

IN THE HIGH COURT OF FIJI AT LAUTOKA

WESTERN DIVISION

Civil Action No. HBC 116 of 2009

BETWEEN : RANJANI DEVI SHARMA (f/n Shantanu Prasad) of Kulukulu,
Sigatoka in the Republic of Fiji Islands, Domestic Duties.

PLAINTIFF

AND: **CARPENTERS FIJI LIMITED** a limited liability company having its
registered office at Suva and carrying on business around Fiji.

1ST DEFENDANT

KRISHNEEL RAVINESH REDDY (f/n not known to the Plaintiff) of
Olosara, Sigatoka, Acting Manager

2nd DEFENDANT

Interlocutory Judgement

Present Application

1. When this matter was taken up for hearing on 4th August 2014 the Learned Counsel for the defendants made an application for a determination of the preliminary issue as to law that the jurisdiction to hear matters founded on and arising out of an employment contract vests in the Employment Tribunal and Employment Court, prior to the hearing of the substantive action.
2. The learned counsel for the plaintiff objected to this application on the ground that the Court has already given a ruling on this issue and that the defendant had not appealed against the said Interlocutory Judgement. He submitted further that he has come prepared for the hearing and if the court grants time to hear the preliminary issue he is moving for costs.
3. After hearing submissions of both counsels the court decided to determine the preliminary issue first and adjourned the matter for both parties to file written submissions. Both parties filed written submissions thereafter.

Background

4. This action was instituted by the plaintiff by writ of summons dated 19th July 2009 claiming the following reliefs:
 - i) Loss of salary from the date of termination to the date of judgement.
 - ii) Damages for unlawful dismissal.
 - iii) Exemplary damages.
 - iv) Aggravated damages for defamation of character as per paragraph 5 to 12 of the statement of claim.
 - v) General damages.
 - vi) All costs occurred in this action.
 - vii) Any other relief the court may deem just and expedient.

5. In the statement of claim plaintiff states inter alia:-
 - (i) That she was employed as a variety supervisor at the first defendant company and the second defendant was the acting manager of the said company.
 - (ii) That on or about 9th May 2009 second defendant issued a letter dismissing the plaintiff employment on a false accusation and allegations.
 - (iii) That on or about 12th May 2009 1st defendant issued a letter dismissing the plaintiff alleging that she was dishonest, unreliable and an unfaithful person.
 - (iv) That the plaintiff is a well respected person who holds respect on the society as she has been a community worker and member of various religious organisations.
 - (v) That due to the false allegation the character and reputation has been tarnished as ordinary people regard the plaintiff as a thief after she was terminated by the 1st defendant.
 - (vi) That by reasons of the matters aforesaid the plaintiff is living in shame and she couldn't find a job to earn a living for her and her family.
 - (vii) That the matters aforesaid imputes the plaintiff was dishonest, unfaithful and unreliable person and she has been branded as a thief.
 - (viii) That she has worked with the first defendant for the past three years and previously she worked for other super markets as a cashier.

- (ix) That due to the irresponsibility, misjudgement, error and carelessness of the 2nd defendant the plaintiff was dismissed and later terminated from her employment.
 - (x) That due to the actions of the defendants the plaintiff suffered emotional trauma, pain and suffering.
 - (xi) That the 1st defendant did not follow the proper procedure in dismissing the plaintiff and breached the Employment Relation Bill.
6. After the writ was served on the defendant they have filed summons dated 25th August 2009 under Order 18 rule 18 (1) (a) of the High Court Rules 1988 for orders that the defendants cease to be a party in this action and that names of the defendants be struck out of the writ of summons and all subsequent proceedings on the grounds that;
 - a) The 1st defendant does not exist and is not a legal entity; and
 - b) That the writ is defective in the proper forum in which the writ ought to have been filed is the Employment Relations Court.
 7. His Lordship Justice Inoke has pronounced an Interlocutory Judgement on 26th November 2009 on the preliminary issues raised by the defendants by their aforesaid application.
 8. On the issue of jurisdiction of this court to hear this matter His Lordship has determined that the court has jurisdiction as the claim of the plaintiff is founded on the employment relationship between the parties and a claim not founded on such a relationship.
 9. In his judgement his Lordship has determined that the claim for damages for defamation is not founded on the plaintiffs employment contract and such a claim would not be subject to the provisions of the Employment Relation Promulgation 2007.

Analysis

10. Plaintiff has claimed aggravated damages for defamation of character as per paragraph five to paragraphs twelve of the statement of claim.

11. In paragraph five of the statement it is stated that on or about 12th May 2009 the 1st defendant issued a letter of termination alleging that the plaintiff is dishonest, unreliable and an unfaithful person.

In paragraph 7 it is stated that due to the false allegation the character and reputation of the plaintiff has been tarnished as ordinary people regard the plaintiff as a thief after she was terminated by the first defendant.

12. In considering the above mentioned paragraphs of the statement of claim of the plaintiff it is clear that the plaintiff's claim for damages for defamation is based on the termination letter issued by the 1st defendant and therefore the claim is linked to the employment contract.

13. Section 220 of the Employment Relations Promulgation outlines the jurisdiction of the Employment Relations Court which among other things is empowered under Section 220 (1);

(h) To hear and determine an action founded on an employment contract and pursuant to subsection;

(i)

(j)

(k)

(l)

(m) To hear and determine proceedings founded on tort relating to this Promulgation.

14. In considering the above provisions of the Employment Relations Promulgation it is clear that Section 220 not only contains jurisdiction to Employment Relations Court to hear and determine an action founded on an employment contract but also confers jurisdiction to hear and determine proceedings founded on a tort relating to the Promulgation.

15. In this matter the plaintiff's claim for damages for defamation of character or the tort is based on the termination of the employment contact as discussed in paragraph 10 to 12 herein. Therefore it is my view that the Employment Court is the proper court in which this matter ought to be heard as the remedies and damages sought by the plaintiff are available and provided for under Employment Relation Promulgation.

16. In considering the Interlocutory Judgement of his Lordship Inoke J, I find that the provision contained in Section 220 (I)(M) of the Employment Relation

Promulgation has not been brought to this Lordships consideration prior to pronouncing the said judgement.

As such in the Interlocutory Judgement his Lordship has not considered whether the Employment Relation Court has jurisdiction to hear and determine proceedings founded on a tort relating to the Promulgation. Therefore, I am of the view that the said provision could be considered by this court prior to the hearing of this matter under Order 33 rule 3 of the High Court Rules 1988. Such a process, in my view will not amount to revising of the Interlocutory Judgement pronounced earlier.

Determination

17. Due to the facts set out in the above paragraphs I hold that this matter should be referred to the Employment Relations Court which is the proper court in which this matter ought to be heard.
18. In regard to the inherent Jurisdiction of the High Court I accept the submissions made by the learned counsel for the defendant that the inherent jurisdiction ought not to be exercised to hear this case as this is an action founded on an employment contract and should be properly heard in Employment Court which has been specifically created to hear all such matters related employment including proceedings founded on tort relating to the Employment Relation Promulgation.

Issue of Costs

19. The plaintiffs counsel objected to the application of the defendants being raised on trial day and sought costs for the vacation of trial date. He also submitted that the Plaintiff has deposited hearing fees and incurred other expenses in preparing for the hearing.
20. It is my view that the defendants are at liberty to raise the issue of jurisdiction at any time during or prior to the trial proper and the court is empowered by Order 33 Rule 3 to determine it before, at or after the trial of the cause or the matter.

Therefore, I hold that the costs of this application be costs in cause.

Order

21. (a) I direct the Deputy Registrar of this court to refer this matter to the Employment Relations Court.
- (b) Costs of the application be costs in cause.


Lal. S. Abeygunaratne

Judge

15/08/2014

