

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

CIVIL FILE NO.: HBC 07 of 2016

BETWEEN : NASINU MOSQUE COMMITTEE and ABDUL GAFFAR  
PLAINTIFF

AND : NASINU LAND PURCHASE & HOUSING CO-OPERATIVE  
SOCIETY LIMITED  
DEFENDANT

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**APPEARANCES/REPRESENTATION**

PLAINTIFFS : Mr S.Kumar [Sunil Kumar Esq]  
DEFENDANT : Ms Devan-Singh [Neel Shivam Lawyers]  
RULING OF : Acting Master Ms Vandhana Lal  
DELIVERED ON : 21 January 2019

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**INTERLOCUTORY RULING**  
[Summons to Strike Out - Order 18 Rule 18(1)]

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**Application**

1. This is the Defendant's application a summons dated 29 February 2016 seeking orders that the Plaintiff's claims be struck out on the grounds that:

- a) *it discloses no reasonable cause of action;*
- b) *it is scandalous, frivolous or vexatious;*
- c) *it is otherwise an abuse of the process of the court.*

The Defendant has filed an affidavit of one Muni Deo in support of its application.

2. The Plaintiff filed its affidavit in opposition to the said application.

**Substantive Claim**

3. The claim by the Plaintiff is as follows:

- a) *That all material time the Plaintiffs are Religious Organization duly registered under Religious Bodies Registration Act Chapter 68*

*conducting their prayer and services under the name and style of **NASINU MOSQUE COMMITTEE.***

- b) That the Defendant is Co-operative known as **NASINU LAND PURCHASE & HOUSING CO-OPERATIVE SOCIETY LIMITED** having its registered office at 1<sup>st</sup> Floor, Suite 7A, 68 Suva Street, Suva is doing Land sub division and selling land to the prospective purchasers.*
- c) That on 17<sup>th</sup> day of June, 1963 the Plaintiff and the Defendant entered into a Memorandum of Agreement to purchase all parcel of land as Lot 50 Zone C at the price of four hundred and fifty (450) one pound shares in the Capital of the Society, which will be pleaded in this paragraph and the agreement will be produced at the time of hearing of this case.*
- d) That the Plaintiff's agreed to pay the Defendant dues from 01<sup>st</sup> January, 1968 at the rate of five (5) pounds half yearly in advance on the last day of the month of June and December each year thereafter, or at such other rates as may be assessed and confirmed by a general meeting of the society.*
- e) That the Plaintiff had paid the total amount and in excess of Five Hundred (\$500.00) dollars to the Defendant and the Defendant vide its memorandum dated 26<sup>th</sup> July, 2007 allocated two lots being Lot 3 and Lot 5 in Stage 10 to the Plaintiff.*
- f) That the Plaintiff in various meeting have asked the Defendant to and give the certificate of Titles of the two lots to them but they have not provided them with the certificate of Titles of Lot 3 and Lot 5 but the Defendant had ignored and continues to ignore the Plaintiff's request.*
- g) That 2<sup>nd</sup> named Plaintiff commenced a civil action No: 75/2012 but due to his medical reasons of getting medical treatment abroad he wrote to the High Court Registry to withdraw his action and thereafter registry issues Order 29 Rule 5 summons and the action struck out without being tried on merit.*

They seek following orders:

- a) Specific performance the memorandum of agreement dated 17<sup>th</sup> day of June, 1968 between the Plaintiff and the Defendant and the Defendants memorandum dated 26 July, 2007 allocated two lots being Lot 3 and Lot 5 in Stage 10 to the Plaintiff by doing transfer and issuing them with the Certificate of Titles for two respective lots;*
- b) Further or in alternative, an injunction restraining the Defendant whether by its servants, agents or whosoever from dealing with said two Lot 3 and Lot 5 in Stage 10 until further order of this honourable court;*

- c) *Further or alternatively damages for breach of contract;*
- d) *Further if the Defendants refuse to sign transfer the Chief Registrar to execute necessary documents to effect the specific performance sought in Statement of Claim.*

#### **Grounds for the Application**

4. The grounds on which Plaintiff makes this application is summarised as follows:
5. The Defendant is the registered proprietor of the land on CT No. 3213 being Lot 1 on DP No. 3130. Said land extends from Nasinu River in Lagere to Laucala Bay.

On or about 17 June 1968, the Defendant entered into an agreement with one Mosque Committee to sell part of its land on CT 3213 and provisionally allocated Lot 51 on Zone C as per an earlier subdivision plan to the Mosque Committee.

Subsequently the Defendant's board resolved that two lots would be allocated to the Mosque Committee.

The Co-operative is currently in the process of carrying out development on Stage 10 of its land. Once development for utilities is made, the lots will be allocated to paid members including the Mosque Committee.

The agreement was executed by the Mosque Committee under the hands of its trustee/surety one SKK Maqbool.

Annexure MD 2 is the said Memorandum of Agreement made on 17 June 1968. The said party between which said agreement is executed is the Nasinu Land Purchase & Housing Co-operative Society and the Mosque Committee.

As per the agreement the Mosque Committee has been provisionally allocated Lot 51 in Zone C.

The Mosque Committee is duly registered under the Religious Body Ordinance on 2 March 1968. At the given time the trustees were Rahmatullah Khan, Sheikh Kamal Khan Maqbool, Mohammed Hussain Inayat, Mohammed Hanif and Sayed Rafique Hussain Shah.

The last trustees appointed and registered on 24 April 2007 were:

- i. *Abdul Gaffar*
- ii. *Billy Mohammed Ismail*
- iii. *Abdul Rahim*
- iv. *Abdul Rizwan*
- v. *Riyakat Ali*
- vi. *Mohammed Harun Khan*
- vii. *Sheik Fariq*

The Defendant is not aware if Abdul Gaffar is still the trustee and president of the Mosque Committee.

Since the execution of the above agreement the Mosque Committee has been paying the stipulated purchase price.

Since late 90's various Islamic Organisation have written to the Cooperative claiming legal interest to the Mosque and Land.

On or about 1 November 1996, the cooperative received a letter from Fiji Muslim League (Valelevu Branch) claiming the Mosque to be a subsiding branch of the Valelevu Muslim League.

In 2001 "Laqere Mosque Committee" also laid its clam to the lots.

Said Laqere Mosque Committee was registered on 26 June 2001 well after the execution of the Memorandum of Agreement in 1968.

On 12 September 2001 the Cooperative again received a letter notifying them that the Mosque Committee and not Fiji Muslim League were owners of the Lots allocated by the Cooperative. The Cooperative has since advised Fiji Muslim League that there was no agreement for sale of land between it and the cooperative.

They had also received letter from Messrs Lateef and Lateef claiming that the Mosque Committee entered into agreement with the Defendants to purchase the two lots.

On 24 September 2014, Ministry of Industry and Trade queried on the allocation of the lots and alleged that the Defendants had received payments from three different religious groups.

The Defendant responded informing that the agreement for the lots was with the Mosque Committee and payments were received from then.

According to the Defendant, the First Plaintiff Nasinu Mosque Committee is legally not existent and not registered under the Religious Bodies Act.

The Defendant has had no dealings with Nasinu Mosque Committee neither is Nasinu Mosque Committee been a party or privy to the Memorandum of Agreement.

Hence the Plaintiff submits that neither of the Plaintiff have locus standi to file the action nor they have a cause of action against the Defendant.

### **Opposition to the Application**

6. The Plaintiff opposes the application on following grounds:

Abdul Rahiman (the deponent of the Affidavit) is the Vice President of Nasinu Mosque Committee.

The 1<sup>st</sup> Memorial of Trustees of the Mosque Committee on 2 March 1968 had following names registered:

- Rahmatulla Khan as President;
- Sheik Kamal Khan Maqbool as Secretary;

- Mohammed Hussein Inayat as Treasurer;
- Mohammed Hanif and Sayed Rafique Hussein Shah as Committee Members.

**[annexure AR2 relevant]**

They had approached the Nasinu Land Purchase for a piece of land for prayer purposes and were allocated 2 undeveloped blocks.

Upon their persistent demand the Defendant authorised them to use the present site where Laqere Markaz is situated on Lot 5.

They formed a sister committee in the name and style of Laqere Markaz Committee.

The Mosque Committee Nasinu was formed for perpetual succession until wound up. It is registered with the Fiji Island Revenue and Customs Authority.

That Mosque Committee Nasinu paid the Defendant in full.

Defendant's on 25 July 2007 wrote to Nasinu Mosque Committee that two lots has been allocated to Nasinu Mosque Committee in Stage 10 and once development of the area is completed they would be given the two titles for lots 3 and 5 [annexure AR 5 relevant].

#### **Determination**

7. Courts have time and again held that the power to strike out a statement of claim is one which is to be sparingly used and is not appropriate to cases involving difficult and complicated issues of law – **A.G. v. Halka 18 FLR 210**.

#### No Reasonable Cause Of Action

8. Whilst making a determination under Order 18 rule 18(a), I am only required to examine the statement of claim [no statement of defence has been filed] without any reference to any affidavit evidence other than what has been incorporated in the pleadings.
9. In **Bidesi v. Howard a Suva High Court Civil case number 513 of 1992** Jesuratnam J. held that:

*"It is not enough for the defendant to show at this stage that the Plaintiff has a weak case. He should go further and show the Plaintiff has no case at all"*.

10. The Supreme Court Practice Volume 1, 1993 Part 1 at paragraph 18/19/7 reads:  
*"A reasonable cause of action means a cause of action with some chance of success when only the allegation in the pleadings are considered (per Lord Pearson in Drummond – Jackson v. British Medical Association [1970]1W.L.R.688"*.

It further went on to say that;

*"so long as the Statement of Claim or the particulars (Darey v. Bentinck [1893] 1 QB. 185) disclose some cause of action, or raise some question to 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 it out (Moure v. Lawson (1915) 31 T.L.R. 418, C.A.; Wenlock v. Moloney [1965] 1 W.L.R. 1238).*

11. The first Plaintiff has pleaded that it is a Religious Organisation registered under Religious Bodies Registration Act under the name and style of Nasinu Mosque Committee.
12. The Statement of Claim duly outlines that the Plaintiff and Defendant had entered into a Memorandum of Agreement to Purchase Land.

Via another memorandum dated 26 July 2007 the Defendants are said to have allocated Lots 3 and Lot 5 in Stage 10 to the Plaintiff.

The Defendant now is ignoring and not giving the Plaintiff the Certificate of Titles of the two lots.

13. From the pleading it is clear that the first named Plaintiff Nasinu Mosque Committee has laid out its claim against the Defendant.
14. However, the 2<sup>nd</sup> Named Plaintiff Abdul Gaffar has failed to outline in the statement of claim on what basis he has brought this action and why he is seeking orders sought.
15. The explanation note to Order 18 rule 19 in The Supreme Court Practice Volume 1, 1993 Part 1 states;

*"If there is a point of law which requires serious discussion on objection should be taken on the pleadings and the point set down for argument under Order 33 rule 3".*

16. I am satisfied that only the second named Plaintiff has no reasonable cause of action.

#### Abuse Of Process

17. Pathik J, in **Goldstein v. Narayan a Suva High Court Civil Action No. HBC 0413 of 2001** considered following passage from Halsbury's Laws of England 4<sup>th</sup> Edition Volume 37 at paragraph 434 to be pertinent when considering an application for striking out claim on grounds of abuse of process:

*"An abuse of the process of the court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purposes, or more simply, where the process is misused. In such a case, even if the pleading or indorsement does not offend any of the other specified grounds for striking out, the facts may show that it constitutes an abuse of the process of the court, and on this ground the court may be justified in striking out the whole pleading or indorsement or any offending part of it. Even where a party strictly complies with the literal terms of the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of abuse of process, and where subsequent events render what*

*was originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court."*

18. Paragraph 18/19/17, in The Supreme Court Practice Volume 1, 1993 Part 1 reads:

*"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"*

19. As per the affidavit evidence, the agreement was between Nasinu Land Purchase and Housing Co-operative Society Limited and Mosque Committee [Annexure MD-2 in the affidavit in Support of Muni Deo sworn on 25 February 2016].

According to the Defendant, Nasinu Mosque Committee is not legally in existent and registered, the Defendant had no dealings with Nasinu Mosque Committee which is not a party or privy to the memorandum of agreement.

20. According to the Plaintiff, Mosque committee was formed for perpetual succession until wound up and the assets and liability would pass to the new appointees. The tax requirement had changed and it got registered with FIRCA.
21. Sometimes on or about 25 July 2007, the Defendant had written to the First Plaintiff informing the two lots have been allocated to Nasinu Mosque Committee and once development of the area is completed they will be given the lots [annexure AR 5 to the Affidavit of Abdul Gaffar sworn on 09 May 2016].
22. The Plaintiffs have not pleaded in the claim how Nasinu Mosque Committee was formed and how and when the assets and liabilities of Mosque Committee succeeded to Nasinu Mosque Committee.

Neither is there any affidavit evidence to the above effect.

23. Accordingly I find the proceeding is an abuse of process.

Scandalous, Frivolous Or Vexatious

24. Paragraph 18/19/15 of The Supreme Court Practice Volume 1, 1993 Part 1 states:

*"By these words are meant case which are obviously frivolous or vexatious or obviously unsustainable, per Lindley L.J. in Alt - Gen of Dunchy of Lancaster v. L. & N.W. Ry. [1892] 3ch. 274 p. 277"*

25. The Second named Plaintiff has not outlined in the claim how he is a party or privy to the memorandum of agreement under which the Plaintiffs seeks orders for specific performance.

26. Neither has the first Plaintiff outlined in its pleadings or in affidavit evidence how it is entitled to seek orders for specific performance.

**Final Orders**

27. For reasons aforementioned, I agree with the Defendant that neither of the Plaintiffs has a locus standi to being the proceedings and as such the claim should be struck out on its entirety.
28. The writ of summons and statement of claim filed on 13 June 2016 is hereby struck out and dismissed.
29. The Plaintiffs shall jointly pay the Defendant cost summarily assessed at a sum of \$1,500. Said cost is to be paid in 14 days.



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**Vandhana Lal [Ms]**  
Acting Master  
At Suva.