

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER: ERCC 12 of 2016

BETWEEN: **DR. DILAWAR GREWAL**
PLAINTIFF

AND: **UNIVERSITY OF THE SOUTH PACIFIC**
FIRST DEFENDANT

AND: **PROFESSOR RAJESH CHANDRA**
SECOND DEFENDANT

Appearances: *No Appearance of the Plaintiff.*
Mr. H. Nagin and Ms. M. Rakai for the Defendants.

Date/Place of Judgment: *Friday 31 January 2020 at Suva.*

Coram: *Hon. Madam Justice Anjala Wati.*

RULING

(Striking Out By 2nd Defendant – No Cause of Action)

A. Catchwords:

Employment Law –Unlawful and Unfair Dismissal – Another employee joined as a defendant in the claim for unlawful and unfair dismissal –employment grievance includes a claim for dismissal and is limited against the employer or the former employer - further the contract of employment does not show that the 2nd defendant is a party to the claim – there is no cause of action pleaded against the employee – the claim and the law does not reveal a cause of action against another employee who may have carried out the decision for termination – 2nd defendant therefore removed from the proceedings – costs ordered for being improperly added as a party to the cause.

B. Legislation:

1. The Employment Relations Act 2007 ("ERA"): s. 4.

Cause/Background

1. The application before this Court is for the claim against the 2nd defendant, Professor Rajesh Chandra, struck out on the grounds that there is no reasonable cause of action against him.
2. The application was filed almost a year and a half after the amended statement of defence was filed. By then the summons to enter the action down for trial had already been filed and allocated a date in Court to fix the trial dates.
3. Since the application for striking out was filed late, the same was listed for argument an hour before the trial fixture so that the plaintiff was not deprived due to the delay.
4. On the day of the trial, the plaintiff or his counsel did not turn up. The substantive matter could have been struck out for failure to prosecute. However, the counsel for the defendants, Mr. Nagin suggested that if the application for striking out was heard and the substantive matter adjourned, the plaintiff would be in a better position of not having the entire claim struck out.
5. A less serious approach was therefore taken. I decided to hear only the application for striking out and since the plaintiff was not present or represented in Court, the application was heard undefended.

The Claim

6. The gist of the plaintiff's claim is that he was summarily dismissed from employment by the first defendant. He claims that the dismissal is unjustified, unlawful and unfair. The plaintiff also seeks damages.

7. The 2nd defendant was the Vice Chancellor and the President of the University at the time of the plaintiff's dismissal.

Analysis

8. I have perused the claim and I agree with the counsel for the defendants that it does not disclose a cause of action against the 2nd defendant. All it shows that there were discussions in a meeting with the 2nd defendant and later the contract was terminated on his instructions.
9. The 2nd defendant, at the material time, was employed by the same employer. The plaintiff has a right to bring the action against the employer and not the employee who is alleged to have instructed the termination to take effect.
10. Any decision for termination signed by another employee is deemed a decision by the employer. If the employer had not instructed the termination then the same would be withdrawn by it immediately once it comes to the employer's knowledge that the termination had been effected without proper sanctions. There is no such allegation in the claim. Generally an affected employee has no right in law to sue another employee for unlawful and unfair dismissal.
11. S. 4 of the ERA defines what an employment grievance is. It states that it includes the claim that a worker has against the **employer** or his **former employer** for being dismissed. The definition does not allow for another employee to be sued for unlawful and unfair dismissal.
12. Further, the plaintiff is relying on the contract of employment that was entered into by the plaintiff and the first defendant. It has not been shown to me that the 2nd defendant is a party to the contract and is liable to be sued as an employee of the University. It is my finding that the cause of action lies against the employer and not another employee.

Orders

13. In the final analysis:

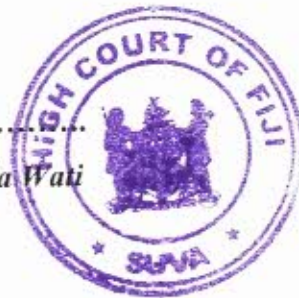
- (a) *I find that there is no cause of action either pleaded or justified in law against the 2nd defendant. I therefore remove the 2nd defendant as a party to the cause.*
- (b) *The 2nd defendant is entitled to costs of the proceedings for being improperly added as a party. I therefore order costs against the plaintiff in favour of the 2nd defendant in the sum of \$1, 500 to be paid within 7 days.*
- (c) *I shall fix a date for the hearing of the substantive matter upon consultation with the parties.*



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Hon. Madam Justice Anjala Wati

Judge

31. 01.2020



To:

- 1. Cromptons for the Plaintiff.*
- 2. Sherani & Company for the Defendants.*
- 3. File: ERCC 12 of 2016.*