

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 121 of 2017**

**BETWEEN**

**GOLD ROCK INVESTMENT LIMITED** a limited liability company having its  
registered office at 54 Millet Street, Vatuwaqa, Suva.

**PLAINTIFF**

**AND**

**iTAUKEI LAND TRUST BOARD** a statutory body incorporated under the  
iTaukei Land Trust Act having its registered office at 431  
Victoria Parade, Suva.

**FIRST DEFENDANT**

**AND**

**STANDARD CONCRETE INDUSTRIES LIMITED** a limited liability company  
having its registered office at Lot 1, Jai Hanuman Road, Bhindi  
Sub-Division, Vatuwaqa, Suva.

**SECOND DEFENDANT**

AND

MATAQALI ULUGAI as customary owner of the iTaukei Land known as “wailiko” and “qoliqoli” owners of adjacent creek and river of Dakuinuku Village, Sawakasa, Tailevu.

INTERESTED PARTY

Counsel : Mr. N. Tuifagalele for the Plaintiff  
Ms. Q. Vokanavanua for the 1<sup>st</sup> Defendant  
Mr. H. Lateef for the 2<sup>nd</sup> defendant

Date of Hearing : 20<sup>th</sup> July, 2018

Date of Ruling : 27<sup>th</sup> July, 2018

**RULING**

*(On the application for Striking Out)*

[1] The plaintiff instituted these proceedings against the defendants and the interested party seeking the following reliefs:

- i. An order that the first defendant be restrained from processing and/or issuing any gravel extraction license to the second defendant over the creek and/or river and land customarily owned by the interested party.

- ii.* An order that the first defendant be restrained from harassing the plaintiff and/or conducting themselves in a manner as landlord that will prejudice the plaintiff as a lease or license applicant.
- iii.* An order that the second defendant be restrained from carrying out any field work, scientific tests, environmental assessment and extraction of sand and/or gravel over the creek and/or river and land customarily owned by interested party.
- iv.* Specific damages.
- v.* Consultation costs.
- vi.* General damages.
- vii.* Exemplary damages at common law,
- viii.* Interest
- ix.* Costs.

[2] The second defendant an application pursuant to Order 18 rule 18 of the High Court Rules 1988 to have the statement of claim against the second defendant struck out for the following reasons:

- i.* The second defendant has been made a party to the action improperly or unreasonably;
- ii.* the plaintiff's statement of claim discloses no reasonable cause of action against the second defendant; and
- iii.* it is an abuse of the process of the court.

[3] Before considering the merits of the application it is important to consider the law governing applications for striking out.

[4] Order 18 rule 18 of the High Court Rules 1988 provides:

- (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.

[5] 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.

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.

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.

In **Narawa v Native Land Trust Board** [2003] FJHC 302; HBC0232d.1995s (11 July 2003) the court made the following observations:

In the context of this case I find the following statement of Megarry V.C. in *Gleeson v J. Wippell & Co.* [1971] 1 W.L.R. 510 at 518 apt:

“First, there is the well-settled requirement that the jurisdiction to strike out an endorsement or pleading, whether under the rules or under the inherent jurisdiction, should be exercised with great caution, and only in plain and obvious cases that are clear beyond doubt. Second, *Zeiss No. 3* [1970] Ch. 506 established that, as had previously been assumed, the jurisdiction under the rules is discretionary; even if the matter is or may be *res judicata*, it may be better not to strike out the pleadings but to leave the matter to be resolved at the trial”.

- [6] In brief what the courts have said in all these decisions is that the power to strikeout a claim is a discretion conferred upon the court and the court must exercise such discretionary power with great caution and only in an exceptional case.
- [7] The main ground upon which the 2<sup>nd</sup> defendant relies on in this matter is that the plaintiff has disclosed no cause of action against it.
- [8] The first defendant in its statement of claim has admitted that it granted two licenses to extract gravel along the Wailoko Creek but the plaintiff was given approval to extract gravel from Pit 1 of Pit 9 whilst the 2<sup>nd</sup> defendant was permitted to extract gravel from Pit 10 to Pit 14. Whether the licenses granted to the plaintiff and the 2<sup>nd</sup> defendant are in respect of the same creek or two different portions of the same creek is a matter of evidence. It cannot be decided summarily in an application for striking out. It is important to note that whether the plaintiff has been made out a case which he can successfully maintain against the 2<sup>nd</sup> defendant is also a matter that should be decided at the substantive hearing of the matter.

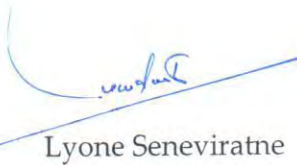
[9] Since the license granted to the 2<sup>nd</sup> defendant is in issue the order that will be made by the court after hearing the substantive matter may have an effect on the 2<sup>nd</sup> defendant's rights. Therefore, the claim against the 2<sup>nd</sup> defendant cannot be struck out.

[10] For the reasons aforementioned the court makes the following orders.

ORDERS

1. The application of the 2<sup>nd</sup> defendant to strikeout the claim of the plaintiff against it is refused.
2. Costs in the cause.



  
Lyone Seneviratne

JUDGE

27<sup>th</sup> July, 2018