

IN THE HIGH COURT OF FIJI AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 86 of 2023

BETWEEN

STEPS INVESTMENT FIJI LIMITED a limited liability company having its
registered office located at Martintar, Nadi.

PLAINTIFF

AND

THE FIJI REVENUE AND CUSTOMS SERVICE a body corporate established
under section 3 of the Fiji Revenue and Customs Service Act 1998 and
having its office at corner of Ratu Sukuna Road and
Queen Elizabeth Drive, Nasese Complex, Suva.

DEFENDANT

Counsel : Ms. Durutalo A. for the Plaintiff
Mr. Eterika E. for the 1st Defendant

Date of Hearing : 31st August 2023

Date of Ruling : 24th August 2023

RULING

(The Application to set aside the Departure Prohibition Order)

[1] The plaintiff instated this action against the defendant seeking the following reliefs:

1. The defendant is to compensate the plaintiff he refund in taxes in the amount of FJD3,340,759.59; and
2. The plaintiff is to be compensated for all the pain and suffering that he has encountered over the past 8 years; and
3. The plaintiff is to be compensated for the defendant's breach of duty of care to him; and
4. The financial loss that the plaintiff has faced through the tactics of the defendant; and
5. The defendant to compensate of general damages; and
6. The legal costs for this application; and
7. The defendant to pay interest; and
8. Any other relief this Honourable Court deems just and fit.

[2] The defendant, on 14th April 2023, filed a Notice of Motion seeking the following orders:

1. That the Departure Prohibition Order imposed on the plaintiff be set aside;
2. That the defendants pay FJD20,000.00 (Twenty Thousand) as costs of this application; and
3. Any other relief this Honourable Court deems just and fit.

[3] There is no Departure Prohibition Order against the plaintiff and in fact there cannot be such an order against a company. The Departure Prohibition Order is against Choon Sik Jeong, who is the Director of the plaintiff company.

[4] The plaintiff seeks an order setting aside the Departure Production Order on various grounds. In his affidavit in support Choon Sik Jeong, avers that he is suffering from epilepsy and he has to travel to South Korea for treatment. The learned counsel for the plaintiff submits that epilepsy cannot be treated in Fiji but no report from the doctor or from the Ministry of Health confirming that position was tendered in evidence.

[5] Choon Sik Jeong also avers in the affidavit in support that his son suffered psychologically after FRCS and Police raided his house while he was away in Korea for treatment. He tendered in evidence Psychiatrist Discharge Summary of his son which shows that he was treated in Fiji and I do not see any relevancy of it to the application to set aside the Departure Prohibition Order.

[6] Choon Sik Jeong also avers in the affidavit in support that the defendant has breached his right to life guaranteed by section 8 of the Constitution which provides:

Every person has the right to life, and a person must not be arbitrarily deprived of life.

[7] If the application to have the Departure Prohibition Order set aside for the reason that the director, Choon Sik Jeong requires to go abroad for treatment, there was no necessity for the plaintiff to seek an order to have it removed permanently. He could have sought some time to go for treatment and come back to Fiji.

[8] Rights of the people guaranteed by the Constitution are subject to the other laws of the country. Section 31(1) of the Tax Administration Act 2009 provides:

(1) Where:

(a) a person is subject to a tax liability; and

(b) the CEO believes on reasonable grounds that it is desirable to do so for the purposes of ensuring that the person does not depart from Fiji for a foreign country without -

(i) wholly discharging the tax liability; or

(ii) making arrangement satisfactory to the CEO for the tax liability to be wholly discharged;

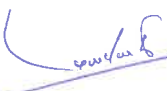
(c) a person whose tax liability has been written off as bad debts and the Chief Executive Officer has reasonable grounds to reinstate the bad debts,

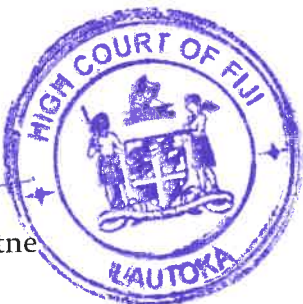
[9] The defendant had issued Departure Prohibition Order exercising the powers conferred upon it by the Tax Administration Act 2009. As I stated earlier in this ruling there is no evidence before this court that epilepsy cannot be treated in Fiji. Therefore, the allegation that he could have lost his life for not allowing him to travel abroad is frivolous.

[10] For the above reasons the court is of the view that Choon Sik Jeong has failed to adduce valid grounds for the court to set aside the Departure Prohibition Order.

ORDERS

1. Application to set aside the Departure Prohibition Order is refused.
2. No order for costs.


Lyone Seneviratne



JUDGE

24th August 2023