

IN THE HIGH COURT OF FIJI AT SUVA
EMPLOYMENT JURISDICTION

ERCC No: 25 of 2018

BETWEEN : UDAY RAJ SINGH

PLAINTIFF

AND : LAND TRANSPORT AUTHORITY

DEFENDANT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. D. Nair for the plaintiff
: Mrs. E. Dauvere for the defendant

Date of Hearing : 28 November 2019

Date of Decision : 27 February 2023

DECISION

PRACTICE & PROCEDURE
of the High Court Rules 1988

Writ of summons – Employment – Strike out – Order 18 rule 18

The following cases are referred to in this decision:

(a) *Drummond Jackson v British Medical Association and others* [1970] 1 W.L.R 688

(b) *AG of the Duchy of Lancaster v. London and NW Railway Company* [1892] 3 Ch. 274

1. This is an application to strikeout the plaintiff's writ and statement of claim. The plaintiff stated that after having served the defendant in several positions, he was appointed the regional manager, central and eastern of the Land Transport Authority on 1 October 2012. Thereafter, the plaintiff complains, his employment was terminated on 12 July 2013, although he could have continued in employment for a further four years until the age of 60. He claimed that other employees of the defendant were allowed to continue in employment until the age of retirement stipulated by the partnership agreement. He alleged that the termination of his employment in those circumstances was unjust and unlawful.
2. The defendant denied the plaintiff's claim and pleaded that his contract lapsed after the duration of a year on 12 July 2013, and stated that upon expiry the contract was not renewed.
3. After summons for directions was filed and discovery completed, the defendant filed a summons to strike out the plaintiff's action on the basis that the statement of claim discloses no reasonable cause of action, that it is scandalous, frivolous or vexatious and that it is an abuse of the process of court. The application was made pursuant to Order 18 rule 18 of the High Court Rules 1988.
4. The affidavit in support of the summons to strike out was given by Matila Cama, team leader of the defendant's human resources department. The affidavit stated that the plaintiff was employed by the defendant since 1978. He was placed under various contracts from 22 August 2003 and employed in different positions. On 9

July 2010, the defendant stated, the plaintiff signed an employment contract for the position of manager operations and training that had a year's duration. The contract was renewed for another year on 7 July 2011 for the position of manager, licensing, registration and driving. The contract was again renewed on 10 July 2012 for a further year. On 13 July 2013, the defendant notified the plaintiff by way of a memo of the end of his employment contract.

5. The defendant pointed out that in terms of section 40 (1) (a) of the Employment Relations Act, a written contract is terminated by the expiry of the term for which the contract is made. The defendant said that the contract was terminated based on clause 2 of the plaintiff's contract of employment. The non-renewal of the employment contract, the defendant said, did not constitute an unlawful termination. The defendant's contention is that the partnership agreement permitted a worker to retire at the age of 60 years but did not provide a worker the right to continue until 60 years.
6. The defendant stated that the plaintiff was given notice of the non-renewable employment contract on 12 July 2013 but that he had come to court only on 27 November 2018, five years after the lapse of his contract. The defendant also said that the plaintiff was in breach of sections 111 and 110(3) of the Act as the employment grievance was not referred to the employer or for mediation in terms of those provisions. The defendant states that the plaintiff's failure to comply with those provisions is an abuse of the process of court.
7. The plaintiff's affidavit in opposition states that the retirement age under the partnership agreement is 60 years and that this agreement was part of his employment contract. He is entitled, he said, to bring an action for breach of contract within six years in terms of the Limitation Act 1971.
8. The employer has tendered copies of the several contracts on which the plaintiff was employed since 2003. These contracts refer to a partnership agreement, the terms of which are considered part of the employment contract. The employment contract would prevail if there is any inconsistency between its provisions and those of the partnership agreement. The matter in dispute between the parties

concerns the worker's retirement age. There is no mention of retirement in the employment contract, which was initially for a duration of a year and was renewed twice. The partnership agreement says the retirement age is 60 years, but in special circumstances the employer may employ anyone beyond the retirement age. The plaintiff's complaint is that all other employees of the defendant were allowed to continue in work until they reached the age of 60.

9. The principles to be considered in a strike out application are settled. In *Drummond Jackson v British Medical Association and others*, the English Court of Appeal held that the power to strike out a claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases¹. The phrase "no reasonable cause or defence" has been explained as no reasonable cause disclosed upon the face of the pleadings².
10. Therefore, it is necessary in a strike out matter to consider the pleadings of the parties. The pleadings show a disparity in some of the matters relied upon by the parties. The plaintiff's breach of contract contention is not clearly laid out in the statement of claim; this is taken up in the plaintiff's affidavit in opposition to explain the delay in coming to court. On the face of it, the plaintiff's position is not on the most assured ground. Notwithstanding the deficiency in the statement of claim and the force in the defendant's contention that a non-renewal of the contract does not ordinarily result in termination of the employment contract, it seems that the safer course in this instance is to hear the evidence. The plaintiff may amend his statement of claim to clarify or particularise his claim.
11. The defendant also based its objection on the grounds that the employment grievance was not referred to the employer within the period of six months as provided by section 111 of the Act and that he had not referred the grievance for mediation services in terms of section 110 (3) of the Act. Suffice to say that this court has held that an employment grievance must first be determined in the Employment Relations Tribunal. There are elements in the plaintiff's statement of

¹ [1970] 1 W.L.R 688

² *AG of the Duchy of Lancaster v. London and NW Railway Company* [1892] 3 Ch. 274

claim that suggest a breach of claim albeit vaguely. Therefore, it is not necessary to rule whether an employment grievance has been properly raised by the plaintiff.

ORDER

- A. The defendant's summons to strike out the plaintiff's action is struck off.
- B. The parties will bear their costs.

Delivered at **Suva** this 27th day of **February, 2023**



A handwritten signature in blue ink, appearing to read "M. Javed Mansoor".

M. Javed Mansoor
Judge