

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 152 of 2013

BETWEEN : **NAINASO I RA HOLDINGS LIMITED** a limited liability company having its registered office at 33 Raojibhai Patel Street, Suva.

PLAINTIFF

AND : **iTAUKEI LAND TRUST BOARD** formerly known as **NATIVE LAND TRUST BOARD**, a Board of Trustees established under the iTaukei Land Trust Act, Cap 134, and having its Head Office at 431 Victoria Parade, Suva.

DEFENDANT

BEFORE : **Acting Master Thushara Rajasinghe**

COUNSEL : **Mr. Rayawa A. V.** for the Plaintiff
Mr. Vukica S. for the Defendant

Date of Hearing : **5th November, 2013**

Date of Ruling : **13th December, 2013**

RULING

A. INTRODUCTION

1. This is the Summons filed by the Defendant pursuant to Order 18 rule 18 (1) (a) and (b) of the High Court Rules seeking an order to strike out this action.
2. The Defendant having being served with this Summons, filed their affidavit in opposition in respect of the grounds contended by the Defendant under o 18 r 18 (1) (b). Subsequently this matter was set down for hearing on the 5th of November 2013 where learned counsel for the Defendant and the Plaintiff made their respective arguments and

oral submissions. Subsequently, both counsel were invited to file their respective written submissions which they filed accordingly.

3. Upon careful perusal and consideration of the Summons, respective affidavits and written submissions of the parties and their oral arguments and submissions, I now proceed to pronounce my ruling as follows.

B. BACKGROUND,

Pleadings,

4. The Plaintiff instituted this proceeding by way of writ of summons and indorsement of claim thereon seeking following reliefs inter alia,
 - i. Specific Performance of an Agreement for Lease vide NLTB ref No 50036876 between the Plaintiff and the Defendant made on or about 29 August 2007,
 - ii. Alternatively, damages for breach of contract,
 - iii. Such further or other relief as this Honourable Court seems fair and just,
 - iv. Cost of and incidental to this action,
5. Apart from that, the Plaintiff did not plead any other facts in their indorsement of claim.

The Defendant's Submissions,

6. The Defendant submitted that the Plaintiff has failed to comply with Order 6 rule 2 and Order 18 rule 1. The learned counsel further submitted that the Writ of Summons with an indorsement of claim only consists with four paragraphs with no further particulars or facts to explain why the Plaintiff is seeking an order for specific performance. There are no particulars of any breach of contract in respect of the alternative relief sought by the Plaintiff. The Learned counsel wherefore contended that the indorsement of claim is unsustainable and should be automatically struck out by this court.

Plaintiff's Submissions.

7. Plaintiff extensively explained the factual background of this dispute in their affidavit in opposition. The Plaintiff contended that there is a reasonable cause of action against the Defendant, hence the proceedings is not scandalous, frivolous or vexatious.
8. The Plaintiff further deposed in their affidavit in opposition that they have entered into an agreement for lease pursuant to regulation 12 of the Native Land Trust (Leases and Licences) Regulation with the Defendant. However, the Defendant failed to issue a registered lease upon the fulfillment of conditions laid down in the Agreement for Lease by the Plaintiff.

C. THE LAW ON STRIKING OUT.

9. I now turn to discuss the applicable laws on the issue of striking out pleadings and indorsement under Order 18 rule 18 of the High Court rules.
10. Order 18 rule 18 (1) (a) and (b) states that

“the court at any stage of the proceedings order to be struck out or amend any pleading or the indorsement, on the ground that –

- a. It discloses no reasonable cause of action or defence as the case may be,*
- b. It is scandalous, frivolous or vexatious,*
- c.*
- d.*

And may order the action be stayed or dismissed or judgment to be entered accordingly, as the case may be.

11. Moreover, Order 18 rule 18 (2) provides the scope of the hearing of applications made under O 18 r 18 (1) (a) where it states that

“No evidence shall be admissible on an application under paragraph (1) (a)”.

12. **Justice Byrne** held in *Timber Resource Management Limited v The Minister for Information, The Minister for Agriculture, Fisheries and Forests, The Attorney General of Fiji and others* (HBC 0212 of 2000) that

“Time and again the court have stated that the jurisdiction to strike out proceedings under Order 18 rule 18 should be very sparingly exercised and only in exceptional cases where legal questions of importance and difficulty are raised – per Marsack J.A. in Attorney General v Shiu Prasad Halka (1972) 18 FLR 210 at page 215

In Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Ltd (1899) 1 Q.B.86 at page 96 Lindley M.R. said “the ...Procedure is only appropriate to cases which are plain and obvious, so that any master or judge can say at once that the statement of claim as it stands is insufficient even if proved to entitle the plaintiff to what he asks. The use of the expression “reasonable cause of action” shows the summary procedure.... Is only intended to be had recourse to in plain and obvious cases”.

13. Master Tuilevuka (as he then was) held in *Sugar Festival Committee 2010 v Fiji Times Ltd* (2012) FJHC 1404;HBC78.2010 (1 November 2012) that

“Court rarely strike out a proceedings on this ground. It is only in exceptional cases where, on the pleaded facts, the plaintiff could not succeed as a matter of law or where the cause of action is so clearly untenable that it cannot possibly succeed will the court act to strike out a claim. If the facts as pleaded do raise legal questions of importance, or a triable issue of fact on which the rights of the parties depend, the court will not strike out the claim.

D. THE LAW ON THE ISSUES OF REASONABLE CAUSE OF ACTION

14. **Justice Jitoko** in *Prasad v Home Finance Company Ltd* [2003] FJHC 322; *HBC0116D.2002S* (23 January 2003)” extensively discussed the issue of reasonable cause of action where his lordship held that

“what constitutes a reasonable cause of action or defence does not mean that the Court should delve into whether the claim or defence is likely to succeed. As Lord Pearson stated in Drummond Jackson v. British Medical Association [1970] 1 WLR 688, [1970] 1 ALL ER 1094 CA at P.1101: No exact paraphrase can be given, but I think a reasonable cause of action means a cause of action with some chance of success, when (as required by r.19 (2)) only the allegations in the pleading are considered.....

The Courts view and many decisions on this matter is clear: As long as the statement of claim or the particulars (Davey v. Bentinck: (1893) 1 QB 185) disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak, and not likely to succeed is no ground for striking it out. (Supreme Court Practice 1985 Vol. 1 p.306).....

It is therefore very clear that in both the exercise of its powers under O.18 r.18 and under its inherent jurisdiction, a Court may only strike out a Statement of Claim and dismiss the action if in the words of Lord Blackburn, in Metropolitan Bank v. Pooley (1885) 10 App. (As 210 at p.221, if and when required by the very essence of justice to be done”.

15. The authorities discussed above have repeatedly affirmed that the discretion of striking out of pleadings should be exercised sparingly. The court is required to consider the right of the litigant to access to the proper and complete judicial process while keeping in mind to prevent the Defendant to get unnecessarily involve in an action which is plainly and obviously has no cause of action or scandalous or frivolous.

E. ANALYSIS,

16. I now turn to analyse the arguments and submissions adduced by the parties with the relevant legal principles and provisions.
17. Order 6 rule 2 (1) (a) stipulates the main elements of the Writ of Summons, where it states ;

“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;*

18. Order 6 r 2 (1) (a) requires that every writ of summons must be endorsed with statement of claim, or if not, it must be accompanied with a statement of the nature of the claim made and the relief and remedy sought.

19. Order 18 rule 1 requires the Plaintiff to serve the statement of claim on the Defendant if it was not endorsed on and served with the writ of summons pursuant to Order 6 rule 2 (1) (a). O 18 r1 states that ;

“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 two or more defendants, on each defendant, and must do so either when the writ is served on that defendant or at any time after service of the writ but before the expiration of 14 days after that defendant gives notice of intention to defend”.

20. Moving back to the writ of summons and indorsement of claim of this instance matter, I do not find that the Plaintiff has satisfied the requirements stipulated in o 6 r 2 and o 18 r 5 -11. At this point I am ably guided by the observation of Justice Kirby in **Len Lindon v the Commonwealth of Australia** (No 2) S. 96/005 where Kirby J held that

“If, notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it had failed to put in proper form, a court will ordinarily allow that party to reframe its pleading... a question has arisen as to whether O 26 r 18 applies to part only of a pleading,

21. The Plaintiff stated that they have entered into an agreement for Lease with the Defendant pursuant to regulation 12 of the Native Land (Lease and Licence) Regulation and complied with all the required condition set out in the said agreement. However, the Defendant failed to issue a registered lease pursuant to Regulation 5 and Section 10 of the Native Land Trust Act. Under such circumstances, the Plaintiff is seeking an order for

specific performance and alternatively order for damages. I concur with the submissions of the learned counsel for the Defendant that the Writ of Summons and the Indorsement of claim is not in compliance with the requirements stipulated in Order 6 and Order 18 of the High Court rules. However, I am satisfied that the Plaintiff has a reasonable cause of action against the Defendant though the pleadings were defectively drafted.

F. CONCLUSION.

22. Having considered the foregoing reasons, I am satisfied that the plaintiff has disclosed a reasonable cause of action in their writ of summons and indorsement of claim though it was not properly pleaded in the pleadings. Wherefore, I do not find the pleadings are frivolous, scandalous, or vexatious. I accordingly make following orders

- i. The Summons for Strike Out filed by the Defendant is refused and dismissed accordingly,
- ii. The Plaintiff is to file and serve amended Statement of Claim within 14 days from this order,
- iii. The Defendant is granted a cost of \$500 assessed summarily,

Dated at Suva this 13th day of December, 2013.

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R.D.R. Thushara Rajasinghe
Acting Master of High Court, Suva