

**IN THE MAGISTRATES COURT AT NADI
CIVIL JURISDICTION**

Civil Action No. 32/23

BETWEEN : DHANWANTI DEVI SINGH

Plaintiff

AND : FILIMONI LEWAGASA

1st Defendant

AND : THE REPUBLIC OF FIJI MILITARY FORCES

2nd Defendant

RULING

1. This is the Second Defendant's application to strike out the Plaintiff's claim pursuant to **section 52 of the Republic of Fiji Military Forces Act 1949** (hereinafter referred to as "**the RFMF Act**"). The application is supported by the Affidavit of Major Lesivakarua. The Plaintiff opposes the application and has filed an Affidavit in Opposition. The Second Defendant has also filed an Affidavit in Reply sworn by Commander Rabuku.

2. The Court further observes that the First Defendant appears without legal counsel and has elected not to file any affidavits in this application or in the substantive matter. His lack of participation, however, does not affect the issues raised in the present strike out application brought solely by the Second Defendant.

3. The Plaintiff filed this action on 15 March 2023. The claim arises from a motor vehicle accident on 7 October 2021 in Lautoka. The Plaintiff's vehicle (HB 722) was driven by his wife, and the First Defendant was driving the Second Defendant's vehicle (GS 078) at the time of the collision. The Plaintiff claims damages in negligence and pleads vicarious liability against the Second Defendant.

4. The Second Defendant seeks to strike out the claim on the basis that it is statute barred under section 52 of the RFMF Act, asserting immunity and arguing that the Plaintiff failed to comply with the 3-month limitation period. The Plaintiff submits that his claim is founded in tort and vicarious liability, and that the Act has no application to a road traffic accident.

5. I have considered the affidavits, submissions, and case authorities relied upon by both parties.

The Law

6. Section 52 of the Act provides that no action shall be brought against an officer or soldier for anything done **under the Act** unless commenced within 3 months and upon notice. It also requires specific pleading of malice, absence of reasonable and probable cause, or gross negligence where such actions are brought.

7. The long title of the RFMF Act is "**An Act to provide for the establishment, maintenance and regulation of military forces and for purposes incidental thereto**" which makes it clear that the Act governs the internal structure, discipline, and functions of the military forces. [Emphasis mine]

8. Therefore its scope is specific and does not extend to ordinary civilian conduct unless the act complained of was done pursuant to, or in the exercise of, powers under the Act.

9. In ***Ratu Epenisa Seru Cakobau v The Commander of The Republic of Fiji Military Forces & Ors (Civil Action No. HBC 322 of 2023)***, the High Court held that section 52 applies only where the cause of action arises from something done under the authority of the Act. Claims in tort that are unrelated to military duties fall outside its scope.

Application to the Present Case

10. The Plaintiff's claim is based on negligence arising from a road accident. It concerns the operation of a motor vehicle on a public road. The Second Defendant has not demonstrated any connection between the alleged negligent driving and any duty or function performed under the Act.

11. In the absence of such a connection, section 52 cannot be invoked to bar the Plaintiff's claim. The pleaded cause of action is a straightforward tort claim, and therefore the Act does not apply.

12. The Statement of Claim discloses a reasonable cause of action and raises triable issues suitable for determination at trial. This is not a plain and obvious case for strike out.

13. The Second Defendant has failed to satisfy the Court that the Plaintiffs claim is barred by section 52 of the Act or that the Statement of Claim should otherwise be struck out.

Distinguishing the Authorities Relied Upon by the Second Defendant

14. The court has also considered the two cases of **Kaiava Tadrau v The Commander, Republic of Fiji Military Forces & Anr (Civil Action No. HBC 334 of 2020)** and **Irene Meena Chand v Commander of The Republic of Fiji Military Forces & Anr (Civil Action No. HBC 301 of 2018)** and its relevance to the present case.

15. In *Kaiava Tadrau v The Commander, Republic of Fiji Military Forces & Anr (supra)*, the Court struck out the Plaintiff's claim because it was filed almost eleven months after his termination from the RFMF, well outside the strict three month limitation period in section 52 of the RFMF Act, which applies only to actions arising from acts done under the Act. That case concerned a challenge to an **internal termination decision made within the military disciplinary framework** and therefore fell squarely within the scope of the Act. By contrast, the present claim arises from an ordinary road traffic accident sounding in negligence and is not connected in any way to the exercise of military powers or functions under the RFMF Act. Section 52 has no application here, and the reasoning in *Kaiava Tadrau* therefore does not assist the Second Defendant.

16. In *Irene Chand v Commander, Republic of Fiji Military Forces & Anr (supra)*, the Court struck out the action because it was filed almost three years after the death of the Plaintiff's husband, well outside the strict three month limitation period mandated by section 52 of the RFMF Act. The claim in that case directly concerned the **treatment, deployment, and medical management of a serving soldier**: matters clearly arising from acts performed under the authority and functions of the RFMF and therefore subject to section 52 immunity. Unlike

that scenario, the present proceedings arise from a road traffic accident and a claim in negligence, which are not acts carried out under the RFMF Act. For this reason, the decision in *Irene Chand* also provides no support to the Second Defendant.

Orders

1. **The Second Defendant's application to strike out the claim is dismissed.**
2. **Costs of \$500** are awarded to the Plaintiff against the Second Defendant, summarily assessed and payable within 30 days.

Any party aggrieved by this decision has the right to appeal.



Setavana Saumatua
Resident Magistrate
9 December, 2025

