PAULA MALO RADRODRO v FIJI COMMISSIONER OF POLICE (HBC0151 of 2011L)

HIGH COURT — CIVIL JURISDICTION

TUILEVUKA M

17 January 2012

Practice and Procedure — judgments and orders — striking out — whether claim discloses reasonable cause of action — breach of statutory duty — defamation — aiding and abetting — High Court Rules O 18 r 18, 18(1)(a), (d).

The Office of the Attorney General sought an order to strike out the plaintiff's claim on the grounds that it disclosed no reasonable cause of action, and that the claim was an abuse of process. The plaintiff claimed that his house was burgled more than once and his scientific discoveries were stolen. He claimed that the police breached their duty by failing to investigate his complaints, that they defamed him by recommending in their reports that he be subjected to a psychiatric assessment, and that the police were guilty of aiding and abetting, in that their inaction resulted in the culprit getting away.

Held –

(1) The plaintiff has not pleaded any specific legislation, let alone any particular provision thereof, to substantiate his allegation of breach of statutory duty.

(2) The fact that the police had formed a professional view that the plaintiff should be subjected to a psychiatric assessment is not in the least defamatory.

(3) There is no known cause of action in the civil law on aiding and abetting.

Plaintiff's claim struck out as disclosing no reasonable cause of action.

Cases referred to

Attorney-General v Prince & Gardner [1998] 1 NZLR 262; *Attorney General v Shiu Prasad Halka* [1972] 18 FLR 210; *Len Lindon v The Commonwealth of Australia* (No 2) S 96/005, followed.

Tawake v Barton [2010] FJHC 14, considered.

Plaintiff in Person.

J. Lewaravu for the Defendants.

[1] Tuilevuka M. The Office of the Attorney-General's Office in Lautoka seeks an Order to strike out the plaintiff's claim on the ground that it discloses no reasonable cause of action and that the claim is an abuse of process. The application is made under Onbsp;18 rnbsp;18 (1)(a) and (d) of the High Court Rules 1988 and under the inherent jurisdiction of the court.

[2] The application is opposed.

[3] The jurisdiction to strike out proceedings under Onbsp;18 rnbsp;18 is guardedly exercised. It is exercised in exceptional cases only.

[4] A statement of claim discloses a reasonable cause of action if the plaintiff could succeed as a matter of law on the facts pleaded therein – assuming they were established OR if the facts pleaded do raise some legal questions of importance. But not so where no cause of action is clearly tenable on the pleaded facts (see *Attorney General v Shiu Prasad Halka* [1972] 18 FLR 210 at 215, as per Justice Gould VP; see also *New Zealand Court of Appeal decision in Attorney-General v Prince & Gardner* [1998] 1 NZLR 262 at 267.

[5] In this case, the plaintiff is alleging breach of duty, defamation and "aiding and abetting" on the part of the Lautoka Police. Essentially, he claims that his house was burgled on many occasions and that his scientific discoveries stolen. The police has never bothered to investigate any of his complaints that he lodged between 2005 to 2011. He claims that the police breached their duty in failing to investigate any of his complaints.

[6] It appears that the police officers concerned are all of the view that Mr Malo may be of unsound mind. The plaintiff appears to be aware of police reports recommending that he be subjected to a psychiatric assessment. These reports appear to be the basis of his allegation of defamation of character.

[7] Finally, the plaintiff alleges that the police is guilty of aiding and abetting in that their inaction has resulted in the culprit getting away.

[8] The plaintiff has filed a voluminous affidavit in opposition. This affidavit exhibits various documentation. The thrust of his allegations is that – because of police inaction and lack of response to his complaints, thieves have repeatedly broken into his house and stolen his inventions and scientific discoveries. These inventions and scientific discoveries are now emerging from various parts of the World in the field of aircraft technology, medicine, music compositions, submarine technology, to name a few. He also claims to have stumbled upon some important discoveries about the speed of light which challenges some of Albert Einstein's theories.

[9] His Lordship Mr Justice Kirby in *Len Lindon v The Commonwealth of Australia* (No 2) s 96/005 summarised the applicable principles of striking out as follows:-

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.*
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....or is advancing a claim that is clearly frivolous or vexatious...*
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.....Even a weak case is entitled to the time of a court. Experience teaches 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 ……. 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 pleading…… A question has arisen as to whether O 26 r 18 applies to part only of a pleading*
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.

[10] Having considered all, I agree with the submissions of Mr Lewaravu. The plaintiff has not pleaded any specific legislation let alone any particular provision thereof to substantiate his allegation of breach of statutory duty.

[11] In my ruling in the case of *Tawake v Barton* , [2010] FJHC 14; HBC231.2008 (28 January 2010), I did set out the following caselaw cited by the Office of the Attorney-General which – though were not relevant in that case – are very much relevant, as a matter of principle in this case before me:

> [18] Mr Green then refers to the case of *Hill v Chief Constable of West Yorkshire* [1988] 2 All ER 238 and quotes the following passage of Lord Keith of Kinkel's judgement:
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> • *'The question of law which is opened by the case is whether the individual member of the police force, in the course of carrying out their functions of controlling and keeping down incidence of crime, owe a duty of care to the members of the public who suffer injury to person or property through activities of criminal such as to result in liability in damages on ground of negligence to anyone who suffers injury by reason of breach of that duty'*
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> • *'By common law, police officers owe to the general public duty to enforce the criminal law … a Chief Officer has very wide discretion as to the manner in which the duty is to be discharged. It is for him to decide how available resources should be deployed, whether particular line of inquiry should or should not be followed and even whether or not certain crimes should be prosecuted. It is only if his decision on such matters is such that no reasonable chief of police would arrive at that someone with a n interest to do so may be in a position to have recourse to judicial review'*
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> [19] Mr Green also cites various other authorities (*Clough v Bussan* [1990] 1 All ER 431; *Alexandrou v Oxford* [1993] 4 All ER 328; *Osman v Ferguson* [1993] 4 All ER 344; *Ancell v McDermott* [1993] 4 All ER 355).
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> [20] He then sums up that although:
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> *'… common law lays down the obligation of enforcing the law, it does not specify the manner in which the duty is to be discharged. Hence, it follows since the Commissioner of Police has been given wide powers to investigate and prosecute, the failure to perform his responsibilities does not give rise to a private cause of action. It is less likely that a common law duty of care will be discovered'.*
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> [21] Mr Green submits that if the Court were to impose liability, it will lead to the defensive and less effective approach to policing.
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> [22] I note that all the authorities that Mr Green discusses involve a Plaintiff who has suffered a crime as a result of what is alleged to be a failure on the part of the police to investigate after receiving certain information. In those cases, public policy immunity was applied to absolve police from holding a duty of care to the Plaintiff.

[12] The fact that the police has formed a professional view that Mr Radrodro should be subjected to a psychiatric assessment is not in the least defamatory. From the documentation provided by the plaintiff, it appears that the police may have formed that view based on its assessment of the plaintiff's demeanor, the nature of his allegations about his scientific discovery and – maybe – rightly or wrongly - even the fact that the plaintiff has a police record having served a term in prison.

[13] There is no known cause of action in the civil law on aiding and abetting. I strike out the plaintiff's claim as disclosing no reasonable cause of action.

Plaintiff's claim struck out.