

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 134 of 2024

BETWEEN : **DEO NARAYAN** of 24 Nacara Street, Vatuwaqa, Suva.

PLAINTIFF

AND : **DEO LINGAM**, Vice President of the Fiji Driving School Association, Lautoka Branch.

1st DEFENDANT

AND : **SUMAN LATA CHAND**, executive member of the Fiji Driving School Association, Lautoka Branch.

2nd DFENDANT

AND : **SANJAY VERMA**, executive member of the Fiji Driving School Association, Lautoka Branch.

3rd DFENDANT

AND : **ASHISH PRASAD**, Vice President of the Fiji Driving School Association, National Branch.

4th DFENDANT

AND : **ROHIT PRASAD**, Secretary of the Fiji Driving School Association, National Branch.

5th DFENDANT

AND : **AKLESH PRASAD**, Treasurer of the Fiji Driving School Association, Lautoka Branch.

6th DFENDANT

AND : **IMMANUEL GOUNDAR**, executive member of the Fiji Driving School Association, Lautoka Branch.

7th DFENDANT

Coram : **Banuve, J**

Counsels : Sunil Kumar Esq for the Plaintiff/Respondent
Saneem Lawyers for the Defendants/Applicants

Date of Hearing : 13 September, 2024

Date of Judgment : 29 May, 2025

JUDGMENT

A. INTRODUCTION

1. An Originating Summons (For Urgent Injunction and Further Directions) was filed on 1st May 2024 in which the following orders were sought;
 1. *That there be an interim injunction restraining the Defendants and the Fiji Driving School Association Central/Eastern from having their special general meeting on the 4th day of May 2024, until the hearing and determination of this application.*
 2. *That there be an interim injunction restraining the Defendants and the Fiji Driving School Association Central/Eastern and the Fiji Driving School Association National Body from conducting any further affairs until the hearing and determination of this application.*
 3. *That this Ex-Parte application be made inter-parte at the discretion of the Honorable Court upon grant of the interim injunctive orders as per (1) and (2) hereinabove for parties to be accorded their rights of natural justice and to file their respective affidavits/responses to the Plaintiff's application to take further direction.*
 4. *That there be a declaration that the Plaintiff's suspension and/or removal from the post of National President of the Fiji Driving School Association was;-*
 - a. *Ultra Vires*
 - b. *In breach of section 10 of the Fiji Driving School Association Constitution thus null and void*

1. That the Plaintiff's Originating Summons Ex-Parte against the Defendants be struck out on the grounds that:

- (a) it discloses no reasonable cause of action;
- (b) is scandalous, frivolous and vexatious; and
- (c) it is an abuse of the process of the Court;

And for further orders that:

- (d) The Defendants shall not be required to file and serve an Affidavit in Opposition until the determination of this application and/or further order of the Court;
- (e) The Plaintiff pay costs to the Defendants on an indemnity basis; and
- (f) Any further orders that the Court deem fit.

6. The Plaintiff/Respondent filed an Affidavit in Response on 18th July 2024 and the Defendants/Applicants filed an Affidavit in Reply on 20 August 2024.
7. The matter was heard on 13th September 2024
8. Both parties made oral and written submissions which the Court found helpful in its deliberation.

B. THE LAW

9. The application to strike out the Originating is made pursuant to Order 18, Rules 18(1)(a),(c) and (d) of the *High Court Rules* 1988, that it:
 - (i) discloses no reasonable cause of action;
 - (ii) is scandalous, frivolous and vexatious; and
 - (iii) is an abuse of the process of the Court
10. The principles to be considered on a strike out application are well settled in this jurisdiction, the cardinal one being that the Court must use its power to strike out, sparingly and with care, to ensure that a Plaintiff was not improperly deprived of the opportunity for a fair trial of his case. Both parties acknowledge this issue in their submissions.¹

¹ *Gleeson v J. Wippell & Co Ltd* [1977] 1 WLR 510 at 518, *Lucas & Sons (Nelson Mail) v O'Brien* (1978) 2NZLR 289

The '**Supreme Court Practice (White Book) 1985 (ed)**', summarizes the position;

*'A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleadings are considered (per Lord Pearson in Drummond Jackson v British Medical Association [1970] 1 WLR 688; But the practice is clear. **So long as the Statement of Claim or the particulars (Davey V Bentinck [1893] 1 QB 185; [1891-4] All ER Rep 691) disclose some cause of action or raise some question fit to be decided by a Judge or jury, the mere fact that the case is weak and not likely to succeed is not ground for striking out (Moore v Lawson (1915) 31 TLR 418 CA; Wenlock v Moloney [1965] 1 WLR 1238; [1965] 2 All ER 87 CA)**'* (highlight for emphasis).

11. A strike out order therefore, ought to be confined to 'exceptional ' cases, where on the pleaded facts, the Plaintiff could not succeed, as a matter of law - *Tawake v Barton Ltd [2010] FJHC 14; HBC231 of 2008 (28 January 2010)*²

The Defendants/Applicants Position

12. The Defendants/Applicants position is that the case filed by the Plaintiff/Respondent ought to be struck off, as falling into that exceptional category, where on the pleaded facts, the Plaintiff could not succeed, as a matter of law.
13. Their position may be summarized as follows;
 - (i) The Plaintiff/Respondent is a member of the Fiji Driving Schools Association Central/Eastern. The Divisional Executive met on 11 March 2024,³ to discuss, along with other matters, the statements made by the Plaintiff, as appeared in a newspaper article, relating to the Land Transport Authority taking bribes to issue driving licenses, and that it should stop approving new driving schools. The Committee considered this a serious matter that warranted an explanation from the Plaintiff, so that the Fiji Driving School Central/Eastern clarify its position with the Land Transport Authority, and the FDSA National Body.

² Per Master Tuilevuka

³ Annexure D4 of the Affidavit of Ashish Prasad filed on 24 May 2024

- (ii)* No response was received from the Plaintiff or the National Secretary FDSA, despite requests for explanation and follow up requests made.
 - (iii)* Consequently, the Executive Committee took a vote to suspend the Plaintiff as a member of the Fiji Driving Schools Association Central/Eastern Branch whereby a majority of 11 of the 12 Executive members voted in favor of the suspension.⁴
 - (iv)* On 15 April 2024 the General Secretary of FDSA was informed that FDSA Central/Eastern would convene a Special General Meeting on 4 May 2024, at Rishikul College. The Notice of the Meeting was also advertised in the Fiji Sun.⁵
14. The Plaintiff/Respondent, purportedly exercising the powers to do so, suspended the Executives of the FDSA Central/Eastern⁶, an action which the Defendants/Applicants assert the Plaintiff/Respondent had no authority to carry out, as under section 30 of the FDSA Constitution such an action could only be carried out by the Executive Committee.
15. There was a National Executive Council Meeting scheduled for 20 April 2024 and the Plaintiff/Respondent was notified of this meeting on 18 April 2024 by the National Secretary of the following:
- a.* He had been suspended as a member of the Fiji Driving School Central/Eastern, consequently he could no longer chair the meeting.
 - b.* The Ministry of Labour had confirmed that the suspension was valid
 - c.* The General Secretary shall chair the Meeting
 - d.* The decision of the Plaintiff to suspend the Defendants was invalid
16. On 20 April 2024, the Executive met at Namaka, Nadi and the suspension of the Plaintiff/Respondent was upheld and the matter was adjourned for final determination to a Special General Meeting, to be held on 4th May 2024.⁷

⁴ Annexure D8

⁵ Annexure D10

⁶ Annexure D11

⁷ Exhibit D12

17. This decision was conveyed to the Plaintiff/Respondent by letter dated 20 April 2024.⁸
18. The Plaintiff/Respondent obtained an injunction on 2 May 2024 against the holding of the Meeting.

The Plaintiff/Respondent's Position

19. The Plaintiff/Respondent opposes the Application to Strike Out, on the basis that no disciplinary process can be carried out without the involvement of the President of FDSA, regardless of the fact, that the President himself was the subject of the disciplinary process. This position is affirmed by the Plaintiff/Respondent in his formal response to the application under Order 18, Rules 18(1),(a),(b) and (d).

(i) No Reasonable Cause of Action-Order 18, Rule 18(1)(a)

- a. Pursuant to clause 24 of the FDSA Constitution, the President is the chairperson of the Special General Meeting and, in his absence, the Vice-President would act.
- b. The National President canceled the Executive Meeting held on 20 April 2024, therefore the Defendants/Applicants had no authority to continue with the Executive Meeting, and uphold the suspension of the Plaintiff/Respondent.
- c. No written request was received by the President pursuant to clause 19(1)(B) of the FDSA Constitution, and in any event, the meeting was canceled by him therefore, the decision to suspend him by majority vote on Viber App, did not accord with clause 20(a) of the FDSA Constitution.

(ii) Plaintiff's Summons is Scandalous, Frivolous and Vexatious –Order 18. Rule 18(1)(b)

⁸ Exhibit D13

The Plaintiff/Respondent reiterates the position that since he has established, a reasonable cause of action, and, that the actions of the Defendants were ultra vires the Constitution of FDSA, then it is axiomatic that the Originating Summons cannot be deemed frivolous and vexatious.⁹

(iii) Is the filing of the Plaintiff's Summons an abuse of the process of the Court? Order 18, Rule 18(1)(d)

The Plaintiff asserts that there can be no abuse of process because there are fundamental questions of law and fact, to be decided [by the Court];

- a. Can a divisional body suspend a National President of FDSA when they are all governed by the same FDSA Constitution?
- b. Whether the continuation of the executive meeting at Perfect Driving School is without authority, and appointments made ultra vires, when the National President (Plaintiff) canceled the said meeting?
- c. Whether there are provisions within the FDSA Constitution to suspend/expel the National President FDSA?

20. There are 2 further issues raised by the Plaintiff/Respondent which the Court will also consider; **(i)** the grant by the Court of the interim injunctive orders according to applicable principles confirms that there is a reasonable cause of action established by the Plaintiff/Respondent and; **(ii)** the filing of the Application to Strike Out, instead of complying with Court directions was irregular and ought not be allowed-*Singh v Singh* [2023] FJCA 147;ABU0089.2020 (28 July 2023).

C. ANALYSIS

21. The pivotal issue for the determination of this matter is whether the Court has a role to play at this stage in the determination of the issues of law which the Plaintiff/Respondent has identified in its Summons, or are they matters that need to be dealt with initially, under the FDSA Constitution?

⁹ Paragraph 3.28 –Submissions of the Plaintiff Opposing Striking Out Application, p 21

22. It is pivotal because the decision on this point of law may avoid the necessity for trial altogether, or render it substantially easier or cheaper, and be determined on the bare facts pleaded, without trial-*William & Humber Ltd v H Trade Markers (Jersey) Ltd (1986) 1 All ER 129*.
23. It is undisputed, and not inconsistent with the pleadings, thus filed that;
- (i) The Plaintiff/Respondent and the Defendants/Applicants are members of the Fiji Driving School Association Central/Eastern, and are bound by the Constitution of the Fiji Driving School Association;
 - (ii) The Fiji Driving School Association Central/Eastern is affiliated to the Fiji Driving School Association, the national body.
24. The Plaintiff/Respondent was, until his suspension, a member of the Fiji Driving School Association Central/Eastern, and by virtue of that membership, was nominated and appointed the President of the Fiji Driving School Association, national body.
25. Article 6 clause (vi) states

MEMBERSHIP will be given to any person;

- (vi) *who agrees to be bound by the Constitution and Regulations of the Association, shall be a member of the Association until membership is terminated under clause (9) and (10) hereof.*
26. The language used in Article 6 of the FDSA Constitution is clear, that the members of the Fiji Driving School Association Central/Eastern, an affiliate member of the Fiji Driving School Association, national body, are bound by its Constitution and Regulations.
27. The relationship between the parties would be contractual, in nature, created when the Fiji Driving School Association Central/Eastern became a member of the Fiji Driving School Association, national body and when the

Plaintiff/Respondent became the President of the national body. The Plaintiff/Respondent's claim is therefore private in nature.¹⁰

28. In that regard, it is mandated that members first resort to its dispute resolution process as set out in clause 10 of the Constitution, specifying that a member wishing to challenge a decision to *suspend or expel*, shall be provided with an opportunity to explain his predicament at a Special General Meeting. This requirement is mandatory.

Clause 10 (iii) of the Constitution states;

Suspension or Expulsion- If the conduct of any member appears to the Executive Committee to endanger, or to be likely to endanger the good order, reputation or welfare of the Association, the Chairman/President in consultation with the Executive Committee may suspend the member(s) and subsequently convene a Special General Meeting of members to consider the suspension and/or expulsion of such member.

At the meeting such members shall be given a reasonable opportunity to explain his/her predicament. Voting at any such meeting shall be by show of hands or secret ballot, with not less than three fifths (3/5) of the members present voting in favor of the motion to effect such a suspension and/or expulsion.

29. A Special General Meeting was convened for this purpose on 4 May 2024 to look specifically into the issue of the Plaintiff/Respondent's suspension. Instead of participating in the dispute resolution process mandated under the FDSA Constitution, the Plaintiff pre-empted matters by seeking the Court's intervention, by way of Originating Summons-Ex Parte, and obtaining interim injunctive orders on 2 May 2024.
30. The Plaintiff/Respondent has however failed to show any breach of his legal right ,at this stage, to justify the Court exercising its discretion to intervene, without first exhausting the remedy available to him under the dispute resolution process prescribed under the FDSA Constitution. The Plaintiff/Respondent's grievance as raised in the Summons before the Court are private in nature, which ought to be addressed pursuant to Article 10(iii) of the

¹⁰ *Singh v FFA & Anor* –Civil Action No HBC 182 of 2014, per Nanayakarra, J

Constitution.¹¹ As stated in *Singh v Fiji Football Association* [2016] FJHC 1020, HBC 182.2014;

'The claim does not disclose a reasonable cause of action. Because the Plaintiff's claim is clearly one of private and therefore the Plaintiff is not entitled to obtain from the Court a remedy against the Defendants. It is therefore frivolous, vexatious and an abuse of the process of the Court'

31. The Court affirms therefore, that the Originating Summons (For Urgent Injunction and Further Directions) filed by the Plaintiff/Respondent on 1 May 2024 discloses no reasonable cause of action, as the grievances raised in it are private in nature and the Court cannot intervene to grant the remedy sought. It follows therefore that the Summons is frivolous, vexatious and an abuse of the process of the Court.
32. The Court would deal with 2 additional issues raised by the Plaintiff/Respondent;
- (i) Whilst the Court had granted injunctive orders on 2 May 2024 to the Plaintiff/Respondent they were granted *ex parte*, pursuant to Order 29, r. 1 of the *High Court Rules* 1988. Despite the matter being rendered *inter-parte* thereafter, no application to dissolve the said orders were filed. The Court is constrained to point out that had such an application been made *inter parte* with additional material provided, it would have found it difficult not to review the orders granted on 2 May 2024, because of its impact on the conduct of the affairs of both the FDSA Central/Eastern and the national body. This issue is now academic given the determination of the Court.
- (ii) The Plaintiff/Respondent states that the action of the Defendants/Applicants in filing a strike out, rather than complying with the rules of pleading and filing a response to its Summons ought not be allowed and the application ought to be dismissed as decreed by the Court of Appeal in *Singh v Singh* [2023] FJCA 147; ABU 0089.2020 (28 July 2023).
The Court notes that it was critical to the Court of Appeal's finding, that the Plaintiff had filed a Statement of Claim and pleaded a cogent cause of action with particulars, in regard to his rights, and the next step was to have had

¹¹ *Matea & Anor v Koroi & Others* (2004) FLR 445, per Jitoko, J

the evidence heard; a regular procedure which should not have been allowed (permitted), to be short-circuited, by entertaining a strike out application.¹²

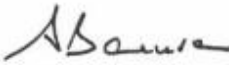
That position is distinguishable from the one currently before the Court. The Summons before the Court is bound to fail. The Court cannot intervene, as the Plaintiff/Respondent's grievance is private in nature, and therefore the Plaintiff is not entitled to obtain from the Court a remedy against the Defendants. In that regard, there is no reasonable cause of action to be pursued or enlivened, by refusing to strike out the Originating Summons, filed on 1 May 2024.

No purpose will be served by retaining the Summons and the only sensible outcome in such a situation is to have it struck off.

ORDERS:

- 1. The Orders sought in the Originating Summons –Ex-Parte (For Urgent Consideration and Further Directions) filed on 1 May 2024, and later rendered inter-parte, are refused and dismissed in their entirety.**
- 2. The Injunctive Orders granted in terms of Orders 1 and 2 of the Originating Summons-Ex Parte (For Urgent Consideration and Further Directions), on 2 May 2024 are hereby dissolved**
- 3. Costs to the Defendants/Applicants summarily assessed at \$1,500.00 to be paid by the Plaintiff/Respondent within 21 days of this judgment.**




Savenaca Banuve
Judge

Dated at Suva this 29th day of May, 2025.

¹² Guneratne, P at paragraphs [55]-[56]