

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 99 of 2012L

BETWEEN : **YU-E-LI** also known as **LI-YU-E** also known as **LEI LOK NGO** of Ravouvou Street, Lautoka, Businesswoman as Administratrix of the **ESTATE OF CHO TAT LAM** late of Ravouvou Street, Lautoka, Businessman.

PLAINTIFF

AND : **MERVIN FAZLEEN ALI** of Vesi Crescent, Lautoka, Student.

1ST DEFENDANT

AND : **VINOD KUMAR MUDALIAR** of Lovu, Lautoka, Businesswoman.

2ND DEFENDANT

R U L I N G

[1]. These are my reasons to defer the ruling on the plaintiff's application for summary judgement under Order 14 Rule 2 of the High Court Rules 1988 until a related criminal proceeding in the Magistrates Court has been determined.

[2]. The facts as pleaded in the statement of claim are as follows. On 01 August 2010, Cho Tat Lam was opening the padlock of the gate to his workshop situated alongside Ravouvou Street in Lautoka when he was mowed down by motor vehicle FC386 driven by the 1st defendant. The deceased's workshop is situated alongside a sharp right hand bend of Ravouvou Street. It is alleged that the 1st defendant lost control of the vehicle at the sharp right hand bend causing the vehicle to veer off the road onto the pavement and driveway of the deceased's factory. The deceased, who was just opening his gate on his driveway at the time, was killed instantly when he was mowed down by the said vehicle. The claim is filed by Cho Tat Lam's surviving spouse under the **Law Reform (Miscellaneous Provisions) (Death and Interest) Act (Cap 27)** and also under the **Compensation to Relatives Act (Cap 29)**.

- [3]. I am aware that a criminal charge for the offence of *dangerous driving causing death* is pending against the first defendant at the Lautoka Magistrates Court. The defendant swears by an affidavit that the deceased was standing in the middle of the road. I understand this is part of the defence that he will mount at the criminal trial against him.
- [4]. In my view, where the deceased was standing would be crucial in the criminal proceedings at the Magistrates Court. Whether or not the defendant is to be believed on that point, is a triable issue of fact that is best left alone for now. The ideal to do is to leave it for determination in the Magistrates Court criminal trial than in the High Court civil law summary judgement proceedings.
- [5]. A rough sketch plan of the accident site drawn by the police investigating traffic officer might have clarified alot of things but none was filed.
- [6]. I disagree with the submissions on the point by Ms. Lidise. If I was to determine that issue here now on affidavit evidence, it would unfairly prejudice the defendant's defence in the criminal trial. It may also unduly bind the learned Magistrate to the doctrine of *res judicata* and/or *issue estoppel*.
- [7]. In **Coral Surf Resort Ltd v Yam [2010] FJHC 25; HBCo66.2008 (2 February 2010)**, I did grant summary judgement in a civil claim even while a criminal case was pending in the High Court Criminal Division. That case however was different. The plaintiff was facing a fraud-related criminal charge but where, although there was some reference to "fraud" in the civil pleadings before me, I did not have to decide whether fraud had taken place before I could determine the rights of the parties.
- [8]. In the final, I will defer my ruling on this summary judgement application until the Magistrates Court Ruling. **Case adjourned to 27 August 2013** for mention.

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Anare Tuilevuka
Master
06 August 2013.