

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 163 of 2015

BETWEEN : **RABENDRA KUMAR** of of Vally Drive, Sacramento, California, United States of America.

PLAINTIFF

AND : **PRAVEEN KUMAR** of Bau Street, 9 Miles, Nausori.

1ST DEFENDANT

AND : **MATELITA ROKOVI** of Bau Street, 9 Miles, Nausori.

2ND DEFENDANT

AND : **HOUSING AUTHORITY** a body corporate constituted by the Housing Act (Cap 267) having its head office at 23 Saqa Place, Valelevu, Nasinu.

3RD DEFENDANT

AND : **THE REGISTRAR of titles office** a Statutory Body established pursuant to the Land Transfer Act of Fiji (Cap 13).

4TH DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSEL: Ms. Chetty - for the Plaintiff
Ms. Jackson - for the 1st & 2nd defendants

Date of Hearing: 09th March, 2016

Date of Ruling: 16^h March, 2016

RULING

*(Preliminary Issues in terms of Order 41 Rule 1 (8)
and Order 2 of the High Court Rules, 1988)*

A. *INTRODUCTION*

1. The First and the Second Defendants filed a Summons on 21st May, 2015 seeking an order to strike out the Plaintiffs Amended Writ of Summons filed on 24th April, 2015 on the grounds that this action is otherwise an abuse of the court process.
2. The application was made pursuant to *Order 18 Rule 18 (d) of the High Court Rules, 1988*.
3. The application was scheduled for hearing on 09th March, 2016.

B. *PRELIMINARY OBJECTION*

4. Before the First and Second Defendants Striking out application could be heard, the Counsel representing the Defendants made two (2) Preliminary objections as follows-
 - (i) That the Plaintiff's Affidavit in Reply filed on 09th July, 2015 at paragraphs 13 & 14 do not reveal the source of the information; and
 - (ii) That the Jurat in the Plaintiff's Affidavit in Reply is also blank, unsigned and not witnessed and reference was made to *Order 41 Rule 1 (8) of the High Court Rules, 1988*.

C. *LAW*

5. *Order 41 Rule 1 (8) of the High Court Rules, 1988 provides-*

1. (1) Subject to paragraphs (2) and (3), every affidavit sworn in a cause or matter must be entitled in that cause or matter.

'(8) Every affidavit must be signed by the deponent and the jurat must be completed and signed by the person before whom it is sworn.

6. *Order 2 of the High Court Rules, 1988 provides-*

'1.-(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

(3) The Court

(Underline is mine for deliberation)

D. *ANALYSIS and DETERMINATION*

7. In terms of the **First objection** raised by the Counsel representing the First and Second Defendants, reference is made to **Order 2 Rule 1 (1) and (2)** hereinabove which clarifies as to what happens when there is any non-compliance on the part of the Defendants in terms of the proceedings.
8. If the Plaintiff is of the view that the 'Source of the information' has not been revealed, and if there is any irregularity, then the Plaintiff is at liberty to seek any appropriate **amendments** to paragraphs 13 & 14 respectively in terms of **Order 2 Rule 1 (1) & (2)** hereinabove.

9. As to the **Second Objection**, this court did point out to the Counsel that the jurat in the original Affidavit in Reply of the Plaintiff is duly endorsed and witnessed as per the requirement of the law accordingly.

10. In the aforesaid circumstances, I do **not uphold** the submissions of the Counsel representing the First & Second Defendants in terms of the **two (2) objections** and is hereby declined accordingly.

Dated at Suva this 16th day of March, 2016



.....
MR VISHWA DATT SHARMA
Master of High Court, Suva