

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 150 of 2014

BETWEEN : JAGAT SINGH aka Pogi formerly of Kavula, Lomaloma, Vanuabalavu Lau
and now residing at Lot 12, Omkar Road, Narere, Retiree.

PLAINTIFF

AND : CARL MILLER of Lot 6 Kanace Road, Valelevu, Nasinu, Employee Reserve
Bank of Fiji.

DEFENDANT

BEFORE: Acting Master Vishwa Datt Sharma

COUNSELS: Mr. Vula for the Plaintiff
Ms Rakai for the Defendant

Date of Hearing: 20th May, 2015

Date of Ruling: Thursday, 16th July, 2015

RULING

(Application to Strike out Plaintiff's Statement of Claim)

INTRODUCTION

1. On 16th July, 2014, the Defendant filed a **Summons to Strike Out the Plaintiff's Statement of Claim** on the following grounds:
 - (a) *That the statement of claim is frivolous and vexatious; and*
 - (b) *Is otherwise an abuse of the process of the court.*

2. The Summons was filed together with an affidavit in support of the Defendant, Carl Miller.
3. This application is made pursuant to *Order 18 Rule 18 (1) (b) and (d) of the High Court Rules, 1988*.
4. The Plaintiff filed his Affidavit in Opposition to the Defendant's Summons to strike out the Plaintiff's Claim on 20th November, 2014.
5. Hereafter, the Defendant filed an Affidavit in Reply on 04th December, 2014, to the Plaintiff's Affidavit in Opposition filed on 20th November, 2014.
6. The parties were directed to file and serve their written submissions simultaneously within 14 days and the application was adjourned for to 26th February, 2015 for hearing.
7. The application was heard on 20th May, 2015.

THE LAW

8. Orde18 Rule 18(1) (a) (b)(c) and (d) states as follows:

18 (1). The Court may at any stage of the proceedings order to be struck out or amend any pleading or endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that-

- (a) it discloses no reasonable cause of action or defence, as the case may be; or*
- (b) it is scandalous, frivolous or vexatious; or*
- (c) it may prejudice, embarrass or delay the fair trial of the action; or*
- (d) it is otherwise an abuse of the process of the court;*

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

9. Moreover, *Order 18 Rule 18 (2)* provides the scope of the hearing of applications made under *Order 18 r 18 (1) (a)* accordingly and reads –

'No evidence shall be admissible on an application under paragraph (1) (a).

BACKGROUND

10. This action was commenced by the **Plaintiff, Jagat Singh** against the **Defendant** on 04th June, 2014.

11. The **Plaintiff** in his statement of claim stated that-

- (i) He was the owner of the wooden & partly block house given to him as a gift by the previous registered proprietor of the property described as CG No. E/871 "Kavula" (part of) Province of Island- Vanuabalavu, the late Ratu Miller.
- (ii) That he resided on the property after the death of the late Ratu Miller, the previous registered proprietor of the property.
- (iii) That the late Alfred Miller is the son of the late Ratu Miller and the father of the Defendant.
- (iv) That he sought for monetary compensation amounting to the sum of \$76,312 for the extension, maintenance work on the deceased property and loss of items from the Defendant who is one of the sons of the late Alfred Miller.

12. The **Defendant** filed an affidavit in opposition and denied substantive part of the Plaintiff's statement of claim but confirms that the deceased **Alfred David Miller's Estate** is administered by his wife, **Pei Raj Miller**.

13. The Defendant also informed court that the Plaintiff relies on a gift by the late Ratu Miller who is not even a registered owner of the deceased property as is evident from the annexed Title.
14. The Defendant is of the view that he has been wrongfully joined as a Defendant in this case and that he has no cause of action against him.
15. He further deposed in his affidavit that the prayers sought by the Plaintiff in his substantive Statement of Claim from paragraphs 13- 15 amounts to an abuse of process and duplicity and further, there is no evidence before this court that these were made with written prior consent of the late Alfred Miller.
16. The Defendant stated further that the Plaintiff's claim is statute barred and has no cause of action against the Defendant.

Analysis and Determination

17. The impending application for this court's determination is the striking out of the Plaintiff's Statement of Claim filed by the Defendant on the following grounds-
 - (a) *That it is scandalous, frivolous or vexatious; or*
 - (b) *That it is otherwise an abuse of the process of the court.*
18. For some reason or other, no reasonable cause of action is pleaded or ascertained against the Plaintiff. Still, I think it is appropriate for me to deal with and determine whether there is any reasonable cause of action or not.
19. Counsels representing the parties to this proceeding filed written submissions with case authorities in support of their case.

20. It is well established that jurisdiction to strike out claims and pleadings in civil proceedings should be very sparingly and only in exceptional cases should be exercised. Reference is made to the case of **Timber Resource Management Limited v. Minister for Information and others [2001] FJHC 219; HBC 212 of 2000 (25th July 2001)**.

21. The caution that should be exercised when, considering applications of this nature was highlighted in the following authorities:-

'Only in plain and obvious cases that recourse should be had to the summary process under O. 18 R. 18(1)' **Hubbuck v. Wilkinson [1889]1 QB 86 .**

22. *This rule can only be invoked when the claim is on the face of it is 'obviously unsustainable.'* **Attorney General of Duchy of Lancaster v. L.N.W.Ry Co [1892] 3 Ch 274.**

23. The Fiji Court of Appeal in **National NBF Finance (Fiji) Ltd v. Nemani Buli-Civil Appeal No 57 Of 1998** expressed the principles relating to the strike out applications as follows:

'The law with regard to striking out pleading is not in dispute. Apart from truly exceptional cases the approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be provided if a legal issue can be raised on the facts as pleaded then the Court will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention...'

No Reasonable Cause of Action

24. In *Razak v. Fiji Sugar Corporation Ltd* [2005] FJHC 720; HBC 208. 1998L (23rd February 2005) his Lordship Justice Gates (current Chief Justice) stated as follows:-

'A reasonable cause of action means a cause of action with 'some chance of success per Lord Pearson in Drummond-Jackson v. British Medical Association [1970] 1 All ER 1094 at p. 110 f. The power to strike out is a summary power ' which should be exercised only in plain and obvious cases', where the cause of action was 'plainly unsustainable'; Drummond- Jackson at p. 110b; A-G of the Duchy of Lancaster v. London and Nw Railway Company [1892] 3 Ch. 274 at p. 277.

25. The jurisdiction to **strike out** proceedings under Order 18 should be very cautiously exercised.

Following authorities would also throw light as to how the court should approach in exercising its jurisdiction, under the aforesaid provision.

In *Kampta Prasad v. Home Finance Company Ltd & Rajendra Singh* [2003] HBC 116 D/02S Jitoko J stated as follows;

'Where court finds strictly on the pleadings there is no reasonable cause of action, it does not deem it necessary to proceed to consider the merits or otherwise of whether the action is scandalous, frivolous or vexatious, or whether it is otherwise an abuse of the process of the court.'

In *Care Zeiss Stoffung v Rayner & Keder Ltd (No 3)* [1970] Ch. 506.

The power given to Court to strike out any pleading or any part of a pleading under this rule is not mandatory but permissive, and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending plea.

26. In this case the Plaintiff admitted in his affidavit in support as well as in the written submissions that he is the owner of the wooden & partly block house given to him as a gift by the previous registered proprietor, the late Ratu Miller.
27. He further stated that he has been residing on the property after the death of the late Ratu Miller and was responsible for the developing, improving, extending, maintenance and renovation of the said property until May, 2013.
28. Reference is made to annexure 'CM 1' in the Affidavit in Reply of the Defendant filed on 04th December, 2014 which confirms that Ratu Miller had a lease issued with effect from 11th September, 1964 for a period of 10 years, meaning the lease would have expired in 11th September, 1974. Subsequently, the lease was transferred to Alfred Miller.
29. It is also noted that the Plaintiff had lodged a caveat on this title on 28th February, 2012 which was cancelled and thereafter he again lodged a second caveat on 12th June, 2013.
30. The evidence submitted to the Court in terms of the affidavit evidence and the relevant annexures reveal that Plaintiff Jagat Singh does not own the said property of "Kavula". He does not have any Title evidence in his name or any nexus with the Defendant, since the Defendant's mother is the Administratrix of the Deceased Estate.

31. Surprisingly, for the reasons best known to the **Plaintiff**, he failed to annex any copy of the **Title to the property** to substantiate that he was the **part owner** of the property constructed on the said property.
32. The **Title** search carried out by the **Defendant** and filed with the affidavit of the Defendant as annexure '**CM1**' establishes the true owner to be **Alfred Miller** and not Ratu Miller.
33. The **Plaintiff** in his statement of claim at paragraph 1 clearly stated that the said property was **gifted** to him by the **late Ratu Miller** who was never the **registered proprietor** of the said property or the **Title** as is evident from the annexed **Title**.
34. The **Plaintiff's** affidavit in opposition further confirms that after the demise of the owner of the said property and Title, **Alfred David Miller**, a **Letters of Administration Grant** was given to the wife of the deceased namely, **Pei Raj Miller** on 05th January, 1999, a copy of the grant annexed to the affidavit as '**MC2**'.
35. The **Plaintiff's** Affidavit in opposition filed on 20th November, 2014 states '*that the late Ratu Miller and Alfred Miller had recognised the contributions the Plaintiff had done to the property financially and otherwise for the development, improvement, extension and renovation of the said property*'- referring to the deceased property which is presently being administered by the wife of the deceased Alfred Miller.
36. Rightfully, in law, if the **Plaintiff** had any claim whatsoever on the said property, he should have filed his compensation claims when the deceased Estate was

advertised in the local daily seeking a grant in the deceased Estate and/or subsequently commenced proceedings against the **administratrix** of the deceased Estate, once the grant was issued to her, and not commence proceedings against the Defendant. It is the Administratrix who now manages the Deceased Estate and not the Defendant. The Defendant being the son of the deceased may be a beneficiary of the Estate and entitled to an interest in the Estate, since the grant issued by the court is an Intestate grant.

37. With the above analysis in mind, I make reference to the following case authorities:

- (a) Master Tuilevuka (as he then was) having observed Justice Kirby’s findings in Len Lindon v the Commonwealth of Australia (No 2) S. 96/005 held in Sugar Festival Committee 2010 v Fiji Times Ltd (2012) FJHC 1404;HBC78.2010 (1 November 2012) that

“Court rarely strikes out a proceeding on this ground. It is only in exceptional cases where, on the pleaded facts, the plaintiff could not succeed as a matter of law or where the cause of action is so clearly untenable that it cannot possibly succeed will the court act to strike out a claim. If the facts as pleaded do raise legal questions of importance, or a triable issue of fact on which the rights of the parties depend, the court will not strike out the claim. His Lordship Mr. Justice Kirby in Len Lindon v The Commonwealth of Australia (No 2) S.96/05 summarized the applicable principles as follows:-

- i. It is a serious matter to deprive a person of access to the courts of law for it is there that the rule of law is upheld, including against Government and other powerful interests. This is why relief, whether under O26 r 18 or in inherent jurisdiction of the court, is rarely and sparingly provided.*

- ii. *To secure such relief, the party seeking it must show that it is clear, on the face of the opponent's documents, that the opponent lacks a reasonable cause of action...or is advancing a claim that is clearly frivolous or vexatious....*
- iii. *An opinion of the court that a case appears weak and such that it is unlikely to succeed is not alone; sufficient to warrant summary termination...even a weak case is entitled to the time of a court. Experience teaches that the concentration of attention, elaborated evidence and argument and extended time for reflection will sometimes turn an apparently unpromising cause into a successful judgment,*
- iv. *Summary relief of the kind provided for by O26 r 18, for absence of a reasonable cause of action, is not a substitute for proceeding by way of demurrer... if there is a serious legal question to be determined, it should ordinarily be determined at a trial for the proof of facts may sometimes assist the judicial mind to understand and apply the law that is invoked and to do so in circumstances more conducive to deciding a real case involving actual litigation rather than one determined on imagined or assumed facts,*
- v. *If, notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it had failed to put in proper form, a court will ordinarily allow that party to reframe its pleading... a question has arisen as to whether O 26 r 18 applies to part only of a pleading,*
- vi. *The guiding principles is, as stated in O 26 r 18 (2), doing what is just. If it is clear that proceedings within the concept of*

the pleading under scrutiny are doomed to fail, the court should dismiss the action to protect the defendant from being further troubled, to save the plaintiff from further costs and disappointment and to relieve the court of the burden of further wasted time which could be devoted to the determination of claims which have legal merit.”

(2) Justice Jitoko in “Prasad v Home Finance Company Ltd [2003] FJHC 322; HBC0116D.2002S (23 January 2003)” extensively discussed the issue of reasonable cause of action where his lordship held that;

“what constitutes a reasonable cause of action or defence does not mean that the Court should delve into whether the claim or defence is likely to succeed. As Lord Pearson stated in Drummond Jackson v. British Medical Association[1970] 1 WLR 688, [1970] 1 ALL ER 1094 CA at P.1101: No exact paraphrase can be given, but I think a reasonable cause of action means a cause of action with some chance of success, when (as required by r.19 (2)) only the allegations in the pleading are considered.....

The Courts view and many decisions on this matter is clear: As long as the statement of claim or the particulars (Davey v. Bentinck: (1893) 1 QB 185) disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak, and not likely to succeed is no ground for striking it out. (Supreme Court Practice 1985 Vol. 1 p.306).....

It is therefore very clear that in both the exercise of its powers under O.18 r.18 and under its inherent jurisdiction, a Court may only strike out a Statement of Claim and dismiss the action if in the words of Lord Blackburn, in Metropolitan Bank v. Pooley (1885) 10 App. (As 210 at p.221, if and when required by the very essence of justice to be done”.

38. The authorities discussed hereinabove confirms that the discretion of striking out pleadings should be exercised sparingly. The court is required to consider the right of the litigant to access to the proper and complete judicial process while keeping in mind the fact that to prevent the Defendant to get unnecessarily involve in an action which is plainly and obviously has no cause of action or abuse of process of the court.

39. Likewise, for the aforesaid reasons and discussions, I find that the Plaintiff does not have any cause of action in this matter against the Defendant and therefore the claim tantamount not only to an abuse of court process but is clearly frivolous or vexatious.

Frivolous and Vexatious

40. In this case the Plaintiff has reiterated the same statements from his Writ of Summons to that in his Affidavit in Support.

41. In fact there is no nexus between the deceased property and the Defendant rather seeks remedy from the Defendant.

42. The Plaintiff has further failed to establish the claim of his ownership of the deceased property as alleged by him.

43. Paragraphs 4-15 of the Plaintiff's claim pleads evidence and not facts and the same is reiterated in his affidavit in support and therefore Order 41 of the High Court Rules, 1988 provides for courts discretion to strike out any affidavits in any manner which is scandalous, irrelevant or otherwise oppressive.

44. Reference is made to the case of Peter Stinson v. Miles Johnson [1996] HBC 326 of 1994 wherein Scott, J stated-

'Where affidavit is in clear breach, Judge may exercise discretion to ignore defects or strike out'.

45. In *Prakash v Australia and New Zealand Banking Corporation Ltd* [2012] FJHC 1114; HBC 242 of 2010, the learned Master Amratunga (as was then) struck out an Amended Claim using Order 18 Rule 18 (1) (a) (b) (C) and (d) due to the poor pleadings and the cause of action was incomprehensible.

46. In the case of Attorney General of Duchy v British of Lancaster v L & N W Railways Co. (1892) 3 Ch 274 as being obviously unsustainable and an abuse of process:

'Connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation' - Castro v Murray [1875] 10 Ex. 213.

47. The Oxford Advanced Learners Dictionary of Current English 7th Edition defined 'frivolous' and 'vexatious' as follows-

Frivolous- *'having no useful or serious purpose'*

Vexatious- *'upsetting' or 'annoying'*

48. I find that the Plaintiff's claim lacks merit and doom to fail.

49. The law governing the considerations is well settled in the case of Hubbuck v. Wilkinson [1889] 1 Q.B. 86 at page 91; where Lindley MR said;-

'It is only in plain and obvious cases that recourse should be had to the summary process under order 18 Rule 18 (1) of the Rules of the High court. This was affirmed in Kemsley v. Foot & others [1952] A.C. 345.'

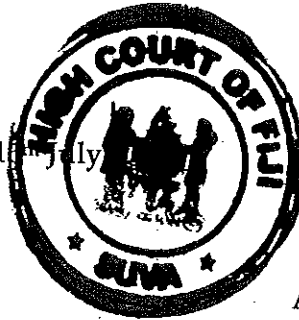
Conclusion


50. The Plaintiff's Statement of Claim filed against the Defendant on 4th June, 2014 discloses no reasonable cause of action as it is frivolous and vexatious and further an abuse of court process.

51. Accordingly, I make the following Orders:-

- (a) *The Plaintiff's statement of claim against the Defendant is hereby struck out;*
- (b) *The Plaintiff is hereby ordered to pay to the Defendant costs summarily assessed in the sum of \$500.*

DATED at Suva on 1st July




.....
VISHWA DATT SHARMA
Acting Master of High Court, Suva

cc. *Mr. Epeli Vula for the Plaintiff.*
Ms. Rakai for the Defendant/Applicant.