

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 277 of 2014

BETWEEN : SHAIENDRA SINGH of Davuilevu, Nausori, Businessman.

PLAINTIFF

AND : PC 3114 WAISAKE IKANIDRODRO

1st DEFENDANT

: COMMISSIONER OF POLICE Suva

2nd DEFENDANT

: ATTORNEY GENERAL OF FIJI

3rd DEFENDANT

BEFORE: Acting Master Vishwa Datt Sharma

COUNSELS: Shailendra Singh in Person
Mr. Nair for the Defendants

Date of Hearing: 30th April, 2015
Date of Ruling: 22nd September, 2015

RULING

Introduction

1. On 01st October, 2014 the Plaintiff filed a Writ of Summons and a Statement of Claim against Abovementioned Defendants. The Writ was later amended and filed on the 04th December, 2014.
2. A Statement of Defence was filed on behalf of the Defendant on 06th January, 2015.

3. No reply to the Defence was filed by the Plaintiff.

4. The Defendant filed and served a Summons together with an affidavit in support of Ajay Singh and sought for an order to strike out the Plaintiff's Statement of Claim on the following grounds-
 - (i) *That the Statement of Claim discloses no reasonable cause of action;*
 - (ii) *That it was scandalous, frivolous, or vexatious; and*
 - (iii) *That it was an abuse of process of the court.*

5. An affidavit in reply to the Defendant's striking out application was filed by the Plaintiff.

6. The Striking Out application was filed pursuant to *Order 18 Rule 18 (1) of the High Court Rules 1988* and under the *Inherent Jurisdiction* of this Honourable Court.

7. The application was heard on 30th April, 2015.

Issues For Determination

8. There are three main issues which require determination by this honourable court and they are:
 - (a) Whether or not the statement of claim discloses no reasonable cause of action is scandalous, frivolous or vexatious or it is otherwise an abuse of the process of the court.

Analysis of Issues

9. **Issue A** - Whether or not the statement of claim discloses no reasonable cause of action is scandalous, frivolous or vexatious or it is otherwise an abuse of the process of the court.

10. In order to address the above issues it is necessary to visit the relevant laws regarding striking out application.

Law on Striking Out Application

11. The Application to strike out has been made pursuant to *Order 18 Rule 18 (1) (a) (b) & (d) of the High Court Rules 1988*. *Order 18 Rule 18 (1) (a) (b) & (d)* states 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 cause of action or defence, as the case may be;*
or
- (b) It is scandalous, frivolous or vexatious; or*
- (c)*
- (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.

- (2) No evidence shall be admissible on an application under paragraph 1(a). (Since this application is filed pursuant to Order 18 Rule 18 (1) (d) only, this court will therefore confine its determination to Rule 18 (1) (d) only)*

12. In dealing with the issue of striking out of application, I bear in mind the following passage from Halsbury's 4th Ed. Vol. 3 at para 435:

"The power to strike out, stay or dismiss under the inherent jurisdiction is discretionary. It is a jurisdiction, which will be exercised with great circumspection and only where it is perfectly clear that the plea cannot succeed, it ought to be exercised sparingly and only in exceptional cases. However, for this purpose the court is entitled to inquire into all the circumstances of the case, and to this end affidavit evidence is admissible.

13. In the case of *Khan v Begum* (2004) FJHC 430; HBC0153.2003L (30 June 2004) Justice Connors discussed 18 (1) (a) and (d) where he held that;

"It is said that the fact the court has this inherent jurisdiction is one of the characteristic which distinguishes the court from other institutions of the government. It is a jurisdiction, to be exercised summarily and as I have said, is in addition to the jurisdiction conferred by the rules. It is not in issue that if a party relies solely upon Order 18 rule 18 there no evidence may be considered by the court in making its determination but that limitation does not apply where the applicant relies upon the inherent jurisdiction of the court."

14. In National MBF Finance (Fiji) Ltd v. Buli Civil Appeal No. 57 of 1998 (6 July 2000) the Court stated as follows:-

"The Law with regard to striking out pleadings is not in dispute. Apart from truly exceptional cases the approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be proved. If a legal issue can be raised on the facts as pleaded then the Courts will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention. It follows that an application of this kind must be determined on the pleadings as they appear before the Court...."

Analysis and Determination

15. Order 18 Rule (1) (a) - no reasonable cause of action-
16. Under this rule the Defendants allege that there is no reasonable cause of action or defence as the case may be.
17. Order 18 Rule (1) (a) is subjected to Order 18 Rule (2) where it is stated that no evidence shall be admissible on an application under paragraph (1) (a).
18. Bearing in mind Order 18 Rule (2), in that circumstances, the court is obliged to look at the pleadings filed before the court and analyse whether or not the action discloses a reasonable cause of action or defence at the case at hand.

19. If the facts as pleaded do raise legal questions or tribal issues of fact on which the rights of the parties depend, the court should not strike out the pleadings as per the case of *Bano v Rashid* [2014] FJHC 266.
20. I will now turn to address the issue of reasonable cause of action.

Justice Jitoko in the case of "*Prasad v Home Finance Company Limited* [2003] FJHC 322; HBC0116D.2002S (23 January 2003)" has discussed the issue of reasonable cause of action where his lordship stated 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 Person stated in Drummond Hackson 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. Bentict: (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 no 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. (a 210 at p.221, if and when required by the very essence of justice to be done".

21. The test of reasonable cause of action does not require the court to determine whether the cause of action in the pleadings will eventually succeed. The only issue to be considered is that the facts pleaded in the pleadings disclose some cause of action or a dispute fit to be decided by the court as per the case of **Bano v Rashid [2014] FJHC 266**.
22. In **Razak v. Fiji Sugar Corporation Ltd [2005] FJHC 720; HBC 208. 1998L (23 February 2005)** his Lordship Justice Gates (current Chief Justice) stated as follows:-

"A reasonable cause of action means a cause of action with "some chance of success" per Lord Pearson in Drummond-Jackson v British Medical Association [1970] 1 All ER 1094 at p.1101f. The power to strike out is a summary power "which should be exercised only in plain and obvious cases", where the cause of action was "plainly unsustainable"; Drummond-Jackson at p.1101b; A-G of the Duchy of Lancaster v London and NW Railway Company [1892] 3 Ch. 274 at p.277.

23. The defendant states that the Amended Writ of Summons does not disclose any reasonable cause of action against the Defendants and does not contain the facts of the incident that the Plaintiff's claim arises from.

The Plaintiff stated at paragraph 5 of his Amended Statement of Claim that he was unlawfully detained for a period of four (4) days from 25th May 2012 to 28th May, 2012 and suffered a lot and could not concentrate on his business.

The Plaintiff pleads unlawful detention or in other words false imprisonment.

It is apparent from the Statement of Claim and other pleadings filed that the Plaintiff has a reasonable cause of action within its claim.

24. Order 18 Rule 1 (b) - frivolous or vexatious-

The issue of whether a claim is frivolous or vexatious, Hon. Justice Kumar made reference is made to paragraph 18/19/15 of the Supreme Court Practice 1993, Vol. 1 (White Book) which reads as follows:-

"By these words are meant cases which are obviously frivolous or vexatious or obviously unsustainable per Lindley LJ in Attorney General of Duchy of Lancaster v. L. & N.W.Ry [1892] 3 Ch. 274, 277;.... The Pleading must be "so clearly frivolous that to put it forward would be an abuse of the Court" (per Juene P. in Young v. Halloway [1895] P 87, p.90;"

25. *In Devi v. Lal* [2014] FJHC 75; HBC 120.2008 (7th February, 2014)- It was held as follows-

"The Oxford Advanced Learners Dictionary of Current English 7th Edition defines the words "frivolous" and "vexatious" as:-

frivolous: "having no useful or serious purpose"

vexatious: "upsetting" or "annoying"

Therefore, for a claim to be frivolous or vexatious, the Appellants must establish that the claim lacks merit (i.e. has no useful purpose) and is only to upset or annoy the Applicants.

26. The Plaintiff's claim is based on unlawful detention and therefore needs to be heard and determined by Court in terms of the law and the evidence that the Plaintiff may produce at the hearing proper.

27. The claim prima facie cannot be judged summarily to be frivolous or vexatious; it needs to be appropriately examined by a court of law accordingly.

28. Therefore, in the given circumstances, the Plaintiff's claim cannot be said to be frivolous or vexatious.

29. Order 18 Rule 1 (b) - Scandalous

Whether the claim is Scandalous; reference is made to the case of *Skerlec v Tompkins* [2014] FJHC 318; HBC 111.2008 (30 April, 2014)- Supreme Court Practice 1993 (White Book) Vol. 1 at paragraph 18/19/14 states as follows-

"The Court has a general jurisdiction to expunge scandalous matter in any record or proceedings (even in bills of costs, Re Miller (1884) 54 L.J.Ch. 205). As to scandal in affidavits, see O.41, r.6.'

Allegations of dishonesty and outrageous conduct, etc., are not scandalous, if relevant to the issue (Everett v. Prythergch (1841) 12 Sim. 363; Rubery v. Grant (1872) L.R. 13 Eq.443).

"The mere fact that these paragraphs state a scandalous fact does not make them scandalous" (per Brett L.J. in Millington v. Loring (1881) 6 Q.B.D. 190, p.196). But if degrading charges be made which are irrelevant, or if, though the charge be relevant, unnecessary details are given, the pleading becomes scandalous (Blake v. Albion Assurance Society (1876) 45 L.J.C.P. 663)."

30. The Plaintiff has pleaded Unlawful Detention in his claim. He further stated in his affidavit in reply that he was arrested and detained by Police from 25th May, 2012 to 28th May, 2012. He is trying to find out answers as to why he was unlawfully detained, if he was. He has also disclosed in his affidavit in Reply a Judgment with is related to his Criminal Case and is somewhat of relevance in this present case to be examined. This case was determined on Revision before the High Court on 24th and 31st January, 2013.
31. The Defendants have not been able to specifically show and or establish the fact that a particular part of the Writ or the Statement of Claim is scandalous in nature.

Order 18 Rule 1 (d) - abuse of process of the court

It is well settled that this Court has inherent jurisdiction to strike out the claim or pleadings for abuse of Court process and reference is made to paragraph 18/19/18 of the Supreme Court Practice 1993 Vol. 1.

At paragraphs 18/19/17 and 18/19/18 of Supreme Court Practice 1993 (White Book) Vol 1 it is stated as follows:-

"Abuse of Process of the Court"- Para. (1) (d) confers upon the Court in express terms powers which the Court has hitherto exercised under its inherent jurisdiction where there appeared to be "an abuse of the process of the Court." This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation (see Castro v. Murray (1875) 10 P. 59, per Bowen L.J. p.63). See also "Inherent jurisdiction," para.18/19/18."

"It is an abuse of the process of the Court and contrary to justice and public policy for a party to re-litigate the issue of fraud after the self-same issue has been tried and decided by the Irish Court (House of Spring Gardens Ltd. v. Waite [1990] 2 E.R. 990, C.A)."

"Inherent Jurisdiction - Apart from all rules and Orders and notwithstanding the addition of para.(1)(d) the Court has an inherent jurisdiction to stay all proceedings before it which are obviously frivolous or vexatious or an abuse of its process (see Reichel v. Magrath (1889) 14 App.Cas. 665). (para 18/19/18)"

32. Further reference is made to the case of *Timoci Uluivuda Bavadra v The Attorney General* (Sup. Ct. (now High Court) C.A. No. 487 of 1987 where Rooney J said:

"I am not required to try any issues at this hearing. All I have to decide whether there is an issue to be tried. It is not enough for the defendant to show on this application that the plaintiff's case is weak and unlikely to succeed".

33. The following passage from the judgment of Court of Appeal in *National MBf Finance (Fiji) Limited v Nemani Buli*, (Civil Appeal No. ABU 0057 of

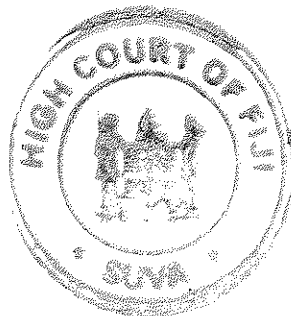
1998) very clearly enunciated and determined the principles of striking out. At page 2 of the judgment their Lordships said:-

"The law with regard to striking out pleadings is not in dispute. Apart from truly exceptional cases the approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be proved. If a legal issue can be raised on the facts as pleaded then the courts will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention..."

CONCLUSION

34. In conclusion the facts pleaded in Statement of Claim do reveal a cause of action against the Defendants and constitutes triable issues. The Statement of Claim discloses a reasonable cause of action which needs to be determined by the Court in a proper hearing before a court. The Plaintiff must be given a day in court to represent his case for the court to determine accordingly.
35. For the above reasons, the applications for striking out by the defendants are therefore dismissed. Each party to bear their own costs. The action should now proceed in the normal manner with due diligence.

Dated at Suva this 22nd Day of September, 2015




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VISHWA DATT SHARMA
Acting Master of High Court, Suva