

IN THE HIGH COURT OF FIJI  
AT LAUTOKA IN WESTERN DIVISION  
EXERCISING CIVIL JURISDICTION

CIVIL ACTION NO. ERCC 09 of 2020.

**BETWEEN** : **NATIONAL UNION OF WORKERS**, a registered Trade Union  
under the Employment Relations Act of 2007  
**PLAINTIFF**

**AND** : **NATURAL WATERS OF VITI PTE LTD**, a limited liability company  
having its Place of business at 1 Naseyani Road Yaqara Fiji.  
**DEFENDANT**

**BEFORE** : Justice Mr. A.M. Mohamed Mackie.

**APPEARANCES** : Ms. Naidu A. O/I of the Plaintiff.  
Mr. Rakesh R. for the Defendant.

**HEARING** : By way of written submissions as agreed on 23<sup>rd</sup> July 2025.

**WRITTEN SUBMISSIONS:** Filed on 21<sup>st</sup> August 2025 by the Plaintiff Union.  
Filed on 22<sup>nd</sup> January 2026 by the Defendant -Employer

**DATE OF RULING** : 18<sup>th</sup> March, 2026.

**RULING**

**(On Application for Strike Out)**

**A. INTRODUCTION:**

1. Before me is Defendant's Summons ("the Application") filed on 01<sup>st</sup> September 2023 seeking, *inter alia*, to Strike out the Plaintiff's Amended Statement of Claim, and for costs.
2. The Application is made pursuant to Order 18 Rule 18 (1) (b) and (d) of the High Court Rules 1988 and the inherent jurisdiction of this Court. It is supported by the Affidavit sworn by **FRANCES CORRIE**, Director Human Resources of the Defendant Employer, and filed together with annexures marked as "**FC-1**" to "**FC-8**".
3. The Plaintiff Union on 5<sup>th</sup> December 2024 filed its Affidavit in opposition sworn by one **SHIU LINGAM**- Industrial Relation Officer cum Union Organizer, with several documents annexed thereto marked as "**SL-1**".
4. The Defendant Employer on 03<sup>rd</sup> February 2025 filed its Affidavit in reply sworn by one **LEIGHTEON TURNER**, Manager, Industrial Relations, with no further annexures.

**B. BACKGROUND HISTORY IN BRIEF:**

5. The plaintiff, 08<sup>th</sup> July 2020, filed its writ of Summons and the Statement of Claim against the Defendant Employer seeking the following reliefs;
- a) *The sum of \$ 102, 960.00 [One Hundred Two Thousand Nine Hundred and Sixty Dollars) to be paid to the plaintiff.*
  - b) *Damages,*
  - c) *Costs of this action on a Solicitor/ client indemnity basis to be paid by the Defendant.*
  - d) *Interest; and*
  - e) *Such further or other relief this Honorable court may deem just and expedient.*
6. As per the initial Statement of Claim, the plaintiff had justified its claim by stating, *inter alia*, **THAT**;
- a. *The Defendant had, for the period commencing from **18<sup>th</sup> June 2014** to **18<sup>th</sup> June 2020**, required workers (Union Members) to commence work fifteen (15) minutes prior to the official hours of work ("**the overtime period**").*
  - b. *The Plaintiff on 18<sup>th</sup> June 2020 formally wrote to the employer via email claiming unpaid wages for the said overtime period.*
  - c. *In response, the Defendant employer had stated that the fifteen (15) minutes addition to the normal hours of work was for safety meetings.*
  - d. *As the Defendant had imposed upon the workers to work in excess of the normal working hours, the Defendant is liable to pay the workers for the said hours and period.*
  - e. *The hours worked in excess of normal working hours is construed as overtime, which is the legitimate entitlement of the workers.*
7. After the statement of Defence, the Reply to Defence and the Summons for Direction were filed on the said initial Statement of Claim, it was settled **out of Court**, wherein, instead of the total claimed sum of **\$102, 960.00**, the Defendant had on **10<sup>th</sup> November 2020**, admittedly, paid and settled a sum of **\$ 80,728.15**, which the Defendant described as payment in good faith, without admission of liability and only for the fleet workers (Drivers).

**C. AMENDED STATEMENT OF CLAIM:**

8. After receiving the said amount in place of the amount claimed in the initial Statement of Claim as aforesaid, the plaintiff on 25<sup>th</sup> August 2022 filed its Amended Statement of Claim seeking a sum of **\$742,727.70 (Seven Hundred forty-two thousand Seven hundred Twenty -Seven Dollars and Seventy Cents)** being the overtime payment, allegedly, due to **the Mechanics and Plant Workers** as well, on the basis that they are also its member employees, who had worked over-time.
9. It is undisputed that the payment already made, without admitting the liability, was for the fleet workers (Drivers). However, the current amended claim by the plaintiff includes the Plant-workers and Mechanics as well, which has in turn magnified the claim to such an extent of **\$742,727.70** as stated above.

10. It was after filing of the Amended Statement of Defence, Reply to Defence and a fresh Summons for Directions, the Defendant chose to file the Summons in hand for Strike out.

**D. LAW:**

11. The Defendant is seeking to strike out the action under Order 18 Rule 18 1(b) and (d) of the High Court Rules 1988, which reads as follows.

***Striking out pleadings and endorsements (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.*

*(2) No evidence shall be admissible on an application under paragraph (1)(a).*

*(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.*

12. **Footnote 18/19/3 of the 1988 Supreme Court Practice** reads;

*“It is only plain and obvious cases that recourse should be had to the summary process under this rule, per Lindley MR. in Hubbuck v Wilkinson (1899) 1 Q.B. 86, p91 Mayor, etc., of the City of London v Homer (1914) 111 L.T, 512, CA). See also Kemsley v Foot and Qrs (1952) 2KB. 34; (1951) 1 ALL ER, 331, CA. affirmed (195), AC. 345, H.L .The summary procedure under this rule can only be adopted when it can be clearly seen that a claim or answer is on the face of it obviously unsustainable “ (Att – Gen of Duchy of Lancaster v L. & N.W. Ry Co (1892)3 Ch 274, CA). The summary remedy under this rule is only to be applied in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process or the case unarguable (see per Danckwerts and Salmon L.JJ in Nagle v Feliden (1966) 2. Q.B 633, pp 648, 651, applied in Drummond Jackson v British Medical Association (1970)1 WLR 688 (1970) 1 ALL ER 1094, (CA)*

13. **Footnote 18/19/4 of the 1988 Supreme Court Practice** reads;

*“On an application to strike out the statement of claim and to dismiss the action, it is not permissible to try the action on affidavits when the facts and issues are in dispute (Wenlock v Moloney) [1965] 1. WLR 1238; [1965] 2 ALL ER 87, CA).*

*It has been said that the Court will not permit a plaintiff to be “driven from the judgment seat” except where the cause of action is obviously bad and almost incontestably bad (per Fletcher Moulton L.J. in Dyson v Att. – Gen [1910] UKLawRpKQB 203; [1911] 1 KB 410 p. 419).”*

14. In the case of ***Electricity Corporation Ltd v Geotherm Energy Ltd [1992] 2 NZLR 641***, it was held;

*“The jurisdiction to strike out a pleading for failure to disclose a cause of action is to be sparingly exercised and only in a clear case where the Court is satisfied that it has all the requisite material to reach a definite and certain conclusion; the Plaintiff’s case must be so clearly untenable that it could not possibly succeed and the Court would approach the application, assuming that all the allegations in the statement of claim were factually correct”*

15. In the case of ***National MBF Finance (Fiji) Ltd v Buli [2000] FJCA 28; ABU0057U.98S (6 JULY 2000)***, it was held;

*“The law with regard to striking out pleadings is not in dispute. Apart from truly exceptional cases the approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be proved. 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 on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention. It follows that an application of this kind must be determined on the pleadings as they appear before the Court”.*

16. In ***Tawake v Barton Ltd [2010] FJHC 14; HBC 231 of 2008 (28 January 2010), Master Tuilevuka*** (as he was then) summarized the law in this area as follows;

*“The jurisdiction to strike out proceedings under Order 18 Rule 18 is guardedly exercised in exceptional cases only where, on the pleaded facts, the plaintiff could not succeed as a matter of law. It is not exercised where legal questions of importance are raised and where the cause of action must be so clearly untenable that they cannot possibly succeed (see Attorney General –v- Shiu Prasad Halka 18 FLR 210 at 215, as per Justice Gould VP; see also New Zealand Court of Appeal decision in Attorney –v- Prince Gardner [1998] 1 NZLR 262 at 267.”*

17. In ***Paulo Malo Radrodro v Sione Hatu Tiakia & others, HBS 204 of 2005***, the Court stated that:

*“The principles applicable to Applications of this type have been considered by the Court on many occasions. Those principles include:*

- a. A reasonable cause of action...*
- b. Frivolous and vexatious is said to mean cases which are obviously frivolous or vexatious or obviously unsustainable – Lindley Li in Attorney General of Duchy of Lancaster v L.N.W Ry [1892] UK Law Rp Ch 134; [1892] 3 Ch 274 at 277.*

- c. *It is only in plain and obvious cases that recourse would be had to the summary process under this rule – Lindley MR in Hubbuck v Wilkinson 1898] UK Law Rp Q.B 176; [1899] Q.B 86.*
- d. *The purpose of the Courts jurisdiction to strike out pleading is twofold. Firstly, is to protect its own processes and scarce resources from being abused by hopeless cases. Second and equally importantly, it is to ensure that it is a matter of justice; defendants are permitted to defend the claim fairly and not subjected to the expense inconvenience in defending an unclear or hopeless case.*
- e. *“The first object of pleadings is to define and clarify with position the issues and questions which are in dispute between the parties and for determination by the Court. Fair and proper notice of the case an opponent is required to meet must be properly stated in the pleadings so that the opposing parties can bring evidence on the issues disclosed – ESO Petroleum Company Limited v Southport Corporation [1956] A.C at 238” – James M Ah Koy v Native Land Trust Board & Others – Civil Action No. HBC 0546 of 2004.*
- f. *A dismissal of proceedings “often be required by the very essence of justice to be done” ..... – Lord Blackburn in Metropolitan – Pooley [1885] 10 OPP Case 210 at 221- so as to prevent parties being harassed and put to expense by frivolous, vexatious or hopeless allegation – Lorton LJ in Riches v Director of Public Prosecutions (1973) 1 WLR 1019 at 1027”*

**E. EVIDENCE:**

- 18. For the consideration of this Application made by the Defendant, I have before me the affidavit in support of the Defendant Company sworn by **Frances Corrie** on 30th August 2023, the affidavit in response sworn by **Shiu Lingam** of the plaintiff union on 5<sup>th</sup> December 2024, and the Affidavit in reply sworn by **Leighton Turner** of the Defendant Company on 3<sup>rd</sup> February 2025, and the documents annexed to those affidavits.

**F. HEARING:**

- 19. Counsel for both parties, on 23<sup>rd</sup> July 2025, having agreed to have the Application disposed by way of written submissions, have filed their respective written submissions as aforesaid.

**G. ANALYSIS:**

- 20. I have carefully gone through the contents of the entire record, including those of averments in the Affidavits, annexures thereto, the written submissions filed and the governing law on the subject of Striking Out. I don't find any necessity to reproduce here the contents thereof as the Application and the issues involved herein can be conveniently disposed on the following grounds.
- 21. The Plaintiff Union filed its initial Statement of Claim against the Defendant Employer on 08<sup>th</sup> July 2020 claiming a sum of **\$102,960.00 (One Hundred And Two Thousand**

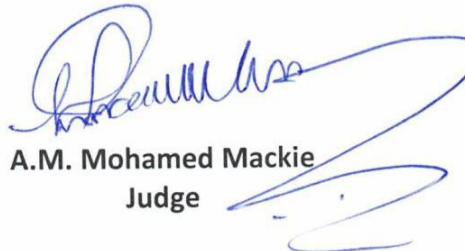
**and Nine Hundred Sixty Dollars)** being the alleged due on the overtime work of the fleet workers( drivers).

22. However, pursuant to filing of the Statement of Defence, the Reply to defence, and obtaining several adjournments for settlement, the Defendant on 10<sup>th</sup> November 2020 paid a sum of **\$ 80,728.15** as full and final settlement of the said claim of **\$102,960.00** as averred in paragraphs 09, 10 and 12 of the Affidavit in support of FRANCES CORRIE. This payment is not disputed by the Plaintiff.
23. It was also not disputed that the said payment was made in good faith and without prejudice basis, which was admittedly on behalf of the Fleet workers (Drivers).
24. It is after accepting the said amount in settlement of the full claim in the initial Statement of Claim as aforesaid, the Plaintiff filed the, purported, Amended Statement of Claim for a colossal sum of **\$742,727.70** by expanding the scope of the claim to include another set of workers (Mechanics and members at the plant in Yaqara).
25. The factual and legal position is that once the total claim in the initial Statement of Claim in a sum of \$102,960.00 was settled by the Defendant on payment of **\$80,728.15** on 10<sup>th</sup> November 2020 as aforesaid, the initial Statement of Claim became adjudicated and it could not have remained open for further claim/s or any amendment.
26. An amendment could have come in only when the initial statement of claim remains open and not being adjudicated or fully and finally settled. Here the position, as at the date of filing the, purported, Amended Statement of Claim on 25<sup>th</sup> August 2022, was that there was no any Statement of Claim in the record that could be amended, as the initial claim on it had stood settled.
27. Once the claim in the initial statement of claim was settled, the Plaintiff could not have extended or expanded the claim by way of filing an Amended Statement of Claim including a further claim on behalf of another set of its member -workers, unless such a claim was filed by way of a new action.
28. The, purported, Amended Statement of Claim cannot bring further reliefs to the Plaintiff, in addition to the reliefs they have already obtained by way of settlement based on the initial Statement of Claim. Because, once the claim in the initial Statement of Claim was settled fully and finally, there cannot be any further claim by amending the pleadings.
29. Hence, the argument advanced by the Defendant in its Application for Striking Out to the effect that the Plaintiff's Amended Statement of Claim is frivolous, vexatious and or otherwise an abuse of the process of this Court as per Order 18 Rule (1) (b) and (d), has to be upheld.
30. Since the Defendant has incurred unnecessary costs on account of the Plaintiff's conduct of this action, Court decides to impose summarily assessed costs in a sum of \$3,000.00 payable by the Plaintiff in 14 days.

**H. FINAL ORDERS:**

- a. The Defendant's Summons filed on 1<sup>st</sup> September 2023 seeking to Strike out succeeds.
- b. The plaintiff's, purported, Amended Statement of Claim filed on **25<sup>th</sup> August 2022** is hereby struck out.
- c. The Plaintiff's initial Statement of Claim filed on 8<sup>th</sup> July 2020 stood determined with the admitted settlement of the claim therein on **10<sup>th</sup> November 2020**.
- d. An Amended Statement of Claim could not have been, subsequently, filed on **25<sup>th</sup> August 2022** for an extended claim, unless the Plaintiff opted to file a new action.
- e. The Plaintiff shall pay the Defendant a sum of \$, 3000.00 (Three Thousand Dollars) being the summarily assessed costs.



  
A.M. Mohamed Mackie  
Judge

At the High Court of Lautoka on this 18<sup>th</sup> day of March, 2026.

**SOLICITORS:**

For the Plaintiff

For the Defendant

Inhouse Solicitors for National Union of workers.

Inhouse Solicitors for National Waters of Viti Pte Ltd.