

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

**CIVIL JURISDICTION**

**Civil Action No. HBC 151 of 2019**

**BETWEEN**

**ARUN KUMARI SINGH T/A THAKUR'S MAINTENANCE & LANDSCAPING**

aka **THAKUR'S MAINTENANCE & LANDSCAPING** having its

place of business at Lot5, Block 2 Rampur,

Nakaulevu, Deuba.

**PLAINTIFF**

**AND**

**ISHWAR LAL DAMODAR** of Mal Street, Suva, being the registered

proprietor of Lot 19, Certificate of Title No. 9737 on DP 2336.

**DEFENDANT**

**Counsel** : Mr. Chand A. for the Plaintiff  
Mr. Kumar E. for the defendant

**Date of hearing** : 11<sup>th</sup> November 2020

**Date of Ruling** : 07<sup>th</sup> December 2020

## **RULING**

*(On The Application to Amend the Statement of Claim)*

- [1] The plaintiff instituted these proceeding against the defendant seeking the following reliefs:
- a. A declaration that the plaintiff be compensated as follows:
    - i. Sum of \$115,296.44 be paid immediately;
    - ii. Sum of \$15,000.00 be paid immediately;
  - b. Damages including punitive, exemplary and general damages;
  - c. Pre and post judgment interest
  - d. Costs
  - e. Any other award that this court deems just.
- [2] The claim of \$115,296.44 is for the work done but not paid by the defendant and \$15,000.00 as legal costs.
- [3] Hearing of the matter was fixed for 9<sup>th</sup> to 13<sup>th</sup> November 2020 and on 03<sup>rd</sup> November 2020 the plaintiff filed summons seeking leave to amend the statement of claim by adding a new cause of action claiming \$48,939.22 being 10% of the sum approved by the engineers which was retained by the defendant.
- [4] The learned counsel for the defendant raised certain preliminary objections to this application with which I will deal first.
- [5] The first objection is the typing error in the summons where the word “to” has been typed as “top”. This error does not have the effect of giving a different meaning to the sentence.

[6] The next objection is that the person who deposed the affidavit in support was not the plaintiff but the plaintiff's son who is the Project Manager of the plaintiff's business and on the reading of the contents of the affidavit it appears that he has deposed to the facts contained therein as the plaintiff. However, in paragraph 2 of the affidavit he is the Project Manager of the defendant, the company belongs to his mother and he is duly authorised by this mother to swear this affidavit. The defects complained of by the defendant are not sufficient to reject the affidavit since he has deposed to the facts contained therein, are within his personal knowledge.

[7] Affidavit is not a pleading but sworn evidence before any court of law. The court is, therefore, entitled to disregard the averments that are not relevant to the application before it.

[8] Order 20 rule 5(1) of the High Court Rules provides:

Subject to Order 15, rules 6, 8 and 9 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

[9] In **Land Transport Authority v Lal** [2008] FJCA 79; ABU0053.2007S (7 November 2008) the Court of Appeal held:

It cannot be doubted that a High Court judge has the discretionary power under the High Court rules to allow the amendment of a claim by the addition of a new cause of action or the addition of a new party to the proceedings at any time (subject to certain qualifications), even where to do so gives rise to a claim being made against a newly added party outside a limitation period fixed by statute (see also s23 of the Limitation Act). But the exercise of the discretion in allowing such amendments must, as always, be exercised in a principled and considered manner.

[10] The new cause of action sought to be added by amending the statement of claim is not time barred. I see no reason why the court should not allow the application for amendment. Once amendment is done all issues between the parties can be adjudicated upon.

[11] The learned counsel for the defendant submitted that if the court is inclined to grant leave to amend the statement of claim the defendant is entitled to costs because hearing of this matter was fixed for five days from 9<sup>th</sup> to 13<sup>th</sup> November 2020 and the defendant was ready to proceed with the hearing. The summons to amend the statement of claim was filed on 3<sup>rd</sup> November 2020, few days before the 1<sup>st</sup> date of the trial. Hence, the defendant is entitled to costs.

### ORDERS

1. Leave is granted to amend the statement of claim.
2. The plaintiff is ordered to pay the defendant \$750.00 as costs.



07<sup>th</sup> December 2020

  
Lyone Seneviratne

**JUDGE**