

IN THE HIGH COURT OF FIJI
NORTHERN DIVISION
AT LABASA

[CIVIL JURISDICTION]

Civil Action No. HBC 06 of 2023

BETWEEN

DHARMA WATI of Korowiri, Labasa, Fiji, Unemployed.

PLAINTIFF

NAVIN PRASAD SHARMA of Tovata, Labasa, Fiji, Driver.

DEFENDANT

Before	Acting Master L. K. Wickramasekara
Counsel	Kohli & Singh Labasa for the Plaintiff Gordon & Company for the Defendant
Date of Hearing	12/10/2023
Date of Ruling	26/10/2023

RULING

- 01.** Defendant in this action has filed Summons to Strike Out the Writ of Summons filed by the Plaintiff on 06/02/2023. This summons has been filed by the Defendant on the 02/08/2023 with the supporting affidavit of one Fehrin Nafisa Ali, an employee of the Accident Compensation Commission Fiji, sworn on the 21/06/2023.
- 02.** In response, the Plaintiff has filed an Affidavit in Opposition on the 21/08/2023. However, no Affidavit in Reply has been filed by the Defendant.
- 03.** Written submissions of the Plaintiff were filed on the 29/09/2023 and the Defendants' written submissions were filed on the 11/10/2023. Hearing on the matter was taken up before this Court on the 12/10/2023 whereas both parties moved from Court to have the Hearing to be conducted by way of written submissions already filed subject to Plaintiff being allowed to file a written submission in reply. Accordingly, the Plaintiff filed a written submission in reply on the 12/10/2023.

04. The court shall consider the affidavits in evidence for and against the application and as well as the written submissions of the parties whilst deciding on this application.
05. Accordingly, I now proceed to make my Ruling on the Summons to Strike Out as follows.
06. The Plaintiff's claim is for compensation over personal injuries arising out of a road traffic accident allegedly caused by the Defendant. The particulars of the alleged accident have been outlined in the Statement of Claim.
07. Pursuant to the Summons for Strike Out and the supporting affidavit of the Defendant, the contention for the Defence is that the Plaintiff has breached the High Court Rules 1988, the Civil Evidence Act 2002 and the Accident Compensation Commission Act 2017 by way of its pleadings and as such the Statement of Claim should be struck out or should be adjourned *sine die* till the Accident Compensation Commission of Fiji makes its determination on the Plaintiffs application to the Commission. It is submitted that pursuant to Section 20 (1) ACCF Act the Plaintiff is bound by law to make an application to the Commission for compensation under 'no fault compensation scheme' and pursuant to Section 25 (1) of the Act, the Plaintiff can only bring in this action after the Commission had decided on such application.
08. Further the Defendant submits that the breach of High Court Rules and the Civil Evidence Act is in respect of Plaintiff pleading a pending traffic charge against the Defendant in the Statement of Claim. It is submitted further that by pleading a pending traffic charge against the Defendant, it has 'irreparably prejudiced the action and a fair trial and the conduct of the Defendants defence to the prejudice of the Defendant'.
09. In its written submissions, the Defendant has submitted that pursuant to Order 1 Rule 10 of the High Court Rules 1988, in line with section 17 of the Civil Evidence Act, if any conviction of an offence to be relied upon as evidence in the proceedings, then such conviction must be specifically pleaded. This is fortified in Order 18 Rule 21 of the High Court Rules as well. It is therefore submitted that as there is no conviction against the Defendant, the Plaintiff is in breach of all above legislative provisions in pleading a pending criminal charge against the Defendant and thus render the pleadings of the Plaintiff scandalous, frivolous, or vexatious; and or may prejudice embarrass or delay the fair trial of the action; and or otherwise an abuse of the process of the Court.
10. Plaintiff on the other hand has submitted that Section 20 (1) or the Section 25 (1) of the ACCF Act has not imposed a bar against filing for a civil remedy under the Common Law and that the Defendant is misguided on the above provisions. It is also submitted that the Plaintiff has made an application to the ACCF for compensation, however well past 18 months, the Commission has failed to make any determination on the

application. As such the Plaintiff submits that if this action is not brought in, his claim would risk been prescribed as per the Limitations Act.

11. Plaintiff submits that the pleading of the pending traffic charge is to give notice to the Defendant that if the Defendant is convicted upon the same the Plaintiff shall rely on the same and thus it is not in breach of the High Court Rules or the Civil Evidence Act.

12. The alleged pleading of the pending traffic charge against the Defendant is found at paragraph 14 of the Statement of Claim and it reads as follows,
“ 14. As the result of the said accident the Defendant was charged for the offence of Dangerous Driving and the matter is pending in court and the Plaintiff will rely upon conviction, if any, as evidence of proof of negligence.”

13. Order 18 Rule 18 (1) of the High Court Rules 1988 reads as follows.

Striking out pleadings and indorsements (O.18, r.18)

18.- (1) *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.

(2) *No evidence shall be admissible on an application under paragraph (1)(a).*

(3) *This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.*

14. Master Azhar, in the case of **VERONIKA MEREONI V FIJI ROADS AUTHORITY**: HBC 199/2015 [Ruling; 23/10/2017] has succinctly explained the essence of this Rule in the following words.

“At a glance, this rule gives two basic messages, and both are salutary for the interest of justice and encourage the access to justice which should not be denied by the glib use of summery procedure of pre-emptory striking out. Firstly, the power given under this rule is permissive which is indicated in the word “may” used at the beginning of

this rule as opposed to mandatory. It is a “may do” provision contrary to “must do” provision. Secondly, even though the court is satisfied on any of those grounds mentioned in that rule, the proceedings should not necessarily be struck out as the court can, still, order for amendment. 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. MARSACK J.A. giving concurring judgment of the Court of Appeal in Attorney General v Halka [1972] FJLawRp 35; [1972] 18 FLR 210 (3 November 1972) held that:

“Following the decisions cited in the judgments of the Vice President and of the Judge of the Court below I think it is definitely established that the jurisdiction to strike out proceedings under Order 18 Rule 19 should be very sparingly exercised, and only in exceptional cases. It should not be so exercised where legal questions of importance and difficulty are raised”.

15. Given the discretionary power the court possesses to strike out under this rule, it cannot strike out an action for the reasons it is weak, or the plaintiff is unlikely to succeed, rather it should obviously be unsustainable. His Lordship the Chief Justice A.H.C.T. GATES in Razak v Fiji Sugar Corporation Ltd (supra) held that:

“The power to strike out is a summary power “which should be exercised only in plain and obvious cases”, where the cause of action was “plainly unsustainable”; Drummond-Jackson at p.1101b; A-G of the Duchy of Lancaster v London and NW Railway Company [1892] 3 Ch. 274 at p.277.”

16. If the statement of claim or defence contains degrading charges which are irrelevant, or if, though the charge be relevant, unnecessary details are given, the pleading becomes scandalous (see: **The White Book** Volume 1 (1999 Edition) at para 18/19/15 at page 350). Likewise, if the proceedings were brought with the intention of annoying or embarrassing a person or brought for collateral purposes or irrespective of the motive, if the proceedings are obviously untenable or manifestly groundless as to be utterly hopeless, such proceedings becomes frivolous and vexatious (per: Roden J in Attorney General v Wentworth (1988) 14 NSWLR 481, said at 491).

17. In **The White Book** in Volume 1 (1987 Edition) at para 18/19/14 states that:

“Allegations of dishonesty and outrageous conduct, etc., are not scandalous, if relevant to the issue (Everett v Prythergch (1841) 12 Sim. 363; Rubery v Grant (1872) L. R. 13 Eq. 443). “The mere fact that these paragraphs state a scandalous fact does not make them scandalous” (per Brett L.J. in Millington v Loring (1881) 6 Q.B.D 190, p. 196). But if degrading charges be made which are irrelevant, or if, though the charge be relevant, unnecessary details are given, the pleading becomes scandalous (Blake v Albion Assurance Society (1876) 45 L.J.C.P. 663)”.

18. On the other hand, if the action is filed without serious purpose and having no use, but intended to annoy or harass the other party, it is frivolous and vexatious. Roden J in Attorney General v Wentworth (1988) 14 NSWLR 481, said at 491 that:

1. *Proceedings are vexatious if they instituted with the intention of annoying or embarrassing the person against whom they are brought.*
2. *They are vexatious if they are brought for collateral purposes, and not for the purpose of having the court adjudicate on the issues to which they give rise.*
3. *They are also properly to be regarded as vexatious if, irrespective of the motive of the litigant, they are so obviously untenable or manifestly groundless as to be utterly hopeless.*

19. In Halsbury's Laws of England (4th Ed) Vol. 37 explains the abuse of process in para 434 which reads:

"An abuse of the process of the court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purposes, or more simply, where the process is misused. In such a case, even if the pleading or endorsement does not offend any of the other specified grounds for striking out, the facts may show that it constitutes an abuse of the process of the court, and on this ground the court may be justified in striking out the whole pleading or endorsement or any offending part of it. Even where a party strictly complies with the literal terms of the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of abuse of process, and where subsequent events render what was originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court."

20. A fair trial requires a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Courts are therefore vested with the power to strike out any such proceeding or claim which is detrimental to or delays the fair trial. Likewise, the rule of law and the natural justice require that, every person has access to the justice and has fundamental right to have their disputes determined by an independent and impartial court or tribunal.

21. In considering the Defendants' allegation that the Plaintiff has breached the Accident Compensation Commission Act 2017, due to its failure to follow Section 25 (1) of the said Act, I find that this section does not impose any bar against a party seeking Common Law remedies for injuries sustained because of a road traffic accident in Fiji. What this section simply does is to give an option to any party to an accident to first

resort to the 'no fault compensation scheme' for compensation for injuries sustained in an accident.

22. This view is fortified by Section 25 (2) where it is clearly stated that 'nothing in this Act affects the operation of the Limitation Act 1971 with respect to any proceeding, claim or action for compensation for personal injury or death as a result of an accident in Fiji'. It is submitted that in this case, even after the lapse of 18 months, the Commission has failed to make any determination on the Plaintiffs application to the Commission for compensation under the no fault compensation scheme. As such if no proceedings under the Common Law is brought in, the Plaintiffs claim faces a high risk of been prescribed under the Limitation Act by the time the Commission decides on the application under the no fault compensation scheme. This in my view is the very reason behind not imposing any bar to Common Law remedies though any application under the no fault compensation scheme is pending.
23. If the legislature has intended that an application under the 'no fault compensation scheme' is to operate as a bar to litigation for Common Law remedies, it would then have stated the same in unambiguous wording in the Act. Further, when considering Section 28 of the Act, it is clear that irrespective of making an application under the 'no fault compensation scheme' or having a determination from the Commission over such application, proceedings for Common Law remedies could be brought in by a party at a Court of Law and the only duty casted on such party through this section is to have the Commission served with the pleadings of such action.
24. In respect of the allegations of breach of High Court Rules and Civil Evidence Act, I believe the pleading of the Plaintiff speaks for itself. The rules and provisions as submitted by the Defendant are to the effect that if a party is to rely upon a conviction for an offence as evidence, then such conviction to be specifically pleaded. The pleading of the Plaintiff is to the effect that the Defendant has been charged for a traffic offence **and if convicted** the Plaintiff shall rely upon the same. Without any reservation I accept the submission of the Plaintiff in this regard as in my considered view this pleading cause no prejudice whatsoever to the Defendant. There are no assessors or juries involved in trials before a civil court in Fiji. It is only before a well-trained judicial mind the trial would proceed in civil claims. A such, I see no reason to find that this pleading would in any way prejudice judicial thinking.
25. Accordingly, the Court, having considered the available affidavit evidence of the parties and the legal submissions on behalf of the parties, do not find the Statement of Claim or any part thereof to have breached the Accident Compensation Commission Act, Civil Evidence Act or the High Court Rules. It is therefore the conclusion of this Court that the Statement of Claim or any part thereof do not fall within the definitions of scandalous, frivolous, or vexatious. Neither do I find that the Statement of Claim of the

Plaintiff to be an abuse of process, especially on the untested affidavit evidence available before this court.

26. The sections of the law that the Defendant had relied upon to argue that this claim is an abuse of process in Court's considered view do not either apply to this claim or has no bearing to the effect of rendering this claim to be an abuse of process.
27. Thus, I conclude that the Defendant has not been able to pass the threshold for allowing an application to strike out the Writ of Summons/Statement of Claim pursuant to Order 18 Rule 18 (1) of the High Court Rules and that this application should necessarily fail.
28. In the consequence, the following final orders are made.
 1. The Summons to Strike Out as filed by the Defendant on 02/08/2023 is hereby refused and struck out subject to the following orders of the court,
 2. Defendant shall pay a cost of \$ 2000.00 as summarily assessed by the Court, as costs of this application.
 3. Defendant is granted 14 days to file and serve its Statement of Defence (That is by 09/11/2023), subject to any applicable late filing fees.
 4. Plaintiff to file and serve its Reply to the Statement of Defence 14 days after (That is by 23/11/2023).
 5. Matter shall take its normal cause thereafter.



At Labasa,
26/10/2023.

L. K. Wickramasekara,
Acting Master of the High Court.