

IN THE HIGH COURT OF FIJI
CIVIL JURISDICTION

Civil Action No. HBC 283 of 2020

BETWEEN: **KERESI MAYA** a rugby union player participating in the 2020 Fiji Rugby Skipper Cup and Farebrother Challenge.

PLAINTIFF

AND: **FIJI RUGBY UNION** a company limited by guarantee duly registered in Fiji having its registered office at 35 Gordon Street, Suva in the Republic of Fiji.

DEFENDANT

Counsel : **Plaintiff: Mr Filipe. V and Mr Valenitabua S.R**

 : **Defendant: Mr Anand. V**

Date of Hearing : **4.2.2021**

Date of Judgment : **16.2.2021**

JUDGMENT

INTRODUCTION

1. Plaintiff was a rugby player and had punched a referee during a local rugby tournament. Even though this was denied in the affidavit in opposition, this fact was not disputed at any time in this hearing or disciplinary inquiry where the fact of punching was admitted by his lawyers. The incident happened during *Skipper Cup and Farebrother Challenge Tournament* (the Tournament) during a match between two participating teams in second half. This tournament was plaid under Terms of Players (TOP) which had expressly adopted ‘*World Rugby Laws of the Game*’ generally and administered through ‘*Regulations relating to the Game as promulgated by World Rugby*’. TOP specifically dealt ‘*Abuse of Match Officials*’ verbally or physically. TOP contained procedure for disciplinary actions in general, but Defendant had applied Regulation 17 of World Rugby sanctions. This was in terms of Clause 9.11 of TOP which dealt with ‘*Abuse of Match Officials Sanctions*’ which recommended ‘*disciplinary sanctions according to the Regulation 17 of World Rugby sanctions*’ (WRR). This was applied and he was handed down a sanction. Hence there is no merits in seeking declaration relating non-compliance of disciplinary procedure contained in TOP. When there is specific procedure for specific type of violation, it must be complied hence the originating summons which is frivolous and vexatious is struck off. Assaulting a referee on the field, is serious misbehavior. Such

serious indiscipline must be dealt with appropriate deterrent. It is paramount that while applying rules of natural justice, there should be consistency, and punishment to be accepted universality. So adopting Regulation 17 WRR for violations under Clause 9.11 of TOP is required. Without prejudice to above originating summons had not complied with requirements contained in Order 7 rule 3 of High Court Rules 1988 (HCR), despite specifically granting more than one opportunity to do so. Defendant had applied for strike out of originating summons in terms of Order 18 rule 18(1)(a),(b), and (d) of HCR. The originating summons is an abuse of process as the Plaintiff who participated in the disciplinary procedure had an opportunity to appeal in terms of said Regulation 17.22 of WRR. Plaintiff is bound by TOP which sanctioned the application of Regulation 17 WRR in terms of 9.11 of TOP hence he is estopped from denying application of Regulation 17 WRR. This originating summons is struck off *in limine* for abuse of process.

FACTS

2. Plaintiff was player of a rugby team that participated in the Tournament.
3. The Tournament was played in accordance with TOP and parties of this action, are bound by that.
4. Plaintiff had allegedly punched a referee in a match between two participating teams, while playing in the Tournament.
5. This match was video recorded, hence the fact of punching is evidenced through contemporaneous evidence. It can be established from eye witnesses such as other players, referees, and match officials and also spectators of the game.
6. Though punching of a referee was not admitted in the affidavits filed by Plaintiff, it was never disputed at hearing of the summons or previous disciplinary inquiry held by Defendant which resulted sanction being imposed on him.
7. So Plaintiff punching a referee on 29.8.2020 while playing in the Tournament between two participating teams of the Tournament is not in dispute.
8. Plaintiff was subjected to disciplinary hearing in terms of Regulation 17 WRR where he had through his lawyer admitted '*punching the match official as per the video recording*' (see Findings of Fact –KP2 of affidavit in support).
9. Accordingly he was sanctioned it was handed down though a detailed reasoning on 4.9.2020 and the said sanction or reasonableness of that, is not challenged in this proceedings or not being appealed in terms of Regulation 17 WRR.

10. Plaintiff is challenging the adoption of Regulation 17 WRR for his disciplinary inquiry which was presided over by Chairperson or 'judicial officer' in terms of the said Regulation.
11. Plaintiff was handed a formal written charge with particulars of charge and also procedure for such inquiry on 2.9.2020.
12. Disciplinary inquiry was conducted on 3.9.2020 and Plaintiff was represented by legal practitioner and the alleged breach as per charge was admitted, but gave reasons for the conduct.
13. The Chairperson of disciplinary inquiry had stated that she had observed the video footage and dismissed the reasons given by Plaintiff for the said assault. It was stated that 'on the balance of probabilities that the Player's action was not accidental.'
14. Plaintiff did not challenge the said finding of chairperson or sanction given, but sought declaratory reliefs regarding the disciplinary process where Regulation 17 WRR was applied instead of disciplinary process contained in TOP.
15. Originating summons filed by Plaintiff is seeking following determination by this court and they are:

- “1. That the Defendant, **FIJI RUGBY UNION** or any person whatsoever be restrained, whether by itself, of its Directors or its servants or agents or otherwise from enforcing and/or executing the Sanction issued by World Rugby accredited Judicial Officer, Ana Tuiketeki based on a Charge against Keresi Maya dated 2 September 2020 pending the hearing and determination of this action.
2. A Declaration that the Defendant breached Clauses 4.5.5, 4.5.6, 9.8, 9.9, and 15 of the Terms of Participation in the Skipper Cup and Appendix 4, Clauses 4.0 to 4.7, 7.0 to 7.7, 9.0, 9.2, 9.3 and 12.0 to 12.4 of the Terms of Participation in the Skipper Cup 2020.
3. A Declaration that the hearing conducted by World Rugby accredited Judicial Officer; Ana Tuiketeki on 3 September 2020 is in breach of Clauses 4.0 to 4.7 of the Terms of Participation in the Skipper Cup 2020 therefore null and void.
4. A Declaration that World Rugby accredited Judicial Officer; Ana Tuiketeki, breached Clause 4.0 to 4.6 of the Terms of Participation in the Skipper Cup 2020 by usurping the functions of the Tournament Director of the Defendant Mr Sale Sorovaki to prosecute, convict and sanction the Plaintiff thereby depriving the Plaintiff from appealing the findings and the sanction of the Tournament Director to the same World Rugby accredited Judicial Officer.

5. An Order that the Sanction issued by World Rugby accredited Judicial Officer, Ana Tuiketēi dated 4 September 2020 be wholly set aside once Declarations 2 and 3 herein are made by this Honourable Court.
 6. That an Interim Stay be granted to the Plaintiff pending the determination of this action.
 7. That the Defendant pay all the costs of these proceedings to the Plaintiff on an indemnity basis within a prescribed period.
 8. Any other Orders, Declarations and Relief as seem just and equitable by this Honourable Court.”
16. Defendant filed summons seeking strike out in term of Order 18 rule 18 (1) (a) ,(b) and (d) of HCR and this is for strike out of this action *inter alia* for
- a. Discloses no reasonable cause of action
 - b. Scandalous , frivolous or vexatious and or
 - c. Otherwise an abuse of the process of the court.

ANALYSIS

17. Plaintiff in the originating summons seeking declaratory orders of the court in relation to order numbered 2,3,4 of the said summons. Apart from that Plaintiff is seeking restraining orders for executing or enforcing the sanctions handed down on 4.9.2020 by ‘*judicial officer*’ appointed in terms of Regulation 17 WRR.
18. The Plaintiff’s reliefs are declaratory and not based on any cause of action, based on common law or statutory law.
19. Plaintiff can seek declaratory orders from court without disclosing a cause of action, which is purely declaratory , in terms of Order 15 rule 18 of HCR
20. The Supreme Court Practice (UK) White Book Vol 1 (1988) 15/16/1 p 225 states with regard Declaratory Judgment in following;

“

The validity of the former O.25.r.5 was unsuccessfully attacked in *Guaranty Trust Co of New York v Hannay* [1915] 2 K.B. 536. C.A, which may be taken as establishing the proposition that the jurisdiction to make a declaration under the rule is not confined to cases in which the plaintiff has complete and subsisting cause of action apart from the rule.

The action for a declaration has been given considerable impetus and importance as a procedural device for ascertaining and determining the rights of parties or for the determination of a point of law”

21. So there is no need for Plaintiff to reveal a cause of action in the originating summons, when he had sought declarations relating certain breaches of TOP in regard to disciplinary proceeding in terms of Regulation 17 of WRR.
22. Plaintiff had sought three specific declarations in terms of Order 15 rule 18 of HCR. So, the objection that it reveals no cause of action is not a reason to strike out this originating summons in terms of Order 18 rule 18 (1)(a) of HCR. The said contention seeking strike out is without merit, but Defendant had sought other grounds such as Order 18 rule 18 (1)(b) and (c) for strike out which require consideration.
23. What is paramount is not whether Plaintiff had disclosed a cause of action, but whether he has any prospect of success in regard to the declaratory orders sought. If there is no merits in the declaratory orders sought it is imperative to strike this action. Plaintiff cannot seek redress from court, for unsustainable claim which is doomed to fail.
24. It is only in plain and obvious cases that strike out is granted at outset. So the burden of Defendant is high. Nevertheless, hopeless and frivolous claims need not be clogged in the litigation, and such actions can be easily identifiable as vexatious, without detailed analysis of facts and circumstances.
25. An obvious unsustainable claim is not only an embarrassment to parties but also abuse of process, hence should be struck off in order to prevent abuse of process, whenever possible.
26. Sometimes Parties tend to file actions, without any merits of their actions, only to reject the inevitable outcome. Such actions are frivolous and vexatious and filed without any merits or reasonable expectation of success.

Frivolous or vexatious

27. According to White Book (1998) '*By these words are meant cases which are obvious frivolous or vexatious, or obviously unsustainable*'¹. If the documents filed by Plaintiff are sufficient to decide that there are no merits in the declarations sought, the action must be struck off, subject to any application to amend the claims.
28. In this action Plaintiff did not seek to amend his claims contained in the originating summons even after service of summons seeking strike out. So Plaintiff's reliefs are confined to the documents already filed in this action, and court can decide on the available material at this moment to strike out.
29. Plaintiff had sought four declaratory orders and they are the core reliefs sought. If all of them are doomed to fail or made without merits, there cannot be any orders for restraining

¹ White Book (1988) p322

the sanctions imposed on him on 4.9.2020. Such orders were depended on the orders for declarations.

30. Plaintiff seek a declaration that Defendant had breached Clauses 4.5.5, 4.5.6, 9.8, 9.9, and 15 of TOP and Appendix 4 to said TOP , Clauses 4.0 to 4.7, 7.0 to 7.7, 9.0, 9.2, 9.3 and 12.0 to 12.4 . These are Clauses of TOP which has no application to disciplinary proceeding relating to '*Abuse of Match Officials*' in terms 9.11 of TOP.
31. Plaintiff had reiterated contents of the originating summons in the affidavit. In the affidavit in support of Plaintiff averments from number thirteen to twenty seven are all legal advice to him and not facts he can swear, in support of this action. These are obviously contents of the statement in terms of Order 7 rule 3 of HCR.
32. Plaintiff's contention, that can be deduced from his affidavit was, that Defendant had breached TOP in the disciplinary procedure adopted as Defendant had applied Regulation 17 WRR.
33. Plaintiff's reliance on Clauses 4.5.5, 4.5.6, 9.8 9.9 and 15 of TOP and Appendix 4 to said TOP , Clauses 4.0 to 4.7, 7.0 to 7.7, 9.0, 9.2, 9.3 and 12.0 to 12.4 is misconceived. When Defendant had applied Clause 9.11 of TOP it need not apply disciplinary procedure in TOP, as Cause 9.11 adopts Regulation 17 WRR, which contains disciplinary procedure and right to appeal.
34. The provisions relied on Plaintiff seeking above declaration, are not contained in Regulation 17 WRR which is comprehensive and directly applicable to the wrong doing of Plaintiff.
35. The charge against Plaintiff was '*Foul Play*' in terms of TOP and relevant provisions are contained in the formal charge sheet annexed to the affidavit in support marked as KP 1. Said document dated 2.9.2020 also contained the particulars of charge relating to punching of referee on 29.9.2020 on thirty fourth minute of second half of specific match of the Tournament.
36. It also said Plaintiff had right to a fair hearing pursuant to item 17.1.1 of Regulation 17 of WRR.
37. Plaintiff was informed at the outset that he will be subjected due process in terms of Regulation 17 of WRR. He had neither objected to this letter where application of Regulation 17 WRR, was given due notice. Neither a written objection to letter of 2.9.2020 nor any evidence that such objection was raised at the hearing where he was represented by lawyers.

38. It is trite law any procedure or jurisdictional objection needs to be taken at the earliest opportunity, unless there is patent lack of jurisdiction, which is not the issue in this case.
39. Plaintiff is bound by TOP as a player participated in the Tournament.
40. Clause 9.11 of TOP which deals with 'Abuse of Match Officials Sanctions' states

'The Fiji Rugby Union will not condone any level or intimidation verbal or physical abuse against any Match Official'.

Therefore , any player or team official cited by Match Commissioners for violating the FRU code of Conduct will be subject to disciplinary sanctions according to the Regulation 17 of the World Rugby sanctions including Appendix 10 Clause 12 on pages 34 & 35.'
41. So there is no merits in the Plaintiff's contention that Defendant is required to follow Clauses 4.5.5, 4.5.6, 9.8,9.9 and 15 of TOP and Appendix 4 to said TOP , Clauses 4.0 to 4.7, 7.0 to 7.7, 9.0, 9.2, 9.3 and 12.0 to 12.4
42. Disciplinary procedure contained in above clauses in TOP are general provision, and this is subjected to Clause 9.11 which deals with specific issue of Abuse of Match Referee which is grave and serious compared with other forms of breaches . Such violations affects the 'core principles' of the game.
43. Preamble of Regulation 17 specific as to requirement of deal with '*Foul Play*' expeditiously and appropriately so that image and reputation of Rugby is maintained. It also stated consistency in disciplinary procedure and acceptance of '*core principle of universality which means that Players who are suspended at any level of the game shall have their suspension recognizes and applies at all levels of the Game and in the territories of all Unions and Associations.*'
44. So it is clear why TOP had expressly adopted Regulation 17 WRR in clause 9.11 of TOP. The alleged incident was serious abuse of a match official during a match. The punching of a referee cannot be condoned by any stretch of imagination. Hence application of clause 9.11 of TOP expressly adopted Regulation 17 WRR so there is consistency and universality regarding procedure and sanction imposed relating such a serious offence.
45. Plaintiff in his third order in the originating summons seeking a declaration that there was a breach of Clauses 4.0 to 4.7 of TOP in the disciplinary process by '*judicial officer*' on 3.9.2020. For the reasons given above, these clauses have no application to disciplinary procedure in terms of Regulation 17 WRR. There was no need to resort to TOP for the '*judicial officer*' when disciplinary process under Regulation 17 WRR was comprehensive and she had applied that.

46. There is no declaration sought that the originating summons that Regulation 17 WRR was breached. The claims are all based on misconception that Regulation 17 WRR cannot be applied when TOP contained some disciplinary process for players of the Tournament.
47. The declaration sought in order four of the originating summons again relate to Causes 4.0 to 4.6 of TOP and alleged non compliance of that by '*judicial officer*'. For the reasons given above this is unsustainable too.

CONCLUSION

48. Plaintiff was duly charged for the '*Foul Play*' more fully described in the said charge dated 2.9.2020. He was also informed of application of Regulation 17 WRR in said letter. TOP specifically adopted Regulation 17 WRR in clause 9.11 of TOP. Plaintiff participated in disciplinary process and admitted punching the referee, but gave a reason for that. This reason was rejected with reasons in the inquiry held under Regulations 17 WRR. He was accordingly sanctioned. Plaintiff had failed to appeal against said sanction in terms of Regulation 17.22 WRR, but filed this originating summons seeking declaratory reliefs which are unsustainable. He is estopped from denying application of Regulation 17 WRR as he had participated in disciplinary process under Regulation 17 without any objection. Apart from that Clause 9.11 of TOP applies to all the players of the Tournament and they have consented to application of Regulation 17 WRR for '*Abuse of Match Officials*'. The origination summons and declarations are patently flawed and unsustainable. So the Defendant's summons for strike out is granted as the originating summons are frivolous, vexatious. It is an abuse of process, too. Originating summons struck off. The cost of this action is summarily assessed at \$1,500 to be paid within 21 days, by Plaintiff to Defendant.

FINAL ORDERS

- a. Originating summons struck off
- b. Cost is summarily assessed at \$1,500.

Dated at Suva this 16th day of February, 2021.



Deepthi Amaratunga
Justice Deepthi Amaratunga
High Court, Suva