

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

CIVIL ACTION NO.: HBC 60 of 2019

**BETWEEN : SUDAMA NAND
PLAINTIFF**

**AND : THE PERMANENT SECRETARY OF MINISTRY
OF INFRASTRUCTURE AND TRANSPORT
FIRST DEFENDANT**

**: OFFICE OF THE ATTORNEY GENERAL OF FIJI
SECOND DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr Gosai [Jiten Reddy Lawyers]
DEFENDANTS : Ms. G Nagilevu [Attorney-General's Chambers]
RULING BY : Acting Master Ms Vandhana Lal
DELIVERED ON : 27 APRIL 2022

INTERLOCUTORY RULING

Application

1. The Defendants seeks leave to have the matter struck out on the grounds:

- (i) It is time barred pursuant to section 4(d) and 16(3) of the Limitation Act 1971;*
- (ii) It is frivolous or vexatious;*
- (iii) It is otherwise an abuse of the process of the Court.*

2. The said application is said to be made pursuant to Order 18 rule 18 (1) of the High Court Rules and is supported by an affidavit by one Taitusi Vakadravuyau sworn on 18th July 2019.
3. Despite being directed by this court to file/serve its opposition to the application, the Plaintiff failed to comply with such directives.

The Plaintiff's Claim

4. The Plaintiff's claim is for unlawful dismissal by the First Defendant.
5. Due to the termination of the Plaintiff's appointment, he claims to have suffered loss and embarrassment, mental anguish and loss of reputation.
6. The Plaintiff was said to be employed as a supervisor in the mechanical section of Public Works Department.

He claims that on 09th May 2007 he was sent home without any notice or a reasonable cause of action.

Earlier on 18th April 2007 he claims to be charged with one count of larceny but was later (on 04th October 2007) acquitted of the charge.

On 27th April 2007 the First Defendant is said to have suspended the Plaintiff's pay by 50%.

On 28th November 2007 the Plaintiff was served with two disciplinary charges. After the hearing, the Plaintiff was found to be guilty of the charges (this was on 24th January, 2018).

On 03rd February 2008, the First Defendant terminated the Plaintiff's appointment via a written letter dated 03rd March 2008.

The Defendant's Contention

7. According to the Defendant *"a claim for contract and tort must not be admitted or entertained after 06 years from the date when the alleged cause of action first arose"*.
8. The Defendant's claim, the Plaintiff initiated the claim on 26th February 2019 some 10 years from 09th May, 2007 when the Plaintiff was suspended for the alleged offence of larceny by servant.
9. And since, the Plaintiff failed to obtain the court's leave prior to initiating the claim out of time, the Plaintiff's claim is frivolous, vexatious and an abuse of the court process and ought to be struck out.

The Plaintiff's Objection

10. The Plaintiff's claim is for wrongful termination and is said to be filed within the time limit as mediation process was going on. When the Plaintiff was not compensated that he brought this action.

Period of limitation for different classes of action under the Limitation Act

11. The Plaintiff's claim is for unlawful termination and pursuant to Section 4(1) of the Limitation Act *"an action shall not be brought after the expiration of 06 years from the date on which the cause of action accrued."*

When did the cause of action accrue?

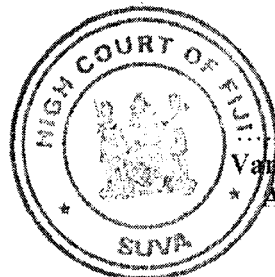

12. As admitted by both the parties, the Plaintiff's employment was terminated on 03rd February 2008 via a letter by the First Defendant.
13. Hence the cause of action arose on 03rd February 2008 and the Plaintiff had 06 years from said date to bring the said proceedings i.e. on or before 03rd February 2014.

Findings

14. The said action was initiated by filing of the writ of summon and statement of claim on 26th February 2019 some 11 years after the Plaintiff's was terminated from his employment.
15. Hence, I find that the Plaintiff's claim is indeed filed out of the limitation period prescribed under Section 4(1) of the Limitation Act and is an abuse of the court process and ought to be struck out.

Orders

16. The Plaintiff's claim filed on 26th February 2019 is struck out pursuant to Section 4(1) of the Limitation Act and section 18 rule 18(1) (d) of the High Court Rules.
17. Parties to bear own cost.

 
Vandhana Lal [Ms]
Acting Master
At Suva.

27 April 2022

TO:

1. Suva High Court Civil Action No. HBC 60 of 2019;
2. Jiten Reddy Lawyers, Solicitor for the Plaintiff;
3. Attorney-General's Chamber, Solicitors for the Defendants.