

IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 82 OF 2015

BETWEEN : **MOHAMMED RAFI** of Drumasi, Tavua, Fiji, Cultivator, in his capacity as the Administrator of the **ESTATE OF KUSHI MOHAMMED** and in his personal capacity.

PLAINTIFF

AND : **MOHAMMED TAKI** of 4220 Bayonne Court, Stockton CA 95206, USA, Retired formally of Drumasi, Tavua in his capacity as the Administrator of the **ESTATE OF KUSHI MOHAMMED** and in his personal capacity.

DEFENDANT

Appearances : Mr J. Ulucole for the defendant/applicant
: Mr N. Padarath for the plaintiff/respondent
Date of Hearing : 2 August 2018
Date of Ruling : 2 August 2018

R U L I N G

[On variation of orders]

[01] This is an *ex parte* notice of motion by the defendant/applicant (*'the defendant'*) to vary my order of 6 September 2016, delivered dismissing the action on the ground that it discloses no reasonable cause of action against the defendant (*'the application'*). The defendant has filed a supporting affidavit, sworn on 27 July 2018.

[02] By his application filed 27 July 2018, the defendant seeks the following orders:

- a) *Any previous transaction and or dealings with MOHAMMED RAFI be null and void in relation to the Estate of Kushi Mohammed.*

b) That the name of MOHAMMED RAFI be deleted or removed from the Registration of the Titles as a Trustee.

[03] The application is made under the High Court Rules 1988, as amended, Order 20, Rule 10, which provides:

Amendment of judgment and orders (O 20, R 10)

"10 Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omissions, may at any time be corrected by the Court on motion or summons without an appeal."

[04] In my ruling dated 6 September 2016, which the defendant seeks to vary, I ordered that:

1. *The action is struck out under Rule 18 (1) (a) as it discloses no reasonable cause of action.*
2. *The plaintiff lacks the capacity to bring the action as an administrator as he has been declared bankrupt.*
3. *The plaintiff shall pay summarily assessed cost of \$1,000.00 to the defendant.*

[05] Initially, the defendant did not make any claims other than striking out the action. Accordingly, I struck out the action on the ground that the originating summons does not disclose reasonable cause of action against the defendant and that the plaintiff lacked the capacity to bring the action as he had been declared bankrupt.

[06] The HCR, O 20, R 10, enables the court to correct any clerical mistakes in judgments or orders, or errors arising from any accidental slip or omissions without appeal.

[07] There is a mass of authority to the effect that this rule only applies where there is an accidental slip or omission. There is nothing which could attract the operation of that rule, and no jurisdiction to vary a judgment after it has been drawn up, except so far as is necessary to correct errors in expressing the intention of the court (see *Suresh Sushil Chandra & Anor V Suva City Council & Anor* [1989] 35 FLR 152).

[08] By invoking the slip rule, the defendant seeks to include in the order delivered on 6 September 2016, that any previous transaction and or dealings with MOHAMMED RAFI be null and void in relation to the Estate of Kushi Mohammed and that the name of MOHAMMED RAFI be deleted or removed from the Registration of the Titles as a Trustee. These are new substantive issues. These issues were never raised in the proceedings.

[09] The defendant seeks variation of the order. The variation seeks to include the substantive relief which was never raised in the action. The court has no jurisdiction to include in the order a substantive new relief by applying the slip rule. The slip rule may be applied to correct any clerical mistakes in judgments or orders or errors arising from any accidental slip or omissions without appeal. The variation the defendant seeks does not arise from accidental slip or omissions. In fact, it is substantive relief in nature. In the circumstance, the slip rule cannot apply. The application is misconceived. I, therefore, dismiss the application but without costs.

The result

1. Application to vary the orders refused.
2. No order as to costs.

M.H. Mohamed Ajmeer
2/8/18
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M.H. Mohamed Ajmeer
JUDGE

At Lautoka
2 August 2018

Solicitors:

For the defendant/applicant: M/s Colavanua Law, Barristers & Solicitors
For the plaintiff/respondent: Samuel K Ram, Barrister & Solicitor

