

In the High Court of Fiji at Suva
Civil Jurisdiction
Civil Action No. 20 of 2012

Trustees of Nabua Matua Taxi
Plaintiff
And
Lomaca Baleilevuka
Defendant

COUNSEL: Mr S. Gosai for the plaintiff
Mr S. Valenitabua for the defendant
Date of hearing : 23rd January, 2019
Date of Ruling: 31st January, 2019

RULING

1. The defendant has filed notice of motion seeking leave to appeal and stay of the Ruling of the Master of 18th October, 2018, declining the defendant's application to strike out the statement of claim, on the ground that Nabua Matua Taxis no longer exists in law, as a business registered under the Registration of Business Act .
2. The defendant, in his affidavit in support of the summons to strike out, (as filed before the Master) stated that Nabua Matua Taxis has ceased to carry on business on 8th December, 2015. The trustees registered a Notice of Cessation by a Registered Firm or Individuals at the Companies office. Simultaneously, the same persons "*purporting to be the Plaintiff*" formed and registered a different business named "*Nabua Matua Taxis and Hire*", which commenced business on 1st August, 2015. The defendant concludes that the "*purported Plaintiff trustees no longer have any standing to continue these proceedings as their appointing authority Nabua Matua Taxis ceased to exist on 10th December 2015*".

3. Apisai Vasuturaga, a trustees of Nabua Matua Taxis and Nabua Matua Taxis and Hire, in his affidavit in reply filed on behalf of the defendant states that the trustees formed another company called Nabua Matua Taxis and Hire. The trustees wanted to change the name of Nabua Matua Taxis, but this was not approved, as Nabua Matua Taxis and Hire was already in existence and the two entities could not be merged. The office of the Registrar of Companies informed him that they had made an error on their application and issued a letter to reconfirm that Nabua Matua Taxis is still a registered business. The office had given a wrong form to fill, instead of advising that Nabua Matua Taxis and Hire cannot be merged. When the trustees signed the Notice of Cessation, they did not know that it was a form for cessation of business. The trustees were informed by the office that it was the form to fill to register another business.
4. The Master held that the plaintiff has locus standi to bring this action and have disclosed a reasonable cause of action, as the letter from the Deputy Registrar of Companies confirmed that the business Nabua Matua Taxis is still registered.

The determination

5. The defendant relies on the following documents to support his contention that the plaintiff has ceased to carry on business:
 - (i) A Notice of Cessation lodged by Nabua Matua Taxis on 9th December, 2015, and registered on 10th December, 2015.
 - (ii) An application for registration lodged by Nabua Matua Taxis and Hire on 9th December, 2015.
6. The plaintiff has filed a letter dated 7th August, 2017, from the office of the Registrar of Companies, which confirms that the business name "*Nabua Matua Taxis*" is a registered business.
7. In my view, the subsequent letter of 7th August, 2017, from the office of the Registrar of Companies overrides the Notice of Cessation relied on by the plaintiff.
8. It follows and I hold that the plaintiff is a registered business and is in existence.

9. The proposed grounds of appeal contend that the Master failed to properly consider and hold that the plaintiff does not have a valid trust and no locus standi, in view of the Notice of Cessation .The Master erred in not striking out this action.
10. I find that there are no prospects of success in the proposed grounds of appeal, in the light of my finding that the plaintiff is a registered business and in existence
11. In my view, the Master reached a correct finding that the plaintiff has locus standi to bring this action.
12. The application for leave to appeal and stay is declined.
13. It is a “well-settled requirement that the jurisdiction to strike out an endorsement or pleading, whether under the rules or under the inherent jurisdiction, should be exercised with great caution, only in plain and obvious cases that are clear beyond doubt”- Megarry VC in *Gleeson v. J. Wippell & Co*, [1977] 1 WLR 510 at 518.
14. **Orders**
 - (a) The application for leave to appeal and stay is declined.
 - (b) The defendant shall pay the plaintiff costs summarily assessed in a sum of \$ 1000 within 15 days of this judgment.



A.L.B. Brito-Mutunayagam

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Judge

31st January .2019