

IN THE HIGH COURT AT SUVA
APPELLATE JURISDICTION

Miscellaneous No. HBM 38 of 2016

In the matter of the Political Parties (Regulations, Conduct, Funding and
Disclosures) Decree 2013 ("**Decree**")

AND

In the Matter of Specific Decisions of the Supervisor of Elections in his
capacity as Registrar under the Decree

BETWEEN

NATIONAL FEDERATION PARTY, a political party
whose head office is at 124, Princes Road,
Tamavua, Suva

1st APPELLANT

DALIP KUMAR, of No. 39, Kula Street, Samabula, Suva,
Operations Manager, in his capacity as
Registered Officer of the 1st Appellant

2nd APPELLANT

BIMAN CHAND PRASAD of No. 152 Sekoula Road,

Laucala Beach Estate, Suva, Politician

3rd APPELLANT

JAGNNATH SAMI of No. 22, Chameli Street, Drasa Vitogo,
Lautoka, Retired Chief Executive Officer

4th APPELLANT

AND

THE SUPERVISOR OF ELECTIONS in his capacity as Registrar under the
Political Parties (Regulations, Conduct, Funding and Disclosures)
Decree 2013 59-63, High Street, Suva.

RESPONDENT

Counsel : Mr. J. Apted for Appellants
Ms. S. Chand with Ms. R. Purjivan for Respondent.

Date of Hearing : 25th July, 2016

Date of Ruling : 23rd August, 2016

Ruling

(On the application for striking out)

[1] The appellants filed this originating motion in terms of Order 55 of the High Court Rules 1988 seeking to set aside the following orders of the respondent;

- (a) the finding that the 1st appellant was in breach of section 26(2) Political Parties (Registration, Conduct, Funding and Disclosures) Decree, 2013;
- (b) the decision to suspend the 1st appellant in his discretion under section 19(3) of the Political Parties (Registration, Conduct, Funding and Disclosures) Decree, 2013;
- (c) the decision that (in his notice dated 1st February, 2016) that during its suspension, the 1st appellant cannot operate, function, represent or hold itself out to be a political party.

[2] The respondent by letter dated 01st February, 2016 suspended the operation of the 1st appellant as a political party. The paragraphs of the said letter relevant to the matter before the court read as follows;

1. In accordance with section 19(3) of the Political Parties (Registration, Conduct, Funding and Disclosures) Decree, 2013 [“Decree”], the **NATIONAL FEDERATION PARTY** is hereby **suspended with immediate effect on 01 February 2016** for a period of 30 days.
2. A political party that has been suspended under section 19(3):
 - a. shall not be entitled to any of the rights and privileges specified under the Decree.
 - b. cannot operate, function, represent or hold itself out to be a political party.

[3] The respondent suspended the 1st appellant from functioning as a political party under the powers conferred upon him by section 19 of the Political Parties (Registration, Conduct, Funding and Disclosures) Decree, 2013 on the ground that it has acted in contravention of section 26(2) of the Decree.

[4] Section 26(2) of the Decree provides thus;

The accounts of every political party shall be audited annually by an auditor certified by the Fiji Institute of Accountants and shall be submitted to the Registrar within 3 months after the end of each financial year, who shall

publish the accounts in the *Gazette* and in the media, and the costs of such publication shall be paid by or recovered from the political party.

[5] Section 19(3) of the Decree provides that the Registrar may suspend the registration of a political party to enable that political party to remedy the breach specified in the notice issued by the Registrar under subsection 2.

[6] The 1st appellant was suspended by the respondent on the ground that the auditor who certified the 1st appellant's accounts did not have a Certificate of Public Practice as required by section 22 of the Fiji Institute of Accountants Act. Section 22(1) of the said Act provides that no member of the Institute shall have the right to offer his services to the public under the designation of "chartered accountant", unless he is the holder of a certificate of public practice issued in accordance with rules made under the provisions of the Act.

[7] The respondent on 15th February, 2016 filed summons seeking to strike out the originating motion of the appellants under and in terms of Order 18 rule 18 of the High Court Rules 1988.

[8] Order 18 rule 18 provides as follows;

- (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) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

[9] In **Carl Zeiss Stiftung v Rayner & Keeler Ltd** (No 3) [1970] Ch 506 it was held that the power given 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.

[10] In seeking striking out the originating motion of the appellants the respondent relied on the following grounds namely;

- (i) It discloses no reasonable cause of action;
- (ii) It is scandalous, frivolous and vexatious; and
- (iii) It is an abuse of the process of the court.

[11] The appellants came to court challenging the suspension of the 1st appellant. Since this is an appeal from the decision of the respondent the court cannot consider whether there is a reasonable cause of action in that sense. However, the court must consider whether the appellants have some valid grounds of appeal.

[12] In **Drummond-Jackson v British Medical Association** [1970] 1 W.L.R. 688; [1970] 1 All ER 1094 it was held;

Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases.

[13] In the case of **Walters v Sunday Pictorial Newspapers Limited** [1961] 2 All ER 761 it was held:

It is well established that the drastic remedy of striking out a pleading or, part of a pleading, cannot be resorted to unless it is quite clear that the pleading objected to, discloses no arguable case. Indeed, it has been conceded before us that the Rule is applicable only in plain and obvious cases.

[14] In this matter the appellants are seeking to challenge the decision of the respondent to suspend the 1st appellant from functioning as a political party until the defect in the audited accounts were cured. It is not a fact disputed by the parties the accountant who certified the accounts did not have a Certificate of Public Practice at the time he certified the accounts. It is a common occurrence in many jurisdictions around the world that the parties

who are dissatisfied with the decisions taken by various officers in quasi-judicial capacity and in the exercise of their discretionary power to challenge them in court by way of appeals or judicial review. In such cases one of the questions the court is called upon to decide is whether the particular authority has properly exercised his discretion in arriving at the finding challenged before the court.

[15] Suspension of the party for its failure to comply with the provisions of section 26 of the Political Parties (Registration, Conduct, Funding and Disclosures) Decree, 2013 does not warrant compulsory suspension. Section 19(3) of the said Decree only confers a discretion upon the respondent to suspend a party. The question the court has to determine is whether the temporary suspension was in fact warranted in the circumstances of this case.

[16] When a matter is before a court of law it is called upon to decide the rights of the parties as at the date of the institution of the proceedings. Therefore, the fact that the appellants rectified the defect does not disqualify them from challenging the validity of the decision of the respondent to suspend the 1st appellant temporarily. In the circumstances, I hold that the appellants have sufficient grounds to proceed further with this matter.

[17] In law, frivolous litigation is the practice of starting or carrying on lawsuits that, due to their lack of legal merit, have little to no chance of being won. The term does not include cases that may be lost due to other matters not related to legal merit. While colloquially, a person may term a lawsuit to be frivolous if he or she personally finds a claim to be absurd, in legal usage "frivolous litigation" consists of a claim or defence that is presented where the party (or the party's legal counsel) had reason to know that the claim or defence was manifestly insufficient or futile. The fact that a claim is lost does not imply that it was frivolous. Scandalous matter refers to a matter that is both grossly disgraceful or defamatory and irrelevant to the action or defence. It may have immoral or indecent content that is irrelevant and so can be stricken off as improper. Vexatious litigation is legal action which is brought, regardless of its merits, solely to harass or subdue an adversary. It may take the form of a primary frivolous lawsuit or may be the repetitive, burdensome, and unwarranted filing of meritless motions in a matter which is otherwise a meritorious cause of action.

[18] In **Metropolitan Bank v Pooley** (1885) 10 App. Cases 210 it was held:

Nevertheless it is an element of primary importance, in determining the question of whether an action is frivolous and vexatious, to consider what sort of cause of action, if any, appears upon the face of the pleadings.

[19] I have discussed above the nature of the cause of action or the grounds of appeal relied on by the appellants. However minor, it may look to the respondent, the appellants are entitled to obtain a ruling on the matter.

[20] For the reasons given above it cannot be said that these proceedings are scandalous, frivolous or vexatious.

[21] It is the submission of the learned counsel for the respondent that these proceedings amount to an abuse of the process of the court since the appellants have failed to show that they have a reasonable cause of action. I have already dealt with the question whether the appellants have disclosed a sufficient cause of action or grounds of appeal. I do not wish to repeat the same finding over again. The abuse of the process of court is the use of legal process to accomplish an unlawful purpose; causing a summons, writ, warrant, mandate, or any other process to issue from a court in order to accomplish some purpose not intended by the law.

[22] In the instant case there is no such attempt made by the appellants. They are only seeking to challenge the propriety of the decision of the respondent to suspend the 1st respondent from functioning as a political party, to which they are entitled in law.

[23] For the reasons aforementioned I make the following orders.

ORDERS.

- (1) The application to strike out the Notice of Originating Motion dated 15th February, 2016 is refused.
- (2) There will be no order for costs of this application.


Lyone Seneviratne,
JUDGE.



23rd August, 2016.