

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**[CIVIL JURISDICTION]**

**Civil Action No. HBC 244 of 2020**

**BETWEEN** : **HAROON ALI SHAH** of Vuda Point, Lautoka, Retired.

**PLAINTIFF**

**AND** : **IFTIKAR IQBAL AHMED KHAN** of Lautoka, Barrister & Solicitor  
operating as **IQBAL KHAN AND ASSOCIATES**, a law firm of 7  
Yasawa Street, Lautoka.

**FIRST DEFENDANT**

**AND** : **SUMAN SHALINI DEVI** formerly of Razak Road, Lautoka, but now of  
130 Kerrs Road, Wiri, Auckland, New Zealand, Resource Manager.

**SECOND DEFENDANT**

**AND** : **REPEKA NASIKO**, the Reporter Western Division, Fiji Times Pte  
Limited, Vidilo Street to Tukani Street, Lautoka.

**THIRD DEFENDANT**

**AND** : **FRED WESLEY**, the Editor, Fiji Times Pte Limited, 177 Victoria  
Parade, Suva.

**FOURTH DEFENDANT**

**AND** : **FIJI TIMES PTE LIMITED** a limited liability company having its  
registered office at 177 Victoria Parade, Suva.

**FIFTH DEFENDANT**

Before : Master U.L. Mohamed Azhar

Counsels : Mr. S. Lutumailagi for the Plaintiff  
Ms. A. Sadrata and Mr. S. Heritage for the First Defendant  
Mr. S. Singh for the Third to Fifth Defendants (on instruction)

Date of Ruling: 28.03.2024

## RULING

01. The plaintiff is a former legal practitioner who had been struck off from the Rolls in year 2012. He sued the defendants claiming damages under various heads for alleged defamatory news claimed to have been collectively published and or caused by the defendants to be published. The third to fifth defendants filed their statement of defence.
02. The first defendant acknowledged the Writ, but did not file the statement of defence. Instead, he filed the current summons pursuant to Order 18 rule 18 (1) (a) of the High Court Rules and moved the court for following orders:
  - (a) The plaintiff's Writ of Summons and Statement of Claim filed on 30<sup>th</sup> September, 2020 be struck out on the ground that it discloses no reasonable cause of action against the first defendant;
  - (b) Costs on a Solicitor/Client Indemnity basis; and
  - (c) Any other relief or orders which in the opinion of this Honourable Court is just and expedient.
03. The law on striking out of pleadings is well settled. The Order 18 rule 18 of the High Court Rule gives the discretionary power to strike out the proceedings for the reasons mentioned therein. The said rule reads:
  - 18 (1) The Court **may** at any stage of the proceedings **order to be struck out or amend** 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 (emphasis added)

04. The unambiguous wording of the above rule makes its effect very clear that, the power to strike out the pleadings is permissive and not mandatory. Even though the court is satisfied on any of those grounds mentioned in the above rule, the pleadings should not necessarily be struck out as the court can, still, order for amendment. The underlying rationale is that, the access to justice should not, merely, be denied by glib use of summary procedure of pre-emptory striking out.
05. Marsack J.A. in his concurring judgment in Attorney General v Halka [1972] 18 FLR 210, explained how the discretionary power to strike out should be exercised by the courts and 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 18 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”.

06. Accordingly, the general principle is that the order for striking out should only be made if it becomes plain and obvious that the claim or defence cannot succeed. The courts cannot strike out an action for the reason that, it is weak or the plaintiff or the defendant is unlikely to succeed in his or her claim or defence.
07. As stated above, the instant summons was filed by the defendant pursuant to paragraph (1) (a) of the Order 18 rule 18. No evidence shall be admissible in an application filed under that paragraph. The court has to examine the allegations in the pleadings to come to a conclusion on reasonable cause of action. His Lordship the former Chief Justice A.H.C.T. Gates (as His Lordship then was) in Razak v. Fiji Sugar Corporation Ltd [2005] FJHC 720; HBC208.1998L (23 February 2005) held that:

“To establish that the pleadings disclose no reasonable cause of action, regard cannot be had to any affidavit material [Order 18 r.18 (2)]. It is the allegations in the pleadings alone that are to be examined: Republic of Peru v Peruvian Guano Company (1887) 36 Ch.D 489 at p.498”.

08. The cause of action to sue for defamation arises when a person maliciously communicates a false statement with aim of damaging the reputation of another person. The plaintiff who sues for defamation is required to plead the actual verbatim of the alleged statement. In order to succeed in a claim for defamation, the plaintiff should be able to prove (a) the false statement purporting to be fact; (b) the defendant either published or communicated or caused to either publish or communicate that statement to a third party; (c) fault (either negligence or malice) on part of the defendants; and (d) harm or injury to the reputation of the plaintiff.
09. The plaintiff identified the defamatory statement in paragraphs 5 and 6 of his statement of claim. It is a news item appeared on page 7 of Fiji Times published on 21 September 2020. The alleged news is as follows:

**Women alleges Shah duped her \$ 50 K**

**A Writ of Summons was issued to former Lautoka lawyer Haroon Ali Shah last Friday (18/09/20) by a former Fiji Citizen claiming that the former barrister defrauded her of \$ 50,000.**

**Represented by Iqbal Khan, the complainant alleged that the money she acquired in a 2011 civil matter was entrusted to Mr. Ali who was her lawyer in the case.**

**In the summons, the former citizen, who now lives in New Zealand, claimed that she was awarded \$ 50,000 after the parties agreed to a property sale worth \$ 100,000.**

**Once the sale was made, Mr. Ali's former client could not claim the money as she had moved to New Zealand.**

**She alleged, however, that her share was deposited into Mr. Ali's Trust Account in 2011.**

**The former resident claimed that she had contacted Mr. Ali on several occasions requesting the release of the money but he had neglected to do so**

10. The plaintiff further stated in paragraph 7 of the statement of claim that, the defendants jointly and severally caused to be published a largish half size photo of the plaintiff and juxtaposed an insert in small letters which read "Former lawyer Haroon Ali Shah appeared at the Lautoka Magistrate's Court early this year. Picture: File." The plaintiff further pleaded in subsequent paragraphs that, the alleged article was malicious and libelous of him in that the same was devoid of any truth and contained blatant falsehood.

11. In addition, the plaintiff particularized the malice in paragraph 14 of the statement of defence, and in that, the plaintiff alleged that, the first defendant had knowledge of accounts of the second defendant by virtue of being the solicitor for the defendant in Civil Action No. HBC 163 of 2009 and thereby caused publication of the purported news by the third to fifth defendants. The said case (Civil Action No. HBC 163 of 2009) was commenced by the second defendant against one Mul Chand. The plaintiff was the solicitor for second defendant in that case. The first defendant was the solicitor for Mul Chand. There was an order for payment of \$ 50,000 by the second defendant to Mul Chand in that case and the said amount was to be paid from the proceeds of sale of a property. The proceeds of sale was deposited to the Trust Account operated by the plaintiff as the solicitor for the second defendant in that case. The purported news too refers to proceeds of sale of a property. The plaintiff continued to allege in paragraph 14 (v) that, the third to fifth defendants were motivated by greed alone and did not care or were reckless in publishing the alleged malicious material.
12. Accordingly, the plaintiff pleaded all elements that he should prove against the defendants in this case. He identified the alleged news and publication of which is not disputed; he alleges that the defendants collectively published it and or caused to be published; he alleges the malice part of the first defendant whilst pleading recklessness on part of the third to fifth defendants. The plaintiff merely alleged that, the first defendant caused publication of the purported news. It is the allegation of the plaintiff that, the first defendant had actual knowledge of accounts of the second defendant at the material time due to his involvement in the said Civil Action No. 163 of 2009 discussed in the preceding paragraph, and with this knowledge he caused the purported news to be published.
13. The plaintiff did not specifically state as to how the first defendant caused publication of purported news. However, the question as to whether the first defendant had knowledge about the allegation in the purported news published by the third to fifth defendant, and the question as how the first defendant caused publication of the purported news are matters for evidence and not pleading. The pleadings require precise statement of allegation. It is for the plaintiff to prove the allegation that, the first defendant caused publication of the purported news. Accordingly, the plaintiff's case against the first defendant is arguable. It is well settled that a statement of claim should not be struck out and the plaintiff driven from the judgment seat unless the case is unarguable (Nagle v Feilden [1966] 1 All ER 689).
14. In the meantime, it can be argued that, the allegation against the first defendant seems to be weak or unlikely to succeed. However, it is not the consideration for the purpose of Order 18 rule 18. It was held in Ratumaivale v Native Land Trust Board [2000] FJLawRp 66; [2000] 1 FLR 284 (17 November 2000) that:

“It is clear from the authorities that the Court's jurisdiction to strike out on the grounds of no reasonable cause of action is to be used sparingly and only where a cause of action is obviously unsustainable. **It was not enough to argue that a case is weak and unlikely to succeed**, it must be shown that no cause of action exists (**A-G v Shiu Prasad Halka [1972] 18 FLR 210; Bavadra v Attorney-General [1987] 3 PLR 95**”). (Emphasis added).

15. His Lordship the former 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. It cannot be said at this moment that, the cause of action, as pleaded against the first defendant, is plainly unsustainable, because it depends on how effectively the plaintiff proves his allegation against the first defendant that he caused publication of the purported news. For the reasons mentioned above, I am of the view that, the statement of claim filed by the plaintiff discloses a reasonable cause of action against the first defendant. The court therefore cannot exercise the discretion under Order 18 rule 18 and strike out this matter.

17. In result, I make the following orders,

- a. The summons filed by the first defendant is dismissed, and
- b. The first defendant should pay a summarily assessed cost of \$ 1,500 to the plaintiff within a month from today.

At Lautoka  
28.03.20224



  
U.L Mohamed Azhar  
Master of the High Court