

IN THE HIGH COURT OF FIJI AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 186 of 2020

BETWEEN: **FIJI RUGBY FOOTBALL UNION TRUST BOARD** incorporated under the Charitable Trusts Act, having its registered office at the Rugby House, 35 Gordon Street, Suva.

PLAINTIFF

AND: **AMERICAN OUTLET LIMITED** a limited liability company, having its registered office at 13 Sugar City Mall, Lautoka.

DEFENDANT

BEFORE **Master P. Prasad**

Counsel for Plaintiff: Mr. S. Bulu

Counsel for Defendant: Mr. R. Gordon

RULING

(Strike out)

1. The Plaintiff brings this action against the Defendant for unpaid royalty payments due under a Memorandum of Understanding.
2. On 11 February 2022, the Defendant filed a Summons to strike out the Plaintiff's Statement of Claim (**SOC**) pursuant to Order 18 Rule 18 of the High Court Rules (**HCR**) and Section 29A (2) of the Charitable Trusts Act 1945 (**Summons**). In support of the Summons the Defendant filed an Affidavit in Support of one Makelesi Tumalevu, a legal practitioner working at the firm representing the Defendant.
3. Makelesi Tumalevu, in her Affidavit in Support, states that the Plaintiff was initially registered as a charitable trust under the name Fiji Rugby Union (**FRU**) before subsequently changing its name to the Fiji Rugby Football Union Trust Board (**FRTB**), and that both names refer to the same legal entity. She further explains that a search conducted on the Ministry of Justice website on 10 February 2022 showed that the Plaintiff had been deregistered as a charitable trust, and that it had been recorded as charitable organisation number 192 with registration number 7.

4. In his Affidavit in Opposition, John O'Connor, the Chief Executive Officer of the Plaintiff (**O'Connor Affidavit**), states that whether FRU and FRTB are the same entity depends on how the Registrar of Titles (**ROT**) managed its registration. He explains that the entity listed as number 192 carries registration number 7, whereas the Plaintiff's registration number is 458. He further states that on 01 September 1954, the Fiji Rugby Union Trust Board was incorporated under the Charitable Trusts Act 1945 (**CTA**) with registration number 7, and that on 10 March 1998, the entity changed its name to FRTB, after which the ROT assigned the registration number 458 to FRTB.
5. O'Connor adds that in November 2021, the ROT issued a notice under section 29A of the CTA requiring all registered charitable organisations to file annual returns, and on 23 November 2021, the Plaintiff received an email from Messrs Ernst & Young attaching a newsletter containing the said notice, in which "Fiji Rugby Football Union" appears at item number 2 with registration number 458. He states that the Plaintiff complied with the notice by submitting annual reports for the years 2012 to 2020. Following receipt of the Defendant's Summons, the Plaintiff sought clarification from the ROT as to whether it had been deregistered, and on 17 February 2022, the ROT advised that the entity with registration number 7 had been deregistered but not the entity with registration number 458. O'Connor concludes that only the ROT can explain why two different registration numbers were issued, and that FRU and FRTB cannot be treated as a single entity because FRTB succeeded FRU.
6. The Defendant filed an Affidavit in Reply and a Supplementary Affidavit in Reply. Both the said affidavits were deposed by one Gan Yeow Kee, company director of the Defendant. Annexed to the Supplementary Affidavit is a certified true copy of the "*Certificate of Incorporation*" for "*Fiji Rugby Football Union Trust Board*" and the certificate is dated 09 August 2023.
7. On 13 November 2025, when the matter was listed for hearing, both parties made oral submissions. Thereafter both parties sought to file written submissions. The Plaintiff's counsel filed his submissions on 15 January 2026, and the Defendant's counsel filed his submissions on 26 February 2026.
8. 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.

9. 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.

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. 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.*”

12. It was held in **Ratunaiyale 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 teaches 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".

[emphasis added]

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

14. The Defendant's primary basis for seeking to strike out the Plaintiff's SOC is the assertion that the Plaintiff had been deregistered or was incorporated only after the commencement of these proceedings.
15. During the hearing, counsels for both parties referred to certain documents that have been filed with the Court in an affidavit submitted by the Plaintiff in an earlier application in this matter (**2021 Affidavit**). These documents are:
 - a. "*Certificate of Incorporation*" of FRU dated 01 September 1954; and
 - b. "*Change of Name*" document of a name change from FRU to FRTB.
16. The counsel for the Defendant submitted that the FRU was incorporated on 01 September 1954, and that its original certificate did not include a registration number. The Plaintiff has taken inconsistent positions in its 2021 Affidavit and the O'Connor Affidavit—initially claiming it was incorporated as FRU before changing its name to FRTB and later differentiating FRU with registration number 7 from the Plaintiff with registration number 458. Counsel submitted that although the CTA does not mandate allocation of registration numbers or expressly provide for name changes, FRU nevertheless changed its name to FRTB demonstrating that both names refer to the same legal entity.
17. The counsel also submitted that an email from the ROT dated 17 February 2022 predates the "*Certificate of Incorporation*" for FRTB, which was only issued on 09 August 2023. This, counsel argued, shows that no such certificate existed before that date, and that the Registrar could not have issued a new certificate if FRTB had already been incorporated. Consequently, FRTB only came into existence on 09 August 2023 and could not have commenced legal proceedings before that date. The Plaintiff's SOC, filed on 14 August 2020—nearly three years before FRTB's incorporation—was therefore initiated before the entity legally existed, and any court proceedings in the name of FRTB prior to 09 August 2023 must be struck out.
18. The Plaintiff's counsel submitted that it is FRU that has been deregistered and not the Plaintiff. The counsel relied on the 17 February 2022 email from the ROT which confirms that the Plaintiff is still registered.
19. A copy of the said email is attached to the O'Connor Affidavit marked "*JOC – 04*". The email from the former ROT, Ms. Treta Sharma, is in response to the Plaintiff's query on the deregistration of the Plaintiff. The email states as follows:

Dear Mr Anand

Reference is made to your email and letter.

Fiji Rugby Union Trust Board has been deregistered. Registration number was 7.

Fiji Rugby Football Union registration number 458 remains registered as the audited accounts and returns have been submitted. We request if the organization can file the 2021 accounts and return.

There has been some confusion in terms of the name however, we have corrected our file records.

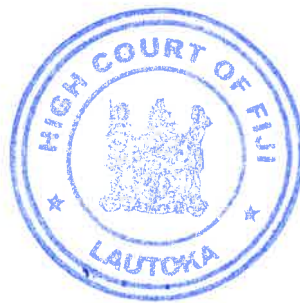
Please let me know should there be any clarification.

20. The principal issue for determination is whether the Plaintiff and FRU constitute a single legal entity, and if not, the respective dates on which each was incorporated. Should they be one and the same entity, the deregistration of FRU would necessarily have resulted in the deregistration of the Plaintiff. Conversely, if they are distinct entities, the Plaintiff could only have commenced these proceedings upon its own incorporation.
21. This Court notes that the Plaintiff's "*Certificate of incorporation*" a copy of which has been provided by the Defendant, states that the date of incorporation as 09 August 2023 with the registration number 458 assigned to it. The O'Connor Affidavit at paragraph 6(iii) stated that "*Registrar allocated registration no. 458 to Fiji Rugby Football Union Trust Board*" but this Affidavit was sworn on 17 June 2022.
22. Additionally, the email dated 17 February 2022, the former ROT stated that "*Football Rugby Football Union registration number 458 remains registered...*".
23. At this point, it is uncertain how the ROT's email and the O'Connor Affidavit could both refer to the registration number 458 when the "*Certificate of Incorporation*" for the Plaintiff records the date as 09 August 2023. This is a matter that only the ROT can clarify. At present, there is no material before this Court that provides a conclusive explanation.
24. In light of the above, this Court accepts that the Defendant may ultimately be able to advance a defence of *locus*, and that this may weaken the Plaintiff's case. Nevertheless, consistent with the principles in *Ratumaiyale* [supra] and *Coe* [supra], a mere possibility that a claim is weak or may not succeed *per se* is not a sufficient basis for striking it out summarily.
25. Whether the Plaintiff has *locus* and was not deregistered and/or later registered only on 09 August 2023, are matters that must be determined at the substantive trial. The evidence available at this interlocutory stage is insufficient to make such findings.
26. In view of the fact that the Defendant through its Summons has raised a prime facie arguable issue concerning the Plaintiff's registration—arising from the date on the Plaintiff's "*Certificate of Incorporation*"—this may, in fact, assist the Plaintiff in obtaining the necessary clarification from the ROT for the substantive

trial hence it would be unjust to impose any cost on the Defendant resulting from the dismissal of the Summons.

27. Therefore, I make the following orders:

- a. The Defendant's Summons to Strike Out the Plaintiff's Claim is dismissed; and
- b. Parties to bear their own costs.



P. Prasad
Master of the High Court

At Lautoka
20 March 2026