IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 248 of 2018

BETWEEN : **RAJNEEL ROHITESH SINGH** of Tomuka, Lautoka, Businessman.

Plaintiff

AND : **FIJI BROADCASTING CORPORATION LIMITED** of 69 Gladstone Road, Suva.

1st Defendant

AND : **THE COMMISSIONER OF POLICE** of Fiji Police Force, Suva.

2nd Defendant

AND : **THE ATTORNEY GENERAL OF FIJI,** Suva.

3rd Defendant

Before : Master U.L. Mohamed Azhar

Counsel : Mr. R. Rai for the plaintiff
Mr. S. Kant for the first to third defendants

Date of Ruling: 10 April 2024

RULING

01. The plaintiff appearing in person brought this action against the defendants claiming damages. The cause of action as pleaded against the first defendant is defamation. However, plaintiff did not plead the alleged defamatory news broadcasted by the first defendant. The cause of action against the second and third defendants is unlawful arrest and assault that allegedly took place on 19 April 2015.

02. The defendants acknowledged the writ and filed their respective statement of defence and moved the court to dismiss the same. The plaintiff's last action was the reply to statement of defence of second and third defendant. It was filed on 10 September 2019. The plaintiff did not move the case forward thereafter. The Office of the Attorney General filed the current summons on 03 September 2020 pursuant to Order 25 rule 9 of the High

Court Rules seeking to strike out the plaintiff's action for want of prosecution and abuse of the process of the court.

03. The Order 25 rule 9 provides for the jurisdiction of the court to strike out any cause or matter for want of prosecution or as an abuse of process of the court if no step has been taken for six months. The said rule reads;

> "If no step has been taken in any cause or matter for six months then any party on application or the court of its own motion may list the cause or matter for the parties to show cause why it should not be struck out for want of prosecution or as an abuse of the process of the court.
>
> Upon hearing the application the court may either dismiss the cause or matter on such terms as may be just or deal with the application as if it were a summons for directions".

04. Justice Scott, striking out of plaintiff's action in **Hussein v Pacific Forum Line Ltd** [2000] 1 FLR 46 (6 March 2000), stated that;

> "The principles governing the exercise of the Court's jurisdiction to strike out for want of prosecution are well settled. The leading English authorities are **Allen v. McAlpine** [1968] 2 QB 299;[1968] 1 All ER 543 and **Birkett v. James** [1978] AC 297; [1977] 2 All ER 801 and these have been followed in Fiji in, for example, **Merit Timber Products Ltd v. NLTB** (FCA Reps 94/609) and **Owen Potter v. Turtle Airways Ltd** (FCA Reps 93/205)".

05. The Court of Appeal of Fiji in **Trade Air Engineering (West) Ltd v Taga** (supra) reiterated that, the new rule (Or 25 r 9) does not confer any additional or wider power to the court except the power to act on its own motion. It was held in that case that;

> "In our view the only fresh power given to the High Court under Order 25 rule 9 is the power to strike out or to give directions of its own motion. While this power may very valuably be employed to agitate sluggish litigation, it does not in our opinion confer any additional or wider jurisdiction on the Court to dismiss or strike out on grounds which differ from those already established by past authority".

06. Lord Diplock, articulating the principles for striking out the actions for want of prosecution and abuse of the court process held in **Birkett v. James** (supra) that:

> The power should be exercised only where the court is satisfied either (1) that the default has been intentional and contumelious, e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the

process of the court; or (2) (a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between each other or between them and a third party.

07. On the other hand, the House of Lords in **"Grovit and Others v Doctor and Others"** (1997) 01 WLR 640, 1997 (2) ALL ER, 417 held that, commencing an action without real intention of bringing to conclusion amounts to an abuse of the process of the court. Lord Woolf stated in that case as follows;

> "The court exists to enable parties to have their disputes resolved. To commence and to continue litigation which you have no intention to bring to conclusion can amount to abuse of process. Where this is the situation the party against whom the proceedings is brought is entitled to apply to have the action struck out and if justice so requires (which will frequently be the case) the courts will dismiss the action. The evidence which was relied upon to establish the abuse of process may be the plaintiff's inactivity. The same evidence will then no doubt be capable of supporting an application to dismiss for want of prosecution. However, if there is an abuse of process, it is not strictly necessary to establish want of prosecution under either of the limbs identified by Lord Diplock in **Birkett v James** [1978] A.C 297. In this case once the conclusion was reached that the reason for the delay was one which involved abusing the process of the court in maintaining proceedings where there was no intention of carrying the case to trial the court was entitled to dismiss the proceedings". (Emphasis added).

08. The plaintiff, upon receiving the summons, retained private solicitors and filed the affidavit opposing the current summons. The plaintiff stated two reasons for not taking steps in this matter. The first is that, he was appearing in person and did not have precise knowledge of law as how to proceed the matter. Second is his health issue and especially the due to the injuries he sustained during the alleged attack by the police.

09. It was the plaintiff who decided to appear in person and to prosecute his case against the defendants. The rules of the court do not give any lenience to the litigants in person in terms of due compliance and diligent prosecution of the matters. Whether the litigants appear in person or through their solicitors, they should follow the uniform rules that govern the procedure for civil litigation. The rules of the court require periodical steps to be taken by the respective parties in civil action till the matter is fixed for trial. The plaintiff who filed the reply to defence should have taken summons for direction on before 10 October 2019. He failed to do so until the current summons was filed. The ignorance of law and procedure is not an excuse.

10. The plaintiff annexed few Medical Reports in support of his second reason for not taking timely steps in this matter. However, those medical report are evidently not relevant to the period of inaction by the by plaintiff. The plaintiff filed the reply to statement of defence of the second and third defendant on 10 September 2019. The plaintiff should have filed the Summons for Directions within a month from that date, i.e. the summons should have been taken by 10 October 2019. Accordingly the time material for this current summons commenced from 10.10.2019. The Medical Reports annexed by the plaintiff are for periods of April, May and July of 2019 and well before 10.10.2019.

11. The reasons given by the plaintiff are unacceptable and therefore the delay becomes inexcusable. The plaintiff should have known very well that these Medical Reports are not relevant at all, because, he was represented by the solicitors at the time he filed the affidavit in opposition. However, the plaintiff solely relied on them. This is clear misleading of the court. The plaintiff not only delayed the process intentionally and contumeliously, but also tried to mislead the court by producing the evidence knowing very well that they are irrelevant.

12. Lord Denning discussed the prejudice that may be caused to a party, due to the long delay of the other party in **Biss v. Lambeth, Southwark & Lewisham Health Authority** [1978] 2 All E.R. 125 and stated at page 131 that:

> "The prejudice to a defendant by delay is not to be found solely in the death or disappearance of witnesses or their fading memories or in the loss or destruction of records. There is much prejudice to a defendant in having an action hanging over his head indefinitely , not knowing when it is going to be brought to trial; like the prejudice to Damocles when the sword was suspended over his head at the banquet. It was suspended by a single hair and the banquet was a tantalizing torment to him. So in the President of India case, [1977] Court of Appeal Transcript 383, which we heard the other day. The business house was prejudiced because it could not carry on its business affairs with any confidence, or enter into forward commitments, whilst the action for damages was still in being against it". (Emphasis added).

13. There are litigants who pursue their cases according to the timetable set out by the rules or within the reasonable time, with diligence and expedition. On the other hand there are some who pursue their cases sporadically or make default with the intention to keep the matters pending against the defendants forever. The courts should not ignore the second category of practice. It should be disallowed for several reasons. Firstly, it is an abuse of the process of the court. Secondly, it is the waste of court's time and resources which are not infinite. The more time that is spent upon actions which are pursued sporadically, the less time and resources there are for genuine litigants who pursue their cases with reasonable diligence and expedition, and want their cases to be heard within a reasonable time' (see: **Singh v Singh** [2008] FJCA 27; ABU0044.2006S decided on 8 July 2008).

14. Thirdly, it constitutes as a serious prejudice to the other party as justice may not be able to be done between the parties since the matter is pending idle without the steps being taken by the relevant party. In this case, the matter has been idle in the registry for more than six months. The plaintiff cannot expect that the court and the defendants should wait until he decides to prosecute this case as and when he desires to do so.

15. For the reasons expounded above, I am fully entitled to say that, the very existence of this action in which the plaintiff has no interest at all in pursuing it, is inexcusable and intolerable. The plaintiff's overall failure is intentional and contumelious. It is an abuse of the process of the court. The plaintiff failed to show cause as to why his action should not be struck out under Order 25 rule 9 of the High Court Rules.

16. In result, the final orders are;

    a. Plaintiff's action is struck out, and

    b. There is no order for cost.

U.L. Mohamed Azhar
Master of the High Court

At Lautoka
10.04.2024

HIGH COURT OF FIJI
LAUTOKA