

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 128 of 2014**

**BETWEEN** : **SHEETAL PRETIKA CHAND**  
**PLAINTIFF**

**AND** : **VISION TRADING LIMITED**  
**DEFENDANT**

**Counsel** : Ms. U. Baleilevuka o/i Siddiq Koya Lawyers for the Plaintiff  
Mr. P. K. Chauhan o/i Messrs. Gordon & Co. for the Defendant

**Date of Ex-Tempore Ruling** : 2<sup>nd</sup> March, 2018

**Written Ruling** : 7<sup>th</sup> March, 2018

**Ruling by** : Hon. Mr. Justice Mohamed Mackie

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**RULING OF THE COURT**  
[On the application for the Striking Out]

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**A. Introduction:-**

1. This is the written form of the extempore ruling pronounced by me on 2<sup>nd</sup> March 2018, when the learned Junior Counsel for the defendant moved for a date to file affidavit to support an inter-party Summons, filed on 23<sup>rd</sup> February 2018, to strike out the Plaintiff's Statement of claim and the writ of summons, while the trial in the action stands fixed to be held on 7<sup>th</sup> and 8<sup>th</sup> of March 2018.
2. The Summons was purportedly filed under Orders 2 and/or Order 3 and/or Order 18 of the High Court Rule 1988 (HCR), without referring to any specific rules thereunder, moving the Plaintiff's Statement of Claim, Writ of Summons to be wholly struck out and the claim of the Plaintiff against the defendant be dismissed.

**B. Background Facts**

3. This is an action filed by the Plaintiff praying for damages and other ancillary reliefs over the tragic death of her husband who was, admittedly, employed as a Boiler Assistant of the defendant Company and died due to drowning as he was unable to escape from a Soak pit ,allegedly , while engaged in his duty.

**C. Chronology of Events:-**

- a. The statement of claim was filed on the 8<sup>th</sup> August 2014.
- b. The statement of defense was filed on 21<sup>st</sup> November, 2014.
- c. The pretrial conference held on 9<sup>th</sup> September 2016.
- d. On 17<sup>th</sup> November, 2016 the trial was fixed to be held from 22<sup>nd</sup> to 23<sup>rd</sup> June 2017 and, unfortunately, due to the leaving of the relevant Judge from the service, who was to sit for trial, the trial dates were vacated and re-fixed before me on 10<sup>th</sup> August 2017 for same to be taken up on **7<sup>th</sup> and 8<sup>th</sup> March 2018.**
- e. While the trial is pending for the next week, as stated above, the Solicitors for the defendant filed the Summons in hand on 23<sup>rd</sup> February, 2018 to Strike out the statement of claim and the writ of summons.
- f. The notice of same being served on the Plaintiff's Solicitors, and the matter being mentioned before me on 2<sup>nd</sup> March, 2018, the learned Junior Counsel, who appeared for the defendant, instead of supporting the summons, moved for a date to file the necessary affidavit in support of the summons.
- g. The learned Counsel who appeared for the Plaintiff vehemently objected for date being granted to file affidavit and against the summons, on the grounds among others, that the trial is fixed for the next week and the application is belated one.

**D. Law**

4. The applicable law is found under Order 18 Rule 18 (1) of the High Court Rules, which provides as follows:

**Striking out pleadings and endorsements (O.18, r.18)**

18.-(1) *The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement 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'. [Emphasis added]*

#### **E. The Governing Principle**

5. In *Paulo Malo Radrodro v Sione Hatu Tiakia & Ors HBC 204 of 2005* the High Court in striking out the claim filed by the plaintiff made the following observations on the exercise of Jurisdiction under Order 18 rule 18 application;

*"The principles applications to applications of this type have been considered by the Court on many occasions. Those principles include:*

*(a) A reasonable cause of action means a cause of action with some chance of success when only the allegations and pleadings are considered – Lord Pearson in Drummond – Jackson v British Medical Association [1970] WLR 688.*

*(b) Frivolous and vexation is said to mean cases which are obviously frivolous or vexatious or obviously unsustainable – Lindley LJ in Attorney General of Ducky of Lanaster v L.N.W. Ry [1892] 3 Ch. 274 at 277.*

*(c) It is only in plain and obvious cases that a recourse should be had to the summary process under this rule – Lindley MR in Hubbuck v Wilkinson [1899] 1 Q.B. 86.*

(d) *The purpose of the Court's jurisdiction to strike out pleading is twofold. Firstly is to protect its own processes and scarce resources from being abused by hopeless cases. Second and equally importantly, it is to ensure that it is a matter of justice; defendants are permitted to defend the claim fairly and not subjected to the expense inconvenience in defending an unclear or hopeless case.*

(e) *“The first object of pleadings is to define and clarify with position the issues and questions which are in dispute between the parties and for determination by the Court. Fair and proper notice of the case an opponent is required to meet must be properly stated in the pleadings so that the opposing parties can bring evidence on the issues disclosed – **ESSO Petroleum Company limited v Southport Corporation [1956] A.C. 218 at 238**”- James M. Ah Koy v Native Land Trust Board & Ors – Civil Action NO. HBC 0546 of 2004.*

(f) *A dismissal of proceedings often be required by the very essence of justice to be done”- Lord Blackburn in **Metropolitan v Pooley [1885] 10 DPP Cas. 210 at 221** – so as to prevent parties being harassed and put to expense by frivolous, vexatious or hopeless allegation – Lorton LJ in **Riches v Director of Public Prosecutions (1973) 1 WLR 1019 AT 1027.**”*

6. For the purposes of determining if an action is an abuse of process, in the case of **Sheetal Investments Ltd v Australia and New Zealand Banking Group Ltd [2011] FJHC 271; HBC 227.2010 (12 May 2011)** the court quoting Halsbury's Laws of England said that:

*“...In Halsbury's Laws of England Vol. 37 page 322 the abuse of process is described as follows:*

*An abuse of process of the court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purposes, or, more simply, where the process is misused. In such a case, even if the pleading or endorsement does no offend any of the other specified grounds for striking out, the facts may show it constitutes an abuse of the process of the court, and on this ground the court may be justified in striking out the whole pleadings or endorsement or any offending part of it. Even where a party strictly complies with the literal terms of the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of an abuse of process, and where subsequent events render what was*

*originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court ...'*

7. The term 'abuse of process' is defined in the following extract from *Walton v Gardiner (1993) 1777 CLR 378* as follows:

*"..... Abuse of process includes instituting or maintaining proceedings that will clearly fail, proceedings unjustifiably oppressive or vexatious in relation to the defendant, and generally any process that gives rise to unfairness....."*

8. The case of *Timber Resource Management Ltd v Minister for Information [2011] FJHC 770; HBC 212.2000 (22 November 2011)* states that:

*"...The term abuse of the process of the court' is also explained in White Book as follows:*

*This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. (Castro v Murray (1875) 10 Ex. 213; Dawkins v. Prince Edward of Saxe Weimar; Willis v. Earl Beauchamp (1886) 11 P. 59, PER Brawn L.J. p. 63)....."*

**F. Discussion:-**

9. When an applicant relies on O.18, r. 18 rr(1) (b) or (c) or (d) there has to be evidence in support, generally, by way of affidavit and it is only under paragraph (a) thereof such evidence is not required.
10. The Solicitors for the defendant, who filed the summons for striking out, when the trial is around the corner, has not thought it is vital to have the affidavit filed before or at least when the summons is supported, to be fair by the Court and the Plaintiff's Counsel.
11. Granting a date by this Court, as moved by the defendant's Counsel, at this juncture to file affidavit evidence on a future date is bound to be a cause for the vacation of the trial that the plaintiff has been anxiously waiting for and undoubtedly it would result further delay in the adjudication of the matter.

12. This action was filed in August 2014 and the solicitors for the defendant, who filed the statement of defense on 21<sup>st</sup> November, 2014, had ample time to file an application of this nature well within time. With all due respect, this can be seen as a sinister move to buy time in order to frustrate the plaintiff in proceeding with her action.
13. As per the case record, the plaintiff's solicitors have got necessary subpoenas issued and served on all the witnesses for the trial on 7<sup>th</sup> and 8<sup>th</sup> March, 2018 and by allowing the trial to be post phoned on account of an application of this nature, the plaintiff will eventually be subjected to unnecessary expenses, delays and perhaps could be deprived of justice, which she may become entitled to, however, depending on the merits of her action.
14. However, since there is no evidence before the Court, the application under O.18, r.18.rr (1) (b) or (c) or (d) cannot be considered and it has to fail necessarily.
15. The remaining sub rule relied on by the defense Counsel for this application is **rr (1) (a)** of r 18 under O.18, which deals with the requirement of reasonable cause of action, and needs no evidence. When the statement of claim is carefully perused, it is obvious that the cause of action has been sufficiently pleaded and the defendant too has aptly responded by its statement of defense.
16. Above all, the agreed issues are very clear on which the final adjudication of the matter solely depends. It is my considered view that once the issues are framed, the pleadings rescind, extinct or take the backseat and revisiting the pleadings is not necessary by bringing these types of applications at this stage. The clear issues already framed, together with any new issue/s that the parties are at liberty to frame at any stage, would undoubtedly guide the Court in arriving at the most justifiable decision in the light of the evidence led at the trial and the applicable law.
17. After filing the statement of defense and framing the agreed issues, the learned Counsel for the defendant should be prepared to face the trial (to take the bull by its horns) without resorting to this type of shortcuts, which is bound to cause further delays and costs in seeing an end to the protracted litigation.

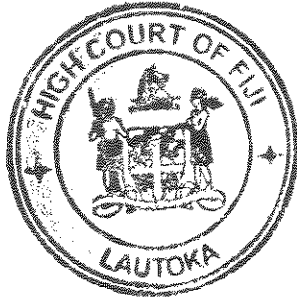
**G. Conclusion:-**

18. Although, the relevant provisions make room for the Striking out Applications to be made at any stage of the proceedings, this liberty should not be abused to bring in frivolous applications and the Courts should be vigilant to allow the only applications which has merits supported by evidence to warrant the consideration

of the Court. For the reasons stated above the defendant cannot succeed in its, purported, application for striking out.

**H. Final Orders:**

- a. The defendant's application for striking out the statement of claim and the writ of summons is hereby dismissed.
- b. The matter will proceed for trial on 7<sup>th</sup> and 8<sup>th</sup> March 2018.
- c. The cost of this application is reserved.



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A.M.Mohammed Mackie

**Judge**

**At Lautoka  
7<sup>th</sup> March, 2018**