

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

**Miscellaneous Action No. HBM 10 of 2023**

**BETWEEN**

**ERONI CEVAMACA**

**APPLICANT**

**AND**

**THE ATTORNEY GENERAL OF FIJI**

**1<sup>ST</sup> RESPONDENT**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTION**

**2<sup>ND</sup> DEFENDANT**

**Counsel** : Applicant in person  
Mr. Kant S. for the Respondents

**Date of Hearing** : 18<sup>th</sup> August 2023

**Date of Ruling** : 13<sup>th</sup> September 2023

## **RULING**

*(On an Application for Striking Out)*

[1] The applicant filed this application for constitutional redress stating that he has a right to have his appeal before the Supreme Court determined without unreasonable delay.

[2] The 1<sup>st</sup> respondent on 25<sup>th</sup> July 2023 filed summons pursuant to Order 18 rule 18 of the High Court Rules 1988 seeking to have the matter struck out on the following grounds that:

- a. it discloses no reasonable cause of action;
- b. it is scandalous, frivolous and vexatious; and
- c. it is an abuse of the process of the court.

[3] Order 18 rule 18 of the High Court Rules 1988 provides:

The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-

- a. it discloses no reasonable cause of action or defence, as the case may be; or
- b. it is scandalous, frivolous or vexatious; or
- c. it may prejudice, embarrass or delay the fair trial of the action; or
- d. it is otherwise an abuse of the process of the court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

[4] In **Carl Zeiss Stiftung v Rayner & Keeler Ltd** (No 3) [1970] Ch 506 it was held that the power given to strike out any pleading or any Part of a pleading under this rule is not mandatory but permissive, and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending plea.

In **Drummond-Jackson v British Medical Association** [1970] 1 W.L.R. 688; [1970] 1 All ER 1094 it was held;

Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases.

In the case of **Walters v Sunday Pictorial Newspapers Limited** [1961] 2 All ER 761 it was held:

It is well established that the drastic remedy of striking out a pleading or, part of a pleading, cannot be resorted to unless it is quite clear that the pleading objected to, discloses no arguable case. Indeed, it has been conceded before us that the Rule is applicable only in plain and obvious cases.

In **Narawa v Native Land Trust Board** [2003] FJHC 302; HBCo232d.1995s (11 July 2003) the court made the following observations:

In the context of this case I find the following statement of Megarry V.C. in **Gleeson v J. Wippell & Co.** [1971] 1 W.L.R. 510 at 518 apt:

“First, there is the well-settled requirement that the jurisdiction to strike out an endorsement or pleading, whether under the rules or under the

inherent jurisdiction, should be exercised with great caution, and only in plain and obvious cases that are clear beyond doubt. Second, Zeiss No. 3 [1970] Ch. 506 established that, as had previously been assumed, the jurisdiction under the rules is discretionary; even if the matter is or may be res judicata, it may be better not to strike out the pleadings but to leave the matter to be resolved at the trial”.

[5] In this matter the basis of this application is the delay in deciding his application before the Supreme Court. The application before the Supreme Court had been filed on 02<sup>nd</sup> December 2023 and this application was made on 15<sup>th</sup> February 2023. In the application he states that he has the right for his appeal be heard and determined without unreasonable delay. I do not see any delay in the matter and two months delay cannot be considered as undue delay.

[6] Section 14(2)(g) of the Constitution provides:

(2) Every person charged with an offence has the right—

(g) to have the trial begin and conclude without unreasonable delay;

[7] The applicant submitted that his case is pending since 2014. High Court matter and the appeal before the Court of Appeal had already been concluded. The applicant had never complained against the delay in the High Court and in the Court of Appeal. This application was filed in respect of the matter Before the Supreme Court which was, at the time of filing this application, only two months old and there is no delay at all.

[8] The learned counsel for the respondents submitted that since the applicant had an alternative remedy, he should not have filed this application.

[9] Section 44(4) of the Constitution provides:

The High Court may exercise its discretion not to grant relief in relation to an application or referral made under this section if it considers that an adequate alternative remedy is available to the person concerned.

[10] The learned counsel's submission is that the applicant had the liberty to write and liaise with the Supreme Court registry with respect to his appeal. In my opinion this cannot be considered as an adequate alternative remedy. The court is not only judges it includes every one involved in the administration of justice. It is their duty to dispose of matters without undue delay. Therefore, in this matter it cannot be said that the applicant had an adequate alternative remedy.

[11] However, as I stated earlier in this ruling, it is absolutely clear from the applicant's own statement that there is no delay at all, which means that the applicant did not have a reasonable cause of action even to institute this proceeding.

[12] For the above reasons the application of the plaintiff is liable to be struck out.

#### ORDERS

1. Applicant's application is struck out.
2. No order for costs.

  
  
Lyone Seneviratne

JUDGE'

13<sup>th</sup> September 2023