

HIGH COURT OF SOLOMON ISLANDS

Civil Jurisdiction

Civil Case No. 149 of 2024

BETWEEN: CS Vision Limited Claimant

AND: Attorney General (Representing the Permanent Secretary of
Ministry of Rural Development) First Defendant

Date of Hearing: 21 October 2024

Date of Ruling: 4 August 2025

Counsel, Mr Robert Firigeni for the Claimant

Counsel, Mr Allan Harara for the Defendant

Pitakaka PJ:

Ruling on Application to strike out Claim

INTRODUCTION

1. This is the Court's ruling on an application by the First and Second Defendants to strike out the Amended Claim filed by CS Vision Limited ("the Claimant") pursuant to Rule 9.75 of the *Solomon Islands Courts (Civil Procedure) Rules 2007* ("the CPR").
2. The application was filed on 10 October 2024 and arises from the Claimant's suit alleging failures by the Ministry of Rural Development and its officials to appoint the Claimant as a preferred supplier under the Rural Development Support Programme (RDS Programme) for the constituencies of Redova Tetepari, West Kwaio, Temotu Nende, and Gao Bugotu.
3. The Claimant pleads that it submitted project proposals on behalf of these constituencies, and that its non-selection constituted a breach of contract, breach of legitimate expectation, and breach of statutory duties under the *Public Financial Management Act 2013* ("PFMA") and the *Public Financial Management (Procurement) Regulations 2021* ("PFMPR").

4. The Defendants argue that the Amended Claim discloses no reasonable cause of action, is frivolous and vexatious, and constitutes an abuse of the Court's process. The Claimant opposes the application and relies on the public/private law distinction recognised in *Roy v Kensington and Chelsea and Westminster Family Practitioner Committee* [1992] 1 AC 624.

APPLICABLE RULE, LAWS AND LEGAL PRINCIPLES

5. Rule 9.75 of the CPR empowers the Court to strike out a claim or part of it where:

“(a) it discloses no reasonable cause of action;
(b) it is scandalous, frivolous or vexatious; or
(c) it is otherwise an abuse of the process of the Court.”

6. In *Tikani v Motui* [2002] SBHC 10, Palmer ACJ held that striking out is a severe remedy to be used only in plain and obvious cases where the claim is legally unsustainable.
7. The Court of Appeal in *Sa'oghatoga v Mugaba* [2015] SBCA 4 emphasised that pleadings must articulate material facts capable of supporting the legal conclusions pleaded.
8. In *Nara v Saki*, [2016] SBCA 18 the Court must assume the pleaded facts are true and determine whether, on those assumed facts, the claim is legally sustainable.
9. In *Malefo v Malefo* [2021] SBCA 21, the Court of Appeal confirmed that on an application under Rule 9.75 CPR, the court considers whether the claimant's evidence, taken at its highest, is capable of supporting the pleaded cause of action, without conducting a merits evaluation.

ANALYSIS

Issue 1: Whether the Amended Claim discloses a cause of action in contract

10. The Amended Claim alleges that the Defendants breached a contractual duty to engage the Claimant as a preferred supplier for the RDS projects. However, the pleading discloses no contract between the Claimant and the Defendants in respect of those proposals.
11. The Claimant asserts it submitted proposals on behalf of the four constituencies, but the Defendants were not parties to any agreement with the Claimant and did not authorise or instruct the Claimant to prepare or submit proposals.
12. The court is of the view and finds that the absence of privity, mutual intention to contract, and consideration renders the contractual claim legally untenable even if the pleaded facts are to be assumed as true or taking the claimants evidence without assessing credits at its highest it is not capable to support the pleaded cause of action of breach of contract when there is no contract between the parties. This is clear on the pleadings.

Conclusion on Issue 1:

13. So, the conclusion on issue 1 whether the claim discloses a reasonable cause of action the

court finds that the claim for breach of contract is wholly misconceived. It discloses no reasonable cause of action and must be struck out.

Issue 2: Whether the Claimant has a viable claim for breach of legitimate expectation

14. The Claimant alleges that it had a legitimate expectation that it would be selected as a preferred supplier based on previous dealings and the submission of its proposals.
15. The Court finds that the pleadings fail to identify any clear, unequivocal representation or promise by the Defendants giving rise to a legitimate expectation.
16. Moreover, the doctrine of legitimate expectation is rooted in public law, and is generally enforced through judicial review proceedings seeking declaratory or injunctive relief, not private civil claims for damages.
17. In *O'Reilly v. Mackman* [1983] 2 AC 237, the House of Lords (per Lord Diplock) established the doctrine commonly known as procedural exclusivity, where a claimant seeks to challenge the validity of a public law decision, the claim must be brought by judicial review and not by ordinary private law action. Bringing such a challenge by (ordinary action) instead of judicial review constitutes an abuse of process.
18. Even taking into account the recognized exceptions to the procedural exclusivity rule in *O'Reilly v Mackman*, as developed in *Roy v Kensington and Westminster Family Practitioner Committee* [1992] 1 AC 624 and relied upon by the Claimant, the Court finds that the substance of the present claim directly impugns the lawfulness of the First Defendant's exercise of public power. The claim therefore constitutes a challenge to the validity of a public law decision and must be brought by way of judicial review.

Conclusion on Issue 2:

19. The claim for breach of legitimate expectation lacks legal merit, is incompetently pleaded, and is not actionable in private law. It is accordingly struck out.

Issue 3: Whether the pleadings disclose a cause of action for breach of statutory duty under the PFMA and PFMPR

20. The Claimant pleads breaches of various provisions of the *Public Financial Management Act 2013*, including:
 1. s.24(1)(a)(b): duties of accountable officers;
 2. s.42(1)-(3): obligations concerning financial controls;
 3. ss.72-75: procurement planning and contracting;
 4. s.84(1)(d), (2)(a)(c)(d): procurement compliance and reporting.
21. The Claimant also alleges breaches of **Regulations 9, 10(1)(b)(c)(d)(f), 16(1), 19(1), 29(1), 33(1)(2), 38(1), 50(1), 59(1)(2), 75(1)(a)(b), 80(1)(2)(3), 81(a), 87(a), and 92** of the *Public Financial Management (Procurement) Regulations 2021*.

22. These provisions concern internal public administration, transparency, procurement planning, and accountability mechanisms. None of them establish a private cause of action enforceable in civil proceedings.
23. The Claimant fails to plead how those duties were owed to it specifically, how they were breached, or how loss resulted from any breach. The claim is thus devoid of legal foundation and is frivolous and vexatious.

Conclusion on Issue 3:

24. In the circumstances the court finds that the claim for breach of statutory duty is legally unfounded and does not disclose a reasonable cause of action is frivolous and vexatious and must be struck out in its entirety.

Issue 4: Whether the Claim is an abuse of process

25. The Claimant argues that its claim may proceed as a private law action based on the exception in *Roy v Kensington and Chelsea and Westminster FPC* [1992] 1 AC 624.
26. In *Roy*, the House of Lords held that where a claimant possesses a private law right (e.g., a contract or proprietary interest), they may vindicate it through ordinary civil proceedings even if the matter engages public law elements.
27. The court finds that that principle does **not** apply in this case. This is because the Claimant does not allege any enforceable private law right based on contract, tort, or statutory entitlement.
28. The essence of the claim concerns public procurement decisions, which are matters of public law and must be pursued through judicial review.
29. As the House of Lords held in *O'Reilly v Mackman* [1983] 2 AC 237, a party may not circumvent the protections and procedures of judicial review by launching an ordinary civil action in cases that challenge public law decisions.
30. Here, the court finds that the use of private law procedures in this context is contrary to the doctrine of procedural exclusivity and amounts to an abuse of the Court's process.
31. As already discussed in issue 2 above even taking into account the recognized exceptions to the procedural exclusivity rule in *O'Reilly v Mackman*, as developed in *Roy v Kensington and Westminster Family Practitioner Committee* [1992] 1 AC 624 and relied upon by the Claimant, the Court finds that the substance of the present claim directly impugns the lawfulness of the First Defendant's exercise of public power. The claim therefore constitutes a challenge to the validity of a public law decision and must be brought by way of judicial review.

Conclusion on Issue 4:

32. The entire claim is improperly constituted and abusive of the Court's jurisdiction. It must be struck out for failure to follow proper judicial review procedure.

FINAL DETERMINATION

33. The Amended Claim filed on 8/9/24 by CS Vision Limited:

1. Discloses no reasonable cause of action;
2. Is frivolous, vexatious, and legally unsustainable; and
3. Constitutes an abuse of the Court's process by seeking to challenge public procurement decisions through private law procedures without pleading any enforceable legal right.

DISPOSITION and ORDERS OF THE COURT

34. Accordingly, the Court orders as follows:

1. **The Defendants' application to strike out is granted;**
2. **The Claimant's Amended Claim is struck out in its entirety pursuant to Rule 9.75 of the *Civil Procedure Rules 2007*;**
3. **The Claimant shall pay the Defendants' costs, such costs to be taxed if not agreed.**

Order Accordingly

DATED this 4th of August, 2025.

By the Court



The seal of the High Court of Solomon Islands is circular. It features a central emblem with a crown and other symbols. The text around the inner border of the seal reads "HIGH COURT OF SOLOMON ISLANDS" at the top and "PUISNE JUDGE" at the bottom. There are two small stars on either side of the bottom text.

Hon. Justice Michael Collin Pitakaka

Puisne Judge of the High Court