

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 79 of 2015

BETWEEN : **VILIKESA KOROI and SULIASI TAFOLO** both of Jittu Estate, Suva, Self Employed, Church Elder.

PLAINTIFF

AND : **MANI LAL, ANARE ARE, MELI CIRINAWALA, RATU MARIKA LAIONE, and ILIESA TUKASA** as TRUSTEES OF JITTU ESTATE LAND TRUST all of Jittu Estate, Suva, Trustees.

2ND PLAINTIFFS

AND : **PEOPLE'S COMMUNITY NETWORK** a duly incorporated Charitable Trust having its registered office at Lot 36 Koroi Place, Samabula.

1ST DEFENDANT

AND : **ATTORNEY GENERALS OFFICE** at its Headquarters located at Marela House, Suva as the legal representative of the Director of Lands pursuant to section 12 of the state Proceedings Act Cap 24.

2ND DEFENDANT

AND : **METHODIST CHURCH OF FIJI** an incorporated religious body with its registered Headquarters office at Epworth House, Nina Street, Suva.

3RD DEFENDANT

AND : **TRUSTEES OF THE METHODIST CHURCH OF FIJI** an incorporated religious body with its registered Headquarters office at Epworth House, Nina Street, Suva.

4TH DEFENDANT

BEFORE: **Master Vishwa Dutt Sharma**

COUNSEL: **Mr. Tuifagalele** - for the Plaintiff
Ms. Mary Chan - for the 1st Defendant
Ms. L. Prasad - for the 2nd Defendant
Mr. Valenitabua - for 3rd and 4th Defendants

Date of Ruling: 17th July, 2018 @ 9 am

RULING

[Application by the Defendants seeking orders to strike out the Plaintiff's Statement of Claim pursuant to Order 18 Rule 18 of the High Court Rules, 1988 and the Court's Inherent Jurisdiction.]

APPLICATION

1. The 1st, 2nd, 3rd and 4th Defendant's filed their respective **Summons to Strike Out**, and sought for the following orders:
 - (a) *It discloses no reasonable cause of action;*
 - (b) *It is scandalous, frivolous or vexatious;*
 - (c) *It is otherwise an abuse of the process of the Court.*
2. *That the 1st Defendant alternatively sought an order for the Plaintiff to supply particulars of its claim to the 1st Defendant to enable the 1st Defendant to file a statement of defence.*
3. *That time for the 3rd and 4th Defendants to file and serve Statement of Defence to the Plaintiffs' Statement of Claim be extended after the hearing and determination of this application.*
4. An Order that the Plaintiff pay costs to the 1st, 2nd, 3rd and 4th Defendants on a full solicitor/client indemnity basis.
5. The Plaintiff **opposed** the Defendant's Striking out application.
6. The application was heard in terms of the **oral and written submissions** made in this proceedings by the Plaintiff and the Defendant.

THE LAW and PRACTICE

7. 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).*

ANALYSIS and DETERMINATION

8. The only **issue** for this Court to determine is-
'Whether the Plaintiff's Statement of Claim should be struck out against the 1st 2nd 3rd and 4th Defendant?
9. Whilst hearing the Defendants on the striking out, it became appropriate for this court to draw the Plaintiff's attention to its pleadings in terms of **Statement of Claim** filed on 04th February, 2015.
10. This court noticed that the Statement of Claim was unsigned by the Plaintiff and/or his Solicitor representing the Plaintiff and therefore allowed the Plaintiff's Counsel an opportunity to address this court on his unsigned Statement of Claim.
11. In reply, the Plaintiff's Solicitor said "the copies in his possession was signed copies and therefore, he would still proceed with the opposition of the Defendant's striking out applications".
12. Therefore, in the above circumstances, it became appropriate for the court to conclude the hearing and make a decision on the issue that has arisen now "**Whether the Plaintiff's Statement of Claim has been properly filed in the manner and form in terms of the requirements of the High Court Rules, 1988?**"
13. This court makes reference to *Order 18 Rule 5 of the High Court Rules, 1988* which deals with the "Formal requirements of the Pleadings" and states as follows-

(5) Every pleading must be signed by the party's solicitor or by the party, if he sues or defends in person.
14. The dictionary meaning of a "*Statement of Claim*" is defined as "a pleading served by the plaintiff in a High Court action, containing the allegations made against the defendant and the relief sought by the plaintiff. If I may add, this pleading is an integral part of the proceedings which lays the basis and foundation for the Plaintiff to file and commence substantive proceedings against the Defendants.
15. Upon a careful reading of the requirement within **Order 18 Rule 5** and taking into consideration the definition hereinabove, I find that the Plaintiff's Statement of Claim is *rather incomplete and not filed within the requirements of Order 18 Rule 5 of the High Court Rules, 1988 and is fatal in law.*
16. In **Conclusion**, this court does not have any other alternative since the Plaintiff's attention was drawn to this fact [unsigned statement of claim] and given the opportunity to address and should have invoked the provisions of *Order 2, Rule 1 (1) of the High Court Rules, 1988* as hereunder and sought for the regularisation of the failure or irregularity instead of making a decision to proceed further and rely on the signed copies in his possession when he was aware that the court will only rely on the documents/pleadings filed before the court of law -

Non-Compliance with rules (O.2, r.1)

1.-(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

17. Accordingly, the Plaintiff's Statement of Claim for the rational hereinabove, is **struck out** and **dismissed** with **costs** summarily assessed **costs of \$500** to be paid by the **Plaintiff** to **each** of the **four (4) Defendants** [**Total of \$2,000**] within 14 days timeframe.


18. I proceed to make the following orders-

FINAL ORDERS

- (i) The Plaintiff's Statement of Claim against the 1st 2nd 3rd and 4th Defendants is hereby struck out and dismissed.
- (ii) Costs on this application is summarily assessed against the Plaintiff at \$500 to each of the four (4) Defendants [\$2,000] to be paid by the Plaintiff to each of the four (4) Defendants within 14 days' time frame.
- (iii) Orders accordingly.

Dated at Suva this 17th day of July, 2018




MASTER
VISHWA DATT SHARMA

cc: Tuifagalele Lawyers, Suva
M Chan Law, Suva
Office of the Attorney General, Suva
Toganivalu & Valenitabua, Suva