

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 543 of 2004**

**BETWEEN** : **NBF ASSET MANAGEMENT BANK** a body corporate established under the National Bank of Fiji Restructuring Act 1996 as successor in Title to the National Bank of Fiji and having its registered office at Tower 3, Reserve Bank of Fiji, Suva, Fiji.

**PLAINTIFF**

**AND** : **TAVEUNI ESTATES LIMITED** a limited liability company incorporated under the laws of Fiji with its registered office at Suva, Fiji.

**FIRST DEFENDANT**

**AND** : **THE REGISTRAR OF TITLES** at the Registrar of Titles Office, 1<sup>st</sup> Floor, Suvavou House, Suva, Fiji.

**SECOND DEFENDANT**

**AND** : **THE ATTORNEY GENERAL OF FIJI.**

**THIRD DEFENDANT**

**BEFORE** : **Master Deepthi Amaratunga**

**COUNSEL** : **Mr. J Oswald –Jacobs** for the Plaintiff  
**Ms. N. Karan** for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant

**Date of Hearing** : **27<sup>th</sup> July, 2012**

**Date of Decision** : **11<sup>th</sup> April, 2013**

**DECISION**

**A. INTRODUCTION**

1. The Plaintiff in its amended summons in terms of Order 19 rule 7 and Order 18 rule 18 of the High Court Rules of 1988 for strike out the statement of defence

of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as it failed to disclose a reasonable defence and alternatively to consider the statement of defence filed in court on behalf of 2<sup>nd</sup> and 3<sup>rd</sup> Defendants was not in compliance with the previous orders/directions of the Decision of His lordship Justice Calanchini (as has lordship then was) dated 19<sup>th</sup> November, 2010 and judgment be entered accordingly. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were adequately informed of this application prior to the summons being filed and though sufficient time was granted 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not sought to amend the statement of defence and only months after the hearing of the summons that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant sought to file summons seeking to amend the statement of defence. The summons for strike out was filed in 2011 and adequate time was granted to seek any amendment to statement of defence for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and in the absence of any such application the summons for strike out was heard in 2012. Even at the hearing of the summons to strike out no affidavit in opposition was filed, though adequate time was were granted for that, indicating lack of explanation on the part of 2<sup>nd</sup> and 3<sup>rd</sup> Defendants for their alleged failure to comply with the orders of the court. The conduct of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants amounts to abuse of process and this conduct also violates the directions of Justice Calanchini's (as his lordship then was)orders made on 19<sup>th</sup> November, 2010. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had prior notice of the summons to strike out and details of non compliance given by the plaintiff by its letter dated 22<sup>nd</sup> September, 2011. Before the hearing of this summons again adequate time was given to comply with the High Court Rules and or to file appropriate application, in regard to the purported statement of defence filed on 10<sup>th</sup> June, 2011. Apart from non compliance of the order dated 19<sup>th</sup> November, 2010, the Plaintiff by notice dated 22<sup>nd</sup> September, 2011 informed in detail non compliances contained in the purported statement of defence for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and also of the impending application for strike out by the Plaintiff, but no effort was made to rectify the errors, and finally the time given by the court for settlement of the issues between the parties but no genuine effort was made by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to rectify the non compliance, and the said conduct warrants striking out of the statement of defence for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as an abuse of process , non compliance with directions of the court and for want of compliance with High Court Rules of 1988 .

**B. FACTS**

2. The amended Summons of the Plaintiff states as follows

1. “ No defence having being served by the defendants herein in accordance with the orders of His Honour Mr. Justice Calanchini made on 19 November 2010 and 24 March 2011 – judgment be entered for the Plaintiff against the Second and Third Defendants as follows:

(a) In pursuance of Paragraph R in the Prayers for Relief in the Fourth Amended Statement of Claim filed in this proceeding – an order in exercise of the powers of this Honourable Court conferred by Section 168 of the Land Transfer Act Cap 131 that the Second Defendant:

(i) Cancel original Certificates of Title Volume 31921 and 28820; and

(ii) Consequent on that cancellation – require the delivery to her by the First Defendant of the duplicates of Certificates of Title Nos 31921 and 28820; then

(iii) Cancel or destroy duplicate Certificates of Title Nos 31921 and 28820; then

(iv) Issue to the Plaintiff as registered – proprietor – or at its direction – new Certificates of Title in respect of Lot 1 on Deposited Plan No 7340 and Lot 1 on Deposited Plan No 7341;

- (b) An order that the Second and Third Defendants pay the costs of the Plaintiff of and incidental to this proceeding as against them;
  - (c) Such further or other order as then Court may deem appropriate.
- 2. Alternatively to Paragraph 1 above – an order that the Amended Defence of the Second & Third Defendants dated 10 June 2011 and purportedly served on the Plaintiff on 10 June 2011 be struck out on the grounds variously that it fails to disclose a reasonable defence or is embarrassing;
- 3. If the order sought in Paragraph 2 above is made by the court – a further order that
  - (a) Judgment be entered for the Plaintiff against the Second & Third Defendants on the same terms as those set out in Paragraphs 1(a) and (b) above;
  - (b) The Second & Thirds Defendants pay the Plaintiff's costs of this application;
- 4. Such further or other order as the Court may deem appropriate. The Plaintiff intends to reply upon the affidavits and pleadings filed in this proceeding and any other affidavit(s) filed before the date of the hearing, during the hearing of this application.

This Summons is issued pursuant to:

- (a) Order 19 r.7 of the High Court Rules 1988
- (b) Order 18 r18 of the High Court Rules 1988; and

(c) The inherent jurisdiction of this Honourable Court.”

5. The Decision of Justice Calanchini (as his lordship then was), instead of striking out the purported statement of defence gave specific directions for the filing of the statement of defence of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in the said decision dated 19<sup>th</sup> November, 2011 as follows

‘As a result I make the following Orders:

1. *The Defendants are to file and serve Amended Defences to the Plaintiff's Fourth Amended Statement of Claim within 21 days from the date of these orders. **The amended defences are to be in accordance with the directions given in this decision and in accordance with Order 18 of the High Court Rules.***
2. *Thereafter the action is to proceed in accordance with the High Court Rules.*
3. *The First Defendant's Counterclaim has the necessary leave of the Court to proceed in accordance with the [Banking Act 1995](#) as a result of the Master's decision dated 7 April 2009.*
4. *The Rates Action and the Main Caveat Action are stayed pending judgment in the present proceedings.*
5. *The costs of these applications are to be the Plaintiff's costs in the cause.’*

3. The purported amended statement of defence for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and counterclaim was filed on 6<sup>th</sup> June, 2011. In pursuant to the decision of Justice Calanchini (as he then was) ‘*The amended defences are to be in accordance with*

*the directions given in this decision and in accordance with Order 18 of the High Court Rules.* And the Plaintiff's 1<sup>st</sup> contention is that the purported statement of defence filed on 6<sup>th</sup> June, 2011 did not comply with the said order.

4. The decision dated 19<sup>th</sup> November, 2010 commented the purported statement of defence filed on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in the following manner

“The second application challenged the Defence filed by the Second and Third Defendants primarily on the basis that the Registrar of Titles has not pleaded in accordance with the requirements of Order 18. The Plaintiff challenges paragraph 2 of the Defence and **correctly points out that the Second Defendant is required to read the Statement of Claim, conduct a search of the records in the Titles Office and then plead to the allegations in paragraph 11(a) – (d) of the Statement of Claim. It is no answer to simply say that the Registrar of Titles has no knowledge of matters that were or ought to have been capable of a substantive response. The paragraph is to be amended so as to comply with the rules.**

There is an objection to the manner in which the Second Defendant has pleaded to paragraph 33 of the Statement of Claim. That paragraph commences as follows:

"33 In or about mid 1999 or at some time thereafter Asset Management Bank discovered that."

Paragraph 7 of the Second Defendant's Defence states:

"The Second and Third Defendants cannot admit or deny paragraph 33 of the claim as the Plaintiff knew that it was invalid title."

The first part of paragraph 7 is a valid defence as it is clearly not possible for the Second Defendant to know when the Plaintiff made the alleged discoveries. The second part of the pleading in paragraph 7 is to be deleted as once again it is not possible for the First Defendant to assert what the Plaintiff knew or didn't know. Paragraph 7 is to be amended by deleting the words starting with "as" to the end of the sentence.

The Plaintiff challenges paragraph 8 of the Defence in so far as it purports to plead to paragraphs 34 and 39 of the Statement of Claim.

Paragraph 34 of the Statement of Claim states:

"As a consequences of the matters referred to in paragraphs 8 to 33 hereof, AMB and the Registrar of Titles made repeated requests of TEL that it surrender Certificates of Title 31921 and 28820 to the Registrar of Titles for cancellation."

Paragraph 39 of the Claim states:

"further or alternatively, by reason of the matters set out in paragraphs 8-32 above, TEL and the Registrar of Titles conspired to defraud the National Bank of Fiji or AMB, as the case may be, of the Water Lots."

Particulars are then pleaded.

Paragraph 8 of the Defence states:

"As to paragraphs 34 to 40 of the claim, the defendants have no knowledge of the contents hereof".

**The allegations in both paragraphs 34 and 39 are matters that after due enquiry, the Registrar of Titles is obliged to plead to. Paragraph 8 is to be amended by the Defendants to comply with the rules of pleading.**

The Plaintiff objects to paragraphs 9 and 10 of the Defence. There are two comments to be made. **One concerns the use of the expression "strict proof". The expression has no place in pleading documents. It is a meaningless expression.** It raises the question whether strict proof is a higher standard than the "balance of probabilities". There is no such expression to be found in either the authorities or in any textbook on the Law of Evidence.

**Secondly, it is apparent that the two paragraphs are in breach of Order 18 Rule 12(3)** which, so far as is relevant, states:

"... every allegation of fact made in a Statement of Claim ... which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence ...; and a general denial of such allegation, or a general statement of non-admission of them, is not a sufficient traverse of them."

The requirement to traverse any allegation of fact made by a party in his pleading is set out in Order 18 Rule 12(1).

**Paragraphs 9 and 10 are to be amended to comply with the rules and with my earlier observations.**



Paragraph 12 of the Defence does not state to which allegation it is pleading. It is vague, ambiguous and as a result embarrassing. It must be amended.

Counsel for the Second and Third Defendants acknowledged the defects in the Defence and urged the Court not to strike out the Defence or the offending paragraphs.

Counsel for the Plaintiff accepted that it is desirable to have all the issues that are in dispute properly identified so that the trial of the action can effectively resolve all outstanding issues. He indicated that he was not applying to have the Defence struck out and did not oppose the Second and Third Defendants filing an Amended Defence”

### **C. ANALYSIS**

5. The directions given in the decision dated 19<sup>th</sup> November, 2010 and noncompliance of that is self-evident. I have added emphasis to the relevant observations and direction, by using bold letters. As regards to contents of paragraphs 34 and 39 of the statement of claim the said decision clearly stated *‘The allegations in both paragraphs 34 and 39 are matters that after due enquiry, the Registrar of Titles is **obliged to plead to**’*. Unfortunately, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant’s statement defence filed on 6<sup>th</sup> June, 2011 has not complied with the directions. The averments in paragraph 39 of the statement of claim was denied, by way of bare denial and also again used a meaningless phrase ‘strict proof’ which was clearly commented by his lordship Justice Calanchini (as his lordship then was) as meaningless expression.
  
6. For completion I will quote the paragraphs 23 and 24 of the statement of defence for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed on 10<sup>th</sup> June, 2011 below which deals

with paragraphs 34 and 39 of the amended statement of claim where specific directions were given in the decision dated 19<sup>th</sup> November, 2010.

“23. AS to paragraphs **34**, 35, 36, 37 and 38 of the claim the Defendants have no knowledge of the contents thereof therefore **cannot admit or deny the contents.**

24. AS to **Paragraph 39** the defendants deny the contents thereof and put the plaintiff to **strict proof.**”(emphasis is mine)

7. There is no affidavit in opposition to this summons seeking strike out and in the absence of that I presume that there is no explanation from the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants for their failure to comply with the explicit and clear directions given by his lordship Justice Calanchini (as his lordship then was) in the decision dated 19<sup>th</sup> November, 2010. It is clear that there is only a bare denial as regards to the paragraph 39 of the 4<sup>th</sup> Amended statement of claim. This was a matter specifically dealt in the abovementioned decision of the court dated 19<sup>th</sup> November, 2010 and even after nearly 2 years after the said decision the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants statement of defence, failed to comply with the express directions of the court and no effort was made before this hearing to rectify the clear non-compliance. Sufficient time was granted for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to comply, but they failed to do rectify till conclusion of the hearing of this summons even without filing an affidavit in opposition for this summons.
8. The paragraph 34 of the 4<sup>th</sup> Amended statement of claim was dealt in a different manner and it was not even properly denied by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in their statement of defence filed on 6<sup>th</sup> June, 2011 and stated ‘*Defendants have no knowledge of the contents thereof therefore cannot admit or deny the contents.*’ This is a violation of Order 18 rule 12(1) of High Court Rules of 1988 which requires any party to traverse any allegation of fact made in a pleading. This was an issue that was dealt in the decision of the court dated

19<sup>th</sup> November, 2010, but again the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had failed to implement the reasoning of the said decision and the directions of the court in the said decision. This can be considered to a disregarding of the directions of the court.

9. In Supreme Court Practice (White Book) 1999 at page 340 it was stated

‘18/13/2 Effect of rule- The main object of this rule and of r.14 is to bring the parties by their pleadings to an issue, and indeed to narrow them down to definite issues, and so diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing (per Jessel M.R. in Thorp v Holdsworth (1876) 3 Ch.D.637). **This object is secured by requiring that each party in turn should fully admit or clearly deny every material allegation made against him.** Thus, in an action for debt or liquidated demand in money, a **mere denial of the debt is wholly in admissible.**’(emphasis is mine)

10. The rationale in requiring a party to expressly traverse each and every averments in the pleading is described properly in the above quoted paragraph in the White Book (1999). Further in p 340 of White Book (1999), 18/13/4 stated

“Implied admissions- **Under this rule there is an implied admission of every allegation of fact made in a pleading which is not traversed in the next succeeding pleading. Such an admission has the same value and effect as if it were an express admission** (see Byrd v Nunn(1877) 5Ch. D 781; 7Ch.D 284, CA; Geen v Sevin (1879) 13 Ch.D. 589; Collette v Goode(1878) 7 Ch.D. 842, specific denial held to qualify general denial Symonds v Jenkins (1876) 34 L.T. 277, title not denied); Cookham Rural District Council v Bull (1972) 225 E.G. 2104, CA(date of service of

enforcement notice impliedly admitted by non-denial in the defence) A plaintiff must show that the matters in question are clearly pleaded in order to fix the defendant with an admission (Ash v Hutchinson & Co (Publisher) [1936] Ch. 489,503).

.....

18/13/5

‘.....

**“Defendant puts plaintiff to proof”, held insufficient denial** (Harris v Gamble (1878) 7Ch.D 877). **“Defendant do not admit correctness” held an insufficient denial** (Rutter v Tregent (1879) 12 Ch.D. 768)....

18/13/6

Traverse must be specific, not general- **Every allegation of fact must be specifically denied or specifically not admitted.**

What is apparently one allegation may in really amount to two or more. Thus an allegation” that the defendant broke into and entered the plaintiff’s field” contains two allegations (1) that the field is the plaintiff’s and (2) that the defendant entered it. If the defendant desired to deny both allegations, he must do so separately.

The rule applies only to allegations of fact, matter of law should not be traversed. And the defendant should never traverse matter which the plaintiff might have, but has not, raised against him.....

**A general denial, or a general statement of non-admission, of allegations of facts is not a sufficient traverse thereon.”** (emphasis added)

11. The law relating to pleadings is trite law and the rationale of that is to narrow down the issues before the court. If poor pleadings are entertained in High Court that would waste the valuable time and money for parties as well as the court. In White Book (1999) p 314 18/7/4 under 'Need for compliance' stated

These requirements should be strictly observed (per May L.J. in Lipkin Gorman v Karpnale Ltd (1989) 1 W.L.R 1340 at 1352). Pleadings play an essential part in civil actions, and their primary purpose is to define the issues and thereby to inform the parties in advance of the case ....'

12. The 2<sup>nd</sup> Defendant was required to read the Statement of Claim, conduct a search of the records in the Titles Office and then plead to the allegations in .....the Statement of Claim. It **is no answer to simply say that the Registrar of Titles has no knowledge of matters that were or ought to have been capable of a substantive response.**' (decision of Justice Calanchini on 19<sup>th</sup> November, 2011). This direction has not been followed and 2<sup>nd</sup> Defendant continues with its usual bare denial without considering the facts and the issues. This cannot be accepted from a public office such as the 2<sup>nd</sup> Defendant, who is obliged to investigate the serious allegations contained in the 4<sup>th</sup> amended statement of claim. This attitude of the 2<sup>nd</sup> Defendant is also against the public policy, which is considered later in this decision for abuse of process.

13. Paragraph 13 of the 4<sup>th</sup> amended statement of claim stated as follows

'13. An instrument search conducted at the Titles Office has established that the original Request No 363858 and the original Request No 363859:

- (a) **Have each been torn from the volume of the Register Book into which they had been bound,**  
and

(c) Are both **missing from the Titles Office.**' (emphasis added)

14. This is a fact that has to be specifically traversed and the knowledge of the facts are within the scope of the official duties of the 2<sup>nd</sup> Defendant who is the Registrar of Title, but instead of specifically addressing the serious allegations contained in the said paragraph 13 (a) and (b) the 4<sup>th</sup> amended statement of defence for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants state in paragraph 8 as follows

'8. THE Second and Third Defendants cannot admit or deny paragraphs 13 (a) and (b) of the claim as they have no knowledge of the contents thereof.'

15. If the Registrar of Title cannot verify the truth of the serious allegation contained in the paragraph 13 of the 4<sup>th</sup> Amended statement of claim, the reasons for that should be given. It is a thing that is capable of verifying by the 2<sup>nd</sup> Defendant in its, official duties and by not doing so the 2<sup>nd</sup> Defendant is attempting to be evasive on the issues, in its pleadings.

16. In Supreme Court Practice (White Book) 1999 p 341

18/13/7

'Traverse must not be evasive- A traverse, whether by denial or refusal to admit, must not be evasive but must answer the point of substance.

**The pleader must deal specifically with every allegation of fact made by his opponent-that is, he must either admit it frankly or deny it boldly. Any half admission or half-denied is evasive.....'** (emphasis is mine)

17. So, by stating that the Defendants cannot admit or deny the serious allegations contained in the paragraph 13 of the 4<sup>th</sup> amended statement of claim the 2<sup>nd</sup> Defendant is evading the issue which is obliged to answer since the ascertainment of truth of the allegations are within the official scope of the 2<sup>nd</sup> Defendant as well as on public policy .
  
18. The paragraphs 21 and 24 of the 4<sup>th</sup> amended statement of claim have not been dealt in the 4<sup>th</sup> amended statement of defence for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. This paragraphs have not been mentioned in the said statement of defence indicating the sheer lack of supervision and total disregard to the rules of the court, even when in an earlier application court had commented on the statement of defence and also granted an opportunity to amend it. It seems that the sympathy of the court, for not striking out the statement of defence of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, was being utilized to disregard the rules of the court, as well as the specific directions of the court to violate the rules in impunity.
  
19. Paragraph 25 of the statement of claim states as follows  

‘25. On or about 27 June 1995, the Registrar of Titles issued back to the National Bank of Fiji the invalid duplicate Certificates of Title each endorsed with a memorial of the transfer of the Water Lots from TEL to the National bank of Fiji bearing the date of issue.’
  
20. The paragraph 25 of the 4<sup>th</sup> amended statement of claim contained several facts, for which the 2<sup>nd</sup> Defendant could answer, instead a bare denial was used and in the absence of any explanation I can only assume that this statement of defence was prepared for the sake of filing a statement of defence without considering the facts of the case, which defeats the purpose of the High Court Rules and the previous directions of the court and it is an abuse of process. The 2<sup>nd</sup> Defendant can verify whether on the said date the alleged titles were issued and reply to the alleged facts.

21. Paragraph 26 of the 4<sup>th</sup> amended statement of claim stated as follows

‘26. At the time of issuing back to the National Bank of Fiji the invalid duplicate Certificates of Title, the Registrar of Titles did not and could not enter a memorial of the transfer of the Water Lots from TEL to the National Bank of Fiji in the Register of Titles as he was required to do pursuant to the Act, because the folios which then existed in the Registrar of Titles bearing CT Nos 28286 and 28202 were in respect of parcels of land in Levuka, on the island of Ovalau.’

22. What I have stated in the above paragraph 16 applies to this averment as well since the 2<sup>nd</sup> Defendant had neither denied nor admitted the entirety of the paragraphs 25 and 26 of the 4<sup>th</sup> amended statement of claim. The averments regarding the folios existed in the registrar of title for titles stated in the said paragraph are within the knowledge of the registrar of title and cannot state that 2<sup>nd</sup> Defendant was unaware of those facts.

23. Paragraph 32(e) has not been answered at all and missed out from the statement of defence for the 4<sup>th</sup> Defendant filed on 10<sup>th</sup> June, 2011.

24. The statement of defence filed on 10<sup>th</sup> June, 2011 on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant is nothing but an epitome of what a statement of defence should not be. His lordship Justice Calanchini (as he then was) in his decision delivered on 19<sup>th</sup> November, 2010 has given directions and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants’ statement of defence filed on 10<sup>th</sup> June, 2011 has not followed those directions and the statement of defence filed on record is a sham defence which does not disclose a reasonable defence. The statement of defence for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed on 10<sup>th</sup> June, 2011 has not followed High Court Rules and



though more than one opportunity was granted, they have not utilized the said opportunity to rectify the deficiencies as pointed out by the court.

25. In Supreme Court Practice (1999) at page 314 under the heading 'Need for compliance' of Order 18 where it was stated as follows

'Need for compliance- **These requirements should be strictly observed** (per May L. J. in Lipkin Gorman v Karpnale Ltd [1989] 1 W.L.R 1340 at 1352). Pleadings play an essential part in civil actions, and their primary purpose is to define the issues and thereby to inform the parties in advance of the case which they have to meet, enabling them to take steps to deal within it, and such primary purpose remains and can still prove of vital importance, and therefore it is bad law and bad practice to shrug off a criticism as a "**mere pleading point**"(see per Lord Edmund Davis in Farrell v Secretary of state for Defence [1980] 1 W.L.R 172 at 180, [1980]1 All E.R. 166 at 173)'. (emphasis is added)

In **Farrell v Secretary of State (Viscount Dilhorns) [1980] 1 All E.R 166 at 173** Lord Edmund -Davies held

**It has become fashionable in these days to attach decreasing importance to pleadings**, and it is beyond doubt that there have been times when an insistence on complete compliance with their technicalities put justice at risk, and, indeed, may on occasion have led to its being defeated. But **pleadings continue to play an essential part in civil actions**, and although there has been since the Civil Procedure Act 1833 a wide power to permit amendments, circumstances may arise when the grant of permission would work in justice or, at least, necessitate an adjournment which may prove particularly unfortunate in

trials with a jury. **To shrug off a criticism as ‘a mere pleading point’ is therefore bad law and bad practice. The purpose is to define the issues and thereby to inform the parties in advance of the case they have to meet and so enable them to take step to deal with it.**(emphasis is added).

26. In this action the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants even after the directions of the court has totally disregarded the directions of the court and has also did not follow the High Court Rules and the importance of the pleadings are disregarded. The repeatedly failure e to comply with the express provisions of the law and also the explicit directions of the court is an exceptional situation that warrants striking out of the statement of defence filed on 10<sup>th</sup> June, 2011.

27. In Supreme Court Practice (White Book) 1999 p352

18/19/18 Abuse of the process of the court.....

.....

The categories of conduct rendering a claim frivolous, vexation or an abuse of process are not closed but depend on all the relevant circumstances and **for the purpose considerations of public policy and the interest of justice may be very material**’(emphasis added)

28. The conduct of the 2<sup>nd</sup> Defendant and the answer to the statement of claim is found wanting of the High Court Rules. As a public policy any government servant is bond to follow the decisions and or directions of the court, and failure to do so cannot be treated lightly. The allegations contained in the statement of claim are unusual and serious and needs investigations and proper answer. Evading the issues by 2<sup>nd</sup> Defendant cannot be accepted considering the nature of the allegations which needs specific traverse. A specific order was given by the court on 19<sup>th</sup> November, 2010 and the statement of defence of the 2<sup>nd</sup> and

3<sup>rd</sup> Defendant did not comply with the said order. Even at the hearing of this summons sufficient time was granted for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to file an affidavit in opposition explaining the reasons for non compliance, but no such affidavit was filed. Before this application for strike out was filed a detailed warning and notice was given by the Plaintiff of the impending application for strike out, but the 2<sup>nd</sup> Defendant did not take any heed of that notice. If this is continued litigants will suffer in numerous ways due to delay and cost and if this behaviour is condoned parties will violate any direction of court with impunity. The issue in this case is not confined to pleading, though outwardly it may seem like that. It is far more serious than that and goes to the extent of abuse of process of the court. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants statement of defence filed on 10<sup>th</sup> June, 2011 is nothing but a sham defence, which has not only failed to comply with the High Court Rules of 1988, but also has disregarded the directions of the court. Normally a court would be reluctant to strike out statement of defence, but this is an exception to the normal rule. The repeated non compliance of the High Court Rules and when the court had given specific directions not complying with them and evading the issues raised in the statement of claim cannot be accepted. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendant's statement of defence dated 10<sup>th</sup> June 2011 is a bare denial without addressing the vital issues relating to 2<sup>nd</sup> Defendant. It is nothing but proper in such circumstances to allow the strike out of the statement of defence filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

29. After striking out the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants statement of defence filed on 10<sup>th</sup> June, 2011, a judgment can be entered against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as prayed in the 4<sup>th</sup> amended statement of claim, but the summons filed by the Plaintiff is inconsistent with the orders sought in the 4<sup>th</sup> amended statement of claim. This was not argued at the hearing and no submission was made regarding the change and its effect. So, I will only state that the judgment will be entered against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, by virtue of the strike out of the defence dated 10<sup>th</sup> June, 2011, as prayed in the 4<sup>th</sup> amended statement of claim. At the hearing of the summons the counsel for the Plaintiff did not make any oral or written submission regarding the orders sought in the amended summons filed on 28<sup>th</sup> September, 2011 and its relationship to the orders

sought against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in the 4<sup>th</sup> amended statement of claim and the variation of that. In the circumstances while allowing the striking out the statement of claim, the parties are granted an opportunity to make further submissions regarding the orders sought in the amended summons and orders sought in the statement of claim against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and in the circumstances I will refrain from making any specific orders as prayed in the amended summons dated 28<sup>th</sup> September, 2011. This unexplained variation between the orders contained in the amended summons and orders sought against 4<sup>th</sup> amended statement of claim partly contributed to delay of this decision. Neither side filed any submission for this hearing. The delay is regretted.

**D. FINAL ORDERS**

- a. The statement of defence filed on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on 10<sup>th</sup> June, 2011 is struck off due to non compliance with the decision delivered on 19<sup>th</sup> November, 2010 and it also did not disclose a reasonable defence.
- b. Judgment be entered against 2<sup>nd</sup> & 3<sup>rd</sup> Defendants in accordance with the 4<sup>th</sup> amended Statement of Claim.
- c. Cost of this application will be cost in the cause.

Dated at **Suva** this **11<sup>th</sup> day** of **April, 2013**.

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**Master Deepthi Amaratunga**  
**High Court, Suva**