

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 279 of 2011

**BETWEEN : GYNESHWAR PRASAD f/n Hari Sewak of Jittu Estate, Samabula,
Driver.**

PLAINTIFF

**AND : R. C. MANUBHAI & COMPANY LIMITED a limited liability Company
having its registered office at Shop No. 6, Ba Market Subdivision, Ba.**

DEFENDANT

BEFORE: Master V. D. Sharma

**COUNSEL: Mr. Daniel Singh - for the Plaintiff
Mr. Samuel K. Ram - for the Defendant**

Date of Hearing: 14th April, 2016

Date of Ruling: 05th May, 2016

RULING

(Application for striking out of Plaintiffs Summons & Statement of Claim pursuant to Order 18 Rule 18, Order 29 and the Inherent Jurisdiction of this Honourable Court)

INTRODUCTION

1. This is an **Inter-Parte Summons** filed by the **Defendant** seeking the following **orders**-
 - (i) That the Writ of Summons and Statement of Claim filed by the Plaintiff on 09th September, 2011 be struck out on the ground that the proceedings were commenced after the expiration of 3 years from the date on which the alleged cause of action accrued and therefore is barred by **Section 4 (1) (a) (i) of the Limitation Act (Cap 35-Laws of Fiji)**;
 - (ii) The Writ of Summons and Statement of Claim by the Plaintiff against the 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; and;**
- (d) That this court does not have jurisdiction to hear this matter.**

2. The Plaintiff opposed the Defendants application and filed his affidavit in Response.

RELATED LAWS APPLICABLE TO THIS APPLICATION

Limitation Act Cap 35- Laws of Fiji

3. **Section 4 (1) (a)** states-

4.- (1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say-

- (a) actions founded on simple contract or on tort;**
- (b)
- (c).....
- (d)

Provided that-

(i) in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years; and

(ii)

(Highlighting is mine for deliberation)

The Interpretation Act Cap 7- Laws of Fiji

4. **Section 51 of the Act** states as follows-

In computing time for the purpose of any written law, unless a contrary intention appears-

- (a) ***a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;***
- (b) *if the last day of the period is a Saturday, Sunday or a public holiday (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;*
- (c) *where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;*
- (d) *where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.*

(Highlighting is mine for deliberation)

Striking Out Application

5. The Application to strike out has been made pursuant to **Order 18 Rule 18 (1) (a) (b) & (d) of the High Court Rules 1988. Order 18 Rule 18 (1) (a) (b) (c) & (d)** states 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)

(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).

6. In dealing with the issue of striking out of application, I bear in mind the following passage from **Halsbury's 4th Ed. Vol. 3 at para 435:**

"The power to strike out, stay or dismiss under the inherent jurisdiction is discretionary. It is a jurisdiction, which will be exercised with great circumspection and only where it is perfectly clear that the plea cannot succeed, it ought to be exercised sparingly and only in exceptional cases. However, for this purpose the court is entitled to inquire into all the circumstances of the case, and to this end affidavit evidence is admissible.

7. In the case of Khan v Begum (2004) FJHC 430; HBC0153.2003L (30 June 2004) Justice Connors discussed 18 (1) (a) and (d) where he held that;

"It is said that the fact the court has this inherent jurisdiction is one of the characteristic which distinguishes the court from other institutions of the government. It is a jurisdiction, to be exercised summarily and as I have said, is in addition to the jurisdiction conferred by the rules. It is not in issue that if a party relies solely upon Order 18 rule 18 there no evidence may be considered by the court in making its determination but that limitation does not apply where the applicant relies upon the inherent jurisdiction of the court."

8. 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...."

ANALYSIS and DETERMINATION

9. In essence the **issue** this court needs to determine is **"Whether the Plaintiff's Writ of Summons and Statement of Claim filed on 09th September, 2011 be struck out on the ground that the proceedings**

were commenced after the expiration of 3 years from the date on which the alleged cause of action accrued and therefore is statute barred in terms of section 4 of the Limitation Act?”

10. The Plaintiff's substantive cause of action is based on a simple Tort of Negligence. He was employed by the Defendant Company in his capacity as a driver. The Plaintiff alleges that on or about 08th September, 2008, in the course of his employment he was engaged in lifting a 8ft by 4ft x 10.3mm sheet of glass mirror which slipped and cut his left arm just above the wrist, causing him injury, loss and damage. He further alleges that the injury on the Plaintiff was caused by the negligence and/or breach or statutory duty by the Defendant, their servants and/or agents.
11. I have perused the relevant court file HBC No. 279 of 2011 which revealed the following information-
- (a) The Plaintiff's Writ of Summons and Statement of Claim dated 05th September, 2011 was received by the Registry counter clerk on 05th September, 2011 at 12.20 pm;
 - (b) Subsequently, the same was approved by the Senior Court Officer on 07th September, 2011 at 4.30 pm;
 - (c) The requisite filing fee was paid on 09th September, 2011 with RR.No.455357 and a stamp or seal bearing the following information **'Filed, 09th September, 2011, High Court Civil Registry Suva'** was impressed at the back of the Plaintiff's document. This officially confirms that the Plaintiff's Writ of Summons and Statement of Claim was filed on 09th September, 2011 although it was received by the registry on 05th September, 2011.
12. **Section 4 (1) (a) (i) of the Limitation Act Cap 35 requires that any claim for personal injury must be filed before the expiration of three (3) years from the date on which the alleged cause of action arose.**
- Further, Section 51 (a) of the Interpretation Act Cap 7 provides that in calculating the time, the date on which the incident occurs is not to be counted, rather excluded from the counting.**
13. Applying the above laws to the present case, **the incident is alleged to have taken place on or about 08th September, 2008.**
- The Plaintiff's claim is for personal injury in terms of Tort of Negligence and therefore should have been filed before the expiration of three (3) years, excluding the date of the incident in terms of the law.**
- On a simple calculation of three (3) years' time period from 09th September, 2008 (excluding the date of the alleged incident on or about 08th September, 2008), the Plaintiff's claim should have been filed**

on or before 09th September, 2011, before the end of business or the mid night.

In the present case the Plaintiff's claim was in fact filed on 09th September, 2011, which falls within the three (3) years' time frame allowed in Law.

14. **Therefore the Plaintiff's Writ of Summons and Statement of Claim was correctly accepted by the Registry, issued and sealed within the given time frame in Law, and is not in any way barred by Section 4 (1) (a) (i) of the Limitation Act Cap 35.**
15. Further, it is important that I also deal with the fact relating to the **practice adopted by the High Court Civil Registry** in eventually issuing the Plaintiff's Writ of Summons and Statement of Claim that I have been able to ascertain from the court file kept in my custody.

In relation to the present case- *That the Plaintiff's claim was lodged with the High Court Civil Registry on 05th September, 2011 at 12.20 pm and approved for issuance by the Senior Court Officer on 07th September, 2011 at 4.30 pm. eventually issued and sealed on 09th September, 2011.*

Reference is made to the case of **Cauchi v Air Fiji Ltd [2003] FJHC 334; HBC0331.2001 (11 March 2003)** wherein it was held with regards to the lodging of necessary papers at the High Court Registry –

"...in this I agree with the submissions of the Plaintiff's Counsel, that he had done everything he could to have the action brought by lodging the necessary papers at the High Court Registry on the afternoon on 20th July, 2001 and the failure of the registry staff to stamp the Plaintiff's Writ on the same day (as opposed to releasing the stamped document) for reasons of internal registry procedure was a breach of the High Court Rules...and the mere fact that it was only stamped and uplifted on 25th July, 2001 is of no significance in my view in determining when the Plaintiff's action was brought... Finally, Section 51 (a) of the Interpretation Act Cap 7 expressly provides that in computing time for the purpose of any written law'....a period of days from the happening of an event...shall be deemed to be exclusive of the day on which the event happens..."

16. Bearing above in mind, I may add that "The Plaintiff's right of action should not be prejudiced by the internal procedure of the Court Registry."

The Plaintiff's Writ of Summons and statement of Claim was filed on 05th September, 2011, almost four (4) days ahead of the three (3) years expiry time frame as stipulated by Section 4(1) (a) (i) of the Limitation Act and supported by **Section 51 (a) of the Interpretation Act Cap 7**, that deals with the computation of time for the purpose of any written law.

17. For the aforesaid rational, the Plaintiff's Writ of Summons and Statement of Claim was lodged with the High Court Registry within the limitation period and the mere fact that it was only stamped and released on 09th September, 2011 is of no significance for this court to determine when the Plaintiff's claim was lodged.
18. Even if I disregard as to when the Plaintiff's Writ of Summons and Statement of Claim was lodged with the Registry, still the date of issuance of 09th September, 2011 confirms in terms of the Limitation Act and the Interpretation Act that the Plaintiff's claim was lodged and issued within the time frame of Three (3) years. There is no doubt whatsoever.
19. In the result, I make the following orders-

ORDERS

- (i) The Plaintiff's Writ of Summons and Statement of Claim has been filed within the Three (3) year time frame and is not statute barred by Section 4 (1) (a) (i) of the Limitation Act, Cap 35.
- (ii) The Defendant's Inter-Parte Summons filed on 16th July, 2015 is therefore struck out accordingly.
- (iii) Cost is assessed against the Defendant in the sum of \$1000.
- (iv) The case is adjourned for further directions to 26th May, 2016 at 9 am.

Dated at Suva this 05th Day of May, 2016



(Handwritten signature)
.....
MR VISHWA DATT SHARMA
Master of High Court, Suva

cc: *Mr. Daniel Singh, Daniel Singh Lawyers, Suva*
Mr. Samuel K. Ram, of Samuel K Ram, Ba.