

IN THE MAGISTRATES COURT AT NADI
CIVIL JURISDICTION

Civil Case No. 103 of 2023

BETWEEN : VINOD KAMAL

Plaintiff

AND : THE COMMISSIONER OF POLICE

1st Defendant

AND : THE ATTORNEY GENERAL OF FIJI

2nd Defendant

RULING ON STRIKING OUT APPLICATION

This is the Defendants' Motion filed on 13 August 2024 seeking to strike out the Plaintiff's claim filed on 6 October 2023. The Plaintiff claims general damages in the sum of \$10,000, exemplary and punitive damages, special damages to be assessed at trial, and costs on an indemnity basis. The claim is limited to the monetary jurisdiction of this Court.

The Motion is brought pursuant to **Order 3 Rule 8 and Order 26 of the Magistrates Court Rules 1945, Order 18 Rule 18(1)(a) of the High Court Rules 1988**, and section **3(5) of the State Proceedings Act 1951**. The principal ground advanced is that the Plaintiff's Statement of Claim discloses no reasonable cause of action.

The Plaintiff's case is pleaded in negligence and breach of fiduciary duty. The claim arises from a break-in on 6 August 2017 during which the Plaintiff's property was stolen. Following a police investigation, one David Goundar was charged. However, on 26 May 2023 the day set for hearing the case did not proceed because the police prosecutor did not have the case file. The application for adjournment was refused, and the accused was acquitted. The Plaintiff alleges that the 1st Defendant failed in its legal obligations and that this failure deprived him of justice, caused mental anguish, and resulted in unrecovered loss.

In support of the claim, the Plaintiff relies on **section 129(5) of the Constitution** (regarding the Commissioner of Police's responsibilities), **sections 5, 7, and 60 of the Police Act**, and **regulation 12(28) of the Police Regulations**, which impose obligations related to discipline and recordkeeping. These provisions collectively define the internal administrative framework of the Fiji Police Force but do not establish a private right of action in tort.

While the Plaintiff's frustration with the failed prosecution is acknowledged, the legal foundation of his claim is fundamentally flawed. The authorities are clear that the police and prosecuting authorities do not generally owe a duty of care to individuals in the conduct of investigations or prosecutions, and that such functions are shielded from civil liability unless there are exceptional circumstances.

In *Hill v Chief Constable of West Yorkshire* [1989] AC 53, the House of Lords held that the police do not owe a duty of care to individual members of the public to prevent crime or bring offenders to justice, save in narrow and defined circumstances involving a special relationship. The Plaintiff has not pleaded any such relationship, nor does one arise on the facts.

Further, in *Elgouzouli-Daf v Commissioner of Police of the Metropolis* [1995] QB 335, the Court of Appeal held that prosecuting authorities do not owe a duty of care to individuals affected by their decisions, as to do so would compromise prosecutorial independence. That case also affirmed immunity for prosecutors acting in good faith, an immunity echoed in **section 3(5) of the State Proceedings Act 1951**, which bars proceedings against the State for anything done or omitted in the course of exercising judicial functions or executing judicial process. The Plaintiff's complaint, at its core, relates to prosecutorial failure due to a missing case file on the date of the hearing, which falls squarely within this protected sphere.

In addition, the Plaintiff's reliance on statutory or regulatory duties is misconceived. As confirmed in *Calveley v Chief Constable of Merseyside Police* [1989] AC 1228, internal disciplinary provisions and statutory obligations do not, on their own, give rise to tortious liability. These instruments are directed at internal governance and oversight, not the creation of enforceable rights by private citizens in civil claims.

Finally, the law does not recognise a tort of "**failure to secure a conviction.**" Prosecutors act on behalf of the State, and the outcome of criminal proceedings rests with independent judicial officers. While the Plaintiff's expectation for justice is understandable, an acquittal resulting from a procedural failure, in the absence of malice, bad faith, or abuse of process, none of which are pleaded does not give rise to civil liability.

The discretion to strike out a pleading under **Order 18 Rule 18(1)(a)** must be exercised cautiously. However, it is appropriate where a claim is legally unsustainable. This is such a case.

Conclusion

The Court finds that the Plaintiff's Statement of Claim discloses no reasonable cause of action in law. The claim is legally untenable and must be struck out.

In the interests of justice and in recognition of the public interest nature of the Plaintiff's concerns, the Court makes no order as to costs.

ORDERS:

1. The Plaintiff's Statement of Claim filed on 6 October 2023 is struck out in its entirety.
2. There shall be no order as to costs.

Any party aggrieved by this decision has the right to appeal.

Setavana Saumatua

Setavana Saumatua
Resident Magistrate
8 August, 2025.

