

IN THE RESIDENT MAGISTRATE'S COURT
AT SUVA-CIVIL DIVISION

Civil Action No MBC 171 of 2020

BETWEEN: **GREEN HYBRID MOTORS CO PTE LTD** a limited liability incorporated under the companies Act having its place of business at 14 Carpenter Street, Raiwaqa, Suva.

PLAINTIFF/RESPONDENT

AND: **HUA CHENG VEHICLE ENGINEERING CO LIMITED** a limited liability incorporated under the companies Act having its place of business at 14 Carpenter Street, Raiwaqa, Suva

2nd PLAINTIFF/RESPONDENT

AND: **SAMI HOLDINGS PTE LTD** formerly Sami Holdings Limited and Sami Holdings Ltd, a limited liability company incorporated under the Companies Act having its registered office at 26 Denison Road, Suva..

DEFENDANT/APPLICANT

For the Plaintiffs/Respondents: Mr. Sharma (**Lajendra Lawyers**)

For the Defendants/Applicant : Ms A. Ali (**Interalia Consultancy**)

Date of Ruling : 1st June 2022

Ruling on Application to Strike Out Plaintiffs Writ of Summons and Statement of Claim

1. The pleadings have closed in this matter.
2. Counsel for the Defendant has then filed an application to strike out the Writ and Claim pursuant to *Order 3 Rule 8* and also relies on *Order 18 Rule 18(2) of the High Court Rules*.
3. The basis of the Defendant's application stems out of the position that the claim against the Defendant discloses no reasonable cause of action.
4. The reasons behind such an application as garnered from the legal submissions of the Defendant is two pronged, that is:
 - i. The claim against the Defendant does not set out a cause of action to establish the issue of a security deposit; and

- ii. No legal relationship has been outlined in the claim with reference to the 2nd Plaintiff and the Defendant.
5. The Application to strike out was supported by written submissions.
6. Learned Counsel for the Plaintiffs has filed written submissions stating that there are no rules that grant a Magistrate jurisdiction to hear this strike out application and that the body of law on the issue of ‘reasonable cause of action’ if the court were to consider the same, rests expressly on the notions that the cause of action has some chance of success considering the pleadings.
7. The court sought clarification from both counsels on whether it was proper to bring an application to strike out a party when the basis of the application did not reflect Order 25 Rule 2 or Order 30 Rule 2 of the Magistrates Court Rules.
8. The learned counsel of the Applicant referred the court to *Sharma v Motibhai & Company* Ltd [2012] FJMC 285 which was authority for the view that any action not brought within the ambit of Section 16 of the *Magistrates Court Act 1945* can be struck out on the basis of their being no reasonable cause of action.
9. The court upon hearing the parties then adjourned the matter for ruling.
10. The court shall firstly discuss whether the application to strike out the Writ and Claim via Order 3 Rule 8 of Magistrates Court Rules and Order 18 Rule 18(2) of the High Court Rules is a proper application.

Striking Out – Magistrates Court

11. The Magistrates Court has limited jurisdiction as the jurisdiction¹ is plainly established by Statute.
12. When no guidance is given in the statute the court adopts² the position which is employed in the High Court Rules. In terms of striking out a matter, the court accepts that there are only two ways that the Magistrate’s Court can do so.

¹ Section 16 of the Magistrates Court Act 1945

² Order 3 Rule 8 of the Magistrates Court Rules 1945

13. Those instances occur as highlighted under Order 25 Rule 2 of the *Magistrates Court Rules 1945* where an amendment to any interrogatory is scandalous or irrelevant and under Order 30 Rule 2 *Magistrates Court Rules 1945* where the plaintiff does not appear to pursue the claim.
14. In *Ram Khelawan –v- Budh Ram* 13 FLR 196 (8th December 1967) at page 197, paragraph F, *Hammett J* stated as follows:

“A Magistrate Court is a creature of statute and the Magistrate and the Court can only exercise the jurisdiction which is given them by the statute”
15. In *Wilkinson v. Barking Group* [1948] 1 All ER 564: at 567 [1948] 1 KB 721 Asquith, L.J. stated:

“It is undoubtedly good law that, where a statute creates a right and in plain language gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking the right must resort to this remedy or this tribunal and not to others.”
16. Order 3 Rule 8 of the *Magistrates Court Rules 1945* is clear in stating that the Magistrates Court can be guided by the High Court Rules if there is no **provision** in the Rules to meet the circumstances arising in any particular cause, matter, case or event.
17. In this matter, the court is being moved to strike out an action and plain reading of the Magistrate’s Court Rules shows that there are only two instances wherein the Magistrates court can entertain an application to strike out. This is highlighted above at paragraph 13.
18. This court is of the view, that the precursor for adopting the High Court Rules as a guide pursuant to Order 3 Rule 8 has not been activated, as there are **provisions** in the Magistrates Rules to strike out.
19. The court has considered decisions in the High Court on the issue.
20. The first is, *Land Transport Authority v Shahid Logging Supplies* [2018] FJHC 1140; Civil Action 283 of 2018 (30 November 2018) *Amaratunga J* at paragraph 13 and 14 had stated as follows:

“13. High Court Rules can be applied in the Magistrates’ Court when there is a lacuna in the Magistrates Court Rules 1945 in terms of **Order 3 rule 8** of the said rules.

14. This provision cannot be used to make a direct application to High Court, but utilization of the said High Court Order in the Magistrate Court, when it is silent”

21. The above High Court decision reinforces the point that where a *lacuna* exists as a result of the Magistrate Court Rules being silent only then can this court utilise Order 3 Rule 8 of the ***Magistrates Court Rules 1945***.
22. In this case as discussed above-herein the law is not silent and as a result there is no *lacuna*.
23. The recent decision of *Seniviratne J* in ***Chang v Primetime Properties Ltd*** [2022] FJHC 152; HBA29.2020 (24 March 2022) is trite on this issue. The court regurgitates paragraphs 13 to 15 as follows:
- “ [13] Order XXV rule 2 and Order XXX rule 2 confer jurisdiction on the Magistrate’s Court to strike out claims under certain circumstances. The intention of the legislature in enacting these provisions are very clear. If the legislature intended to confer the same power as in Order 18 rule 18 of the High Court Rules 1988 on the Magistrates Court it would have included such provisions in the Magistrates Court Rules or in the Magistrates Court Act.
- [14] Order III rule 8 of the Magistrates Court Rules is very clear in that the Magistrate’s Courts are only guided by the High Court Rules 1988 and it cannot be understood to mean that it confers on the Magistrate’s Court to strike out a claim relying on the provisions of Order 18 rule 18 of the High Court Rules 1988.
- [15] As correctly held by the learned Magistrate there is no *lacuna* in Order III rule 8 of the Magistrates Court Rules.”
24. The decision in *Chang* (supra) reinforces the point that only when the Magistrates Court Act and Rules are silent can we then consider Order 3 Rule 8 of the Magistrates Court Rules.
25. Given that the application is not made pursuant to Order 25 Rule 2 or Order 30 Rule 2 of the Magistrates Court Rules, which are the provisions relating to any application for striking out in the Magistrates Court and their being no *lacuna*, this court cannot accept the application as sought.

Conclusion

26. Given the above discussions, the court adjudges that the application to strike out the Writ and claim on basis of there being no reasonable cause of action cannot be sustained.
27. The application is dismissed as a result..
28. Seven (7) days to appeal.
29. Parties to bear their own costs.


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JEREMAIA .N.L SAVOU
RESIDENT MAGISTRATE

