

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**[CIVIL JURISDICTION]**

**CIVIL ACTION NO. HBC 36 OF 2024**

**BETWEEN** : **PETER GEOFFREY RAE** of Korotogo Backroad,  
Sigatoka, Retired.

**PLAINTIFF**

**AND** : **THE FIJI POLICE FORCE**

**DEFENDANT**

**BEFORE** : **Master P. Prasad**

Counsels : Plaintiff in person.  
Ms. J. Raman for Defendant

**RULING**

(Strike out)

1. The Plaintiff filed a Writ of Summons and Indorsement of Claim on 28 February 2024 stating the following:

*The Plaintiff claims:*

*An injunction for the Defendant to make restitution for the following damages suffered by the Plaintiff and to pay \$3,000,000.00 for:*

- (i) *Failure to investigate the truth behind the complaint that led to the arrest of the Plaintiff.*
- (ii) *Breach of the Plaintiff's constitutional right to be produced in court at the earliest opportunity and within 48 hours.*
- (iii) *Breach of the Plaintiff's constitutional right to be presumed innocent until proven guilty.*
- (iv) *Breach of the Plaintiff's constitutional right to humane treatment while in custody.*
- (v) *Ignoring two High Court Orders to accompany the Plaintiff to his rental residence.*
- (vi) *The health and mental trauma inflicted by the Defendant on the Plaintiff.*

- (vii) *The loss of the Plaintiff's marriage as a result of the Defendant's actions.*
- (viii) *The loss of the Plaintiff's access to his children as a result of the Defendants actions.*
- (ix) *The loss of business as a result of the Defendant's actions.*
- (x) *To act as a deterrence against police brutality and the abuse of the Human Rights of citizens.*

(1) *An injunction for the Defendant to make restitution for the loss of the following property, worth \$14,030.00, suffered by the Plaintiff in 2019:*

- (i) *30 kilograms of dried yaqona;*
- (ii) *20 kilogras of pounded yaqona;*
- (iii) *Tufflite new surf boards (x3);*
- (iv) *Second hand 8 foot New Zealand made surf board;*
- (v) *Surf board leg ropes (x4);*
- (vi) *Surf board bags (x2);*
- (vii) *Bamboo ladder;*
- (viii) *Nikon branded camera with 2 lens in a black bag and battery charger;*
- (ix) *Laminating resin;*
- (x) *Slazenger sand shoes;*
- (xi) *Fishing rod with reel;*
- (xii) *Bedding materials ie blankets, pillows, 4 towels and 2 bedsheets;*
- (xiii) *Rood rack for vehicle;*
- (xiv) *Snorkels (x3);*
- (xv) *Goggles (x3);*
- (xvi) *Pairs of diving fins (x3);*
- (xvii) *Gas sparking lighter;*
- (xviii) *Food stuffs;*
- (xix) *Receipts and receipt book;*
- (xx) *Knife sharpen steel;*
- (xxi) *German made mouth organ;*
- (xxii) *Recorder flute;*
- (xxiii) *Weighing scales;*
- (xxiv) *CD music and movie discs;*
- (xxv) *Red house paint.*

(2) *Such further and/or other relief as this Honourable Court deems just and expedient in the circumstance.*

*Dated this 28<sup>th</sup> day of February, 2024.*

2. The Defendant filed an Acknowledgment of Service on 27 March 2024, and then on 19 April 2024 filed a Summons to Strike Out (**Application**) the Plaintiff's

Writ of Summons pursuant to Order 18 rule 18 (1) (a) of the High Court Rules 1988 (HCR). The Plaintiff opposed the Application.

3. On 7 June 2024, the Plaintiff filed an application for default judgment against the Defendant. That application was, however, held in abeyance pending this Court's determination of the Defendant's application to strike out.
4. At the hearing of the Application, given that the Plaintiff was representing himself, counsel for the Defendant opted to rely on her written submissions. The Plaintiff relied on his written submissions and also made oral submissions.
5. The Defendant's submissions in essence were that the Writ of Summons should be struck out as it: (i) failed to plead a concise statement of the nature of the claim against the Defendant; (ii) did not provide details of the legal basis of the claim; and (iii) did not provide the facts that the Plaintiff is relying on.
6. The Plaintiff submitted that striking out his Writ of Summons would be contrary to the interests of justice given the serious nature of the allegations against the Defendant. The Plaintiff in his written submissions also asked that he be given an opportunity to amend the Statement of Claim. It is important to note that the Plaintiff has not filed any Statement of Claim in this matter.
7. The Plaintiff further referred to **Rae v The State** HBM 37/2020L (14/07/21) which was a constitutional redress application filed by the Plaintiff against the State. The Court in the said matter had awarded the Plaintiff \$800.00 for the breach of section 13(1)(f) of the Constitution. While the Plaintiff submitted that the facts in this current matter are related to the facts in **Rae v The State** [supra], there is no reference to the same in the Plaintiff's Writ of Summons.
8. The Defendant's Application is made pursuant to Order 18 rule 18 (1) (a) of the HCR which provides as follows:

*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. 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. 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 expressly stated the law to be “*that the summary procedure under O.18, r.19 s to be sparingly used and is not appropriate to cases involving difficult and complicated questions of law.*”

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

13. Both Order 6 and Order 18 are relevant to this matter. Order 6 Rule 2 of the HCR requires that:

*2 Before a writ is issued it must be indorsed-*

- (a) With a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby;*
- (b) Where the claim made by the plaintiff is for a debt or liquidated demand only, with a statement of the amount claimed in respect of the debt or demand and for costs and also with a statement that further proceedings will be stayed if, within the time limited for appearing, the defendant pays the amount so claimed to the plaintiff, his or her solicitor or agent;*
- (c) Where the action is brought to enforce a right to recover possession of goods, with a statement showing the value of the goods.*

14. Further, Order 18 Rule 1 of the HCR reads as follows:

*Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are 2 or more defendants, on each defendant, and **must do so either** when the writ is served on the defendant or any time after service of the writ but before the expiration of 14 days after the defendant gives notice of intention to defend.*

15. After the Defendant filed its Acknowledgement of Service, the Plaintiff did not file a Statement of Claim at all and then on 19 April 2024 the Defendant filed the current Application.

16. In ***Ali v Vitiana Timbers (Fiji) Ltd*** [2013] FJHC 105; HBC20.2009 (12 March 2013), Amaratunga J in striking out the writ of summons held as follows:

*The Plaintiff is then required under Order 18 rule 1 to serve the statement of claim before 14 days of such intention to defend is given. In ANZ Banking Group v Fredric William Caline [2006] HBC 500R/04 (Ruling on 3rd February, 2006) Jitoko J held the provision is mandatory. I agree with said decision of Jitoko J.*

*7. The Plaintiff is given an opportunity of filing an endorsement for a very limited purpose and cannot continue with the same for 4 years as in this case, and if done it will not only be a non-compliance of a rule but also an abuse of process. ...*

*8. The interpretation of the Order 18 rule 1 has to be done with the purpose of the said provision in mind. The Plaintiff 'must' file a*

*statement of claim 'before the expiration of 14 days after that defendant gives notice of intention to defend' can be interpreted as a mandatory requirement as the 14 days before the expiration of the notice of intention to defend is the latest where the Plaintiff was given ample opportunity to comply before that*

17. The Plaintiff's indorsement of claim, in its present form, fails to disclose a reasonable cause of action. It does not contain a coherent or sufficiently particularised statement of the nature of the claim against the Defendant. The pleading is devoid of material facts and necessary particulars to explain how the Defendant is alleged to have breached the Plaintiff's constitutional rights or how such alleged breaches are said to have resulted in the claimed loss of marriage, loss of business, and loss of property.

18. Accordingly, I find that the Plaintiff has not complied with the mandatory requirements of neither Order 6 Rule 2 nor Order 18 Rule 1.

19. Moreover, in this case, the Plaintiff not only failed to comply with the requirements of Order 6 Rule 2 and Order 18 Rule 1, he proceeded to file an application for default judgment against the Defendant instead of seeking an extension of time to file his Statement of Claim. As such, I do not find this to be a case where the Plaintiff can be given time to amend his Writ of Summons and/or be given time to file a Statement of Claim.

20. I therefore find that the non-compliance of the Plaintiff with the mandatory requirements of Orders 6 Rule 2 and 18 Rule 1 tantamount to an abuse of court process.

21. For the foregoing reasons, I make the following orders:

- a. The Plaintiff's Writ of Summons is struck out; and
- b. There is no order as to costs.



**At Lautoka**  
**06 February 2026**

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke.

**P. Prasad**  
**Master of the High Court**