

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA FIJI**

**Civil Action No.: HBC 128 of 2005**

**BETWEEN** : **NARENDRA MICHAEL**, of Lautoka

**PLAINTIFF**

**AND** : **MAHESH** (Investigating Officer) of Nadi Police Station, Nadi

**FIRST DEFENDANT**

**AND** : **ARVIN** of Nadi Police Station, Nadi

**SECOND DEFENDANT**

**AND** : **SUSHIL** of Nadi Police Station, Nadi

**THIRD DEFENDANT**

**AND** : **THE COMMISSIONER OF POLICE**

**FOURTH DEFENDANT**

**Appearances:** Ms. Draunidalo T. for the Plaintiff  
Ms. Mary Lee for the Defendants

**RULING**

1. In this matter the Plaintiff is claiming damages from the Defendant Police Officers and the Commissioner of Police for the loss and damages he suffered due to assault and torture while in Police custody.
2. When this matter was taken up for trial on 17 February 2015 the Learned State Counsel appearing for the Defendants made an oral application seeking leave to lead the Plaintiff's previous convictions in evidence, and also for the Court to strike out the Plaintiff's pleadings (Order 18 Rule 18 High Court Rules 1988) for lack of particulars.

3. This application was opposed by the Learned Counsel for the Plaintiff.
4. Upon hearing submissions of both Counsel the Court granted time to file written submissions on the said oral applications made by the State Counsel.
5. I will first deal with the application to strike out the Statement of Claim of the Plaintiff before considering the application to lead evidence on the Plaintiff's previous convictions.
6. The Learned State Counsel submitted that the whole claim against the Defendants rests entirely upon paragraph 3 of the Statement of Claim. It is contended by her that the said paragraph does not set out the particulars of inhuman treatment inflicted upon the Plaintiff leading to the Plaintiff being hospitalized and also lacks the particulars such as when and where the alleged, torture and inhuman and degrading treatment took place.
7. In regard to the exemplary damages claimed by the Plaintiff Defence Counsel submitted such a claim should be specifically pleaded together with the facts on which the party pleading relies as per Order 18 Rule 7(3) of the High Court Rules. She contends that given the absence of these facts the Claim for exemplary damages should be struck out.
8. The Defence Counsel also submits that the Plaintiff has failed to set out his cause of action and also to set out particulars of material facts relevant to his claim and this failure cannot be overlooked under Order 2 Rule 1 of the High Court Rules. She also contends that this failure has led to serious prejudice caused to the Court, to the public interest and also to the Defendants. It is also submitted by the Defendants that the undue delay, unavailability of Defendants loss of document and time limitations are factors showing serious prejudice that will be caused so them, if the matter proceeds any further.
9. In *Attorney General v Shiu Prasad Halka (1972) 18 FLR 210 at page 215 Marsack J.A.* said:

*"Following the decisions cited in the Judgments of the Vice President and of the Judge of the Court below, I think it is definitely established that the jurisdiction to strike out proceedings under Order 18 Rule 19 should be very sparingly exercised, and only in exceptional cases. It should not be so exercised where legal questions of importance and difficulty are raised".*

*Lindley M.R. in Hubbuck and Sons Ltd v Wilkinson, Heywood and Clark Limited*[1899] 1 QB 86 at page 90,91 said :

*“The application is made under Order XXV., r.4 Order XXV. Abolished demurrers and substituted a more summary process for getting rid of pleadings which show no reasonable cause of action or defence. Two courses are open to a Defendant who wishes to raise the question whether, assuming a statement of claim to be proved, it entitles the Plaintiff to relief. One method is to raise the question of law as directed by Order XXV.,r.2; the other is to apply to strike out the Statement of Claim under Order XXV., r.4. The first method is appropriate to cases requiring argument and careful consideration. The second and more summary procedure is only appropriate to cases which are plain and obvious, so that any Master or Judge can say at once that the Statement of Claim as it stands is insufficient, even if proved, to entitle the Plaintiff to what he asks. The use of the expression “reasonable cause of action” in rule 4 shows that the summary procedure there introduced is only intended to be had recourse to in plain and obvious cases.....”.*

10. In the light of the above authorities it is clear that the jurisdiction to strike out proceedings under Order 18 Rule 18 (i) should be sparingly exercised in plain and obvious cases.

11. Paragraph 3 of the Statement of Claim of the Plaintiff states as follows:

*“Whilst in police custody the said 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants unlawfully without reasonable cause assaulted, tortured the Plaintiff and subjected him to degrading and inhumane treatment at the Nadi Police Station thereby causing the Plaintiff serious injuries”.*

12. In considering the facts pleaded in paragraph 3 of the Statement of Claim, I find that the Plaintiff has not set out the particulars of assault, torture or inhuman and degrading treatment suffered by him at the hands of the Defendants. I am in agreement with the Defence Counsels argument that the Plaintiff has failed to particularize and set out how the assault was carried out and the time it occurred etc. I also find that the claim for exemplary damages has not been specifically pleaded together with the facts the party pleading relies on.

13. Due to the lack of particulars in the Statement of Claim I am of the view that this matter cannot proceed further without amendments being made to include such particulars.

14. Therefore I will now consider whether the Plaintiff should be allowed to amend his Statement

of Claim at this stage, almost 10 years after filing the Original Statement of Claim on 26 May 2005.

15. Order 20 Rule 5(1) of the High Court Rules provide:

*“5(i) Subject to Order 15 rules 6, 8 and 9 and the following provisions of this rule, the Court may at any stage of the proceedings allow the Plaintiff to amend his writ, or any party to amend his pleadings, on such terms as to costs or otherwise as maybe just and in such manner (if any) as it may direct”.*

16. In *Fiji Electricity Authority v Balram & Others 18 FLR at p20* it was held as follows:

*“An amendment to pleadings maybe permitted by the Court at any stage of the proceedings for the purpose of determining the real question in controversy and if it can be made without injustice to the other side, should be allowed however late, and however negligent or careless may have been the first omission”.*

17. It is clear from the said authority that amendments to pleadings may be permitted by the Court at any stage of the proceedings and however negligent or careless may have been the first omission. In exercising this discretion the Court must be mindful that no injustice would be caused to the other side if it is allowed. The Defence Counsel contends that serious prejudice will be caused to the Defendants if this matter proceeds any further.


18. In considering the litigation history of this matter I find that the parties have filed their pre-trial conference minutes on 16 September 2008 and the said minutes sets out agreed facts and agreed issues. The agreed issues include:

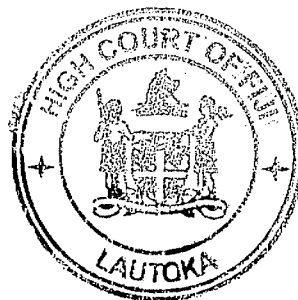
- (i) Whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants unlawfully and without reasonable cause assaulted and tortured the Plaintiff whilst in police custody?
- (ii) Whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants subjected the Plaintiff to degrading and inhumane treatment whilst in police custody at Nadi Police Station and thereby causing the Plaintiff serious injuries?

19. It is evident from the agreed issues that the Defendants have accepted the pleadings as they were at the stage of the pre-trial conference in 2008. Therefore I am of the view that it is unfair for the Defendants to bring an application to strike out the pleadings for lack of

particulars at this stage, almost 10 years since the Statement of Claim was filed. If such an application is allowed it would cause serious prejudice to the Plaintiff who has spent many years seeking redress from Court. Having agreed to the issues to be tried on the pleadings Defendants are now making this application to strike out the Statement of Claim of the Plaintiff. They should have raised this issue at any time within the 10 year period before the matter was set for trial. In considering all of the above I hold that the Defendants application to strike out the Statement of Claim should be dismissed.

20. As I find the Statement of Claim should be amended I will not make any award of costs on wasted trial preparations sought by the Plaintiff.
21. I will also not consider the application by the Defendant seeking leave to lead the Plaintiffs previous conviction in evidence in this Ruling. The Defendants are at liberty to bring a fresh application for the said purpose, at the appropriate stage of the proceedings.
22. **Final Orders**
  - (a) The Defendants application to strike out the Plaintiffs pleadings dismissed.
  - (b) The Plaintiff is directed to amend the Statement of Claim to include the material particulars/facts supporting the cause of action.
  - (c) No costs.

  
**Lal S. Abeygunaratne**  
**Judge**



**At Lautoka**  
**10 March 2015**