

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 143 OF 2016

BETWEEN : **SIKELI MATAUNIUMA KOROISAU** of Tokatoka Vunaivi,
Saunaka Village, Nadi, School Teacher.

PLAINTIFF

A N D : **SULIANA QAYA, KAVEKINI NAVEI, ORISI YARO** and
APISAI DRIU all of Tokatoka Vunaivi, Saunaka village,
Nadi, Domestic Duties and Farmers respectively.

1ST DEFENDANTS

A N D **MOHAMMED IQBAL** of Ledrusasa, Votualevu, Nadi,
Businessman.

2ND DEFENDANTS

A N D **iTAUKEI LAND TRUST BOARD** a body corporate formed
under iTaukei Land Act Cap 134.

3RD DEFENDANTS

Appearances: Mr S Nacolawa for Plaintiff
Ms P Mataika for Defendant

Date of Hearing: 27 February 2017

Date of Ruling: 27 February 2017

R U L I N G

[01] This is an application to strike out the writ and the statement of claim.

[02] By their summons filed on 3 February 2017 (*the application*), the defendants seek to have the plaintiff's claim struck out on the ground that there has been no agreement between the plaintiff and the defendants. The application is supported by an affidavit of Suliana Qaya, the first named first defendant (*the defendant*) sworn on 23 January 2017.

[03] The application is made under Order 18, Rule 18 (d), Order 33, Rule 7 of the High Court Rules 1988 and the inherent jurisdiction of the court. The court may, at any stage of the proceedings, strike out any pleadings or indorsements on the ground that it is otherwise an abuse of the process of the court (see: Rule 18 (d)). Under O.33, r.7, the court may dismiss an action after decision of any preliminary issue tried separately from the cause or matter substantially disposes the action.

[04] It will be noted that rule 7 falls under O.33, which deals with the place and the mode of trial. Rule 7 is applicable at the trial stage when a preliminary issue is raised by any party. The pleadings are not yet complete in this case. The defendants did not even file their statement of defence. Rule 7 has, therefore, no application at this stage of the proceedings.

[05] Ms Mataika appearing for the defendants admits that the application is based on the ground that there is no agreement between the plaintiff and the iTLTB, the third defendant and that it is an abuse of process to question the exercise of a statutory power by the third defendant.

[06] Mr Nacolawa, counsel appearing for the plaintiff, in contrast, submits that there is no statement of defence filed by the defendants. The court may be struck out their statement of defence as it has been filed in the absence of the leave of the court.

[07] The plaintiff seeks certain declarations and damages against the defendants. The declaratory relief and damages may be sought in an ordinary civil action brought through writ of summons. The plaintiff did not seek any relief changing the third defendant's statutory power. It is, therefore, not an abuse of process to bring a writ action seeking declaratory relief and damages for the alleged breach of agreement.

[08] The defendant's another ground for striking out the claim is that there is no agreement between the plaintiff and the third defendant. If the plaintiff does not have any agreement with the third defendant, the application to strike out on that ground needs to be made by the third defendant. The third defendant did not make any such application.

[09] Plain reading of the statement of claim discloses reasonable cause of action against the defendants. The plaintiff seeks general damages for breach of agreement. Such an action may be brought through writ. There is no misuse of the right to issue proceedings. Therefore, the defendants are not entitled to apply to the court for striking out of the claim on the ground that it is an abuse of the process of the court.

[10] I have carefully considered the submissions made by both parties. It appears that striking out application is based on the issue that there has been no agreement between the plaintiff and the third defendant. This issue may be raised as a preliminary issue at the trial. The court will not strike out a claim on the preliminary issue as it would involve a mixed question of law and fact. The court could decide any preliminary issue before the substantial matter or cause.

[11] It is for these reasons; I would strike out the application filed by the defendants for striking out the claim, but without costs.

Final Outcome

1. Striking out application struck out.
2. No order as to costs.

Hedhropia 27/2/17

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M H Mohamed Ajmeer

JUDGE

**At Lautoka
27 February 2017**

