IN THE HIGH COURT OF FIJI AT LABASA

CIVIL JURISDICTION

Civil Action No. HBC 43 of 2016

BETWEEN

RAJENDRA DEO PRASAD of Tokatoka, Queens Highway,

Navua, Bus Operator.

PLAINTIFF

AND

DALIP CHAND & SON LIMITED a limited liability company having

its registered office at Ritova Street, Labasa.

FIRST DEFENDANT

AND

LAND TRANSPORT AUTHORITY, a statutory body established under the

Land Transport Act having its registered office at Valelevu, Nasinu.

SECOND DEFENDANT

Counsel : Ms S. Naidu for plaintiff

Mr R. Singh for 1st defendant

Mr G. Stephens for 2nd Defendant

Date of Hearing : 21st June, 2017

Date of Decision : 12th July, 2017

Ruling

(On the application for leave to appeal)

[1] The plaintiff instituted these proceedings by writ of summons seeking for an injunction restraining the 1st defendant from operating bus service in Basoga area; making representations that the 1st defendant is an operator of bus services in Basoga area; interfering or disrupting the plaintiff's bus services in Basoga area until further orders of the court or until the determination of the proceedings, and for damages for loss of revenue and for the harm and damage caused to the plaintiff's reputation and public standing. The learned Master granted the injunction ex-parte.

[2] On 1st September, 2016 the 1st defendant filed summonses to have the plaintiff's action struck out and to have the ex-parte injunction orders dissolved.

[3] The learned Master by her order dated 25th January, 2017 dissolved the ex-parte injunction and refused the application for striking out.

[4] The 1st defendant sought leave to appeal from the order of the learned Master refusing to strike out the action of the plaintiff.

[5] In **Neimann v Electronic Industries Ltd [1978] VR 431** the following observations were made by the Supreme Court of Victoria:

> Leave to appeal from an interlocutory order should be granted only where:
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> (a) the decision was wrong or at least attended with sufficient doubt to justify granting leave; and in addition
> (b) substantial injustice would be done by leaving the decision unreversed.
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> Leave will be granted more readily if the effect of the order is to change substantive rights or terminate the action, so that substantial injustice would be effected if the order is wrong.

[6] In **Reddy's Enterprises Ltd v Governor of the Reserve Bank of Fiji** [1991] FJCA 4; Abu0067d.90s (9 August 1991) Sir Moti Tikaram J. made the following observations:

> It is not my function to assess the actual merits of the appeal but if prima facie it is obvious that the appeal is wholly unmeritorious or wholly unlikely to succeed then it would be appropriate for me to say so. As to the contention that the points raised are not novel all I can say is that the issue of novelty itself is not crucial. The important point is whether there is a serious question for adjudication as opposed to it being frivolous or vexatious.

[7] The provisions governing striking out applications are found in Order 18 rule 18 of the High Court Rules 1988 which provides as follows;

> (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-
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> (a) it discloses no reasonable cause of action or defence, as the case may be; or
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> (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.

[8] It is pertinent to note that the judges are very mush discouraged in summarily striking out actions. They are always encouraged to go through the full trial and make findings on all the issues which the parties are at variance.

[9] In his affidavit filed in support of the application for an injunction the plaintiff avers that he is the holder of Road Route Licence 12/23/34 which authorises him to operate bus services on route Nos. 500, 508 and 509. The first defendant has been granted the Road Route Licence bearing No. 12/23/23 by which it is allowed to operate bus services on route Nos. 507, 507A, 507B, 507D, 508 and 509A. It is averred in the affidavit that on the perusal of the letter dated 12th April, 2012 and the RRL 12/23/23 indicates that the 1st defendant has not been authorised to operate bus services on Basoga/PWD/Nasea/Bulileka route. I could not find a letter dated 12th April, 2012 attached to the affidavit of the plaintiff filed in support of the application for injunctions. However, the plaintiff has filed a letter of the 2nd defendant dated 16th April, 2012 addressed to the 1st defendant. In that letter there is no indication that the 1st defendant has been authorised to operate bus services on the said route.

[10 Whether the 1st defendant had licence to operate a bus service on Basoga/PWD/Nasea/Bulileka route is not what matters here, what the court must look into is whether the plaintiff had a permit to operate his busses on this route. In the statement of claim the plaintiff has averred that in view of the letter dated 16th April, 2012 the 1st defendant has not been granted licence to operate bus services on routes 507A and 507C and therefore the 1st defendant has no right to operate a bus service in Basoga area. If the 1st defendant operates a bus service on this route without a permit the responsibility is on the 2nd defendant take action against the 1st defendant. It is also averred in the statement of claim that the 1st defendant is in breach of section 62(2) of the Land Transport Act 1998. Section 62(2) of the Land Transport Act 1998 provides that no person shall drive or use, or cause or permit to be driven or used, any public service vehicle contrary to the terms of a public service vehicle licence or public service permit relating to that public service vehicle. In the statement of claim it is not averred by the plaintiff that he has a licence to operate a bus service on this route. For a cause of action to arise there must be a violation of a legal right. In the instant case there is no such violation. If the 1st defendant has acted in breach of any statutory provisions the relevant government authority must take action against it and in my view there is a valid ground of appeal for the 1st defendant to pursue at the hearing of the appeal if the leave is granted.

[11] In the case of **Drummond-Jackson v British Medical Council** (1970) 1 W.L.R. 688 it was held that the test in determining the existence of a reasonable cause of action has some chances of success when only the allegations in the pleadings are concerned.

[12] As correctly observed by the learned Master the plaintiff is not seeking to challenge a decision of the Land Transport Appeals Tribunal. There is nothing in the statement of claim of the plaintiff to suggest that he intends to challenge a decision of the Land Transport Appeals tribunal in these proceedings. The learned counsel for the 1st defendant submitted that in Paragraph 15 of the statement of defence the 1st defendant has stated that the plaintiff has filed this action challenging the grant of route 507A to the 1st defendant. Whether the plaintiff is challenging the decision of the Land Transport Appeals Tribunal must be ascertained from the averments in the statement claim and not from the averments in the statement of defence. In my view there is no merit in the submission of the learned counsel that in this action the defendant is seeking to challenge the legality of the decision of the Land Transport Appeals Tribunal.

[13] For the reasons set out above the court makes the following orders.

Orders

(i) Leave to appeal is granted to appeal against the ruling of the learned Master dated 25th January 2017.

(ii) The plaintiff is ordered to pay each of the defendants $500.00 as costs of this application.

HIGH COURT OF FIJI SUVA

Lyone Seneviratne

JUDGE

12th July, 2017.