

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

*Civil Action No. HBM 134 of 2018*

**BETWEEN:**                      **PEARLLACE ANTONIO**

**APPELLANT**

**AND:**                                **REGISTRAR OF POLITICAL PARTIES**

**RESPONDENT**

**BEFORE:**                            **Hon. Acting Chief Justice Kamal Kumar**

**COUNSEL:**                        M. Young for Appellant  
   S. Taukei and B. Narayan for Respondent

**DATE OF JUDGMENT:**    28 May 2020

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**RULING**

**(Application to Strike Out Grounds of Appeal)**

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**1.0 Introduction**

1.1 On 11 January 2019, Respondent filed Application by way of Summons to strike out Appellant's Grounds of Appeal on the grounds that:-

- (i) it discloses no reasonable cause of action;
- (ii) pursuant to Order 55 Rule 3 of the High Court Rules 1988, the Appellant's appeal is not in the proper form;
- (iii) it is time barred pursuant to Order 55 Rule 4(2) of the High Court Rules 1988; or

(iv) it is otherwise an abuse of the process of the Court.

1.2 On 5 February 2019, parties were directed to file and serve Submissions and the Application was adjourned to 19 February 2019, for hearing.

1.3 On 19 February 2019, the Application was heard and adjourned for Ruling on Notice.

## **2.0 Application to Strike Out**

2.1 Respondent's Application is made under Order 18 Rule 18(1)(a)(d) of the High Court Rules ("HCR").

2.2 It is well established that jurisdiction to strike out claim or pleadings should be used very sparingly and only in exceptional case **Timber Resource Management Limited v. Minister for Information and Others** [2001] FJHC 219; HBC 212/2000 (25 July 2001).

2.3 In **National MBF Finance (Fiji) Ltd v. Buli** Civil Appeal No. 57 of 1998 (6 July 2000) the Court stated as follows:-

*"The Law with regard to striking out pleadings is not in dispute. Apart from truly exceptional cases the approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be proved. If a legal issue can be raised on the facts as pleaded then the Courts will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention. it follows that an application of this kind must be determined on the pleadings as they appear before the Court..."*

## **Reasonable Cause of Action**

2.4 In **Razak v. Fiji Sugar Corporation Ltd** [2005] FJHC 720; HBC 208. 1998L (23 February 2005) his Lordship Justice Gates (current Chief Justice) stated as follows:-

*“A reasonable cause of action means a cause of action with “some chance of success” per Lord Pearson in **Drummond-Jackson v. British Medical Association** [1970] 1 All ER 1094 at p.1101f. The power to strike out is a summary power “which should be exercised only in plain and obvious cases”, where the cause of action was “plainly unsustainable”; Drummond-Jackson at p.110b; **A-G of the Duchy of Lancaster v. London and NW Railway Company** [1892] 3 Ch. 274 at p.277.*

2.5 On 31 October 2018, Respondent notified Peoples Democratic Party (**PDP**) of the de-registration of PDP pursuant to s25(2) of the Political Parties Registration Conduct, Fundraising and Disclosure Act 2014 (**PPR**) for failure to submit to Registrar a statement of its assets and liabilities at least 30 days before general election as required under s25(1) of PPR.

2.6 Appellant’s only ground of appeal applied is that Respondent should have given notice to PDP under s19(2) of the contravention for PDP to show cause why it should not be registered.

2.7 Section 19(1)(2) of PPR provides as follows:-

“19(1) The Registrar may deregister a political party if the political party-

- (a) has contravened the provisions of this Act;
- (b) does not promote free and fair nomination of candidates;
- (c) does not adhere to any written law relating to the nomination of candidates;
- (d) obtained its registration in a fraudulent manner; or
- (e) has instigated or participated in the commission of an offence under this Act.

(2) The Registrar shall, before deregistering a political party-

- (a) inform the political party, in writing, of the particulars of the breach or contravention;
- (b) inform the political party, in writing, of the intention to deregister the political party; and
- (c) direct the political party to remedy the breach or contravention within 60 days or otherwise show cause why the party should not be deregistered.

2.8 Common sense dictates that s19(2) of PPR applies when the Registrar intends to exercise his discretion under s19(1) of PPR and not otherwise.

2.9 Section 25 of PPR provides as follows:-

“25(1) A political party shall, **at least 30 days before general elections**, submit to the Registrar a statement of its assets and liabilities.

(2) Notwithstanding any other penalty provided in this Act or in any other written law, the Registrar shall deregister a political party which-

(a) fails to comply with this section; or

(b) submits a statement which is false in any material particulars.

(3) The Registrar shall publish the information received by him or her under subsection (1) in the Gazette and in the media, and the costs of any such publication shall be paid by or recovered from the political party.”

2.10 It is totally absurd on the part of Applicant to submit that Registrar should have given 60 days notice for PDP to show cause. The purpose and intention of s25(1) is to ensure that Political Parties prior to election submit statement of its assets and liabilities to the Registrar.

2.11 Parties who failed to do so will be de-registered by the Registrar and that party will not be able to contest the election.

2.12 If a party fails to submit its assets and liabilities to the Registrar, at least 30 days before the election and Registrar gives 60 days notice to show cause, the Party in breach of s25(1) of PPR will be able to contest the election within the 60 day period which will defeat the intent and purpose of s25(1) of PPR.

2.13 In this instance, it is not disputed that:-

(i) 2018 General Election was held on 14 November 2018;

(ii) PDP did not file Statement of Assets and Liabilities 30 days prior to 2018 General Election.

2.14 This Court therefore has no hesitation in holding that Appellant's ground of appeal has no chance of success and as such there is no reasonable cause of action for Court to determine.

2.15 Even though the Appellant's appeal can be dismissed on the ground that there is no reasonable cause of action, I will deal with other ground stated in the Application as well.

2.16 Section 30 of PPR provides that:-

“30(1) **Any person aggrieved with a decision of the Registrar** made under this Act **may appeal that decision to the High Court**, provided however that no such appeal shall be accepted or entertained by the High Court unless the appeal is lodged in the High Court **within 14 days from the date of the decision of the Registrar.**

(2) The decision of the High Court on any appeal against a decision of the Registrar made under this Act shall be final and binding on all parties and shall not be subject to any further appeal.

(3) Subject to the provisions of this Act, an appeal against a decision of the Registrar to the High Court under subsection (1) shall be dealt with in accordance with the High Court Rules 1988.”

2.17 Pursuant to s30(3) of PPR, Order 55 of HCR applies in respect to Appeals from Respondent's decision.

2.18 Before I proceed any further I need to clarify that “Registrar” under Order 55 Rule 4(1)(a) of High Court Rules does not include Respondent or any other Registrar appointed under any Act of Parliament.

2.19 “Registrar” under Order 1 Rule 2 of HCR is defined as follows:-

“Registrar means the Chief Registrar of the High Court and includes any Deputy Registrar when lawfully discharging any of the functions of the Chief Registrar under these Rules.”

2.20 **Respondent falls under Order 55 Rule 4(1)(b) of HCR, as a “General Person”.**

2.21 Respondent’s contention is that Appellant has failed to comply with Order 55 Rule 3(1) and 4(2) of HCR.

2.22 Order 55 Rule 3(1)(2) of HCR provide as follows:-

“3.-(1) An appeal to which this Order applies shall be by way of rehearing and **must be brought by originating motion.**

(2) Every notice of the motion by which such an appeal is brought must state the grounds of the appeal and, if the appeal is against a judgment, order or other decision of a court, must state whether the appeal is against the whole or a part of that decision and, if against a part only, must specify the part.”

*(emphasis added)*

2.23 Order 55 Rule 4(1)(b) and (2) provide as follows:-

“4.-(1) **The persons to be served with notice of the motion** by which an appeal to which this Order applies is brought are the following:-

(a) ....

(b) if the appeal is against an order; determination, award or other decision of a tribunal, Minister of the State, government department or **other person**, the chairman of the tribunal, Minister, government department or **person, as the case maybe, and every party to the proceedings** (other than the appellant) in which the decision appealed against was given.

(2) The notice must be served, and the appeal entered, within 28 days after the date of the judgment, order, determination or other decision against which the appeal is brought.”

*(emphasis added)*

2.24 There is no doubt that the requirement to bring the appeal by Originating Motion and serve the Notice within 28 days are mandatory provision.

2.25 In **Chand v. Land Transport Authority & Anor.** [2017] C.A. No. HBA of 2016; Appellant appealed against decision of Land Transport Authority Appeals Tribunal. Second Respondent applied to strike out the appeal on the ground that Appellant (Chand) failed to comply with Order 55 Rule 3(1) and 4(2) of HCR.

2.26 His Lordship Justice Seneviratne in dealing with the non-compliance stated as follows:-

*“I am therefore of the view that there is no proper appeal before this court.....this is not an inadvertent mistake or error on the part of the appellant or his solicitors. This in my view is nothing but negligence on their part and the appeal must therefore be struck out”.*

2.27 In this instance, Appellant filed Grounds of Appeal instead of filing Originating Motion as required under Order 55 Rule 3(1).

2.28 Counsel for the Appellant relied on Order 2 Rule 1 of HCR and submitted that this proceedings is not a nullity and non-compliance of HCR is an irregularity.

2.29 This Court is of the view that Order 2 Rule 1 of HCR cannot assist the Appellant on the ground that he filed Grounds of Appeal through his Solicitors in total disregard to Order 55 Rule 3(1) of HCR.

2.30 If, Appellant would have filed “Notice of Motion” (Form 7) or “Originating Summons” (5) instead of Notice of Originating Motion (Form 6) Court would have held it as an irregularity.

However, when documents are filed in high Court with total disregard to the Rules then it cannot be treated as an irregularity.

2.31 Decision to de-register PDP by Respondent was made on 31 October 2018, which means Notice must have been served on the Respondent by 29 November 2018.

2.32 According to Respondent's Submission Ground of Appeal was served on 12 December 2018. This Court finds this was done without any regard to Order 55 Rule 4(2) of HCR.

2.33 This Court fully endorses what was said at paragraph 11 of **Chand's** case and quoted at paragraph 2.26 of this Ruling.

### **3.0 Conclusion**

3.1 I hold that the Grounds of Appeal filed on 13 November 2018, discloses no reasonable cause of action and is abuse of court process.

3.2 In relation to Costs of Appeal, this Court takes into consideration that both parties made Submissions, defects were brought to attention of Appellant but he continued with the proceeding without any attempt to seek rectification.

3.3 Accordingly, I make following Orders:-

- (i) Grounds of Appeal filed on 13 November 2018, is dismissed and struck out;
- (ii) Appellant do pay Respondent's costs assessed in the sum of \$1,000.00 within thirty (30) days from date of this Ruling.



  
Kamal Kumar  
**ACTING CHIEF JUSTICE**

At Suva  
28 May 2020

**AC Law for the Appellant**

**Office of the Attorney-General of Fiji for the Respondent**