

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 21 of 2014

BETWEEN : **SAMUELA TALETAWA** of Toga Naqavoka Village, Rewa, Taxi Driver.

PLAINTIFF

AND : **SUVA CITY COUNCIL** a duly incorporated body, established under the Local Government Act Cap 125 and having its registered office at 196 Victoria Parade, Suva.

1ST DEFENDANT

AND : **FIJI ELECTRICITY AUTHORITY** a duly incorporated body, established under the Electricity Act Cap 180 and having its registered office at 2 Marlow Street, Suva.

2ND DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSEL: Mr. Rayawa - for the Plaintiff
Mr. Sahu Khan - for the 1st Defendant
Mr. Filipe - for the 2nd Defendant

Date of Ruling : 18th October, 2017

RULING

[Application by the 1st Defendant seeking an order to strike out the Plaintiff's Statement of Claim pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules, 1988]

APPLICATION

1. This is the 1st Defendant's Summons to Strike Out, seeking for the following orders:
 - (a) That the Plaintiff's Statement of Claim be struck out on the grounds that the said Statement of Claim discloses no reasonable cause of action against the 1st Defendant.
 - (b) And the costs of this application be paid by the Plaintiff.
2. The application is made pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules 1988 and under the inherent jurisdiction of the High Court.

3. The Plaintiff **opposed** the 1st Defendant's Striking out application.
4. No Affidavit was filed in support of the Strike out Application because **Order 18 Rule 18 (2)** states that ***No evidence shall be admissible on an application made under paragraph (1) (a).***
5. The application was heard in terms of the **oral** and **written submissions** made in this proceeding by the Plaintiff and the 1st Defendant.

BACKGROUND

6. This Striking out Application filed is by the 1st **Defendant** against the Plaintiff's Substantive Claim.
7. The Cause of Action in the present action alleges an accident that occurred on 05th January, 2012 involving Plaintiff's motor vehicle registration No. LT 3782.
8. The Plaintiff claims that he was returning from dropping off a passenger along Korociriciri road; the electricity post stay pole, installed by the 1st Defendant and handed over to and now belonging to the 2nd Defendant, situated on the said road, suddenly fell on to the Plaintiff's vehicle registration No.LT 3782.
9. This resulted in Plaintiff vehicle sustaining damages which caused the vehicle to be put off the road.
10. That the 1st and 2nd Defendant's joint and several reckless disregard for the safety of the members of the public falls below the reasonable acceptable standards of public service delivery and their statutory duty to the members of the public in this case the Plaintiff.
11. That the level of recklessness calls for punitive and deterrent damages against the 1st and 2nd Defendants jointly and severally in order to instil a sense of public duty and not run its operations on a purely commercially cost cutting driven exercise which results in poor service delivery.
12. The Plaintiff claims damages under various heads as set out in his Statement of Claim.

THE LAW and PRACTICE

13. 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) *.....;*

(c)

(d)

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).

14. 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 LJ 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". (underline mine for emphasis)*

15. 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. (underline mine for emphasis)*

ISSUE for DETERMINATION

16. The following is the only **issue** which requires determination by this honourable court:-
- (a) **Whether the Plaintiff's Writ of Summons and the Statement of Claim discloses any reasonable cause of action against the 1st Defendant?**

ANALYSIS and DETERMINATION

Whether the Plaintiff's Writ of Summons and Statement of Claim discloses any reasonable cause of action against the 1st Defendant?

17. 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)...."

18. 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".

19. It is for the **Plaintiff** to establish that he has a **Cause of Action** in this case against the **1st Defendant** in terms of the **facts** and the **Pleadings** filed herein.
20. On the other hand, the **1st Defendant** must establish that the **Plaintiff** does not have a **Cause of Action** in this case against him.
21. The **Plaintiff'** Counsel made oral submissions whilst the **1st Defendant's** Counsel made oral and written submissions in support of their respective cases defending the **1st Defendant's striking out application**.
22. The **1st Defendant's** arguments are-
- The authorities have repeatedly affirmed that the discretion of striking out pleadings should be exercised sparingly and the Court is required to look into the right of the litigant to have access to proper and complete judicial process bearing in mind the fact to prevent the Defendant(s) from unnecessarily getting involved in an action that is plainly and obviously has no cause of action or abuse of the process of the Court.
 - That the fallen electrical pole that allegedly hit the Plaintiffs vehicle occurred at Korociri, Nausori in 2014. The 1st Defendant since 1979 does not have any authority or responsibility for the maintenance of electrical power poles and that authority and responsibility lies solely with the 2nd Defendant as owner.
 - Further when the 2nd Defendant took over the public installation of electricity in 1979, all documented records and authority kept with the 1st Defendant were transferred to the 2nd Defendant. Therefore, it is the 2nd Defendants responsibility to inspect electrical power poles and conduct maintenance when it so requires.
 - That it is unreasonable to place a burden on the 1st Defendant to carry out activities of inspection or maintenance of electrical power poles after it has transferred all assets and authority on or about 1979 to the 2nd Defendant.
 - That the Plaintiff's claim discloses no reasonable cause of action against the 1st Defendant and should be struck off.
23. Whereas, the **Plaintiff's arguments** are-

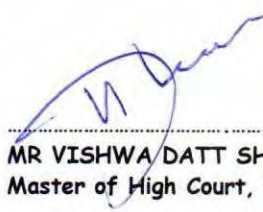
- That the 1st Defendant's application seeking strike out is premature.
 - That there are triable issues in this case which this Court needs to determine.
 - That the 1st Defendant is still responsible with regards to the electrical post at Korociriciri which fell on the Plaintiff's vehicle.
 - That it was the 1st Defendant's negligent.
24. **Prima facie**, the Plaintiff says that he has a clear **cause of action** against the 1st Defendant since the 1st Defendant **Suva City Council** was **responsible** for the electrical pole at Korociriciri and were also **negligent** that caused the accident and damage to the Plaintiff's vehicle.
25. **The Striking out application** of the 1st Defendant is a **summary proceeding** and is only appropriate to cases which are **plain and obvious**.
26. Bearing in mind the **facts** of this case and the **nature of the pleadings** filed by the parties to the proceedings, this case cannot be classed as '**plain and obvious**' in nature.
27. The Court needs to determine **whether the 1st Defendant Suva City Council has any authority or responsibility for the maintenance of electrical power poles and whether the authority and responsibility lies solely with Fiji Electrical Authority, 2nd Defendant?**
28. Further, **this Court needs to determine whether Fiji Electricity Authority, 2nd Defendant took over the public installation of electricity in 1979 as alleged by the 1st Defendant?**
29. **Finally, whether it is the 2nd Defendants responsibility to inspect electrical power poles and conduct maintenance when it so requires?**
30. Obviously, I hold that both Counsels submissions and arguments raise **legal and tribal issues in this case which needs deliberation and determination by Court**.
31. These legal and tribal issues can only be resolved and determined by testing out the evidence of the parties to the proceedings at a full hearing of the matter that will enable the Court to deliberate its decision in a **just and fair manner**.
32. Having perused and analyzed the issues and arguments raised by both the 1st Defendant and the Plaintiff couple with the **principles** dealing with the present application to **Strike out the Plaintiff's Statement of Claim**, this court does possess all the requisite material and evidence to reach a definite and certain conclusion.
33. I find as a fact that the Plaintiff has shown a **reasonable cause of action within his claim against the 1st Defendant**. Therefore, the 1st Defendant, **Suva City Council** must continue to remain a party to the proceedings until the matter is heard and determined for once and for all.
34. Accordingly, I make the following orders-

ORDERS

- (i) That the 1st Defendant's Summons seeking the Striking Out of the Plaintiff's Statement of Claim fails and is accordingly dismissed.
- (ii) The 1st Defendant to pay the Plaintiff summarily assessed cost of \$1,000 within 14 days.
- (iii) The Matter to be expedited and take its normal cause in terms of further directions.
- (iv) Orders accordingly.

Dated at Suva this 18th day of October, 2017




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

cc: Rayawa Law, Suva
Suva City Council.