

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 268 of 2008

BETWEEN : **INTERIOZ & EXTERIOZ ENGINEERING AND CIVIL WORKS LIMITED**
a limited liability company having its registered office at 181 Mead Road, Nabua, Suva, Fiji.

1ST PLAINTIFF

KALPESH KUMAR PATEL of Raiwaqa, Suva, Fiji, Businessman suing in his capacity as a minority shareholder of the First Plaintiff.

2ND PLAINTIFF

AND : **ABDUL ALEEM** of Suva, Fiji Director and Shareholder of the First Plaintiff.

1ST DEFENDANT

ABDUL SHAMEEM of Suva, Fiji Director and Shareholder of the First Plaintiff.

2ND DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSELS: Ms. Devan for the Plaintiff
Mr. Bulisea for the Defendants

Date of Hearing: 16th February, 2016

Date of Ruling: 06th October, 2016

RULING

[Motion filed by the Defendant pursuant to Order 20 and Order 18 Rule 18 (1) (d) of the High Court Rules, 1988]

APPLICATION

1. The Defendants filed a Motion and an Affidavit in Support on 15th May, 2015 and sought for the following orders-
 - (a) That the Original and the Amended Writ of Summons be struck out on the Grounds that the Amended Writ of Summons was filed without the leave of the Honourable Court;
 - (b) That the filing of the Amended Writ of Summons without the leave of the Court is an abuse of the process of the Court and the same be struck out and dismissed;
 - (c) That costs in favour of the Defendants.
2. The application was made pursuant to *Order 20 and Order 18 Rule 18(1) (d) of the High Court Rules 1988*.
3. Both parties to the proceedings informed Court that they opted to file the Written Submissions on this application and Court to deliver a Ruling on the basis of the written Submissions.
4. The Court directed both Counsels representing the parties to the proceedings to file and serve the simultaneous **Written Submissions** within 14 days and adjourned the matter for Ruling.

THE LAW

5. The law on striking out pleadings and endorsements is stipulated at *Order 18 Rule 18 of the High Court Rules 1988* which 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) 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.

6. The law on **Amendment of the Pleadings** is stipulated at **Order 20 of the High Court Rules, 1988 as follows-**

Amendment of pleadings without leave (O.20, r.3)

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.

DEFENDANT'S CASE

7. The Defendants application is seeking an order to **Strike out** the Plaintiff's Original Writ of Summons as well as the Amended Writ of Summons.
8. Their contention is that the **Amended Writ of Summons** was filed without the leave of this Court and therefore it tantamount to an abuse of the process of the Court.
9. That the Defendants will file a written submissions and the Court to deliver the Ruling.

PLAINTIFF'S CASE

10. The Plaintiff's case is that this is a 2008 matter and needs to be expedited.
11. That the Plaintiff will file a written submissions and this Court to deliver the Ruling accordingly.

ANALYSIS and DETERMINATION

12. The issue before this Court is whether the Plaintiff's Writ of Summons and the Amended Writ of Summons filed herein should be struck out?
13. I refer to my minutes of 16th February, 2016 and note that both Counsels asked this Court that they be permitted to file and serve their written submissions and the Court to deliver its Ruling base on the written submissions. This permission was sought by both Counsels since they had not prepared and were ready with their respective written submissions on the date of the Hearing.

14. This Court in the circumstances acceded to the application and directed both Counsels to file and serve their respective written submission within 14 days. To date no written submissions has been received. This Court in the circumstances will now proceed to deliver its Ruling accordingly.
15. I have taken some valuable time to peruse the bulky Court file. The respective file is divided into three (3) volumes.
16. I find that on 30th May, 2013, the Honourable Judge of the High Court upon hearing the Plaintiff's Summons filed on 16th March, 2011, made the following orders-
 - A. That Judgment be entered against the Defendants pursuant to *Order 19 Rule 7 of the High Court Rules, 1988 and the Inherent Jurisdiction of the Court*;
 - B. Application to file Statement of Defence refused;
 - C. Plaintiff to file Notice of Assessment of Damages on 14th June, 2012. Damages to be assessed by the Master. Costs of this action will be included in the Damages.
17. The Notice of Assessment of Damages was filed by the Plaintiff on 06th June, 2012.
18. Subsequently, both parties to the proceedings also filed Interlocutory applications seeking orders as set out in their respect applications.
19. I do note the contention of the Defendants that the Plaintiff filed An Amended Writ of Summons without the leave of the Court.
20. An Amended Writ of Summons is filed in this case on 09th January, 2014. I have flipped each and every page of the Court file but failed to find any application filed by the Plaintiff seeking any order for Amendment of the Writ of Summons.
21. Although no written submissions have been filed in support of their respective cases, since I find there is no formal application to Amend the Plaintiff's Writ of Summons In all just and fairness, it would be appropriate to expunge the Amended Writ of Summons filed on 09th January, 2014 from the Court record in lieu of the striking out as sought for by the Defendants.
22. Further, I cannot see the rational why and how the Plaintiff has managed to file the Amended Writ of Summons without any leave application and when the Court had already determined the Plaintiff's Summons filed on 16th March, 2011 and made the orders as reflected at paragraph 16 of my Ruling hereinabove.
23. The Original Writ of Summons of the Plaintiff filed herein cannot be struck out because the Court Orders made on 30th May, 2013, (as in paragraph 16 A, B and C above) are made on the basis and foundation of the Plaintiff's substantive Original Writ of Summons filed on 18th August, 2008.

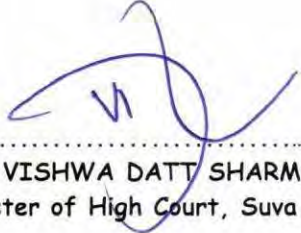
24. I cannot see the Rational why this Court should accede to the Defendant's application to strike out the Plaintiff's Original Writ of Summons when certain orders as enumerated hereinabove at paragraph 16 (A, B and C) are made in relation to the Plaintiff's Original Writ of Summons.
25. I therefore find, that there is no abuse of Court process on the part of the Plaintiff as alleged by the Defendants.
26. The Defendants application fails in the circumstances.
27. Accordingly, for the aforesaid rational, I make the following final orders in terms of the Defendants Striking out Application filed herein.

FINAL ORDERS

- A. The Defendant's application seeking to strike out the Plaintiff's Original Writ of Summons is hereby struck out.
- B. The Plaintiff's Amended Writ of Summons filed herein without the leave of the Court is hereby expunged from the Court Record.
- C. The matter in the interim is now taken off the list and once the Counsels are ready to proceed with other Interlocutory Applications as filed herein, then upon application it would be restored to the Court list.
- D. The Defendants to pay Costs to the Plaintiff summarily assessed at \$750 within 14 days.

DATED at Suva on 6th October, 2016





 MR VISHWA DATT SHARMA
 Master of High Court, Suva

cc. Neel Shivam Lawyers, Suva
 Vakaloloma and Associates, Suva