

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

CIVIL ACTION NO. HBC 129 OF 2016

BETWEEN : **NANDNI DEVI** of Togo Lavusa, Nadi, Accountant.

FIRST PLAINTIFF

AND : **AJNESH VINESH VARMA** of Togo Lavusa, Nadi as next friend of
NIDISH ANSH and **ANITHI NAIYA**, Minors.

SECOND PLAINTIFFS

AND : **AJNESH VINESH VARMA** of Togo Lavusa, Nadi.

THIRD PLAINTIFF

AND : **SURYA NAND** of Nadi.

DEFENDANT

AND : **MOHAMMED SAIYAZ** of Korociri, Nadi Back Road, Nadi.

THIRD PARTY

Appearances : Mr R. Singh for the plaintiffs
Ms S. Ravai for the defendant
Ms J. Takali for the third party

Date of Hearing : 1 May 2019

Date of Ruling : 1 May 2019

R U L I N G

[on striking out]

Introduction

[01] This is an application to strike out the third party notice filed by the defendant on the ground that it discloses no reasonable cause of action. The third party relies on the certificate of registration of vehicle No. DH 360, which confirms that the defendant is the last registered owner of the vehicle.

[02] By a summons supported by an affidavit of Mohammed Saiyaz, the third party (*'the application'*), the third party seeks an order striking out the defendant's statement of claim against the third party filed on 26 November 2018, on the grounds that:

- (a) *It discloses no reasonable cause of action against the third party.*
- (b) *It is scandalous, frivolous or vexatious*
- (c) *It may prejudice, embarrass or delay the fair trial of the action*
- (d) *It is otherwise an abuse of the process of the Court.*

[03] The application is made under Order 18 Rule 18 (1), (a), (b), (c) and (d) of the High Court Rules 1988, as amended (*'HCR'*) and the inherent jurisdiction of this court.

[04] Both the plaintiffs and the defendant oppose this application. The defendant had filed an affidavit of Surya Nand, the defendant in response, to which the third party had filed an affidavit in reply. The defendant says the vehicle was transferred to the third party by the defendant's son-in-law and there is no transfer document except for transfer form, which the third party did not take to the Land Transport Authority (*'LTA'*).

[05] At the hearing, the parties made oral submissions through their counsel. Only the plaintiffs tendered written submission.

The background

[06] The brief background facts are that: the plaintiffs' claim for personal injuries and damages against the defendant arises out of a motor vehicle accident where the

vehicle No. DH 360 driven by the first defendant was involved. The matter was fixed for trial on 6 September 2018 when the court among other things made order allowing the defendant to file a third party notice. The defendant has filed the third party claim seeking an order that the third party Mohammed Saiyaz do indemnify the defendant against all claims and costs in the event the court adjudges the same against the defendant. The third party has filed his statement of defence to the defendant's statement of claim against the third party. After filing the statement of defence to the defendant's claim, the third party had filed the application to strike out the third party claim. The third party claim is based on the ground that the defendant had already sold the said vehicle to Third Party, therefore the liability shifts to the third party. The Third Party denies the defendant's claim and says that the third party never purchased the said vehicle from the defendant.

The Law

[07] The application is made pursuant to Order 18 Rule 18 (1) (a), (b), (c) & (d) of the HCR, which provides:

"Striking out pleadings and indorsements (O 18, R 18)

The Court at any stage of the proceedings order to be struck out or amended any pleading or indorsement of any writ in the action, or anything in any pleading or the indorsement, on the ground that:

- (a) it discloses no reasonable cause of action or defence, as the case may be;*
- (b) it is scandalous, frivolous or vexatious;*
- (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."*

Affidavit evidence

[08] The third party in his affidavit in support states:

' ...

5. *In paragraphs 16 and 17 of the Defendant's Statement of Claim against me he states as follows:-*

"16. ON 25th June 2014 the Defendant sold the vehicle registration No. DH 360 to the Third Party.

17. THE Third Party undertook to effect registration of the transfer and the Defendant had nothing more to do with the said vehicle."

6. *I did not at any time advise the Defendants as such. It is true that I had used the defendant's Motor Vehicles Registration No. DH 360 on a number of occasions but did not purchase it from him.*

7. *After the accident on the 17th May 2015, the Defendant had parked Motor Vehicle Registration No. DH 360 at my premises as he did not have a place to keep the vehicle to which I agreed to.*

9. *I verily believe that the Defendant is trying to avoid the claim by the Plaintiffs and added me to these proceedings just because the Vehicle was parked at my premises.*

11. *The annexure clearly shows that the Defendant is the owner of the vehicle till to-date after he acquired the Vehicle on the 18th January 2013.*

...'

[09] The defendant on the other hand in his affidavit in response states:

'...

3. *That paragraph 4 of the said Affidavit is admitted. I wish to further state that the Third Party is trying to negate liability knowing full well that he was the owner and had possession of the said Motor Vehicle from 25th day of June 2014, when he had purchased the said vehicle from me.*

4. *That paragraphs 5, 6 and 7 of the said Affidavit is denied and the Defendant is put to strict proof of the same. I wish to further state that the said Motor vehicle was only parked at the Third Party's residence after the accident as he was the owner of the said vehicle at the time of the accident.*

6. *That in response to paragraph 9, 10 and 11, I wish to state that the Third Party is relying on the fact that the said Motor Vehicle was still registered under my name at the time of the said Accident to try and refute liability when the truth of the matter is that he had failed to effect registration of the transfer unto his name as he had informed me at the time of sale of the said vehicle.*

...'

Submissions

- [10] Ms Takali, on behalf of the third party submits that the defendant's statement of claim against the third party discloses no reasonable cause of action as the defendant himself is the registered owner of the vehicle registration No. DH 360, and that the third party had only used the vehicle few times and it was parked at the third party's place as the defendant had no space to park the vehicle. As such, the defendant's claim against third party should be struck out.
- [11] Conversely, Ms Ravai of counsel appearing for the defendant contended that the vehicle was transferred to the third party by the defendant's son-in-law. However, there was no transfer document except for the transfer form, which the third party undertook to effect the registration of the transfer, but failed. She further contended that the vehicle was only parked at the third party's residence after the accident as he was the owner of the said vehicle at the time of the accident.
- [12] Mr Singh of counsel for the plaintiffs submits that the jurisdiction of the court to summarily strike out a claim must be exercised sparingly and only in exceptional cases.

Discussion

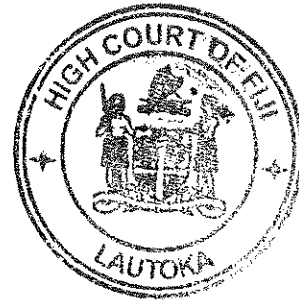
- [13] The third party has made this application to strike out the defendant's claim against him. His application is made on the sole ground that he is not the registered owner of the vehicle at the time of the accident. The defendant's third party claim is based on the basis that the defendant sold the vehicle registration No. DH 360 to the third party before the accident and the third party undertook to effect registration of the transfer, but failed to do so.
- [14] The application has been made relying on all four limbs ((a) to (d)) of R 18. At the inquiry however the application was argued on limb (a) that the third party claim discloses no reasonable cause of action.
- [15] The court when considering an application to strike out under paragraph (a) will only consider the pleading and assume the allegation in the pleading is true and will be proved at the trial. Evidence is inadmissible on an application under paragraph (1) (a) (see R 18 (2)).
- [16] It is true that the defendant is the registered owner of the vehicle according to the certificate of registration.
- [17] Whether the third party was the actual owner of the vehicle at the time of the accident is a question of fact which can only be determined at the trial after evidence, cross examination and re-examination. The certificate of registration is no conclusive proof of the ownership of the vehicle.
- [18] Reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered.
- [19] I have carefully considered the allegations in the defendant's statement of claim against the third party, and in my opinion, it discloses a reasonable cause of action with some chance of success. I would, therefore, strike out the third party's application with summarily assessed costs of \$400.00 each, payable to the plaintiff and to the defendant (Totalling \$800.00) within 14 days.

The outcome

1. The third party's application to strike out the defendant's statement of claim against third party is struck out.
2. The third party shall pay summarily assessed costs to the plaintiff and to the defendant \$400.00 each, totalling \$800.00 within 14 days of the date of this ruling.
3. The matter is now adjourned for mention only at 9.30 am on 23 May 2019.

M.H. Mohamed Ajmeer
..... 1/5/19..

M.H. Mohamed Ajmeer
JUDGE



At Lautoka
1 May 2019

Solicitors:

For the plaintiffs: M/s Patel & Sharma, Barristers & Solicitors

For the defendant: M/s Fazilat Shah Legal, Barristers & Solicitors

For the third party: M/s Siddiq Koya Lawyers, Barristers & Solicitors