

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

**Civil Action No. HBC 15 of 2020**

**BETWEEN**

**MOHAMED YASEEN also known as MOHAMMED AYSEEN** of  
117 Ragg Avenue, Namadi Heights, Tamavua,  
Suva, Fiji, Businessman.

**PLAINTIFF**

**AND**

**NOORIZA JAHAN** of Lot 1 Pasvali Street, Wailoku, Suva, Fiji,  
Domestic Duties.

**FIRST DEFENDANT**

**AND**

**NAZEEM KHAN** of 28A Koki Place, Laucala Beach Estate, Suva,  
Fiji, Businessman.

**SECOND DEFENDANT**

**Counsel** : Mr. Nambiar N. with Ms. Pillay B. for the Plaintiff  
Mr. Tuifagalele N. for the 1<sup>st</sup> defendant

**Date of Hearing** : 17<sup>th</sup> November 2020

**Date of Ruling** : 08<sup>th</sup> December 2020

## **RULING**

*(On the Summons to Strike Out)*

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

- (1) An injunction restraining the First defendant and second defendant by itself and/or their servants or agents from selling, leasing, transferring, assigning and/or in any manner or form howsoever from dealing or disposing of the property comprised in Certificate of Title being Lot 29 on Deposit Plan No. 2315 and consisting an area of One Rood and Three Tenths of a perch until further order of this court.
- (2) An order for specific performance of the sale and purchase agreement made 24 September 2019 and stamped on 3 October 2019.
- (3) A declaration that the First and Second Defendant are in breach of the sale and purchase agreement signed on 24 September 2019 and stamped on 3 October 2019.
- (4) An order requiring the First Defendant and Second defendant to transfer Certificate of Title No. 9589 to the Plaintiff.

(5) An order that the First Defendant and Second Defendant do all such acts and execute all such documents as may be necessary to transfer Certificate of Title No. 9589 to the plaintiff or alternatively, the Chief Registrar of the High Court of Fiji be appointed to convey in the name of the First defendant and Second Defendant herein to the plaintiff the property legally described as Certificate of Title No. 9589 being Lot 29 on Deposit Plan No. 2315 and consisting an consisting an area of One Rood and Three Tenths of a perch subject to the Sale and Purchase Agreement signed on 24 September 2019 and stamped on 3 October 2019, for all the estate, right, title and interest of the First defendant and Second Defendant therein and may be directed to execute the conveyance in favour of the plaintiff named herein further and in the alternative damages for breach and/or refusal to complete the sale.

(6) Further and in the alternative damages for breach and/or refusal to complete the sale.

(7) Costs of the proceedings on a full indemnity basis.

(8) Such further order and/or relief as this Honourable Court may deem just and expedient.

[2] The plaintiff, pursuant to Order 18 rule 18(1)(a), (b) and (d) of the High Court Rules 1988 and the inherent jurisdiction of the court, made the present application to have the statement of defence of the defendants struck out.

[3] 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.

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”.

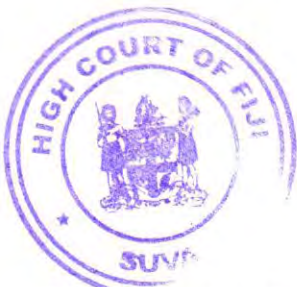
- [4] From the decisions cited above it is clear that the court is discouraged to a very great extent in summarily striking out matters and the discretion conferred upon the court by Order 18 rule 18(1) of the High Court Rules 1988 must be exercised with great caution and only in exceptional cases.
- [5] The plaintiff is the father of the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant was married to the 1<sup>st</sup> defendant. The defendants are joint owners of the subject property. The plaintiff avers in his affidavit in support that he entered into a sale and purchase agreement with the defendants to purchase the subject property for FJD695,000.00 and in anticipation of the transfer he paid the defendants FJD86,051.56 but the defendant had transferred the subject property to a third party.
- [6] The plaintiff instituted these proceedings on 17<sup>th</sup> January 2020. The affidavit of service was filed by the plaintiff's solicitors on 24<sup>th</sup> January 2020. The

defendants did not give notice of intention to defend the action within the period of 14 days as required by Order 18 rule 1 of the High Court Rules 1988.

- [7] On 27<sup>th</sup> March 2020 the 1<sup>st</sup> defendant appeared in court in person and sought time to obtain legal advice. The statement of defence of the 1<sup>st</sup> defendant was filed with the notice of appointment of solicitors only on 29<sup>th</sup> May 2020 after more than five months from the service of the writ of summons without seeking leave of the court.
- [8] Before considering the grounds for striking out pleading as enumerated in Order 18 rule 18 of the High Court Rules 1988 the court, in this matter, must consider whether the 1<sup>st</sup> defendant has followed the proper procedure in filing the statement of defence.
- [9] It is important to note that the procedural laws are enacted to facilitate the proper administration of justice. In this matter it appears that the 1<sup>st</sup> defendant has had no regard whatsoever for the provisions of the High Court Rules. Therefore, the statement of defence is liable to be struck out.
- [10] The court in the exercise of its inherent jurisdiction strikes out the statement of defence.

### **ORDERS**

1. The statement of defence is struck out.
2. The 1<sup>st</sup> defendant is ordered to pay the plaintiff \$750.00 as costs of this application.



08<sup>th</sup> December 2020

  
Lyone Seneviratne

**JUDGE**