

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO. HPP 22 of 2021

BETWEEN: **TANIELA BOLAITAMANA** of Tavua Village, Koro Island, Lomaiviti,

PLAINTIFF

A N D: **REGISTRAR OF BIRTHS, DEATHS, MARRIAGES** of Level 1, Suvavou House

DEFENDANT

Appearance : Mr Etuate Meru for the Plaintiff
Ms. Suliana Taukei for the Defendant

Date of Hearing : Tuesday, 17th May, 2022 at 9.30am

Date of Decision : Friday, 17th June, 2022 at 9.00am

DECISION

- [1]. The matter before me stems from the plaintiff's originating summons, dated 24.03.2021, filed pursuant to Order 85, rule 2 of the High Court Rules, 1988 and section 6 and 7 of the Succession Probate and Administration Act and the inherent jurisdiction of the court.
- [2]. The plaintiff's summons is supported by an affidavit sworn on 09.03.2021 and a supplementary affidavit sworn on 30.03.2021. The plaintiff is seeking the grant of the following orders in its originating summons against the Registrar of Births, Deaths and Marriages;
 - a) *A declaration that **SAMUELA VULI KOLI** who was born on the 12th of March 1979 and **SAMUELA CIRIVAKAYAWA** who was born on the 12th of May 1979 are one and the same person.*

- b) *An Order declaring against the validity of the late **SAMUELA VULI KOLI a.k.a SAMUELA CIRIVAKAYAWA a.k.a SAMUELA SILANI'S** 2nd birth certificate registered on the 21st of January, 1987 which lists his name to be **SAMUELA CIRIVAKAYAWA**.*
- c) *A declaration that the late **SAMUELA VULI KOLI a.k.a SAMUELA CIRIVAKAYAWA a.k.a SAMUELA SILANI** is the biological son of the late **SERUWAIA MARAMA**.*
- d) *An Order that the Plaintiff be appointed the Administrator of the Estate of **SAMUELA VULI KOLI a.k.a SAMUELA CIRIVAKAYAWA a.k.a SAMUELA SILANI**.*
- e) *Further or other relief in the premises as the Court shall deem proper.*

[3]. The defendant did not file an affidavit in response to the affidavit in support of the plaintiff sworn on 09.03.2021 and 30.03.2021. The defendant moved court to set aside the plaintiff's proceedings for 'irregularity'. The defendant did not take any step in the proceedings after becoming aware of the 'irregularity' in the proceedings.

[4]. With these considerations bearing in mind, let me now turn to the defendant's objection to the plaintiff's proceedings. As I understand the submissions of Ms. Taukei, counsel for the defendant, the sole ground upon which the defendant moved court to set aside the plaintiff's proceedings is that the plaintiff is in breach of section 12(2) of the State Proceedings Act, 1951 which provides;

12(2) *Civil proceedings against the State **shall be** instituted against the Attorney General*

[5]. Counsel for the defendant went on to submit that;

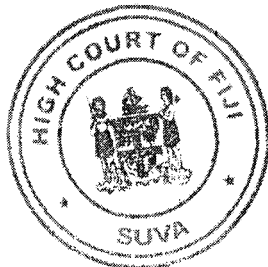
- The plaintiff is seeking certain orders in his originating summons against the Registrar of Births, Deaths and Marriages.
- The office of the Registrar is a statutory body established under the Births, Deaths and Marriages Registration Act, 1975.
- Therefore, a claim against the Registrar is a claim against the state.
- Given the fact that the plaintiff is instituting a claim against the state, the provisions of section 12(2) of the State Proceedings Act is therefore applicable to the plaintiff where the claim against the state must be made against the Attorney – General.


- In the present case, the Attorney- General is not a party to the proceedings and therefore the plaintiff is in breach of section 12(2) of the State Proceedings Act.

- [6]. I accept the submissions advanced by counsel for the defendant. It is true that the office of the Registrar is a statutory body established under the Births, Deaths and Marriages Registration Act, 1975. Therefore, a claim against the Registrar is a claim against the state and therefore section 12(2) of the State Proceedings Act (the Act) comes into effect or operation. The failure to comply with section 12(2) of the Act **[mandatory provision]** is fatal.
- [7]. Counsel for the plaintiff was characteristically frank and brief in relation to the objection raised by counsel for the defendant. He admitted that there is a failure to comply with section 12(2) of the Act. What is more damaging is that the plaintiff failed to show a good reason for his failure to comply with the mandatory requirement of section 12 (2) of the Act.
- [8]. I uphold the preliminary objection raised by counsel for the defendant. Thus the setting aside and dismissal of the plaintiff's originating summons is an inevitable consequence. I do not believe that it is my responsibility to regularize the plaintiff's defects. Needless to say I reject in *limine* the plaintiff's originating summons filed on 10.03.2021. It would be an abuse of process of the court to permit irregular documents to remain upon the record. This court has a duty to discharge towards the public and the suitors, in taking care that its records are kept free from irregular documents. **I note that the irregularity was brought to the notice of the plaintiff's counsel prior to the hearing of this matter on 17.05.2022. The plaintiff on his own volition chose not to rectify the irregularity in the summons.**

ORDERS

- [1]. The plaintiff's originating summons filed on 10.03.2021 is struck out.
- [2]. I make no order as to costs.




Jude Nanayakkara 17-06-2022
[Judge]

High Court - Suva
Friday, 17th June, 2022