FJCA 170; ABU115.2023 (28 November 2025) where the Court of Full Bench determined that :

[40] In its judgment in *Ajendra Sharma v ANZ Banking Group Ltd*, this Court referred to the principles as to pleading an action brought on a contract, citing *Odgers Principles of Pleading and Practice in the High Court of Justice*.^[21] To paraphrase, when a contract is founded on a contract, it is necessary to plead the contract, its terms, and the alleged breach.

[41] Paragraphs 29 and 71 fall far short of complying with those principles. The appellant's claim does not include a pleading that the appellant and the respondent entered into a contract of employment, what the terms of that contract were (and whether express or implied), nor what terms were alleged to have been breached. While paragraphs 29 and 71 include the word "contract", the most that could be said is that there was some form of contract between the appellant and the respondent, and that it was "open" and "indefinite". Nor do they establish that the contract is "central" to the claim. The two paragraphs are insufficient to satisfy the requirement for jurisdiction under s 220(1)(h): that the claim is *founded on an employment contract*. To the contrary, the references to the appellant having been "unlawfully and unfairly dismissed" appear to place the appellant's claim under the definition of "employment grievance" under s 4 of the ERA.'

47. The Court has had the benefit of perusing the Claim.
48. In paragraphs 4-7 of Clause A, the Claim explained the employment and referred to the summary of what the terms and conditions of the contract were as well as citing variations of the contract to suit the position as General Manager which the Plaintiff was appointed to.

49. In the Statement of Claim from clauses C from paragraphs A as well as paragraphs 23-25, the Plaintiff claimed that the termination was contrary to the termination provisions of the contract given that the reasons for termination were not substantiated and that the investigation report which gave rise to the termination was not released to the Plaintiff.
50. The Plaintiff also claimed that the negotiations for mutual separation between the parties was not done in good faith claiming that the Defendant had pre-conceived opinions of the separation.
51. Finally, in not paying the 20% benefit under the profit share and 20% bonus equivalent to the 2023 gross salary unlawfully denied the alleged entitlement that the Plaintiff had.
52. The Plaintiff also Claimed for loss to livelihood, depression, mental anguish and loss of dignity, despair and lack of self worth and physical and emotional suffering which were tantamount to unlawful and unfair dismissal arising from the breach of employment Agreement.
53. Having perused the Claim and the paragraphs in the pleadings, the Court finds that the claim centres on the Breach of Employment Contract first and foremost and reliefs arising from the said breach.
54. The Court therefore finds that the Claim as it stands also reflects characteristics or elements of an employment grievance. However, as relied upon, the centre of the application relies upon relief from the breach of the contract and relies upon the contract itself.
55. The Court therefore proceed to Trial having been satisfied that on the basis of the case precedence's and having perused the Claim, that the Claim falls within the ambit of the jurisdiction of the Employment Relations Court.

Orders of the Court

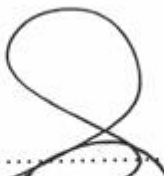
56. **The orders are as follows:**

(a) *The Claim is for allegations of a breach of contract, reliefs emanating from the claim to be proven thereof.*

(b) ***That the Employment Relations Court has jurisdiction to determine the matter.***

(c) ***Costs in the cause.***




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Ms. Senileba LTT Waqainabete-Levaci
Puisne Judge