

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 342 of 2015

**BETWEEN** : **JAYS HOLDINGS LIMITED** a duly registered company with its registered office in Fiji.

1<sup>ST</sup> PLAINTIFF

**AND** : **JAG RAM** of Lot 1, Waila, Nausori, Managing Director.

2<sup>ND</sup> PLAINTIFF

**AND** : **SUNITA** of Lot 1, Waila, Nausori, Domestic Duties.

3<sup>RD</sup> PLAINTIFF

**AND** : **COMPROLLER OF CUSTOMS & EXCISE** as the Chief Executive Officer of the Fiji Revenue and customs Authority Act 1998 having its head office at National Revenue and Customs Complex, Queen Elizabeth Drive, Nasese, Suva.

DEFENDANTS

**BEFORE:** Master V. D. Sharma

**COUNSEL:** Ms. Isireli Fa - for the Plaintiffs  
Mr. Verebalavu with Etirika - for the Defendant

**DATE OF RULING:** 17<sup>th</sup> July, 2018 @ 9 am

**RULING**

*[Application by the Defendant seeking an order to strike out the Plaintiff's Statement of Claim pursuant to Order 18 Rule 18 (1) (a) (b) and (d) of the High Court Rules, 1988 and the Court's Inherent Jurisdiction.]*

## APPLICATION

1. This is the **Defendants' Summons to Strike Out**, and seeks the following orders:

- (a) *That the Plaintiffs' application be struck out Order 18 Rule 18 (1) (a) (b) and (d) of the High Court Rules 1988 and under the inherent jurisdiction of this Honourable Court.*

### Upon the Grounds that:

- (i) That it discloses no reasonable cause of action;
- (ii) That it is scandalous, frivolous or vexatious;
- (iii) That it is an abuse of the Court process; and
- (iv) That for an Order that the Plaintiff do pay to the Defendant the costs of and occasioned by this application to be assessed summarily.

## THE LAW and PRACTICE

2. 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. 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"*

#### DEFENDANTS' CASE

7. Relied on the written submissions.
8. The Plaintiffs issued proceedings against the Defendant seeking special and general damages on goods that were detained by the Defendant lawfully but retained unlawfully;
9. Submitted that the Plaintiff's actions are basically based on Damages to goods and relies on the court decision of 29<sup>th</sup> May, 2015;
10. The Plaintiff is currently charged with a criminal offence pending determination;
11. The Plaintiff's statement of claim has no chance of success since the goods which are the subject of the claim are allegedly smuggled goods on which the duty was avoided;
12. The statement of claim refers to the market value of goods rather than the actual value of purchase on the invoices;
13. These mere facts make the Plaintiff's claim frivolous and vexatious.
14. The court must not be allowed to make determination on goods which are the subject of alleged smuggling Act by individuals who have a debt owing to the Government;
15. Seeking the Plaintiff's claim be struck out.

#### PLAINTIFFS' CASE

16. Adopts affidavit in reply deposed by Jag Ram;
17. Ruling delivered in HBC 288 of 2014;
18. Plaintiff's case is goods was seized, and upon release the Plaintiff discovered goods damaged;

19. Plaintiff is seeking damages;
20. Criminal matter pending in Magistrate's court against the Plaintiff is separate from this civil case;
21. Defendant's application has no merits;
22. Defendant's Defence contradicts Plaintiff's claim- so there are triable issues;
23. Plaintiff's cause of action is set out at paragraphs 13-17;
24. Defendant is denying Plaintiff's statement of claim at paragraphs 13-17- it is obvious defendant is raising triable issues;
25. Claim sets out merits of the Plaintiff's case.
26. The Defendant's application to be struck out.

#### ANALYSIS and DETERMINATION

27. The issues for court's determination are *Whether the Plaintiff's Statement of Claim"-*

- *Discloses no reasonable cause of action;*
- *Is Scandalous, Frivolous or Vexatious;*
- *Is an abuse of the court process?*

*Further, whether the Defendant is entitled to any costs of this application?*

#### Reasonable Cause of Action

28. It is for the Plaintiffs to establish that they have a **Cause of Action** in this case against the **Defendant** in terms of the **facts** and the **Pleadings** filed herein.
29. On the other hand, the **Defendant** must establish that the **Plaintiffs** do not have a **Cause of Action** in this case against the Defendant.
30. Reference is made to 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)...."*

31. 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"

32. Both parties attention is drawn to the earlier civil Action filed by the same Plaintiffs herein against the Controller of Customs & Excise case reference *HBC 288 of 2014- Jays Holdings Limited -v- The Controller of Customs & Excise.*
33. In *HBC 288 of 2014*, the Plaintiffs filed an Originating Summons against the Defendant seeking an order for the immediate release of the Inter-Alia, the Plaintiff's goods, currencies etc.
34. The Ruling was delivered by the Hon. Presiding Judge on 29<sup>th</sup> May, 2015 in favour of the Plaintiffs seeking for various orders. The orders made are referred to therein of which both parties are very well aware of.
35. The current Action *HBC 342 of 2015* is filed by the same Plaintiffs *Jay Holdings Limited & Others -v- The Controller of Customs & Excise*, subsequent to the Ruling delivered in *HBC 288 of 2014* and has some nexus to the present claim. The Plaintiff's in the current Action *HBC 342 of 2015* are claiming that the items seized and goods detained by the Defendant [as enumerated at paragraphs 13-15 inclusive of the Plaintiff's statement of claim], and upon the return by the same by the Defendant, to the Plaintiff as per the Court Ruling of 29<sup>th</sup> May, 2015, were damaged and could no longer be sold resulting in losses to the Plaintiffs as a result of the Defendant's unlawful action. He adds that the goods as mentioned in the statement of claim at paragraphs 14 & 15 were damaged whilst in the control and custody of the Defendant.
36. The Defendant in his **Statement of Defence** is putting the Plaintiff's to strict proof in regards to the value of goods as claimed at paragraphs 14 & 15 inclusive of the Plaintiff's Statement of Claim.
37. I find that the Plaintiffs are generally claiming for the replacement value of Plaintiff's goods seized and damaged by the Defendant and various other orders as set out in the Plaintiff's prayer at paragraphs 1-16 inclusive.
38. In light of above, I find that prima facie, the Plaintiffs have a **Cause of Action** within their Statement of Claim as filed herein. It is for the Plaintiffs to prove their case on the balance of probability at the full hearing.

**Scandalous, Frivolous and Vexatious**

39. 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).
40. 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...."*

33. **Whether the claim is Scandalous in nature?**

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)."*

34. **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?**

35. **The Plaintiff's Claim is yet to be put to the Test in terms of the evidence to be tendered at the hearing and then for the determination of the Claim.**

36. **Therefore, the Defendant cannot submit that the Plaintiff's Summons and the Statement of Claim at this stage of the proceedings is scandalous in nature.**

37. **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. Holloway [1895] P 87, p.90: ...."*

38. **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'.*

39. Taking into consideration the above matters together with the **written submissions** and **oral arguments** raised in Court by both Counsels, the Defendant need to establish that the Plaintiff's Claim **lacks merits**. This Court needs to hear and determine the same in terms of the law and the evidence that the Parties to the proceedings may and or intend to produce at the hearing proper in order to allow this Court to deliberate and determine the substantive issues of alleged damages to detained goods and the losses incurred to the Plaintiffs in the process of the release of the seized and detained items by the Defendant.

However, this claim **prima facie** cannot be judged summarily to be **frivolous** or **vexatious**; it needs to be appropriately investigated, examined and determined in terms of the availability of evidence before a court of law accordingly.

40. Therefore, in the given circumstances, the Plaintiff's claim cannot be said to be **frivolous** or **vexatious**.

Abuse of Court Process

41. 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)*

42. 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"

Again, the **summary procedure** should not be used to determine the "**abuse of process of the court**", rather the substantive matter needs to be heard to determine the issue within the writ and the statement of claim making a claim whether it is **groundless** and **unfounded** in the sense that the plaintiff does not know of any facts to support it.

### IN CONCLUSION

43. For the aforesaid rationale, I do not find that it can be found and ascertained from the Plaintiff's Statement of Claim that it has no reasonable cause of action, is Scandalous, Frivolous, and Vexatious and/or is an abuse of the Court process.
44. Therefore, the **Defendant's application seeking an order to strike out the Plaintiff's Statement of Claim** against the **Defendant** fails.
45. It is only appropriate for obvious reasons that as a result of my **finding** not to proceed to strike out the Plaintiff's Writ of Summons and the Statement of Claim against the Defendant, that I am inclined to grant costs to the succeeding party (Plaintiffs).
46. The Defendant is therefore ordered to pay a summarily assessed costs of **\$650** to the **Plaintiffs** within 14 days hereof.
47. Accordingly, I proceed to make the following orders:

### FINAL ORDERS

- (i) The Defendant's application to strike out of the Plaintiff's Writ of Summons and the Statement of Claim fails.
- (ii) The Plaintiff's Writ of Summons together with the Statement of Claim against the Defendant remains intact.
- (iii) Cost against the Defendant on this application is summarily assessed at \$650 to be paid by the Defendant to the Plaintiff within 14 days' time frame.
- (iv) The matter to proceed between the Plaintiffs and the Defendant and stands adjourned for further directions on the next cause.
- (v) Orders accordingly.

Dated at Suva this 17<sup>th</sup> day of July, 2018



cc:

  
MASTER  
VISHWA DATT SHARMA