

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. 197 of 2011

BETWEEN : **Amrit Prakash** of Rarawai, Ba, School Teacher.

PLAINTIFF

AND : **Colonial Life Limited** having its registered office at Level 10,
Suva Central Buildings & its agent office in Lautoka.

DEFENDANT

Solicitors : Nacolawa & Company for the Plaintiff
Munro Leys for the Defendant

R U L I N G

INTRODUCTION

1. According to the statement of claim filed by the plaintiff on 01 December 2011, he was a school teacher who took out three life insurance policies with the Colonial Life Limited. Details of those policies are set out in the statement of claim.
2. The premiums for the polices were all deducted from the plaintiff's fortnightly payroll "via EDP 54825 or Treasury Pay under Code 241".
3. The plaintiff pleads that sometime after the policies commenced:

"....two of them have become lapsed without any justifiable explanations given by the Defendant...."
4. It appears that the third policy which had not lapsed like the other two was "realised" on 09 December 2002 upon the death of the plaintiff's mother whence upon the defendant paid out the sum of \$5,675.45 which was a short payment of \$202.95.
5. It is pleaded that the defendant continued to deduct premiums from the plaintiff on this third policy after it was realised as well as continued to deduct premiums from the two other polices even after they had lapsed.

6. The plaintiff pleads that on numerous occasions, he called, wrote letters, sent faxes, and personally visited the defendant's offices in Suva and Lautoka "to terminate the deductions of the premiums – but such requests have fallen on deaf ears". Hence, the defendant continued to deduct premiums for years.
7. The plaintiff pleads that in his attempts to stop the deductions, he sought the assistance of several law firms and thereby incurred costs.
8. At paragraph 11 of the statement of claim, the plaintiff claims damages for "loss of expectation" of the full maturity value of the two policies that were lapsed without justification and also the recovery of the premiums that were deducted after the lapse of the policies.
9. If I may say so, the pleadings are so poorly drafted in many respects. It is not clear to me whether the cause of action is founded on an action on breach of contract or on negligence. In paragraph 9, the plaintiff sets out the particulars of negligence but these seem to relate to the action for the recovery of the premiums. There is no mention of the phrase "breach of contract" in the pleadings. One would imagine that a claim for loss of expectation of the full maturity value including bonus of the two lapsed policies should be founded on breach of contract.
10. Generally, the Courts will exercise the jurisdiction to strike out under Order 18 Rule 18 rather guardedly. The reason why they would do so is best explained by Mr Justice Kirby in **Len Lindon –v- The Commonwealth of Australia (No. 2) S. 96/005** as follows:-

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.

11. The same principles are further reinforced in Fiji under section 15(2) of the 2013 Constitution which gives to every party to a civil dispute the right to have the matter determined by a court of law.

Access to courts or tribunals

15.—(2) Every party to a civil dispute has the right to have the matter determined by a court of law or if appropriate, by an independent and impartial tribunal.

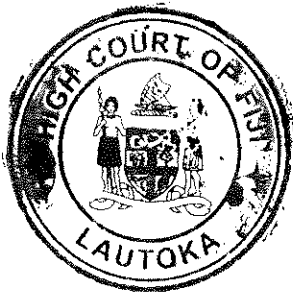
12. To demonstrate the extent to which the Court must adopt a guarded attitude, Kirby J went on to say as follows in **Len Lindon**:

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

.....

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

13. While the claim appears to be rather weak, the allegation of fact that the policies had allegedly lapsed without justification and yet the defendant had continued to deduct premiums does stick out prominently. I will take heed of Kirby J's caution and dismiss the application with no order as to costs. Case adjourned to 25 august 2016 for directions at 10.30 a.m.



.....
Anare Tuilevuka
JUDGE
12 August 2016