

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 250 of 2016

BETWEEN : **SHANJIVAN PADARATH** **PLAINTIFF**
AND : **SAVAIRA TABUA** **FIRST DEFENDANT**
AND : **FIJI BROADCASTING COMMISSION** **SECOND DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr. S.Kumar [Sunil Kumar Esq]
DEFENDANT : Mr. E.Narayan [Patel Sharma Lawyer]
JUDGMENT OF : Acting Master Ms Vandhana Lal
DELIVERED ON : 07 March 2019

INTERLOCUTORY RULING

[Order 20 rule 5 – Amendments to Writ of Summons and Statement of Claim]

1. The Plaintiff on 3 October 2016 filed a Writ of Summon. The Claim was damages for defamation of character.

The First Defendant Savaira Tabua is said to be a reporter with the Second Defendant. The Plaintiff named the Second Defendant as Fiji Broadcasting Commission.

2. In their Statement of Defence the Defendants state that:
 - i. Savaira Tabua is a reporter with Fiji Broadcasting Corporation Limited;
 - ii. Second Defendant is incorrectly named. The correct title is Fiji Broadcasting Corporation Limited.

They further went on to state that the defamation article has not provided thus the claim is embarrassing.

3. The Plaintiff now seeks leave from the Court to amend his Writ of Summon and Statement of Claim by correcting errors in the Writ and Statement of Claim as follows:

- a) *The present correct name of Second Defendant should be as FIJI BROADCASTING CORPORATION LIMITED previously known as Fiji Broadcasting Commission of 69 Gladstone Street, Suva;*
- b) *Paragraph 4 of the Statement of Claim amended to include particulars defamatory pictures of Plaintiff and particulars as:*
 - i. *Fake Doctor to appear in Court;*
 - ii. *A man pretending to be a doctor will appear in Court today;*
 - iii. *The individual who allegedly ran a clinic from his home in Nasinu, has been exposed as a fraud with no medical qualifications;*
 - iv. *Chief Executive of Fiji Medical and Dental Council Dharmesh Prasad says he was arrested on Wednesday after a patient came for a review and because suspicious of his medical treatment;*
 - v. *He had some sort of medical equipment whereby he can tell, what some has, for each consult he was charging \$75 without giving any receipt this is highly irregular and illegal;*
 - vi. *The so called fake doctor has been operating for last three months and according to Fiji Medical Council, this is quite serious matter because the individual allegedly administered cough mixture for to people who have heart problem.*

4. Order 20 rule 5 (3) of the High Court Rules reads:

"An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or as to the case may be, intended to be sued".

5. The test to be applied when deciding with an application to amend pleading was discussed by the Court of Appeal in **Sundar v Prasad [1998] FJCA 19 ABU 0022U.975 (15 May 1998)**.
6. *"It is a guiding principle of cardinal importance on the question of amendment that, generally speaking, all such amendments ought to be made "for the purpose of determining the real question in controversy between the parties to any proceedings or of*

correcting any defect or error in any pleadings". – commentary on paragraphs 20/5 – 8/16 of Order 20 rules 5 – 8, The Supreme Court Practice (1993).

7. The Plaintiff states that whilst preparing his reply to the Statement of Defence it was discovered that Fiji Broadcasting Commission had changed its name to Fiji Broadcasting Corporation Limited.

However the Defendants, claim that the Second Defendant did not change its name after filing of the claim. The Plaintiff ought to have conducted a proper search of the Second Defendant to ascertain correct name.

8. Regardless of the reason for error I find that amendment to change the name of the Second Defendant is justified.

This will rectify the issue of the entity being sued and enable determination of issues between the parties.

Furthermore the mistake/error to title of Second Defendant is to the name rather than the identity of the Second Defendant.

There is no prejudice caused as the Fiji Broadcasting Corporation have acknowledged service and filed defence to the Writ of Summons.

Further they can be compensated by cost for the delay.

Hence I will allow amendment as per prayer (a) of the summons filed by the Plaintiff.

9. Order 18 rule 6 (1) of the High Court Rules reads:

".....every pleading must contain and contain only a statement in a summary form of the material facts on which the party pleading relies for his or her claim..... not the evidence by which those facts are to be proved; and the statements must be as brief as the nature of the case admits"

Rule 11 further requires that every pleading must contain necessary particulars of any claim.

10. The Supreme Court in **Chand v. Fiji Times Limited & Others a Supreme Court Civil Appeal No. CBV 0005 of 2009** delivered on 8 November 2011 has held:

"However, it is trite law that pleadings in a defamation action are in a special category and must be prepared with great care and scrutiny..... Another cardinal rule of pleading in defamation cases is that the statement of claim generally must set out verbatim the precise words alleged to have been used by the perpetrator, and where the defamatory words are said to be defamatory".

In the said case, the trial court described paragraph 6 and 7 of the Amended Statement of Claim which constituted the main cause of action as "embarrassing". Paragraph 6 of the Amended Statement of Claim simply refers to the article published in The Fiji Times with Caption "Chand faces theft probe" and seeking out in sub paragraphs (a) to (f) the various allegation and/or implication as understood by the appellant, without referring to the various parts of the said article from which allegation and/or implication arise.

The Supreme Court held that:

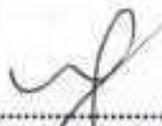
"the difficulty with this manner of pleading is that both the respondent as well as the court in which the pleading were filed, had to undertake the task of picking parts from the article which would fit in to the various imputations set out in sub paragraphs (a) to (f). Such an approach is unacceptable as it would not only prejudice the appellant but also the First Defendant who had rather blindly, sought to include in its Statement of Defence, certain justification and other defences with respect to the allegation of defamation".

11. Hence to ensure that there is proper determination of the issues between the parties the Plaintiff ought to be granted leave to amend its Statement of Claim to include the defamatory article or indicate parts of the article it alleges to be defamatory.

FINAL ORDERS

12. The Plaintiff is granted leave in terms of his summons dated 20 July 2017.
13. Plaintiff is further ordered to pay cost summarily assessed at \$500. Cost to be paid in 14 days.
14. Plaintiff is to file and serve his amended Writ of Summon and Statement of Claim in 14 days.
15. The Defendants are to file and serve their Statement Of Defence to the amended claim in 14 days thereafter.
16. Plaintiff to file and serve reply in 07 days thereafter.




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Vandhana Lal [Ms]
Acting Master
At Suva.