IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 182 of 2014

BETWEEN : **PETER SUDESH KUMAR SINGH** of Balawa Street, Lautoka.

PLAINTIFF

AND : **FIJI FOOTBALL ASSOCIATION** of Taramati Street, Vatuwaqa.

1st DEFENDANT

AND : **LAUTOKA FOOTBALL ASSOCIATION**

2nd DEFENDANT

(Ms.) Unaisi Baleilevuka for the Plaintiff
Mr. Samuel Kamlesh Ram for the Defendants

Date of Hearing : - 12th July 2016
Date of Ruling : - 11th November 2016

RULING

(A) INTRODUCTION

(1) The matter before me stems from the Inter-Parte Summons filed by the First and Second Defendants dated 18th November 2014, made pursuant to Order 18, rule 18 of the High Court Rules 1988 and the inherent jurisdiction of the court seeking the grant of the following Orders;

> *The Writ of Summons and Statement of Claim by the Plaintiff against the First and Second Defendant be struck out on the following grounds:-*
>
> *a) It discloses no reasonable cause of action*

b) *It is frivolous and/or vexatious and/or scandalous*
c) *It is otherwise an abuse of process of the Court*

d) *That this Court does not have jurisdiction to hear this matter.*

(2) The application for striking out is supported by an Affidavit sworn by one 'Rajesh Patel' the President of the "Fiji Football Association", the First Defendant.

(3) The application for striking out is strongly opposed by the Plaintiff. The Plaintiff filed an "Affidavit in Opposition" (sworn on 30th January 2015) opposing the application for Striking out. The Defendants did not file an "Affidavit in Reply".

(4) The Plaintiff and the Defendants were heard on the Summons. They made oral submissions to Court. In addition to oral submissions, Counsel for the Plaintiff and the Defendant filed a careful and comprehensive written submission for which I am most grateful.

(B) THE FACTUAL BACKGROUND

(1) What is this case about? What are the circumstances that give rise to the present application?

(2) On 06th November 2014, the Plaintiff issued a Writ against the Defendants seeking damages for alleged breach of Clause 34 of the Statute of Lautoka Football Association. The allegation is denied by the Defendants.

(3) To give the whole picture of the action, I can do no better than set out hereunder the averments/assertions of the pleadings.

The Plaintiff in his Statement of claim pleads *inter alia*;

Para 1. *THAT the Plaintiff is the Senior Vice President of the Lautoka Football Association and was elected in 2011 for the period of Four (4) years. The position as the Vice President will expire in 2015.*

2. *THAT the Defendant on the 18th day of October 2014, published a Notice convening the Annual General meeting of the Lautoka Football Association which is scheduled for 31st day of October 2014 at 5.30pm at the Sugar Cane Growers Hall.*

3. *THAT members and Executives officers of the Lautoka Football Club are all bound by the provisions of the Lautoka Football Association Statute which specifically sets out the laws regarding calling of Annual General Meeting.*

4. *THAT by virtue of Clause 34 of the Statute of Lautoka Football Association Statute, any Notice for Annual General Meeting shall be*

held after 14 days of Notice being published in the local paper or circulated to the club of Lautoka Football Association.

5. *THAT as per clause 34 specifically state:*

> *"The Annual General Meeting shall be held in the month of February each year. The Secretary shall give at least fourteen (14) clear days Notice to all Clubs of the Place, Date and Hour of such meeting by circulars and may also give such Notice in a local English language daily newspaper"*

6. *THAT the Plaintiff enquired from other Soccer Clubs in Lautoka and have been advised that no such Notice has been sent to them in accordance with Clause 34 of the Lautoka Football Association Statute.*

8. *THAT the Defendant action by advertising on the Fiji Sun newspaper on 18th day of October 2014 falls too short of the specific provision requiring 14 days Notice.*

9. *THAT the Defendant by advertising on the Fiji Sun newspaper on 18th day of October 2014 clearly demonstrates the wilful disregard to the Lautoka Football Association Statute and cannot arbitrarily overrule the said Statute.*

10. *THAT the Defendant in breach of Clause 34 of the Lautoka Football Association Statute held the Annual General Meeting of the Lautoka Football Association on the 31st day of October, 2014.*

Wherefore, the Plaintiff claims from the Defendants;

- *AN INJUNCTION RESTRAINING the 1st and 2nd Defendants, their servants and/or agents from taking any action/transaction on behalf of Lautoka Football Association pending further order of the Court.*
- *A DECLARATION that the Fiji Football Association Notice published in the Fiji Sun Newspaper on 18th day of October, 2014 is contrary to Clause 34 of Lautoka Football Association Statute.*
- *A DECLARATION that the Annual General Meeting of the Lautoka Football Association held on the 31st of October, 2014 is null and void.*
- *AN order be made directing the Defendant to call for another Annual General Meeting of the Lautoka Football Association by giving 14 days Notice in accordance with Clause 34 of the Lautoka Football Association Statute.*
- *FOR AN ORDER for damages for wrongful and wilful disregard to the provisions and clauses of the Lautoka Football Association statute.*

- ❖ *FOR AN ORDER that this matter be referred to Arbitration by Virtue of the Fiji Football Association Statute.*
- ❖ *Further and other relief as this Honourable Court thinks fit;*
- ❖ *Costs of this action of Solicitor/Client indemnity basis.*

(4) The Defendants in their Statement of Defence pleads *inter alia;*

Para 1. *The allegations made in paragraph 1 are denied and the Plaintiff is put to strict proof.*

2. *With regards to paragraph 2 the Defendants say that the circular was published on the 16th October 2014 and it was advertised in the Newspaper on the 18th October 2014.*

3. *The Defendants accept paragraph 3 but further say that the Statutes of Fiji Football Association and FIFA also bind members and respective officers of the Second Defendant.*

4. *The allegations in paragraph 4 are denied and the Plaintiff is put to strict proof.*

5. *The allegations in paragraph 5 are accepted and the Defendants says that the Secretary is given discretion to give such notice in the daily newspaper. The requirement to give notice in a local newspaper is not mandatory.*

6. *The allegations in paragraphs 6, 7, 8, 9, and 10 are denied and the Plaintiff is put to strict proof.*

7. *The Defendants further say that the Plaintiff's claim _*

   a. *disclosures no reasonable cause of action;*
   b. *is frivolous and/or vexatious and/or scandalous; and*
   c. *is an abuse of process of the Court.*

Wherefore, the Defendants pray;

i) *The Statement of Claim be dismissed.*

ii) *Costs*

(C) THE LAW

(1) Against this factual background, it is necessary to turn to the applicable law and the judicial thinking in relation to the principles governing **"striking-out"**. Rather than refer in detail to various authorities, I propose to set out hereunder important citations, which I take to be the principles in play.

(2) Provisions relating to striking out are contained in **Order 18, rule 18 of the High Court Rules.** Order 18, rule 18 of the High Court Rule reads;

> *18. – (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action or anything in any pleading or in the indorsement, 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.*

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

Footnote 18/19/3 of the 1988 Supreme Court Practice reads;

> *"It is only plain and obvious cases that recourse should be had to the summary process under this rule, per Lindley MR. in Hubbuck v Wilkinson(1899) 1 Q.B. 86, p91 Mayor, etc., of the City of London v Homer (1914) 111 L.T, 512, CA). See also Kemsley v Foot and Qrs (1952) 2KB. 34; (1951) 1 ALL ER, 331, CA. affirmed (195), AC. 345, H.L .The summary procedure under this rule can only be adopted when it can be clearly seen that a claim or answer is on the face of it obviously unsustainable " (Att – Gen of Duchy of Lancaster v L. & N.W. Ry Co (1892)3 Ch 274, CA). The summary remedy under this rule is only to be applied in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process or the case unarguable (see per Danckwerts and Salmon*

L.JJ in Nagle v Feliden(1966) 2. Q.B 633, pp 648, 651, applied in Drummond Jackson v British Medical Association(1970)1 WLR 688 (1970) 1 ALL ER 1094, (CA) .

Footnote 18/19/4 of the 1988 Supreme Court Practice reads;

"On an application to strike out the statement of claim and to dismiss the action, it is not permissible to try the action on affidavits when the facts and issues are in dispute ***(Wenlock v Moloney) [1965] 1. WLR 1238; [1965] 2 ALL ER 87, CA).***

It has been said that the Court will not permit a plaintiff to be "driven from the judgment seat" except where the cause of action is obviously bad and almost incontestably bad (per Fletcher Moulton L.J. in ***Dyson v Att. – Gen [1911] 1 KB 410 p. 419).***"

(4) In the case of **Electricity Corporation Ltd v Geotherm Energy Ltd [1992] 2 NZLR 641,** it was held;

"The jurisdiction to strike out a pleading for failure to disclose a cause of action is to be sparingly exercised and only in a clear case where the Court is satisfied that it has ***all the requisite material to reach a definite and certain conclusion****; the Plaintiff's case must be so clearly untenable that it could not possibly success and the Court would approach the application, assuming that all the allegations in the statement of claim were factually correct"*

(5) In the case of **National MBF Finance (Fiji) Ltd v Buli [2000] FJCA 28; ABU0057U.98S (6 JULY 2000),** it was held;

"The law with regard to striking out pleadings 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 proved. If a legal issue can be raised on the facts as pleaded then the courts 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. It follows that an application of this kind must be determined on the pleadings as they appear before the Court".

(6) In **Tawake v Barton Ltd** [2010] FJHC 14; **HBC 231 of 2008 (28 January 2010),** Master Tuilevuka (as he was then) summarised the law in this area as follows;

> *"The jurisdiction to strike out proceedings under Order 18 Rule 18 is guardedly exercised in exceptional cases only where, on the pleaded facts, the plaintiff could not succeed as a matter of law. It is not exercised where legal questions of importance are raised and where the cause of action must be so clearly untenable that they cannot possibly succeed (see* ***Attorney General –v- Shiu Prasad Halka 18 FLR 210*** *at 215, as per Justice Gould VP; see also* ***New Zealand Court of Appeal decision in Attorney –v- Prince Gardner [1998] 1 NZLR 262*** *at 267."*

(7) His Lordship Mr Justice Kirby in **Len Lindon –v- The Commonwealth of Australia (No. 2) S. 96/005** summarised the applicable principles as follows:-

a) *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 O 26 r 18 or in the inherent jurisdiction of the court, is rarely and sparingly provided.*

b) *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...*

c) *An opinion of the Court that a case appears weak and such that 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 arguments and extended time for reflection will sometimes turn an apparently unpromising cause into a successful judgment.*

d) *Summary relief of the kind provided for by O.26 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 in circumstances more conducive to deciding a real case involving actual litigants rather than one determined on imagined or assumed facts.*

e) *If, notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it has failed to put in proper form, a Court will ordinarily allow that party to reframe its pleading.*

f) *The guiding principle 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.*

(8) In **Paulo Malo Radrodro v Sione Hatu Tiakia & others, HBS 204 of 2005,** the Court stated that:

"The principles applicable to applications of this type have been considered by the Court on many occasions. Those principles include:

a) *A reasonable cause of action means a cause of action with some chance of success when only the allegations and pleadings are considered – Lord Pearson in* ***Drummond Jackson v British Medical Association*** *[1970] WLR 688.*

b) *Frivolous and vexation is said to mean cases which are obviously frivolous or vexations or obviously unsustainable – Lindley Li in* ***Attorney General of Duchy of Lancaster v L.N.W Ry[1892] 3 Ch 274 at 277.***

c) *It is only in plain and obvious cases that recourse would be had to the summary process under this rule – Lindley MR in* ***Hubbuck v Wilkinson*** *[1899] Q.B 86.*

d) *The purpose of the Courts jurisdiction to strike out pleading is twofold. Firstly is to protect its own processes and scarce resources from being abused by hopeless cases. Second and equally importantly, it is to ensure that it is a matter of justice; defendants are permitted to defend the claim fairly and not subjected to the expense inconvenience in defending an unclear or hopeless case.*

e) *"The first object of pleadings is to define and clarify with position the issues and questions which are in dispute between the parties and for determination by the Court. Fair and*

*proper notice of the case an opponent is required to meet must be properly stated in the pleadings so that the opposing parties can bring evidence on the issues disclosed – **ESSO Petroleum Company Limited v Southport Corporation [1956] A.C at 238" – James M Ah Koy v Native Land Trust Board & Others – Civil Action No. HBC 0546 of 2004.***

f) *A dismissal of proceedings "often be required by the very essence of justice to be done"..... – Lord Blackburn in **Metropolitan – Pooley [1885] 10 OPP Case 210 at 221**- so as to prevent parties being harassed and put to expense by frivolous, vexations or hopeless allegation – Lorton LJ in **Riches v Director of Public Prosecutions (1973) 1 WLR 1019 at 1027"***

g) *A reasonable cause of action means a cause of action with some chance of success when only the allegations and pleadings are considered – Lord Pearson in **Drummond Jackson v British Medical Association [1970] WLR 688.***

h) *Frivolous and vexation is said to mean cases which are obviously frivolous or vexations or obviously unsustainable – Lindley Li in **Attorney General of Duchy of Lancaster v L.N.W Ry[1892] 3 Ch 274 at 277.***

i) *It is only in plain and obvious cases that recourse would be had to the summary process under this rule – Lindley MR in **Hubbuck v Wilkinson [1899] Q.B 86.***

j) *The purpose of the Courts jurisdiction to strike out pleading is twofold. Firstly is to protect its own processes and scarce resources from being abused by hopeless cases. Second and equally importantly, it is to ensure that it is a matter of justice; defendants are permitted to defend the claim fairly and not subjected to the expense inconvenience in defending an unclear or hopeless case.*

k) *"The first object of pleadings is to define and clarify with position the issues and questions which are in dispute between the parties and for determination by the Court. Fair and proper notice of the case an opponent is required to meet must be properly stated in the pleadings so that the opposing parties can bring evidence on the issues disclosed – **ESSO Petroleum Company Limited v Southport Corporation [1956] A.C at 238" – James M Ah Koy v Native Land Trust Board & Others – Civil Action No. HBC 0546 of 2004.***

l) *A dismissal of proceedings "often be required by the very essence of justice to be done"..... – Lord Blackburn in* ***Metropolitan – Pooley [1885] 10 OPP Case 210 at 221-*** *so as to prevent parties being harassed and put to expense by frivolous, vexations or hopeless allegation – Lorton LJ in* ***Riches v Director of Public Prosecutions*** *(1973)1 WLR 1019 at 1027"*

(9) **In Halsbury's Laws of England ,Vol 37, page 322** the phrase **"abuse of process"** is described as follows:

> *"An abuse of process of the court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purposes, or, more simply, where the process is misused. In such a case, even if the pleading or endorsement does not offend any of the other specified grounds for striking out, the facts may show it constitutes an abuse of the process of the court, and on this ground the court may be justified in striking out the whole pleading or endorsement or any offending part of it. Even where a party strictly complies with the literal terms of the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of an abuse of process, and where subsequent events render what was originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court."*

(10) The phrase **"abuse of process"** is summarised in **Walton v Gardiner (1993) 177 CLR 378** as follows:

> *"Abuse of process includes instituting or maintaining proceedings that will clearly fail proceedings unjustifiably oppressive or vexatious in relation to the defendant, and generally any process that gives rise to unfairness"*

(11) In **Stephenson –v- Garret [1898] 1 Q.B. 677** it was held:

> *"It is an abuse of process of law for a suitor to litigate again over an identical question which has already been decided against him even though the matter is not strictly res judicata".*

(D) ANALYSIS

(1) Let me now turn to the application bearing in my mind the above mentioned legal principles and the factual background uppermost in my mind.

(2) Before I pass to consideration of submissions, let me record that counsel for the Plaintiff and the Defendant in their written submissions have done a fairly exhaustive study of judicial decisions and other authorities which they considered to be applicable.

I interpose to mention that I have given my mind to the oral submissions made by counsel, helpful written submissions and the judicial authorities referred to therein.

(3) The Defendants in this application are relying on **Order 18, Rule 18 of the High Court Rules of Fiji, 1988** and the inherent jurisdiction of the court. Order 18 rule 18 states that:

> *"18 (1)The Court may at any stage of the proceedings order to be struck out or amended any pleading or the 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 that the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be..."*

The Striking-out application by the defendants is made on the grounds that the Plaintiff's action;

(a) discloses no reasonable cause of action
(b) is scandalous, frivolous or vexatious: and
(c) is an abuse of the process of the court.

(4) With that in mind, let me now turn to the Defendants application for striking-out.

The allegations of the Statement of Claim are; (Reference is made to paragraph 01 -11 of the Statement of Claim)

- *THAT the Plaintiff is the Senior Vice President of the Lautoka Football Association and was elected in 2011 for the period of Four (4) years. The position as the Vice President will expire in 2015.*

- *THAT the Defendant on the 18th day of October 2014, published a Notice convening the Annual General meeting of the Lautoka Football Association which is scheduled for 31st day of October 2014 at 5.30pm at the Sugar Cane Growers Hall.*

- *THAT members and Executives officers of the Lautoka Football Club are all bound by the provisions of the Lautoka Football Association Statute which specifically sets out the laws regarding calling of Annual General Meeting.*

- *THAT by virtue of Clause 34 of the Statute of Lautoka Football Association Statute, any Notice for Annual General Meeting shall be held after 14 days of Notice being published in the local paper or circulated to the club of Lautoka Football Association.*

- *THAT as per clause 34 specifically state:*

  > *"The Annual General Meeting shall be held in the month of February each year. The Secretary shall give at least fourteen (14) clear days Notice to all Clubs of the Place, Date and Hour of such meeting by circulars and may also give such Notice in a local English language daily newspaper"*

- *THAT the Plaintiff enquired from other Soccer Clubs in Lautoka and have been advised that no such Notice has been sent to them in accordance with Clause 34 of the Lautoka Football Association Statute.*

- *THAT the Defendant action by advertising on the Fiji Sun newspaper on 18th day of October 2014 falls too short of the specific provision requiring 14 days Notice.*

- *THAT the Defendant by advertising on the Fiji Sun newspaper on 18th day of October 2014 clearly demonstrates the wilful disregard to the Lautoka Football Association Statute and cannot arbitrarily overrule the said Statute.*

- *THAT the Defendant in breach of Clause 34 of the Lautoka Football Association Statute held the Annual General Meeting of the Lautoka Football Association on the 31st day of October, 2014.*

In *adverso*, it is submitted on behalf of the Defendants that; (I focus on paragraphs 3.1, 3.2, 3.3, 3.4, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the written submissions of the Defendants)

Para *3.1* *That both the Defendants are unincorporated associations and therefore their statutes and constitution are of a contractual nature which binds the members of the associations;*

3.2 *The only clause complained of is a procedural clause in relation to time of notice. Even if there were a breach of such a clause it would be a trivial breach.*

3.3 *There is evidence to show that that the meeting was called and the Plaintiff was present. The notice convening meeting was declared to be valid and no objections were raised by the Plaintiff.*

3.4 *Further the notice convening meeting was served and advertised.*

6. *The Defendant held the annual general meeting. The minutes of this meeting are marked as exhibit "**RP-9**" to the Affidavit of Rajesh Patel sworn on the 18th of November 2014.*

7. *These minutes clearly show that the meeting was in order and that the Plaintiff was present at the meeting.*

8. *In addition, the notice which was served on the members of the Second Defendant is marked as exhibit "TP-8" to the same affidavit.*

9. *The Plaintiff's only cause of action has no merits whatsoever. It claims that a breach of a procedural clause in the constitution of the Second Defendant is sufficient to declare an entire meeting which was approved by everyone to be invalid. This is similar to the situation raised in the case of **Rarawai & Penang Cane Producer's Association v Vinod Naidu & Ors Lautoka High Court Civil Action no. HBC 72 of 2015.***

10. *The Second Defendant is a member association of the First Defendant. It is bound by the Statute of the First Defendant. The statutes of the First Defendant is marked with exhibit "RP-1" and the statutes of the Second Defendant is marked as exhibit "RP-2".*

11. *The case of **Khan v Puma Olymipans, ex pate Kumar [2004] FJHC 438 HNJ0001.2004L** dealt with a dispute which arose within a sporting association. The Plaintiff (Applicant) sought leave to judicially review a decision made by the Fiji Football Association. The High Court, in determining the application for leave to file judicial review, said that the association was bound by its constitution and rules and:-*

> *"The relationship between the parties would appear to be one of a contract such contract being created when the clubs become members of the respondent ..."*

12. *Therefore, the complaint of the Plaintiffs would be in breach of contract. The application in* ***Khan v Puma Olympians, ex pate Kumar [2004] FJHC 438 HNJ0001.2004L*** *was dismissed on the basis that the Applicant had to exhaust all its remedies available within the constitution (the contract documents) before they could seek intervention from the court.*

13. ***In Rarawai & Penang Cane Producer's Association v Vinod Naidu & Ors*** *(supra) at paragraph 35, 16, and 37 the honourable Judge says:-*

> *"35. In view of Section 6.15 of the RPCPA constitution, I would say that it is undisputable that any dispute relating to the affairs of the association should first be referred to the "Board" of association. The sub sections provided for the procedure to be adopted where there is a dispute among the members of the association. It is very clear that the Plaintiffs have not resorted to the dispute resolution procedure within the association. The Section 6.15 provides provisions for simple and amicable way of dispute resolution within the association which has not been followed by the Plaintiffs.*
>
> *36. The Plaintiffs had an alternative remedy under the purview of the above provisions rather than bringing an action against the Defendant in this nature.*
>
> *37. Therefore, on the foregoing reasons I align with the argument advanced by the Defendant and hold that the Plaintiffs have not shown a prima facie case with sufficient material evidence to establish the averments prayed for, against the Defendant to allow the injunction of for the decision made on 26 May 2015 to be changed".*

14. *Article 67 of the statutes of the First Defendant (see exhibit "RP-1"). This provides as follows:-*

> *"67.1 Fiji FA, its Members, Players, Officials and match and player' agents will not take any dispute to Ordinary Courts unless specifically provided for in these Statutes and FIFA regulations. Any disagreement shall be submitted to the jurisdiction of FIFA, or OFC or Fiji FA.*
>
> *67.2 Fiji FA shall have jurisdiction on internal national disputes, i.e. disputes between parties belonging to Fiji FA, FIFA shall have jurisdiction on international disputes, i.e. disputes between parties belonging to different Associations and/or Confederations".*

15. *The constitution of the Second Defendant under Article 4 very clearly provides that it is subject to the constitution of the First Defendant. Therefore, the Second Defendant is also bound by the provisions of the constitution of the First Defendant.*

Ms. Baleilevuka, Counsel for the Plaintiff responds by pointing to the fact that the Lautoka Football Association and its members are bound by the Statute of Lautoka Football Association.

(5) **Striking-Out**

As noted above, the Courts rarely will strike out a proceeding. 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 courts act to strike out a claim.

In this regard, I am inclined to be guided by the decision of the New Zealand Court of Appeal in **"Lucas & Sons (Nelson Mail) v O. Brien** (1978) 2 N.Z.L.R 289 as being a convenient summary of the correct approach to the application before the court. It was held;

> *"The Court must exercise .....jurisdiction to strike out pleadings sparingly and with great care to ensure that a Plaintiff was not improperly deprived of the opportunity for a trial of his case.* ***However, that did not mean that the jurisdiction was reserved for the plain and obvious case; it could be exercised even when extensive argument was necessary to demonstrate that the Plaintiff's case was so clearly untenable that it could not possibly succeed."***
>
> (Emphasis added)

Where, a claim to strike out depends upon the decision of one or more difficult points of law, the court should normally refuse to entertain such a claim to strike out. But, if in a particular case the court is satisfied that the decision of the point of law at that stage will either avoid the necessity for trial altogether or render the trial substantially easier and cheaper ; the court can properly determine such difficult point of law on the striking-out application. In considering whether or not to decide the difficult question of law, the court can and should take into account whether the point of law is of such a kind that it can properly be determined on the bare facts pleaded or whether it would not be better determined at the trial in light of the actual facts of the case; **See** ***Williams & Humber Ltd v H Trade markers (jersey) Ltd (1986) 1 All ER 129 per Lord Templeman and Lord Mackay.***

Returning back to the instant case, in my view, the facts pleaded in the Statement of Claim are appropriate to determine a question of law.

(6) A striking-out application proceeds on the assumption that the facts pleaded in the Statement of Claim are true. That is so even although they are not or may not be admitted. However, it is permissible to refer to Affidavit evidence where the evidence is undisputed and is not inconsistent with the pleadings.

Attorney-General v McVeagh [1995] 1 NZLR 558 at 566. The Court said:

> *The Court is entitled to receive Affidavit evidence on a striking-out application, and will do so in a proper case. It will not attempt to resolve genuinely disputed issues of fact and therefore will generally limit evidence to that which is undisputed. Normally it will not consider evidence inconsistent with the pleading, for a striking-out application is dealt with on the footing that the pleaded facts can be proved; see* ***Electricity Corporation Ltd v Geotherm Energy Ltd [1992] 2 NZLR 641, 645-646, Southern Ocean Trawlers Ltd v Director-General of Agriculture and Fisheries [1993] 2 NZLR 53*** *at pp 62-63, per Cooke P. But there may be a case where an essential factual allegation is so demonstrably contrary to indisputable fact that the matter ought not to be allowed to proceed further.*

(7) Returning back to the case before, it is undisputed and not inconsistent with the pleadings that;

- The members and officials of the Lautoka Football Association are bound by the provisions of the Lautoka Football Association Statute (Annexure RP-2) which specifically sets out the laws regarding calling of Annual General Meeting.

- The Lautoka Football Association (2nd Defendant) is affiliated to Fiji Football Association (1st Defendant) and shall be subject to its Constitution (Annexure RP-1).

Therefore, it is permissible to refer to Affidavit evidence.

The Plaintiff is an official of the Lautoka Football Association, which itself is a member of the Fiji Football Association.

As I said earlier, the Lautoka Football Association is affiliated to Fiji Football Association and is subject to its Constitution.

Article (4) of the Lautoka Football Association Statute provides; (Annexure RP-2)

> 4. *The Association shall be affiliated to Fiji Football Association (FFA) and shall be subject to its Constitution and Rules or any modification thereof for the time being in force.*

Article (67) of the Fiji Football Association Statute provides; (Annexure RP-1)

> **Article 67 Jurisdiction**
>
> 67.1 *Fiji FA, its Members, Players, Officials and match and player' agents will not take any dispute to Ordinary Courts unless specifically provided for in these Statutes and FIFA regulations. Any disagreement shall be submitted to the jurisdiction of FIFA, or OFC or Fiji FA.*
>
> 67.2 *Fiji FA shall have jurisdiction on internal national disputes, i.e. disputes between parties belonging to Fiji FA. FIFA shall have jurisdiction on international disputes, i.e. disputes between parties belonging to different Associations and/or Confederations.*

The language of Article 4 and 67 of the Statute is unmistakeably clear to me.

It would seem to follow there from that the members and officials of Lautoka Football Association, the Plaintiff and the Second Defendant are bound by the Statute and rule of the Fiji Football Association.

The relationship between the parties would appeared to be one of a contract such contract being created when the District Clubs become members of the Fiji Football Association and similarly the contract between the Plaintiff and the Lautoka Football Association when the Plaintiff agreed to become an official of Lautoka Football Association. Therefore, the Plaintiff's claim is clearly one of private and not a public nature.

One word more, it is clear that there are available avenues of dispute resolution which have not been availed by the Plaintiff.

The Plaintiff's claim is not recognised by public law and therefore unenforceable by an action against the Defendants in this nature. Therefore, the claim is bound to fail. The claim does not disclose a reasonable cause of action. Because the Plaintiff's claim is clearly one of private and therefore the Plaintiff is not entitled to obtain from the Court a remedy against the Defendants. It is therefore frivolous, vexatious and abuse of process of the Court.

Plaintiff Must Plead a Reasonable Cause of Action

In relation to the ground of "no reasonable cause of action", paragraph 18/19//10 of the White Book states –

> *".... A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered (per Lord Pearson in Drummond-Jackson v British Medical Association [1970] WLR 688; [1970] 1 All ER 1094, CA."*

What is a "Cause of Action"?

The High Court in **Dean v Shah [2012] FJHC 1344**, defined a cause of action in the following way –

> *"A cause of action is said to be a set of facts that gives rise to an enforceable claim by a Plaintiff. In **Read v Brown 22 QBD 128** Esther M.R. States that a cause of action comprises every fact which if traversed the Plaintiff must prove in order to obtain Judgement. Lord Diplock in **Letang v Cooper (1965) 1 QB 232 at 242-243** states that a cause of action:*
>
> *".... Is simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person" (our emphasis)*

The High Court in **Dominion Insurance Ltd v Pacific Building Solutions [2015] FJHC 633**, defined a cause of action to mean –

> *".... Any facts or series of facts which are complete in themselves to found a claim for relief. (Obi Okoye, Essays on Civil Proceedings, page 224 Art 110, cited in **Shell Petroleum Development Company Nigeria Ltd & Anr v X.M. Federal Limited & Anr S.C. 95/2003).**"*

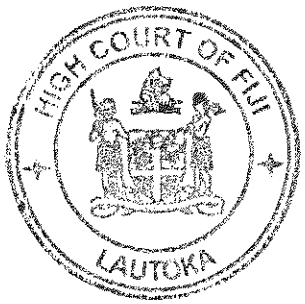
It is apparent from the authorities that the term "cause of action" means allegations of material facts which, if proved, will provide a complete foundation for a recognised type of claim. It is submitted that there are, therefore, two aspects to consider: **first, does the law recognise the Plaintiff's claim as one as an enforceable one, and if so, secondly do the material facts alleged if proved, give rise to a right to a remedy.**

As I said earlier, the Public law does not recognise the Plaintiff's claim as one as an enforceable one. Thus, the claim is bound to fail as a result.

(E) FINAL ORDERS

(1) The Plaintiff's Writ of Summons and the Statement of Claim is struck out.

(2) The Plaintiff to pay costs fixed summarily in the sum of $1500.00 to the Defendants within 14 days hereof.



11/11/2016.

Jude Nanayakkara
Master .

At Lautoka
11th November 2016.