

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER: ERCC 10 of 2018

BETWEEN: **JOJI ULUIQALAU LEWENILOVO**
PLAINTIFF

AND: **LAND TRANSPORT AUTHORITY**
DEFENDANT

Appearances: Plaintiff in Person.
Mr. V. Prasad for the Defendant.

Date/Place of Judgment: Friday 07 February 2020 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

RULING

(Striking Out By Defendant)

A. Catchwords:

Employment Law – Claim for unlawful and unfair dismissal – application made to strike out for failure to prosecute – no excuse shown why the matter has not moved for more than 6 months – in absence of any explanation, the plaintiff cannot be provided indulgence to continue with the cause – consequences of delay prejudice defendant as it has the right to have such matters tried early – claim struck out with costs.

B. Cases:

1. Singh v. Singh [2008] FJCA 27; ABU0044.2006S (8 July 2008).

C. Legislation:

1. High Court Rules 1988 (“HCR”): Order 25 Rule 1(4) and Order 25 Rule 9.

1. The plaintiff has filed a claim for unlawful and unfair dismissal against the employer. The defendant has applied for the claim to be struck for want of prosecution.
2. The application is filed pursuant to Order 25 Rule 1 (4) and Order 25 Rule 9 of the HCR. Order 25 Rule 1 (4) mandates that the plaintiff must issue a summons for directions within one month of the close of pleadings in absence of which the defendant may apply for the action to be dismissed.
3. Order 25 Rule 9 states that if no step has been taken in any cause for six months then a party or the Court on its own motion may list the matter for the parties to show cause why it should not be struck out for want of prosecution or as an abuse of the process of the Court. The Court may either dismiss the cause on such terms as may be just or deal with the application as if it were a summons for directions.
4. The plaintiff filed a writ of summons on 15 May 2018. A statement of defence was filed on 14 August 2018. A reply to the defence was filed on 19 September 2018. Service of the reply was effected on 20 September 2018. The pleadings were deemed closed in October 2018. The plaintiff did not take any action in the matter for 6 months after the pleadings were closed.
5. The defendant then moved in May 2019 for the matter to be struck out. When the application to strike out the matter was listed in Court in June 2019, the plaintiff had appeared in person. He was advised that he was given time to file his affidavit to show cause on the defendant's summons to strike out for want of prosecution.
6. From June 2019 to February 2020, the plaintiff did not file any affidavit to show cause why the matter should not be struck out. He has a counsel on record being Mamlakah Lawyers. At least the counsel ought to have taken this matter seriously.
7. After filing of the reply to defence, the counsel for the plaintiff did not move the action except for filing a notice of intention to proceed. This was filed in January 2019. After filing the notice of intention to proceed, no further action was taken in the matter.


8. I find that the filing of the notice of intention to defend in January 2019 is a mere abuse of the process of the Court to avoid a summons to strike out from being filed. It is not a serious process to further the progress of the matter.
9. I have been provided with an authority by Mr. Prasad on a similar line which is *Singh v. Singh [2008] FJCA 27; ABU0044.2006S (8 July 2008)* where the Full Court stated that the filing of the notice of intention to defend does not prevent an application to strike out for want of prosecution. It buys no immunity from the exercise of the Court's inherent powers to strike out the matter.
10. The plaintiff has been sleeping on his rights to have the issue of unlawful and unfair dismissal vindicated in Court. He has failed to show me why he has not prosecuted the matter with due despatch and why the same has been delayed.
11. In the ordinary course of the matter, this action should have been tried by now but the delay by the plaintiff has caused the matter to lay dormant. It has not even progressed to the discovery stage to enable the pre-trial conference to take place.
12. I find that there is no reasonable excuse provided for the delay and in absence of any explanation, this court has no basis to treat the summons to strike out as summons for directions.
13. A litigant who brings an action in Court cannot expect to ride on the defendant's back or hope for the sympathy of the Court in keeping the matter alive when no interest is shown to assist their own case.
14. There is natural prejudice arising from the delay. This is a dismissal case that occurred in 2017. The longer the delay in the proceedings, the difficult it becomes for the defendant to be able to continuously keep its witnesses engaged to testify in the matter. A lot of changes in an institution as large as the defendant's occur over time. A lot of information also changes hands. It is always better that employment cases are prosecuted expeditiously so that correct and precise information is before the Court.

15. It is also not suitable for case management reasons that writ actions continue to lie in the system for 2 years post filing of the same. Soon this case would be marked in the old list of cases which needs to be given priority. If the Court does not take strict measures in ensuring that new matters are prosecuted quickly, there is no way in which the system can expect the backlog of cases to diminish. It is not proper for the purposes of administration of justice to allow parties to keep their files inactive in the system for no valid reason. The Courts must have control of such matters.

16. On the basis of my findings:

(a) I strike out the matter for want of prosecution.

(b) I order costs against the plaintiff in favour of the defendant in the sum of \$750 which I have summarily assessed to be paid within 21 days.



.....
Hon. Madam Justice Anjala Wati

Judge

07. 02.2020



To:

1. *Mamlakah Lawyers for the Plaintiff.*
2. *Cromptons for the Defendant.*
3. *File: ERCC 10 of 2018.*