

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO: HBC 99 of 2008

BETWEEN : Kamal Lal
Plaintiff

AND : Main Singh aka Mahend Singh
Defendant

AND : Director of Lands
Interested Party

BEFORE : The Hon. Mr Justice David Alfred

Counsel : Mr M Nand for the Plaintiff
Mr M Young for the Defendant
Ms L Ramoce (Ms M Faktaufon with her) for the Interested Party

Date of Hearing : 10 February 2016
Date of Judgment : 11 February 2016

JUDGMENT

1. This Amended Motion for Reinstatement (Motion) came up for hearing on 10 February 2016 in the presence of Counsel as above.
2. Counsel for the Plaintiff (the Applicant) at the commencement of his oral submission provided a written Legal Submission. He submitted that the Judge

had struck out the matter on a mention date. The Rules of the High Court (RHC) does not preclude a striking out on a mention date. The absence of the Plaintiff's Counsel (on 22 May 2015) (the date) was due to a mistake in that the date was not entered in the solicitors' diary.

3. The Affidavit in Support filed by the Plaintiff has as its Annexure K1 what is stated to be a page of the Solicitors' diary dated 22 May 2015, ostensibly confirming a honest mistake made when the date was not entered therein.
4. In response to my question that because the mistake of a solicitor does not exonerate, why was there no affidavit filed by the solicitor concerned. Mr Nand agreed that whoever made the mistake should affirm the affidavit. He went on to say that the matter had not been struck out on the basis of Order 25 rule 9 of the RHC.
5. Counsel concluded by saying the Affidavits in Opposition of the Defendant and the Interested Party do not oppose the application to reinstate and do not state what prejudice they would suffer if this application were to be allowed.
6. Counsel for the Defendant and Counsel for the Interested Party were commendable for the brevity of their oral submissions, the former stating the matter should remain struck out and the latter that they would abide by the order of the Court.
7. The Counsel for the Plaintiff replied that what Counsel for the Defendant said regarding the Order of the Court dated 17 February 2015 was not related to the Application.
8. At the conclusion of the hearing, I reserved my judgment. In the course of reaching my decision I have perused:

- (1) The Legal Submission of the Plaintiff (including the cases cited which I find to be distinguished because of the particular facts of this matter and application).
- (2) The Motion.
- (3) The Affidavit in Support.
- (4) The Affidavit in Opposition of the Defendant.
- (5) The Affidavit in Response for the Interested Party.
- (6) The Affidavit in Response of the Plaintiff.

9. I now proceed to deliver my judgment. The Motion is seeking to reinstate a matter struck out because of the absence of the Counsel for the Plaintiff on the date. Not to put too fine a point on this, the Affidavit in Support should have been filed by the solicitor concerned who knows full well that he was responsible for the non-entry of the date in his diary. It is most inappropriate for the Plaintiff to have affirmed the Affidavit in Support when he had no personal knowledge of what had transpired. It was equally inappropriate for the Plaintiff to swear that annexure K1 was a diary copy when he was not the recorder in it nor did he state who had informed him that it was.
10. In the event, there is nothing before me as to why Counsel for the Plaintiff was absent on the date. No affidavit had been filed by him. If the solicitors for the Plaintiff were unaware who he was, a quick perusal of para 7 of the Affidavit of their law clerk, Achal Goundar sworn on 6 July 2015, would have disclosed the requisite information.
11. I also note from paras 11 and 12 of the Affidavit in Support of the Plaintiff sworn on 6 November 2015 that he had been advised of the fresh summons filed on 16 June 2015. It is surprising that he was not advised that the fresh summons had been withdrawn, and struck out by the acting Master on 23 July 2015, as I have noted from the Court file.

12. In fine, the Plaintiff has failed to satisfy me why I should set aside the order of Kotigalge J, made on 22 May 2015 and sealed on 24 June 2015.
13. I therefore dismiss the Amended Motion for Reinstatement with costs, which I summarily assess at \$250.00 to be paid to the Defendant and at \$250.00 to be paid to the Interested Party by the Plaintiff.

Dated at Suva this 11th day of February 2016



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David Alfred
JUDGE
High Court of Fiji