

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 134 of 2016

BETWEEN : ZHONG ZHONG QIANG and WEI CHING QIANG both of Lot 17, Nailuva  
Road, Suva, Company Director.

PLAINTIFFS

AND : SUKULU TANI of Raiwai, Suva, Retired.

DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSELS: No appearance of the Plaintiff/Counsel  
Ms. Rakai for the Defendant

Date of Hearing: 09<sup>th</sup> March, 2016

Date of Ruling: 31<sup>st</sup> March, 2017

RULING

[Application by the Defendant seeking an order to strike out the Plaintiff's Writ and the Statement of Claim pursuant to Order 18 Rule 18 of the High Court Rules, 1988 and the filing of the Defendant's Defence be stayed until 7 days after the hearing and determination of this striking out application]

## APPLICATION

1. This is the Defendant's Strike Out Summons seeking for the following orders:
  - (a) *That the claim against the Defendant is wholly struck out;*
  - (b) *That the filing of the Defendant's Defence be stayed until seven days after hearing and determination of this application.*
  - (c) *That the Plaintiffs to pay costs of this application to the Defendant.*

### On the Grounds:

- (i) That it discloses no reasonable cause of action or defence, as the case may be; or
  - (ii) That it is Scandalous, frivolous or vexatious; and
  - (iii) That it is otherwise an abuse of the process of the Court.
2. The application was made pursuant to *Order 18 Rule 18 (1) (a), (b), and (d) of the High Court Rules 1988* and under *the inherent jurisdiction of the High Court.*
  3. The Plaintiff opposed the Defendant's Striking out application and on 14<sup>th</sup> September, 2016 was directed to file and serve an Affidavit in Reply to the Defendant's application but failed to adhere to the Court directives.
  4. The application was heard in terms of the affidavit evidence filed coupled with the written and oral submissions made in this proceedings by the Defendant. The Plaintiff neither filed his Affidavit nor appeared during the hearing to argue the Defendant's striking out application.

## BACKGROUND

5. The Plaintiff's Substantive Claim is for General Damages and financial loss against the Defendant to be assessed by the Court for obstructing the approved work on the sewer line and further failing to either ignore or comply with the appropriate authority approval.
6. According to the Defendant, the Plaintiffs are not the registered owners of Certificate of Title No; 27684 being Lot 17 on DP No; 2365.

7. The Defendants say they own CT 35140 being Lot 4 on DP No; 744 and therefore the Plaintiff cannot interfere with their rights as a registered proprietor to extend the sewer line through their property.

#### The Law and Practice

8. 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).*

9. In Paulo Malo Radrodro vs Sione Hatu Tiakia & Others, HBS 204 of 2005, the Court stated that:

*"The principles applicable to applications of this type have been considered by the Court on many occasions. Those principles include:*

- a. A reasonable cause of action means a cause of action with some chance of success when only the allegations and pleadings are considered - Lord Pearson in Drummond Jackson v British Medical Association [1970] WLR 688.*
- b. Frivolous and vexation is said to mean cases which are obviously frivolous or vexations or obviously unsustainable - Lindley Li in Attorney General of Duchy of Lancaster v L.N.W Ry [1892] 3 Ch 274 at 277.*

- c. *It is only in plain and obvious cases that recourse would be had to the summary process under this rule - Lindley MR in Hubbuck v Wilkinson [1899] Q.B. 86.*
- d. *The purpose of the Courts jurisdiction to strike out pleading is twofold. Firstly is to protect its own processes and scarce resources from being abused by hopeless cases. Second and equally importantly, it is to ensure that it is a matter of justice; defendants are permitted to defend the claim fairly and not subjected to the expense inconvenience in defending an unclear or hopeless case.*
- e. *"The first object of pleadings is to define and clarify with position the issues and questions which are in dispute between the parties and for determination by the Court. Fair and proper notice of the case an opponent is required to meet must be properly stated in the pleadings so that the opposing parties can bring evidence on the issues disclosed - ESSO Petroleum Company Limited v Southport Corporation [1956] A.C at 238" - James M Ah Koy v Native Land Trust Board & Others - Civil Action No. HBC 0546 of 2004.*
- f. *A dismissal of proceedings "often be required by the very essence of justice to be done"..... - Lord Blackburn in Metropolitan - Pooley [1885] 10 OPP Case 210 at 221- so as to prevent parties being harassed and put to expense by frivolous, vexations or hopeless allegation - Lorton LJ in Riches v Director of Public Prosecutions (1973) 1 WLR 1019 at 1027"*
10. His Lordship Mr Justice Kirby in Len Lindon -v- The Commonwealth of Australia (No. 2) S. 96/005 summarised the applicable principles as follows:-
- a. *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.*
- b. *To secure such relief, the party seeking it must show that it is clear, on the face of the opponent's documents, that the opponent lacks a reasonable cause of action ... or is advancing a claim that is clearly frivolous or vexatious...*
- c. *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.*

- d. *Summary relief of the kind provided for by O.26 r 18, for absence of a reasonable cause of action, is not a substitute for proceeding by way of demurrer.... If there is a serious legal question to be determined, it should ordinarily be determined at a trial for the proof of facts may sometimes assist the judicial mind to understand and apply the law that is invoked and to do in circumstances more conducive to deciding a real case involving actual litigants rather than one determined on imagined or assumed facts.*
- e. *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.*
- f. *The guiding principle is, as stated in O 26 r 18(2), doing what is just. If it is clear that proceedings within the concept of the pleading under scrutiny are doomed to fail, the Court should dismiss the action to protect the defendant from being further troubled, to save the plaintiff from further costs and disappointment and to relieve the Court of the burden of further wasted time which could be devoted to the determination of claims which have legal merit.*

#### Issues for Determination

11. Following are the issues which require determination by this honourable court:-
  - (a) Whether the Plaintiff's Writ of Summons and the Statement of Claim **discloses any reasonable cause of action?**
  - (b) Whether the Plaintiff's Writ of Summons and the Statement of Claim is **scandalous, frivolous or vexatious?**
  - (c) Whether the Plaintiff's Writ of Summons and Statement of Claim is an **abuse of the process of the Court?**

#### ANALYSIS and DETERMINATION

*Whether the Plaintiff's Writ of Summons and Statement of Claim discloses any reasonable cause of action?*

12. The following notes to *Order 17 r19 of the Supreme Court Practice (UK) 1979 Vol. 1 or 18/19/11* on what is meant by the term 'a reasonable cause of action' sufficiently provides the answer to the applications.

".....A reasonable cause of action means a cause with some chance of success when only the allegations in the pleadings are considered (per Lord Pearson in Drummond Jackson v British Medical Association [1970] 1 WLR, 688; [1970] 1 All ER 1094 CA). So long as the statement of claim or the particulars (Davey v Bentinck [1893] 1 QB 185) disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak, and not likely to succeed is no ground for striking out (Moore v Lawson (1915) 31 TLR 418, CA.; Wenlock v Moloney [1965] 1 WLR 1238 1 W.L.R. 1238 [1965] 2 All ER 871, CA)...."

13. Reference is also made to Lindley M.R. in Hubbuck & Sons, Ltd v Wilkinson, Heywood & Clark Limited [1899] 1QB 86 at page 91 said:

".....summary procedure is only appropriate to cases which are plain and obvious, so that any master or judge can say at once that the statement of claim as it stands is insufficient, even if proved, to entitle the plaintiff to what he asks. The use of the expression "reasonable cause of action" in rule 4 shows that the summary procedure there introduced is only intended to be had recourse to in plain and obvious cases".

14. It is for the Plaintiffs to establish that they have a Cause of Action in this case in terms of the facts and the Pleadings filed herein.
15. On the other hand, the Defendant must establish that the Plaintiff does not have a Cause of Action in this case.
16. The Plaintiff and their Counsel failed to appear in Court on four (4) consecutive adjournments to defend the Defendants striking out application nor did they filed any affidavit response to the application.
17. The Striking out application of the Defendant is a summary proceeding and is only appropriate to cases which are plain and obvious.
18. Bearing in mind the facts of this case and the nature of the pleadings filed by the parties to the proceedings, this case can be classed as 'plain and obvious' in nature.
19. In this instant case, in summary, the Plaintiff's application is misconceived since the Plaintiffs are not the registered proprietors of Lot 17 on Deposit Plan No. 2365 and the Title shows that there is no shared Easement on the Defendant's property. Any extension of the sewer line would pass onto the Defendant's property and no statutory notice from the Town Council or the Water Authority of Fiji was served onto the

Defendant with regards to the construction of the extension of the sewer line from Lot 17 on Deposit Plan No. 2365 across the Defendant's property. In considering the allegations and pleadings filed herein, the Plaintiff claim may have some chance to succeed but the Plaintiff cannot force its way to construct a sewer line crossing the Defendants property unless the Authorities allow but there is no evidence of this before the Court.

Therefore, the Plaintiffs have not shown any reasonable cause of action.

***Whether the Plaintiff's Writ of Summons & the Statement of Claim is Scandalous, Frivolous or Vexatious & Abuse of Process of the Court***

20. It is well established that jurisdiction to strike out claim or pleadings should be used very sparingly and only in exceptional cases: **Timber Resource Management Limited v. Minister for Information and Others** [2001] FJHC 219; HBC 212/2000 (25 July 2001).
21. 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...."*

22. Whether the claim is Scandalous? Reference is made to the Supreme Court Practice 1993 (White Book) Vol. 1 at paragraph 18/19/14 states as follows-

*"The Court has a general jurisdiction to expunge scandalous matter in any record or proceedings (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)."*

23. Whether the nature and contents of the Plaintiff's Claim in terms of the Writ of Summons and the Statement of Claim tantamount to scandalous facts and are irrelevant and therefore makes the Plaintiff's Claim Scandalous?

According to the Defendant, the Plaintiffs are not the registered owners of Certificate of Title No. 27684 being Lot 17 on DP No. 2365. This property sits on the Nailuva Road and is linked to the Defendant's Deposit Plan. The Plaintiffs and /or their Counsels failed to appear in Court to assist with the application and counter the striking out. There are scandalous matters which needed to be ironed out from the Plaintiff's Statement of Claim.

24. The issue of whether the Plaintiff's Claim is frivolous or vexatious? Reference is made to paragraph 18/19/15 of the Supreme Court Practice 1993, Vol. 1 (White Book) which reads as follows:-

*"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, 277; 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; ...."*

25. *In Devi v. Lal [2014] FJHC 75; HBC 120.2008 (7<sup>th</sup> February, 2014) - It was held as follows-*

*"The Oxford Advanced Learners Dictionary of Current English 7th Edition defines the words "frivolous" and "vexatious" as:-*

*Frivolous: "having no useful or serious purpose"*

*Vexatious: "upsetting" or "annoying"*

*'Therefore, for a claim to be frivolous or vexatious, the Appellants must establish that the claim lacks merit (i.e. has no useful purpose) and is only to upset or annoy the Applicants'.*



26. The Defendant Plaintiff submitted that the Plaintiffs without any colour of legal rights, have continuously endeavoured to construct the extension of the sewer line across the Defendants property, which the Defendant is not consenting to.
27. Taking into consideration the above matters together with the written/oral submissions and arguments raised in Court by the Defence Counsel, the Defendant has established that the Plaintiffs just cannot force their way and construct an extension of a sewer line across the Defendant's property without any approval from the appropriate authorities. Therefore, the Plaintiff's Claim lacks merits and tantamount to frivolous and vexatious claim.
28. Whether the claim is otherwise an abuse of the process of the Court?
29. It is well settled that this Court has inherent jurisdiction to strike out the claim or pleadings for abuse of Court process and reference is made to paragraph 18/19/18 of the Supreme Court Practice 1993 Vol. 1.-

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 its 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."*

*"It is an abuse of the process of the Court and contrary to justice and public policy for a party to re-litigate the issue of fraud after the self-same issue has been tried and decided by the Irish Court (House of Spring Gardens Ltd. v. Waite[1990] 2 E.R. 990 C.A)."*

*"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).*

30. In Halsbury's Laws of England Vol 37 page 322 the phrase "abuse of process" is described as follows:

*"An abuse of process of the court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purposes, or, more simply, where the process is misused. In such a case, even if the pleading or endorsement does not offend any of the other specified grounds for striking out, the facts may show it constitutes an abuse of the process of the court, and on this ground the court may be justified in striking out the whole pleading or endorsement or any offending part of it. Even where a party strictly complies with the literal terms of the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of an abuse of process, and where subsequent events render what was originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court."*

31. The phrase "abuse of process" is summarized in Walton v Gardiner (1993) 177 CLR 378 as follows:

*"Abuse of process includes instituting or maintaining proceedings that will clearly fail proceedings unjustifiably oppressive or vexatious in relation to the defendant, and generally any process that gives rise to unfairness"*

32. The Plaintiff has commenced proceedings asking Court to intervene and order amongst other orders that the Defendant not to obstruct the approved work on the sewer line as approved by the authorities. The Plaintiffs are aware that their initial injunction application seeking similar orders were struck out and did not pursue with the claim to obtain those reliefs thereafter and subsequently have failed to appear at the hearing of the striking out application. Therefore, I find that the Plaintiffs have used the Court process, not in good faith and for proper purposes, rather have misused the Court machinery accordingly.

33. In Tawake v Barton Ltd [2010] FJHC 14; HBC 231 of 2008 (28 January 2010), Master Tuilevuka (as he was then) summarised the law in this area as follows;


*"The jurisdiction to strike out proceedings under Order 18 Rule 18 is guardedly exercised in exceptional cases only where, on the pleaded facts, the plaintiff could not succeed as a matter of law. It is not exercised where legal questions of importance are raised and where the cause of action must be so clearly untenable that they cannot possibly succeed (see Attorney General -v- Shiu Prasad Halka 18 FLR 210 at 215, as per Justice Gould VP;*

see also New Zealand Court of Appeal decision in Attorney -v- Prince Gardner [1998] 1 NZLR 262 at 267."

34. Having perused and analyzed the issues raised by the Defendant couple with the principles dealing with the present application to **Strike out the Plaintiff's Writ of Summons and the Statement of Claim**, this court does possess all the requisite material and evidence to reach a definite and certain conclusion.
35. Accordingly, I make the following orders-
- (i) That the Defendant's Summons seeking the Striking Out of the Plaintiff's Writ of Summons and the Statement of Claim hereby succeeds.
  - (ii) That the Plaintiffs Writ of Summons and the Statement of Claim is hereby struck out and dismissed accordingly.
  - (iii) The Plaintiffs to pay to the Defendant summarily assessed cost of \$750 within 14 days.
  - (iv) Orders accordingly.

Dated at Suva this 31<sup>st</sup> day of March, 2017



  
.....  
MR VISHWA DATT SHARMA  
Master of High Court, Suva

cc: Sherani Lawyers., Suva  
MIQ Lawyers, Suva.