

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. 158 of 2024

IN THE MATTER OF VERONICA MALANI
A.K.A. ADI VAKACEGU RAMANAKIWAI
MALANI, RATU FILIMONE RALOGAIVAU
AND MANOA MALANI a.k.a. RATU MANOA
MALANI SEEKS CLAIM FOR
COMPENSATORY DAMAGES, INJUNCTIVE
RELIEF, PUNITIVE DAMAGES AND LEGAL
COST MEASURES DUE TO VIOLATION OF
FUNDAMENTAL CONSTITUTIONAL RIGHTS,
MISFEASANCE, ABUSE OF OFFICE,
DISCRIMINATION, COWARDICE, CONFLICT
OF INTEREST AND ABUSE OF
PROSECUTORIAL POWERS BY THE FIJI
POLICE FORCE, FIJI POLICE
INVESTIGATION TEAM, FIJI DIRECTOR OF
PUBLIC PROSECUTION [DPP] AND
ATTORNEY GENERAL [AG] WHO IS ALSO
THE SUSPECT IN THE 1987 BOMBING
INVESTIGATION

BETWEEN: VERONICA MALANI a.k.a ADI VAKACEGU RAMANAKIWAI
VERONICA RALOGAIVAU MALANI of 68 Vesi Street, Laucala Bay Road,
Suva, Land Developer/Human Rights Defender

RATU FILIMONE RAMARAMA RALOGAIVAU [ALSO
REPRESENTING THE ESTATE OF LATE MRS. FANE RALOGAIVAU]
of 68 Vesi Street, Laucala Bay Road, Suva, Retired Minister/Senator

MANOA MALANI a.k.a. RATU MANOA LUTUNAUGA
SAUMAIVERATA NADURUCORO MALANI of 68 Vesi Street, Laucala
Bay Road, Land Developer/Human Rights Defender

PLAINTIFFS

AND: THE FIJI POLICE FORCE COMMISSIONER (INCUMBENT)

FIRST DEFENDANT

**AND: DIRECTOR OF PUBLIC PROSECUTION (CHRISTOPHER PRYDE)
OFFICE OF THE DIRECTOR PROSECUTION**

SECOND DEFENDANT

**AND: HONOURABLE INIA SERUIRATU (FORMER MINISTER OF
DEFENCE AND CURRENT OPPOSITION LEADER)**

THIRD DEFENDANT

**AND: AIYAZ SAIYAD KHAIYUM (FORMER MINISTER OF JUSTICE &
ATTORNEY GENERAL OF FIJI/SUSPECT OF THE 1987 BOMBING
CASE) (POLICE REPORT NO: 133/7/20)**

FOURTH DEFENDANT

**AND: RUSIATE TUDRAVU (Former Acting Commissioner of the Fiji Police
Force and Current Chairman of the Tailevu Provincial Council)**

FIFTH DEFENDANT

**AND: BIU MATAVOU (Former Retired ACP Crime of the Fiji Police Force
Headquarters Centre Point)**

SIXTH DEFENDANT

**AND: NEELRAJ SHARMA (FORMER PROSECUTOR OF THE OFFICE OF
PUBLIC PROSECUTION AND SOLICITOR WITH MUNRO LEYS)**

SEVENTH DEFENDANT

**AND: MESAKE WAQA (Former Director CID and currently ACP Crime Fiji
Police Force – Fiji Police Force Headquarters Centrepont)**

EIGHTH DEFENDANT

**AND: ESILI NADOLO (Police Inspector & Team Leader for Bombing Case
investigation Team – Police Report number 1 337/20 – Fiji Police
Headquarters Centrepont)**

NINTH DEFENDANT

AND: RUPENI TAOKA (Police Inspector and Member of the Investigating Bombing Case Investigation Team – Police Report number 133/7/20 – CID OFFICE TOORAK)

TENTH DEFENDANT

AND: MAKELESI RANADI (Police Office & Member of the Bombing Team Case Investigation Team – Police Report number 133/7/20 – CID OFFICE TOORAK)

ELEVENTH DEFENDANT

For the Plaintiffs: Mr. Raikanikoda

For the 1st, 5th, 6th, 8th,

9th, 10th, 11th Defendants: Mr. Chauhan

For the 4th Defendant: Ms. Fatima

For the 7th Defendant: Mr. Singh

RULING ON STRIKING OUT APPLICATION OF 7th DEFENDANT

1. This is the Application of the 7th Defendant by way of Summons filed on the 18th of June 2024, seeking the following orders: -
 - i. The Statement of Claim filed on the 17th of May 2024 (the Claim) against the 7th Defendant be wholly struck out and dismissed.
 - ii. All proceedings against the 7th Defendant be stayed pending the determination of this application.
 - iii. That Plaintiff pays the 7th Defendant the costs of this application on an indemnity basis or alternatively, summarily assessed on a higher scale; and
 - iv. Such further orders as the Court deems just and fair.

On the grounds that the Claim:

- a) Discloses no reasonable cause of action; and/or

- b) Is scandalous, frivolous or vexatious; and/or
- c) May prejudice, embarrass or delay the fair trial of the action; and/or
- d) Is otherwise an abuse of the process of the Court;

And, on further grounds that the Claim:

- e) Is a civil proceeding which must be instituted against the Attorney General as required by section 12 of the State Proceedings Act 1951; and/or
 - f) Raises issues which the High Court of Fiji has determined in Judicial Review No. HBJ 2 of 2021
2. The Application is supported by the Affidavit of Neelraj Singh (the Applicant) deposed on the 18th of June 2024 and filed on the same day.
 3. The application is made pursuant to Order 18 Rule 18 (5), (2), (3) and (5) and Rule 18 (1), (a), (b), (c) and (d) of the High Court Rules 1988 sections 3 (5) and 12 (2) of the State Proceedings Act 1951 and under the inherent jurisdiction of the High Court.

The grounds for the Application

4. The Applicant was appointed as a State counsel in the Office of the Director of Public Prosecutions Office, in the General Crimes Division and he served from March 2019 to January 2022.
5. During that period, Mr. Christopher Pryde (the 2nd Defendant) was the Director of Public Prosecution (DPP) and he understands that he is the current DPP. As State counsel he was subject to the directions of the DPP and did not make any decisions on any matters in his personal capacity nor did he have any discretion professionally.
6. He deposes that the Claim discloses no reasonable cause of action against him.
7. He further believes that the Claim against him is misconceived as the work that he did as a State counsel was not in his personal capacity.

8. He states that there is simply no basis for the Plaintiffs to file a claim against him because:
 - (a) He acted on the lawful directions of his employer, the DPP;
 - (b) There is no basis to claim damages against him either as compensatory or as punitive damages;
 - (c) He had no authority to decide the prosecution or otherwise of this matter or any other matter as alleged. This exercise is solely reserved for the DPP.
9. The Claim names his current employer, this has no relevance to their claim against him and he contends that it has been included deliberately to cause him embarrassment and to harm/ridicule him while he defends the claim.
10. He believes that the Plaintiff's claim does not comply with the requirements of the State Proceedings Act 1951; and is defective and not in compliance with the High Court Rules 1988.
11. He also believes that the Claim is an abuse of the Court's process. The issues raised by the Plaintiff have already been dealt with by the High Court of Fiji in Judicial Review No. HBJ 2 of 2021.
12. He submits that the Claim against him should be struck out, because at all relevant times, he was acting as a State Counsel on directions of the DPP, for all the reasons he has stated above.
13. He prays for the orders as set out in the Summons.
14. The application is opposed and the Plaintiffs, through the 1st Plaintiff Veronica Malani filed an "affidavit" on the 23rd of August 2024. The first purported affidavit filed by the Plaintiffs on the 23rd of August did not comply with Order 41 of the High Court Rules

and was ordered to be struck out. The Plaintiffs were then granted time to file a supplementary affidavit, which they did on the 5th of September 2024

15. The Plaintiffs oppose the application for striking out on the following grounds: -

- a) The 7th Defendant was the DPP officer in charge of the Plaintiff's case, when their Police report number 133/7/20 was referred to the Office of the DPP.
- b) The deponent appends a document titled "Response to the Defendant 7's Strike Out. She sets out a brief history of the events that occurred on the 18th of October 1987 where she was the victim of a bombing incident.
- c) She filed a complaint on these events on the 5th of July 2020 and the investigation was re-opened in 2020 vide Police report number 133/7/20.
- d) She then submits that the Police failed to conduct a thorough, fair, non-biased, non-discriminatory, adequate and comprehensive investigation.
- e) She contends that the suspect's statement should have been recorded instead of a caution interview. She contends again that these three officers Mesake Waqa, Esili Nadolo and Biu Matavou put Khaiyum under caution interview
- f) She contends that the 7th Defendant was employed by the DPP at the time in question, in 2020 and he was assigned this file.
- g) On the 7th of January 2021 the DPP announced that there was insufficient evidence. She contacted the Police, and she was informed that the 7th Defendant was the officer in carriage.
- h) The Plaintiffs contend that the striking out application should not be granted, and this matter should take its own course.

16. The Applicant filed an Affidavit in Reply on the 19th of September and submitted that the Plaintiffs have not provided any basis for their assertions of fact or attributed their sources of information for the factual statements that they have made.

17. He reiterates that the application should be granted as he was acting as a State counsel on the directions of the DPP.

18. The Striking out Application was heard on the 11th of December 2024.

19. The parties made oral arguments supplemented by written submissions on the same, together with case authorities.

20. I am grateful to counsel for their helpful submissions.

Analysis

21. The High Court has the power conferred by Order 18 Rule 18 to strike out pleadings and the relevant Order provides as follows: -

“Striking out pleadings and indorsements (O.18, r.18)

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 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.”

22. The application to strike out the claim against the 7th Defendant is based on the provisions of Order 18 Rule 18 (1) (a), (b), (c) and (d) namely that the Plaintiff’s claim against the 7th Defendant –

- (i) discloses no reasonable cause of action;
- (ii) it is frivolous and vexatious;
- (iii) it may prejudice, embarrass or delay the fair trial of the action; or
- (iv) it is otherwise and abuse of process of the Court

23. In determining this application on the above headings, we will examine each of the limbs as set out in the Rules above.

No reasonable cause of action

24. The Plaintiffs have instituted this claim against the 7th Defendant alleging that his action or inaction directly impacted their case by instructing the Police to record the suspect's statement instead of conducting a caution interview.

1. There is no dispute that at the relevant time in question, the 7th Defendant was a State Counsel in the Office of the DPP. His appointment was pursuant to section 117 (11) of the Constitution and section 50 of the Criminal Procedure Act.
2. As State counsel he was subject to the directions and orders of the DPP, and he could not act independently. Conversely the Plaintiffs have not demonstrated in the affidavit how his actions or inactions contrary to the directions of his superior affected them all.
3. The affidavit evidence has not set out any evidence that he has acted in a way that has deliberately targeted or discriminated against the Plaintiffs.
4. The deponent of the affidavit for the Plaintiffs, the first Plaintiff Veronica Malani makes a lot of factual allegations yet does not attribute her sources of information.

25. Order 41 Rule 5 of the High Court Rules regulates the content of affidavits as follows: -

“Contents of affidavit (O.41, r.5)

5.-(1) Subject to Order 14, rules 2(2) and 4(2), to Order 86, rule 2(1), to paragraph (2) of this rule and to any order made under Order 38, rule 3, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.

(2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof”

26. The purpose of affidavits is to provide evidence, not vehicles for opinions, submissions or statements of the law: per Scott, J in Peter Stinson v Miles Johnson [1996] HBC 326 of 1994.

27. In the case of Kylie-Jane Anderson v Iowane Salaitoga (1999) 45 FLR 241 HBC 353/89S
Ruling 3 September 1999 per Byrne, J:

“Affidavits should depose only as to facts and not be in reality, as here, a submission on the law and an expression of opinion. Defendant counsel’s submission that affidavit should be ignored as not containing evidence and is improper is accepted, but Court is prepared to allow it only to reject its content that retention of overseas counsel was necessary.”

28. Statements in affidavit not claimed to be within deponent’s knowledge and/or or argumentative nature as well as vernacular expressions are in breach of Order 41 Rule 5 (Per Tikaram, P, Barker, Tompkins, JJA in Rt Jeremaia Natauniyalo v Native Lands Commission & Rt Akuila Koroimata (1998) 44 FLR 280.)

“Members of the legal profession drafting affidavits which blatantly defy the normal standards should realize that they run the risk of such affidavits being stricken from the file and solicitors being penalised in costs”:

29. From the above provisions, it is clear that Annexure VM1 of Veronica Malani’s Supplementary affidavit is in breach of Order 41 Rule 5 (2) as the deponent does not state the source and grounds for her assertions of the actions of the various Defendants in the course of the investigation into her report. She also attributes no source of knowledge for her assertions on the actions of the 7th Defendant.

30. The Court therefore finds the Plaintiffs have not been able to establish how the 7th Defendant acted independently of his employment or how he acted contrary to his employment, to the detriment of the Plaintiffs.

31. That being the case the Court accepts that as it stands now, the Plaintiffs have no reasonable cause of action against the 7th Defendant, and he must be struck out as a party to this action.

Frivolous and vexatious; it may otherwise delay the reasonable trial of this action; and it is otherwise an abuse of Court Process

32. The second, third and fourth limbs of Order 18 Rule 1 (b), (c) and (d) will be dealt with together. The Court has already found that the Plaintiff has no reasonable cause of action against the 7th Defendant.
33. The Plaintiff was notified by the Statement of Defence filed on the 18th of June 2024 that there was no reasonable cause of action against the 7th Defendant as he was State counsel working under the directions of the DPP; following all of the handbooks and codes that applied to all State Counsel at Office of the DPP (paragraph 12 of the Statement of Defence.)
34. Despite being put on notice, the Plaintiff has maintained the action with the 7th Defendant despite also suing the DPP as the 2nd Defendant in these proceedings. The fact that the Plaintiff has persisted despite being on notice that the 7th Defendant is not a proper party to these proceedings would support the contention that the current action as it stands, is frivolous and vexatious, would delay the fair trial of this matter and is otherwise an abuse of the Court process.
35. The Court therefore finds that the application is successful, and the 7th Defendant shall be struck out as a party to these proceedings.
36. Having disposed of that question, the remaining grounds for the Summons (the alleged breach of the State Proceedings Act and the fact that the High Court has already determined the matter in HBJ2 of 2021) are moot and will not be addressed. In any event they go towards the Writ as a whole and it is not appropriate at this junction to discuss it further as the 7th Defendant, as Applicant has already received his answer.
37. In this case the 7th Defendant has engaged counsel and filed a Statement of Defence therefore he is entitled to costs.

38. I do not find it appropriate to order costs on an indemnity basis and costs will be assessed summarily.

This is the Ruling of the Court

1. The application pursuant to Order 18 Rule 18 succeeds, the 7th Defendant is removed as a party to these proceedings.
2. The Plaintiffs will pay costs to the 7th Defendant, summarily assessed at \$1,000, one month to pay

There is a right of appeal



Mr. Justice U. Ratuveli
Puisne Judge

cc: - *Raikanikoda & Associates*
- *Office of the Attorney-General*
- *Munro Leys*
- *R. Patel Lawyers*