

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 311 of 2008

BETWEEN : **NASIM ALI**
PLAINTIFF

AND : **THE CHIEF EXECUTIVE OFFICER, PUBLIC WORKS**
DEPARTMENT
1ST DEFENDANT

AND : **SUVA CITY COUNCIL**
2ND DEFENDANT

AND : **THE ATTORNEY-GENERAL OF FIJI**
3RD DEFENDANT

BEFORE : **Hon. Justice Kamal Kumar**

COUNSEL : Mr P. Niubalavu and Ms P. Preetika for the Plaintiffs
Ms L. Ravoce for the 1st and 3rd Defendants
Ms M. Vasiti for the 2nd Defendant

DATE OF HEARING : 3rd June 2015

DATE OF JUDGMENT : 14 April 2016

RULING
(Application to Strike Out Plaintiff's Claim)

1.0 Introduction

1.1 On 3 and 18 March 2015, the Second and First and Third Defendants respectively filed Application by way of Summons to strike out Plaintiff's claim against the Defendants under Order 18 Rule 18 of High Court Rules and inherent jurisdiction of this Court.

1.2 On 24 March 2015, parties were directed to file Affidavits and Submissions and the Applications were adjourned to 3 June 2015 at 11.30am for hearing.

1.3 Following Affidavits were filed by the parties:-

For Second Defendant

(i) Affidavit of Vuli Tukana in Support of the Application sworn and filed on 3rd March 2015 ("**Tukani's 1st Affidavit**")

(ii) Affidavit of Vuli Tukana in Reply sworn on 1st May 2015 and filed on 5 May 2015 ("**Tukana's 2nd Affidavit**")

For First and Third Defendants

Affidavit of Ajay Singh in Response sworn and filed on 30 April 2015 ("**Singh's Affidavit**")

For Plaintiff

Affidavit of Sangeeta Devi in Opposition sworn and filed on 14 April 2015 ("**Devi's Affidavit**").

1.4 Parties filed their Submissions and on 3rd June 2015, made Oral Submissions.

2.0 Chronology of Events

2.1 On 12 September 2008, Plaintiff filed Writ of Summons and Statement of Claim against the Defendants claiming special and general damages for injuries sustained by him on or about 25 April 2008, when he fell into a manhole at Grantham Road, Suva.

2.2 On 19 September 2008, Defendants filed Acknowledgment of Service and Notice of Intention to Defend.

2.3 On 30 October 2008, First and Third Defendants filed Statement of Defense.

- 2.4 On 19 November 2008, Plaintiff filed Reply to Defense of First and Third Defendants.
- 2.5 On 18 December 2008, Judgment in Default of defence was entered against the Second Defendant.
- 2.6 On 20 January 2009, Second Defendant filed Application to set aside default judgment.
- 2.7 The setting aside application was called on 17 February 2009, before Mr J. Udit, the then Master of the High Court and thereafter the Application was adjourned on various occasions by the Court.
- 2.8 **It is interesting to note that there is no court record or Order in respect to the setting aside application.**
- 2.9 Surprisingly, on 7 May 2010, being returnable date for Summons for Directions the then Master on the face of pending setting aside default judgment application by Second Defendant directed Second Defendant to file and serve Statement of Defense.
- 2.10 It appears from Court file that the setting aside application was not brought to the Master's attention on 7 May 2010.
- 2.11 On 3 April 2010, First and Third Defendants filed Amended Statement of Defense, after close of pleadings.
- 2.12 I also note that First and Third Defendants filed Amended Statement of Defense after the close of pleadings without leave of the Court as the High Court Rules clearly provides, that after close of pleadings the parties can only amend pleadings with courts leave. Order 20 Rule 3-(1) of High Court Rules provides:-
- “3.-(1) A party may, without the leave of the Court, amend any pleading of his once at any time before the pleadings are deemed to be closed and, where he does so, he must serve the amended pleading on the opposite party.”***
- 2.13 There is no Court record that shows that the Court granted First and Third Defendants Leave to amend their Statement of Defense.

- 2.14 On 20 May 2010, Second Defendant filed Statement of Defense and on 19 July 2010, Plaintiff filed Reply to Second Defendant's Statement of Defense.
- 2.15 On 9 September 2010, the then Master Ordered parties to file List of Documents, attend to Pre-Trial Conference ("**PTC**") and adjourned the matter to 20 October 2010, for mention but was later, adjourned to 16 November 2010.
- 2.16 After several adjournments parties filed their Affidavit Verifying List of Documents.
- 2.17 On 14 March 2011, parties were directed to attend to PTC and finalise PTC Minutes and this matter was adjourned to 4 May 2011, for mention.
- 2.18 This matter was next called on 17 May 2011, when Counsel for First and Third Defendants sought time to respond to draft PTC Minutes as such this matter was adjourned to 4 July 2011, and then adjourned for same reason for this matter to take normal course.
- 2.19 On 29 August 2011, Plaintiff filed PTC Minutes.
- 2.20 On 1st September 2011, Second Defendant filed application by way of Summons to strike out Plaintiff's claim on the ground that the claim is scandalous, frivolous, vexatious and abuse of court process.
- 2.21 On 16 September 2011, Plaintiff filed Summons to enter action for Trial and on 23 September 2011, filed Copy Pleadings.
- 2.22 Second Defendant's Application to strike out the claim was heard by his Lordship Justice Amaratunga on 16 March 2012, when he was sitting as Master of the High Court.
- 2.23 On 1 July 2013, decision in respect to Second Defendant's Striking Out Application was delivered whereby the Application was dismissed with costs.
- 2.24 On 4 July 2013, Plaintiff filed fresh Summons to Enter Action for Trial and on 18 September 2013, this matter was referred to Civil Registry to refer it to a Judge.
- 2.25 On 22 November 2013, this matter was adjourned to 26, 27 and 28 August 2014, for trial.

- 2.26 On 26 August 2014, Counsel for the First and Third Defendants informed Court that the affairs of First Defendant has been taken over by Fiji Roads Authority (“FRA”) pursuant to Fiji Roads Authority Decree 2012 (“FRAD”) and as such Counsel needed to liaise with FRA to determine whether FRA wished to engage another Counsel.
- 2.27 The trial dates were vacated and this matter was adjourned to 12 September 2014, for review.
- 2.28 On 12 September 2014, Counsel for First and Third Defendants informed the Court that Office of the Attorney-General of Fiji will represent FRA and as such this matter was adjourned to 31 October 2014, for Review.
- 2.29 Defendants then filed Application to strike out Plaintiff’s claim which is referred to at paragraph 1.1 of this Ruling.

3.0 Application to Strike Out

- 3.1 Both Applications are made under Order 18 Rule 18 (1)(a)(b)(d) of the High Court Rules and inherent jurisdiction of this Court.
- 3.2 Since there are two applications I will state the law and legal principles that are relevant before I consider the applications separately.
- 3.3 Order 18 Rule 18(1)(a)(b) and (d) and (2) of High Court Rules provide as follows:-

“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.

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

3.4 It is well established that jurisdiction to strike out claim or pleadings should be used very sparingly and only in exceptional case: **Timber Resource Management Limited v. Minister for Information and Others** [2001] FJHC 219; HBC 212/2000 (25 July 2001).

3.5 In **National MBF Finance (Fiji) Ltd v. Buli** Civil Appeal No. 57 of 1998 (6 July 2000) the Court stated as follows:-

“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...”

3.6 In **Razak v. Fiji Sugar Corporation Ltd** [2005] FJHC 720; HBC 208. 1998L (23 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.1101f. 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.*

Scandalous, Frivolous or Vexatious

Scandalous

3.7 At paragraph 18/19/14 of Supreme Court Practice 1993 Vol. 1 (White Book) it is stated:-

“The Court has a general jurisdiction to expunge scandalous matter in ay record or proceeding (even in bills of costs, Re Miller (1884) 54 L.J.Ch.205). As to scandal in affidavits, see O.41,r.6.

Allegations of dishonesty and outrageous conduct, etc., are not scandalous, if relevant to the issue (Everett v. Prythergch (1841) 12 Sim. 363; Rubery v. Grant (1872) L.R. 13 Eq. 443). “The mere fact that these paragraphs state a scandalous fact does not make them scandalous” (per Brett L.J. in Millington v. Loring (1881) 6 Q.B.D. 190, p.196). But if

degrading charges be made which are irrelevant, or if, though the charge be relevant, unnecessary details are given, the pleading becomes scandalous (Blake v. Albion Assurance Society (1876) 45 L.J.C.P. 663).

“The sole question is whether the matter alleged to be scandalous would be admissible in evidence to show the truth of any allegation in the pleading which is material with reference to the relief prayed” (per Selborne L.C. in Christie v. Christie (1873) L.R. 9 Ch.App. 499, p.503; and see Cashin v. Cradock (1877) 3 Ch.D. 376; Whitney v. Moignard (1890) 24 Q.B.D. 630).”

- 3.8 For the claim to be scandalous the Applicants must prove that the allegations and facts pleaded are defamatory, or would be disgraceful if the facts are not relevant to issues before the Court.

Frivolous or Vexatious

- 3.9 At paragraph 18/19/15 of Supreme Court Practice 1993, Vol. 1 (White Book) it is stated:-

*“By these words are meant cases which are obviously frivolous or vexatious or obviously unsustainable per Lindley LJ in **Attorney General of Duchy of Lancaster v. L. & N.W.Ry** [1892] 3 Ch. 274;.... The Pleading must be “so clearly frivolous that to put it forward would be an abuse of the Court” (per **Juene P. in Young v. Halloway** [1895] P 87, p.90;”*

- 3.10 The Oxford Advanced Learners Dictionary of Current English 7th Edition defines “frivolous” and “vexatious” as:-

frivolous: “having no useful or serious purpose”

vexatious: “upsetting” or “annoying”

Abuse of Process

- 3.11 It is well settled that this Court has inherent jurisdiction to strike out the claim or pleadings for abuse of Court process as well as under Order 18 Rule 18(1)(d) of High Court Rules (paragraph 18/19/18 of Supreme Court Practice 1993 Vol. 1).

- 3.12 At paragraphs 18/19/17 and 18/19/18 of Supreme Court Practice 1993 (White Book) Vol 1 it is stated as follows:-

“Abuse of Process of the Court” - Para. (1)(d) confers upon the Court in express terms powers which the Court has hitherto exercised under inherent jurisdiction where there appeared to be “an abuse of the process of the Court.” This term connotes that the process of the Court must be

*used bona fide and properly and must not be abused. The Court will prevent the 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 (see **Castro v. Murray** (1875) 10 P.59, per Bowen L.J. p.63). See also “Inherent jurisdiction”, para.18/19/18.”*

*“Inherent Jurisdiction - Apart from all rules and Orders and notwithstanding the addition of para.(1)(d) the Court has an inherent jurisdiction to stay all proceedings before it which are obviously frivolous or vexatious or an abuse of its process (see **Reichel v. Magrath** (1889) 14 App.Cas.665) (para 18/19/18).”*

4.0 Application to Strike Out Claim by the Second Defendant

- 4.1 Second Defendant submits that Plaintiff’s claim against it be struck on the ground that claim is “scandalous, frivolous and vexatious” and “abuse of process”.
- 4.2 Plaintiff’s claim is for personal injuries received by him when he fell into a manhole on a pavement/footpath along Grantham Road.
- 4.3 It is Second Defendant’s responsibility to provide evidence and prove that Plaintiff’s claim is defamatory or disgraceful because, the facts pleaded does not in any way defame the Second Defendant or is disgraceful.
- 4.4 The facts pleaded by the Plaintiff in the Statement of Claim are not at all defamatory or disgraceful and facts pleaded are totally relevant to the issues that will need to be determined by this Court.
- 4.5 I therefore, hold that Plaintiff’s claim against Second Defendant is not scandalous.
- 4.6 Second Defendant has also failed to address the Court, as to on what basis it is claiming that the Plaintiff’s claim is frivolous or vexatious.
- 4.7 Before I proceed further to determine whether the Plaintiff’s claim is an abuse of process I will address Plaintiff’s Submission, that the Second Defendant’s Application is an abuse of process on the ground that Second Defendant had on 1st September 2011, filed Application to Strike Out Plaintiff’s claim and that

Application was determined and struck out by his Lordship Justice Amaratunga on 1 July 2013.

- 4.8 It is well settled principle that when a party intends to re-litigate issue that has been already determined by the court whether it be interlocutory or otherwise it would be an abuse of court process.
- 4.9 In **Fidelitas Shipping Co. Ltd v. V/O Export Chleb** [1966] pages QB642 and 630 at paragraphs C to G and paragraph A to B (page 643) his Lordship Diplock L.J. stated as follows:-

“...Yet I take it to be too clear to need citation of authority that the parties to the suit are bound by the determination of the issue. They cannot subsequently in the same suit advance argument or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is by way of appeal from the interlocutory judgment and, where appropriate, an application to the appellate court to adduce further evidence: but such application will only be granted if the appellate court is satisfied that the fresh evidence sought to be adduced could not have been available at the original hearing of the issue even if the party seeking to adduce it had exercised due diligence.

This is but an example of a specific application of the general rule of public policy, nemo debet bis vexari pro una et eadem causa. The determination of the issues between the parties gives rise to what I ventured to call in Thoday v. Thoday an “issue estoppel.” It operates in subsequent suits between the same parties in which the same issue arises. A fortiori it operates in any subsequent proceedings in the same suit in which the issue has been determined. The principle was expressed as long ago as 1843 in the words of Wigram V.C in Henderson v. Henderson which were expressly approved by the Judicial Committee of the Privy Council in Hoystead v. Commissioner of Taxation. I would not seek to better them: “I believe I state the rule of the court correctly when I say, that where a given matter becomes the subject of litigation in,

and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.”

- 4.10 The current Application before this Court, is made because of the provision of FRAD 2012, pursuant to which FRA took over the works relating to construction, maintenance and development of roads in Fiji from Department of National Roads and Municipal Councils.
- 4.11 Therefore the issue to be determined by this Court is not entirely the same as that was determined by his Lordship Justice Amaratunga on the ground that the FRAD was not promulgated when his Lordship dealt with the Second Defendant’s striking out application.
- 4.12 The issue that needs to be determined is that since the Second Defendant’s liability is taken over by FRA is the liability then caught by s38A of the FRAD as amended.
- 4.13 At this point I wish to state that when any section of the Principal Act or Decree is amended or a new section is added parties and their Solicitors/Counsel should refer to that section as section of the Principal Act or Decree and not as sections of Act or Decree that amends Principal Act or Decree.

For example:-

- (i) *The First and Third Defendants at paragraph 4.7 and 4.8 of their Submissions state as follows:-*

*“4.7 Notwithstanding the above, the claim against the Defendants is barred by virtue of section **38A of the Amendment Decree** which states*

in no uncertain terms that an action cannot be brought against the Defendants for act or omission done in the exercise or non-exercise of its duties.

*4.8 Further, the provision of section **38A of the Amendment Decree** precludes the Court from granting the relief that the Plaintiff seeks as the provision protects the FRA and its agents from any liabilities.”*

(ii) *The Second Defendant at paragraph 20 of its submission states as follows:-*

*“20. This responsibility is now vested in the Fiji Roads Authority which accepts the same. By accepting this responsibility the Fiji Roads Authority is able to claim indemnification **pursuant to Section 8 of the Amendment Decree.**”*

4.14 It can be noted from paragraph 4.7 of First and Third Defendants Submissions that they state “...Defendant is barred by virtue of s38A of the Amendment Decree...” or at paragraph 4.8 they state that “Further, the provision of 38A of the Amendment Decree...”.

4.15 It is interesting to note, that Fiji Roads Authority (Amendment) Decree 2012 (Decree No. 46 of 2012) has only 8 sections and does not have s38A.

4.16 In reference to paragraph 20 of Second Defendant’s Submission Section 8 of Fiji Road Authority (Amendment) Decree 2012 (Decree No. 46 of 2012) does not provide indemnity to FRA but inserts section 38A (indemnity provision) to the Principal Decree after section 38.

4.17 Therefore, parties when referring to section 38A (the indemnity provision), should refer to it as s38A of the FRAD 2012.

4.18 Since his Lordship Justice Amaratunga dealt with the issues prior to enactment of FRAD this Court will only consider as to whether Plaintiff’s claim against the Second Defendant be struck out because of the provisions of FRAD.

4.19 The principal objective of FRAD is provided in section 3 as follows:-

“3. The principal objectives of this Decree are to:-

(a) give effect to the re-organisation of the Department of Roads; and

(b) make provision for the effective management and administration of the road systems.”

4.20 The function of FRA is provided at section 6 of FRAD as follows:-

- “6. The Authority shall be responsible for all matters pertaining to construction, maintenance and development of roads in Fiji, including but not limited to the following:-**
- (a) managing (land provision, network planning, designing, constructing, maintaining, renewing and generally managing the use of) all roads;**
 - (b) traffic management (including road design, traffic signs and markings);**
 - (c) road safety (relating to provision and management of the road);**
 - (d) the enforcement of vehicle load limits to avoid road damage (especially logging trucks and cane trucks);**
 - (e) the issuing of over-width, height and lengths limits;**
 - (f) Planning and management of Road Survey and Design;**
 - (g) Provide advice, programme management services, design, supervision services for Capital Works Programme; and**
 - (h) For such other matters, as the Minister may direct.”**

4.21 Road is defined in section 2 of FRAD as follows:-

““road” or “roads” means all land and civil infrastructure constructed by any municipal council or government body, or any other body authorised by a municipal council or government body that is used as or facilitates a public right of passage for the movement of vehicles and pedestrians, including but not limited to—

- (a) the vehicle pavement from curb to curb, or where there is no curb, the roadside verges, drains and curbs;**
- (b) road signs, road marker posts and other markings, including pedestrian crossings;**
- (c) traffic islands;**
- (d) bridges and culverts;**
- (e) footpaths and pavements adjacent to a vehicle pavement;**
- (f) street lights and traffic lights;**
- (h) parking meters;**
- (i) jetties; and**
- (j) all national roads, municipal roads, and such other public roads as may be determined by the Authority.”**

4.22 Section 18(1)(2) of FRAD as amended provide as follows:-

“18-(1) As from the commencement of this Decree, all assets, interest, rights, privileges, liabilities and obligations of -

- (a) the State in relation to the Department; and**

(b) municipal councils in relation to municipal roads, shall immediately be transferred to and shall vest in the Authority without conveyance, assignment or transfer.

(2) Every right and liability vested in subsection (1) in the Authority may, on and after the commencement of this Decree, be sued on, recovered or enforced by or against the Authority in its own name and it shall not be necessary for the Authority, the State or any municipal council to give notice to any person whose right or liability is affected by the vesting.”

4.23 Second Defendant relies on s38A of FRAD which section was inserted pursuant to s8 of Fiji Roads Authority (Amended) Decree 2012 (Decree No. 46 of 2012) Section 38A of FRAD provides as follows:-

“38A.—(1) Neither the Committee, the Change Manager, the Authority nor any officer, servant, workman or labourer employed or engaged by the Committee, the Change Manager or the Authority shall be liable for any action, suit, proceeding, dispute or challenge in any Court, Tribunal or any other adjudicating body for or in respect of any act or omission done in the exercise or non-exercise of the powers conferred by or duties prescribed under the provisions of this Decree or any other written law.

(2) Notwithstanding anything contained in subsection (1), the Minister may on an ex-gratia basis grant compensation to any person who has suffered any injury or damage to property, caused either directly or indirectly by any act or omission done in the exercise or non-exercise of the powers conferred by or duties prescribed under the provisions of this Decree or any other written law.” 4.25 **I uphold Plaintiff’s Submission that s38A of FRAD only applies to FRA its “officers, workman or labourers” does not have any retrospective effect.”**

4.24 The officers, servants and workers of Second Defendant who were involved in maintenance and construction of roads at the material time were not officers, workers and servants of FRA and such Second Defendant cannot claim the indemnity provided in s38A FRAD for their acts or omissions.

4.25 If the Government of the day, had any intention to relieve the Defendants or FRA from any liability because of pending litigation against the Defendants then it would provide for that in the principal Decree or when the Decree was

amended on two occasions as was the case when the legislature enacted the Essential National Industry Employment Decree 2011 (“**ENI**”).

4.26 Pursuant to Section 30(2) of ENI all pending legal proceedings under or involving Employment Relations Promulgation 2007 were to be terminated.

4.27 There is no such provision in FRAD which is similar to terms of s30(2) of ENI.

4.28 In view of what I stated above I hold that s38A of the FRAD does not indemnify the Defendants and their officers, workers or servants from any liability due to their acts or omissions. Their acts or omissions also does not indemnify FRA in any respect.

4.29 Section 22 of FRAD provides as follows:-

“Any action, arbitration, proceedings or cause of action that relates to a transferred asset, liability or employee and that immediately before the commencement of this Decree is pending or existing by, against, or in favour of the Department, or to which the Department is a party, may be prosecuted and, without amendment of any writ, pleading or other documents, continued and enforced against, or in favour of the Authority.”

4.30 “**Department**” is defined as “**Department of National Road**” (section 2 FRAD).

4.31 Section 22 also supports the view that section 38A did not in any way affect any pending legal proceedings against the Department.

4.32 It appears that when Fiji Roads Authority (Amended) Decree 2012 (Decree No. 46 of 2012) was promulgated Section 18 of the Principal Decree was amended to include transfer of “assets, liabilities, right, privileges, liabilities and obligation” of “municipal councils in relation to municipal road” the drafters overlooked to amend section 22 of FRAD by adding the words “and/or municipal councils” after the word “Department” which appears twice in section 22 of FRAD.

4.33 This is something which the Second Defendant should have taken up with or should take up with respective authority.

4.34 In any event, if section 22 is not amended then Second Defendant subject to legal advice can make appropriate application to join FRA as a third party.

4.35 Based on what I stated above, I have no alternative but to dismiss Second Defendant's Application to Strike Out Plaintiff's claim.

5.0 Application to Strike Out Claim by First and Third Defendants

5.1 First and Third Defendants also rely on the provision of FRAD and in particular s38A of FRAD in support of their ground that after promulgation of FRAD, Plaintiff has no reasonable cause of action.

5.2 I repeat what I stated at paragraphs 4.20 to 4.32 of this ruling and in particular my reference to section 22 of FRAD.

5.3 I do not wish to re-produce my comments in those paragraphs again.

5.4 Before I proceed any further I note that Counsel for First and Second Defendants have failed to refer to s12(2) of State Proceedings Act Cap 24 ("SPA") which provides that any civil proceedings against the State be instituted against the Attorney-General of Fiji.

5.5 Public Works Department is no doubt government body and therefore Plaintiff should have only filed his claim against the Third Defendant.

5.6 To join Chief Executive Officer of Public Works Department is an abuse of process.

5.7 I therefore have no option but to remove the First Defendant's name from the court record.

5.8 I must make it very clear that First Defendant's name is removed from Court Record only because of s12(2) of SPA and not because of First and Second Defendant's Application to strike out claim.

5.9 I hold that Plaintiff has reasonable cause of action against the Third Defendant.

6.0 Costs

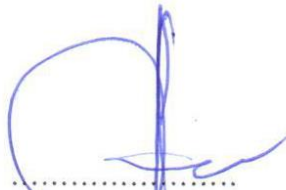
I take into consideration that all parties filed Submissions and made Oral Submissions.

7.0 Orders

I make following Orders:-

- (i) Second Defendant's Application to Strike Out the Claim by Summons filed on 3 March 2015, is dismissed and struck out;
- (ii) First and Third Defendants Application to Strike Out the Claim by Summons dated and filed on 18 March 2015, is dismissed and struck out;
- (iii) First Defendants name be removed from the Court record;
- (iv) Second Defendant pay Plaintiff's costs assessed in the sum of \$750.00;
- (v) First and Third Defendants do pay Plaintiff's costs assessed in the sum of \$750.00.




K. Kumar
JUDGE

At Suva

14 April 2016

M. A. Khan, Esquire for the Plaintiff

Office of the Attorney-General for the First and Third Defendants

Lajendra Law for the Second Defendant