IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

CIVIL ACTION NO. HBC 52 OF 2021

BETWEEN : **KELEPI SALAUCA** medium, Naboro.

PLAINTIFF

AND : **THE STATE (DPP's Office, Lautoka)**

DEFENDANT

Before : Master P. Prasad

Counsels : Plaintiff in person
Mr. S. Kant for Defendant

Date of Hearing : 12 February 2025

Date of Decision: 24 July 2025

RULING

(Strike out)

1. The Plaintiff filed the initial Statement of Claim on 23 February 2021 and an Amended Statement of Claim on 15 March 2021. The Plaintiff filed a second Amended Statement of Claim on 18 February 2022 joining the Human Rights Commission to the proceeding as *Amicus Curie*. The Plaintiff through the said second Amended Statement of Claim **(SOC)** states as follows:

    a. The Plaintiff was arrested at Kulukulu on 20 July 2016 and was badly assaulted by a Police Officer namely Mitieli Nacagilevu;
    b. The Plaintiff was then taken to Sigatoka Police Station and assaulted again;
    c. Between 20 and 21 July 2016 the Plaintiff was assaulted at different times;
    d. The Plaintiff was interviewed by Police Officer Viliame Uqeuqe and was told that the Plaintiff was going to be released;
    e. The Police then instead of charging the Plaintiff for shoplifting, charged him for burglary and theft and locked him back in the Sigatoka Police Station cell;

f. 4 days later, (after more than 48 hours) on 25 July 2016 the Plaintiff was finally produced in Court;
g. The Plaintiff's criminal case number CF 287 of 2016 was pending at the Sigatoka Magistrates Court;
h. The court gave an order for the Plaintiff to be medically examined;
i. The Plaintiff was remanded from 25 July to 2016 to 3 October 2016 when he was granted bail;
j. But the Plaintiff was not released on bail as his previous bail in HAC 172 of 2015 was revoked due to him being charged in CF 287 of 2016;
k. That the State Prosecution failed to assess the evidence against the Plaintiff and as a result the matter is still pending before the Sigatoka Magistrate Court;
l. On 4 November 2020 the Plaintiff applied to transfer CF 287 of 2016 to the High Court which was granted by the Sigatoka Magistrates Court;
m. The High Court action HAC 178 of 2020 was adjourned on various occasions on application of the State and the State failed to file Information or serve Disclosures; and
n. The State thereafter filed a *Nolle Prosequi*;

2. The Plaintiff claims general damages for malicious prosecution, false imprisonment, pain and suffering and breach of human rights for a total sum of $25,000.00.

3. On 22 July 2022, the Defendant filed a Summons to Strike Out (**Summons**) the Plaintiff's SOC pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules (**HCR**) and the inherent jurisdiction of this Court.

4. On 29 August 2022, this Court removed the *Amicus Curie* from the proceeding. On 18 March 2024, the Plaintiff attempted to file an application for leave to amend his SOC again. The Defendant objected to the said application. Despite being afforded the opportunity to file an application for leave to amend his SOC from 11 October 2022 onwards, the Plaintiff failed to do so. Thereafter, this Court gave directions that it will deal with the Defendant's Summons first, as it was already filed, and then deal with the Plaintiff's application for leave to amend the SOC in the event the matter was not struck out.

5. Both parties made oral submissions at the hearing of the Summons and filed written submissions as well.

Order 18 Rule 18 (1) (a)

6. The relevant rule which the Defendant is relying on is Order 18 Rule 18 (1) (a) of the HCR.

7. Order 18 rule 18 provides:

"18 (1)The 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 case of action or defence, as the case may be;

(b) it is scandalous, frivolous or vexatious;

(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."

8. The following excerpts from the 1997 Supreme Court Practice provide the scope of the rule together with guiding factors when dealing with an application for the strike out of a pleading.

9. Footnote 18/19/3 of the 1997 Supreme Court Practice reads:

"Striking out or amendment—The rule also empowers the Court to amend any pleading or indorsement or any matter therein. If a statement of claim does not disclose a cause of action relied on, an opportunity to amend may be given, though the formulation of the amendment is not before the Court (CBS Songs Ltd v. Amstrad [1987] R.P.C. 417 and [1987] R.P.C. 429). But unless there is reason to suppose that the case can be improved by amendment, leave will not be given (Hubbuck v. Wilkinson [1899] 1 Q.B. 86, p.94, C.A.). Where the statement of claim presented discloses no cause of action because some material averment has been omitted, the Court, while striking out the pleading, will not dismiss the action, but give the plaintiff leave to amend (see "Amendment," para. 18/12/22), unless the Court is satisfied that no amendment will cure the defect (Republic of Peru v. Peruvian Guano Co. (1887) 36 Ch.D. 489)."

10. Footnote 18/19/7 of the 1997 Supreme Court Practice reads:

"Exercise of powers under this rule—It is only in plain and obvious cases that recourse 18/19/7 should be had to the summary process under this rule, per Lindley M.R. in Hubbuck v. Wilkinson [1899] 1 Q.B. 86, p.91 (Mayor, etc., of the City of London v. Horner (1914) 111 L.T. 512, C.A.). See also Kemsley v. Foot [1951] 2 K.B. 34; [1951] 1 All E.R. 331, C.A., affirmed [1952] A.C. 345, H.L. It cannot be exercised by a minute and protracted examination of the documents and facts of the case, in order to see whether the plaintiff really has a cause of action (Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.)."

11. Footnote 18/19/11 of the 1997 Supreme Court Practice on no reasonable cause of action or defence reads:

"Principles—A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered (per Lord Pearson in Drummond-Jackson v. British Medical Association [1970] 1 W.L.R. 688; [1970] 1 All E.R. 1094, C.A.). So long as the statement of claim or the particulars (Davey v. Bentinck [1893] 1 Q.B. 185) disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out (Moore v. Lawson (1915) 31 T.L.R. 418, C.A.; Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.);..."

12. The legal principles regarding striking out pleadings are clear and widely understood. The Court of Appeal in ***National MBF Finance v Buli*** [2000] FJCA 28 determined the principles for strike out. In ***Attorney-General v Shiu Prasad Halka*** 18 FLR 210 at 214 Justice Gould V.P. in his judgment expressed "*that the summary procedure under O.18, r.19 is to be sparingly used and is not appropriate to cases involving difficult and complicated questions of law.*"

13. Justice Winter (as his Lordship then was) in ***Ah Koy v Native Land Trust Board*** [2005] FJHC 49 aptly stated:

"The practice in Fiji of preemptively applying to strike out a claim is wrong and must cease. Counsels ability to overlook the purpose of this summary procedure is astounding. The expense to the administration of justice, let alone clients, is a shameful waste of resources....

Apart from truly exceptional cases the remedy should not be granted. The approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be provided at trial. If a legal issue can be raised on the facts as pleaded then the courts will not strike out a pleading and will certainly not do so upon a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of such a factual contention....
The rule of law requires the existence of courts for the determination of disputes and that litigants have the right to use the court for that purpose. The courts will be alert to their processes being used in a way that results in an oppression or injustice that would bring the administration of justice into disrepute. However, the court cannot and must not deny proper access to justice by the glib use of a summary procedure to pre-emptorily strike out an action no matter how weak or poorly pleaded the Statement of Claim supporting the case is....

It is not for the court in deciding whether there is a reasonable cause of action to go into the details of the issues that are raised by the parties. This summary jurisdiction of the court was never intended to be exercised by a detailed examination of the facts of the case at a mini hearing to see whether the plaintiff really has a good cause of action merely a sufficient one. This is not the time for an assessment of the strengths of either case. That task is reserved for trial. The simple fact that these parties engaged

in argument by opinion over statutory interpretation must bring into existence a mere cause of action raising some questions fit to be decided by a judge."

14. The clear and unambiguous wording of Order 18 Rule 18 indicates that the power to strike out pleadings is discretionary rather than obligatory.

15. For an application under Order 18 Rule 18 (1) (a), the Court may only conclude an absence of a reasonable cause of action on the pleadings itself with no evidence being admissible. His Lordship Chief Justice Mr. A.H.C.T. Gates (as His Lordship then was) held in **Razak v Sugar Corporation Ltd** [2005] FJHC 720 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] UKLawRpCh 186; (1887) 36 Ch.D 489 at p.498".*

16. The pleadings suggest that the Plaintiff brings this action against the Defendant for the following four causes of action: (i) false imprisonment for time spent in police custody from 20 July 2016 to 25 July 2016; (ii) false imprisonment for time spent in remand from 25 July 2016 to 3 October 2016; (iii) malicious prosecution for the offences of burglary and theft; and (iv) breach of constitutional rights and rights under the International Convention on Civil and Political Rights (**ICCPR**).

17. The Defendant's position on each of the four causes of action raised by the Plaintiff has been surmised hereafter under each respective heading.

False imprisonment for time spent in police custody from 20 July 2016 to 25 July 2016

18. The relevant paragraphs in the SOC which refer to false imprisonment are as follows:

> *"3. That the Plaintiff was arrested at Kulukulu, Sigatoka on the 20th July 2016 at about 2-3pm, and was badly assaulted with punch on the face, kick and was force to board in a private vehicle by Mitieli Nacagilevu (police officers).*
>
> *4. That the Plaintiff was then taken to Sigatoka Police Station and was further assaulted with an allegation of shoplifting.*
>
> *5. That whilst at Sigatoka Police Station the Plaintiff was assaulted for two (2) days at different point in time (20th – 21st July 2016).*
>
> *6. That after the Plaintiff was interviewed by Police Officer Viliame Uqeuqe, the Plaintiff was told that he is going to be released.*

7. That the Plaintiff then intends to lodge his complaint report of police assault and the police then instead of charge the Plaintiff of shoplifting case, the police then locked the Plaintiff back in the cell and have him charged with a Burglary and Theft case.

8. That the Plaintiff was then kept in custody in the Police cell from 20th July 2016 and produced in court on the 25th of July 2016, which is more than 4 days (and more than 48 hours) ...

26. That the Plaintiff was unlawfully detained for about 3 months (remanded) and 5 days in Police custody from the 20th July 2016 to 3rd October 2016 and has been the cause of revocation of bail in the High court of Fiji (HAC 172 of 2015) from 3rd October 2016 to 15th June 2018 (Lautoka)."

19. The Defendant's counsel submitted that the Plaintiff has failed to appropriately plead this cause of action and as such has not complied with Order 18 Rule 6(1) of the HCR. Counsel relied on ***Dakshil Patel v Lalita Devi Nair and Another*** District Registry No. HBC 210 of 2009 (16 February 2016) on the requirements of pleading material facts.

20. The Defendant's counsel further submitted that the SOC has merely outlined in general that the Plaintiff was in Police custody without properly pleading the elements of false imprisonment. The Defendant in its submissions has referred to the case of ***Rajendra Singh v The Commissioner of Fiji Police Force and Others*** Civil Appeal No. ABU 151 of 2018 on the discussion of what the legal requirements are that constitute an action based on false imprisonment.

21. Defendant's counsel also stated that the Plaintiff's imprisonment was at the Sigatoka Police Station yet this SOC has been filed against the DPP's Office when the DPP's Office played no role in the Plaintiff's alleged imprisonment on the stated dates.

22. In addition, the Defendant's counsel brought to the Court's attention another matter filed by the Plaintiff, which is before this Court, namely HBC 53 of 2021 ***Kelepi Salauca v Mitieli Nacagilevu, The Commissioner of Police, The Attorney-General of Fiji and the Human Rights Commission*** (**HBC 53 of 2021**). The Defendant's counsel submitted that the Plaintiff could pursue this claim of false imprisonment in HBC 53 of 2021 and there would be no prejudice to the Plaintiff if this SOC was struck out.

Malicious prosecution for the offences of burglary and theft

23. The relevant paragraphs in the SOC that bear some reference to a claim of malicious prosecution state as follows:

"13. The State prosecution fail to assess the evidence against the Plaintiff at early stage and have the matter hang on the Plaintiff's head for 4 years 2 months with the case pending at Sigatoka Magistrates Court. ...

18. That on the 17th of February 2021 when the matter (HAC 178/2020) was called, the state prosecution cannot file the information and cant even served the plaintiff with disclosures but went further to enter a Nolle Prosequi against the Plaintiff.

19. That there is no evidence in this matter that would afford reasonable cause for charge to be laid.

20. That the prosecution is duty bound to ensure that the evidence is there before laying charges. ...

23. That the States failure to file Information and to serve Disclosures clearly indicates that the action should not have been brought in the first place."

24. Defendant's counsel relied on ***Naisoro v Commissioner of Police*** [2019] FJCA 82; ABU0018.2017 (7 June 2019) where the Court of Appeal discussed the elements which are essential for malicious prosecution and held as follows:

*"[28] I consider it appropriate to firstly identify the essential elements that a Plaintiff must prove in order to succeed in an action for malicious prosecution. The Appellants in their written submissions have referred to the case of **A v New South Wales**, [2007] HCA 10. The High Court of Australia in this case has traced in great detail the history and development of the tort of malicious prosecution. They have re-iterated the oft relied upon four elements a Plaintiff must establish in order to succeed in an action for malicious prosecution. They are;*
"(1) that proceedings of the kind to which the tort applies (generally, as in this case, criminal proceedings) were initiated against the Plaintiff by the defendant;
(2) that the proceedings terminated in favour of the plaintiff;
(3) that the defendant, in initiating or maintaining proceedings acted maliciously; and
(4) that the defendant acted without reasonable and probable cause"

[29] Halsburys Laws of England (4th Edn), Vol 45, para 1368, stipulates that the Plaintiff should expressly plead these four essential elements. Therefore, it is prudent to examine if the Appellants have pleaded these four elements in their Statement of Claim and also whether they have proved them at the trial."

25. The Defendant's counsel submitted that the pleadings; (i) make no reference to the fact that the State acted maliciously/with improper motive; (ii) make no reference to the fact that the State also acted without reasonable and probable cause; and (iii) does not provide any particulars of the same. Consequently, the Plaintiff's claim of malicious prosecution is not sustainable.

False imprisonment for time in remand between 25 July 2016 to 3 October 2016

26. The Plaintiff's contention is that he was wrongfully remanded between 25 July 2016 to 3 October 2016.

27. The Defendant's counsel submitted that the Plaintiff cannot legally have a cause of action against a remand order made by a Court. Counsel relied on section 3(5) of the State Proceedings Act 1952, ***Bachu v Commissioner of Prisons*** [supra] and ***Prakash v Commissioner of Police*** Civil Action No. HBC 255 of 2020 (29 September 2024).

Damages pertaining to breach of Constitutional rights and rights under the ICCPR

28. Defendant's counsel's submission on this claim was that the Plaintiff has not specifically pleaded how his constitutional rights and rights under the ICCPR have been breached, and as such this cause of action does not disclose a reasonable cause and must be struck out.

29. The Defendant's counsel had further submitted that the Defendant would be prejudiced if the Court grants leave to the Plaintiff to amend the SOC as the Plaintiff had already amended the SOC twice. Furthermore, Despite being afforded the opportunity to file an application for leave to amend his SOC from 11 October 2022 onwards, the Plaintiff failed to do so until 18 March 2024 when he attempted to file an application for leave.

30. Defendant's counsel also submitted that the Plaintiff can further its claim for damages for false imprisonment as alleged in the SOC in the other matter namely HBC 53 of 2021 and is therefore not prejudiced.

31. The Plaintiff submitted that his SOC did show a reasonable cause of action and that he be allowed in the alternative to amend his pleadings. He disputed that he was seeking the same reliefs in HBC 53 of 2021.

Analysis

32. It was held in ***Ratumaiyale 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. The principles*

applicable were succinctly dealt by Justice Kirby in ***London v Commonwealth [No 2]*** *70 ALJR 541 at 544 - 545. These are worth repeating in full:*

*1. It is a serious matter to deprive a person of access to the courts of law for it is there that the rule of law is upheld, including against Government and other powerful interests. This is why relief, whether under O 26 r 18 or in the inherent jurisdiction of the Court, is rarely and sparingly provided (**General Street Industries Inc v Commissioner for Railways (NSW)** [1964] HCA 69; (1964) 112 CLR 125 at 128f; **Dyson v Attorney-General** [1911] 1 KB 410 at 418).*

*2. To secure such relief, the party seeking it must show that it is clear, on the face of the opponent's documents, that the opponent lacks a reasonable cause of action (**Munnings v Australian Government Solicitor** (1994) 68 ALJR 169 at 171f, per Dawson J.) or is advancing a claim that is clearly frivolous or vexatious; (**Dey v. Victorian Railways Commissioners** [1949] HCA 1; (1949) 78 CLR 62 at 91).*

*3. An opinion of the Court that a case appears weak and such that it is unlikely to succeed is not alone, sufficient to warrant summary termination. (**Coe v The Commonwealth** (1979) 53 ALJR 403; (1992) 30 NSWLR 1 at 5-7). Even a weak case is entitled to the time of a court. Experience reaches that the concentration of attention, elaborated evidence and argument and extended time for reflection will sometimes turn an apparently unpromising cause into a successful judgment.*

*4. Summary relief of the kind provided for by O 26, r 18, for absence of a reasonable cause of action, is not a substitute for proceeding by way of demurrer. (**Coe v The Commonwealth** (1979) 53 ALJR 403 at 409). If there is a serious legal question to be determined, it should ordinarily be determined at a trial for the proof of facts may sometimes assist the judicial mind to understand and apply the law that is invoked and to do so in circumstances more conducive to deciding a real case involving actual litigants rather than one determined on imagined or assumed facts.*

*5. If notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it has failed to put in proper form, a court will ordinarily allow that party to reframe its pleadings. (**Church of Scientology v Woodward [1982] HCA 78; (1980) 154 CLR 25** at 79). A question has arisen as to whether O 26 r 18 applies only part of a pleading. (**Northern Land Council v The Commonwealth** (1986) 161 CLR 1 at 8). However, it is unnecessary in this case to consider that question because the Commonwealth's attack was upon the entirety of Mr. Lindon's statement of claim; and*

6. The guiding principle is, as stated in O 26, r 18(2), doing what is just. If it is clear that proceedings within the concept of the pleading under scrutiny are doomed to fail, the Court should dismiss the action to protect the defendant from being further troubled, to save the plaintiff from further costs and disappointment and to relieve the Court of the burden of further wasted time which could be devoted to the determination of claims which have legal merit.

33. As discussed in ***London v Commonwealth [No 2]*** [supra], the mere fact that a case is weak and not likely to succeed is no ground for striking out. A court should not dismiss or strike out a case simply because a plaintiff's arguments or evidence may not be particularly strong or because the case may face challenges in succeeding at trial. Instead, courts generally allow cases to proceed to trial where there is a reasonable basis for the claim, even if it is not guaranteed to succeed, so that all relevant evidence and arguments can be fully examined and evaluated in the appropriate legal proceedings.

34. While the Plaintiff's claim may lack some of the necessary facts, details, and particulars required to fully support the allegation of false imprisonment, malicious prosecution and breach of Constitutional rights/rights under ICCPR, the pleadings as they currently stand do disclose some cause of action against the Defendant and do raise some questions to be decided at the trial of the action. The determination of whether the Plaintiff's detention at the Sigatoka Police Station for a period of over 48 hours was unlawful and whether there was malice in his prosecution cannot be conclusively decided based solely on submissions and affidavits. These are critical factual questions that require thorough examination and presentation of evidence during trial.

35. I therefore find that there is a reasonable cause of action, and any lack of detail or clarity can be addressed and clarified through an amendment to the pleadings.

36. In light of the aforementioned reasons, it is only proper to allow the Plaintiff to amend his pleadings to explicitly include further particulars of false imprisonment, malicious prosecution and breach of any rights under the Constitution or the ICCPR. Such amendment can also address the addition of other relevant parties as defendants pursuant to Order 15 Rule 6.

37. Furthermore, as mentioned above, the Defendant's counsel did raise a valid point that the Plaintiff's claim in HBC 53 of 2021 stems from the same incident as that in the current proceeding. The Plaintiff alleges that he was arrested, assaulted and it was only when he was intending to make a complaint of the assault that he was further detained and charged for another offence. It is obvious that same witnesses and evidence of same parties are involved in both matters and the determination and outcome of one matter relates to the other.

38. Hence this is an appropriate case for the Court to exercise its wide discretionary powers conferred under Order 4 Rule 2 of the HCR because it will be prudent to direct that both proceedings be heard and determined at the same time thereby facilitating a more efficient use of time and resources.

39. I note that allowing time to the Plaintiff to amend his pleadings will inconvenience the Defendant to some extent, as they were prompted to file the current Summons because of the way the SOC was originally drafted. However, taking into consideration that the Plaintiff is a serving prisoner and the

Defendant has yet to file a Statement of Defence, there will be no costs awarded in this matter.

40. Accordingly, I make the following orders:

(a) The Summons to Strike Out filed by the Defendant is hereby dismissed;

(b) The Plaintiff is to file and serve an Amended Writ of Summons and Statement of Claim within 21 days from today (by 14 August 2025);

(c) The matter shall be mentioned before the Court on 20 August 2025 for normal course to follow;

(d) This matter (HBC 52 of 2021) and HBC 53 of 2021 be heard and tried at the same time; and

(e) Parties to bear their own costs.

HIGH COURT OF FIJI
LAUTOKA

P. Prasad
Master of the High Court

At Lautoka
24 July 2025