

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 237 of 2016

BETWEEN : **ANUKAR DAYAL** of Raralevu, Nausori, Businessman.

PLAINTIFF

AND : **JOTISHNA PRASAD** of Suva, Fiji, Market Vendor.

1ST DEFENDANT

AND : **SHAMIMA ALI** c/- Fiji Women's Crisis Centre, Suva, Fiji.

2ND DEFENDANT

BEFORE: **Master V. D. Sharma**

COUNSEL: **Mr. Shelvin Singh** for the Plaintiff
Ms. Fong for 1st Defendant

Date of Hearing: 5th July, 2016

Date of Ruling: 26th September, 2016

RULING

[Summons to strike out the Writ of Summons and the
Statement of Claim by the First Defendant]

BACKGROUND

1. The **First Defendant** filed a **Summons** on 26th January, 2016 and sought for the following orders-:
 - (i) *The Statement of Claim against the First Defendant be wholly struck out.*
 - (ii) *All proceedings herein be stayed pending the determination of this application.*
 - (iii) *The Plaintiff pays the First Defendant the costs of this application on an indemnity basis.*

ON THE GROUNDS THAT the *Statement of Claim discloses no reasonable cause of action against the First Defendant.*

2. The application was made pursuant to **Order 18 Rule 18 (1) (a) of the High Court Rules, 1988** and under *the inherent jurisdiction of the High Court.*
3. The Plaintiff opposed the striking out of the First Defendant's application and filed his written submissions.
4. The matter was proceeded for hearing on 05th July, 2016 in terms of the application, affidavit evidence filed herein coupled with the written submissions furnished by both parties to the proceedings.

THE LAW

5. The law on **striking out pleadings and endorsements** is stipulated at **Order 18 Rule 18 of the High Court Rules 1988** which 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) *it may prejudice, embarrass or delay the fair trial of the action; or*
- (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).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

Issues for Determination

9. Following is the **only issues** which requires determination by this honourable court;-
 - (a) **Whether the Plaintiff's Statement of Claim against the First Defendant discloses no reasonable Cause of Action?**

ANALYSIS and DETERMINATION

Reasonable Cause of Action

10. I will now deal with the evidence and the submissions before this Court to determine whether there is **No Reasonable Cause of Action against the First Defendant?**
11. It is well established that jurisdiction to strike out claim or pleadings should be used very sparingly and only in exceptional case **Timber Resource Management Limited v. Minister for Information and Others** [2001] FJHC 219; HBC 212/2000 (25 July 2001).
12. 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...."

13. 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".

14. 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**.

15. 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.

16. The Counsel for the **First Defendant** submitted that 'this is one of those exceptional cases in which a Statement of Claim against the First Defendant should be struck out on the basis that it discloses no reasonable cause of action against her. To establish Defamation, one must among other things establish a defamatory statement has been published to persons other than the Plaintiff that may tend to lower the Plaintiff in the estimation of right thinking members of society generally. Pleadings rules are applied with particular strictness in defamation claims. The Plaintiff cited the Supreme Court of Fiji case of *Chand v. Fiji Times Ltd [2001] FJSC 2; CBV0005.2009 (8 April 2011).*'

The Plaintiff made further reference to the case of *Rabuka v. Fiji Daily Post Company Ltd [2005] FJHC 174; HBC 0511j.2000s (8 July 2005)* the Court stated-

'To establish a cause of action in defamation it must be shown that the defamatory words of and concerning the plaintiffs have been published. There are three aspects to this requirement, namely, (a) the nature of defamatory statement; (b) the way in which it refers to the plaintiff and (c) the means by which it was published, here through the newspaper.'

'From the above case, it is clear that publication is an essential element to a claim of defamation. Likewise, it is not sufficient to simply plead that a statement was published, the

plaintiff needs to show the means by which the Defendants, particularly the First Defendant in this case, published the allegedly defamatory statement.'

'The Statement of Claim does not meet the appropriate standard of pleadings in so far as they relate to the First Defendant. The statement of claim pleads that the letter of 19 June, 2014 (containing the defamatory statement) was published by the Second Defendant. The Plaintiff specifically pleads 'In a letter dated 19 June, 2014 written and signed by the second Defendant.'

*'It is also an essential element that the words complained of must be calculated to cause pecuniary damage to the Plaintiff. This was recently confirmed in Trade Air Engineering (*West) Ltd v Mechanical Services Ltd (2012) FJHC 1418; Civil Action 338.2003 (16 November 2012) and the Court stated at page 22-*

'With regards to the claim for damages on this ground the authorities provide that pecuniary damage must be established.'

'This element is not pleaded herein at all.'

17. On the other hand, Counsel representing the Plaintiff strongly argued and submitted *'the Statement of Claim pleads a Cause of Action against the First Defendant. Paragraph 4 of the Statement of Claim alleges with sufficient clarity that the letter of 19 June, 2014 was written jointly by the Defendants. The particular paragraph further alleges that the letter was written falsely and maliciously by the Defendants.'*
18. Having perused and analyzed the issues raised by both the First Defendant and the Plaintiff in terms of the principles dealing with the present application to **Strike out the Plaintiff's Writ of Summons and the Statement of Claim**, this court does possess all the requisite material and evidence before it to reach a definite and certain conclusion in favour of the First Defendant.
19. Hence, considering the nature of the plaintiff's action, this is the most appropriate stage to determine the success of its claim.
20. **I uphold the submissions of the Counsel representing the first Defendant and accordingly strike the Plaintiff's Writ of Summons and the Statement of Claim against the First Defendant accordingly.**

21. Accordingly, I make the following orders-

- (i) That the First Defendant's Summons seeking the Striking Out of the Plaintiff's Writ of Summons and the Statement of Claim hereby succeeds.
- (ii) The Writ of Summons and the Statement of Claim against the First Defendant is Struck Out accordingly.
- (iii) The Plaintiff is ordered to pay the First Defendant Costs Summarily Assessed at \$650 within 14 days.
- (iv) The Matter to take its normal cause against the Second Defendant.
- (v) Further directions to be made on 05th November, 2016.

Dated at Suva this 26th day of September, 2016



MR VISHWA DATT SHARMA
Master of High Court, Suva

cc: *Shelvin Singh Lawyers, Suva*
Munro Leys solicitors, Suva