

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

Civil Action # **HBM 111 of 2024**

BETWEEN: **FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION** of the Republic of Fiji, Rev John Hunt House, 3 Saint Fort Street, for and behalf of the **STATE**.

PLAINTIFF

AND: **SARIKA DEVI RAJ** of Lot 16, Sivi Road, Caubati, Nasinu.

DEFENDANT

Appearances:

Plaintiff: Ms. Mausio. L & Ms. Ravuinikadavu. L (FICAC).

Defendant: Saneem. M. (Saneem Lawyers).

Date of Hearing: 4th October 2024

Ruling

A. Introduction

[1] The Defendant in this matter on 9th September 2024 filed summons to strike out and seeking "*an order that the Plaintiffs claim be dismissed as it discloses no reasonable cause of action against the Defendant*".

B. Background

[2] On 20th August 2024, FICAC had filed originating summons and ex-parte summons. It was accompanied by an affidavit of Catherine Takinana. The ex-parte summons sought a restraining order be issued against a Toyota Rav 4 2019 model registered as SDRAJ with running number KI590 and VN # JTMW43FV90J020969. I heard FICAC, ex-parte on 28th August and granted the restraining orders that was sought.

[3] The Defendant was a civilian staff at the Fiji Military Forces (FMF) with the designation as Clerical Officer (Accounts). Her annual salary was \$25,000.00. She was responsible for ensuring that public funds were received and expended in compliance with appropriations and other relevant laws, providing internal audit services, ensuring that financial controls were in place and revenue collection. She was terminated from FMF on 26th February as a result of her involvement with businesses Maleka Kava, Maleka Investment and Sachins Kava. It is alleged that Defendant failed to declare her ownership in those businesses. Those businesses were

added as vendors of FMF. Investigations were carried out after it was alleged that fraudulent payment vouchers were made out Maleka Kava bank account.

- [4] The allegation by FICAC is that payment for the vehicle was made from Maleka Kava bank account for the deposit of the vehicle. Furthermore, according to FICAC, the Defendant signed an offer letter with Credit Corporation for a vehicle loan for \$78,000.00 and it was possible through her business with Maleka Kava as her annual salary was not enough to make repayments for the loan. FICAC further informed that the Defendant was interviewed under caution and charged on 26th July 2024. The same day the said vehicle was transferred to a Vani Coka Vulavou. On 7th August 2024 the said vehicle was seized under a search warrant executed under Section 28 of the Proceeds of crime Act 1997.

C. The Submissions

- [5] The submission by Mr. Saneem in his application to strike out can be summarized as follows:

- (a) *that the Plaintiff confirms that the Defendant did not own the said motor vehicle.*
- (b) *the seizure of the said vehicle was unlawful.*
- (c) *the current restraining order does not apply to any person.*
- (d) *the Plaintiff has not complied with Section 19D.*
- (e) *the Plaintiff failed to disclose that Vani Coka Volavou had instituted proceedings seeking to recover her vehicle.*

- [6] FICAC's submission on the issue are:

- (a) *Applicants' method of bringing summons is not in compliance with the Rules.*
- (b) *Before the court may strike out proceedings the causes of action must be clearly untenable that they cannot possibly succeed.*
- (c) *On the case laws the present matter should not be struck out as there are important legal questions to be answered.*

D. Analysis

- [7] The Defendant in this application relies upon **Order 18 Rule 18 (1) (a)** of the High Court Rules 1988, which is that "***[t]he 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;***" It is well established that the jurisdiction to strike out proceedings under Order 18 should be very sparingly exercised and only in exceptional cases.

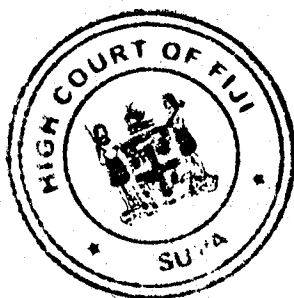
- [8] Civil forfeiture orders are provided for under Division 2A of the Proceeds of Crimes Act 1997. Section 19A allows for an application for a restraining order for tainted or terrorist property. Tainted property under the Act is defined to include proceeds of crime. Without prejudging this matter and based on the material that is currently before me, I find that there is an allegation that the Defendant did not declare her interest in certain businesses and that fraudulent payments were made out from FMF to a particular business which the Defendant was the sole owner. The Plaintiff further alleges that the Defendants did not have the earning capacity to acquire the vehicle and the business to which the payments from FMF were made was used to acquire the vehicle. The Plaintiff's allege that the vehicle was acquired through proceeds of crime.

[9] The affidavit of Catherine Takinana which accompanies the originating summons is comprehensive. It sets out the basis of the declarations that the Plaintiffs are seeking. The vehicle in issue is the subject of the restraining order. The said vehicle was owned by the Defendant. It is alleged that she transferred it to another the day she was caution interviewed and charged by FICAC. The allegation is that that vehicle is tainted property. There is nothing exceptional in this application to strike out this matter. The application to strike out is dismissed.

E. Court Orders

(a) Application to strike out is dismissed.

(b) No orders as to costs.



A handwritten signature in black ink, appearing to be "Chaitanya S.C.A. Lakshman", written over a horizontal dotted line.

Chaitanya S.C.A. Lakshman

Puisne Judge

11th October 2024