

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 08 of 2017

Ana Vakasawaqa
Plaintiff

v

Malakai Gucake
First defendant

v

Air Pacific Limited trading as Fiji Airways
Second defendant

Counsel: Mr R. Vananalagi for the plaintiff
Ms L. Jackson for the first defendant
Mr P. Kumar for the second defendant

Date of argument 24th February, 2020

Date of Ruling: 4th June, 2020

Ruling

1. The plaintiff, a flight attendant employed by the second defendant claims damages from the first and second defendants for injuries sustained. She claims that the accident was caused by the negligence of the first defendant. The first defendant is a Pilot with the second defendant. The second defendant, in its statement of defence denies the claim and stated that the claim is statute barred under the Workmen's Compensation Act.

2. The second defendant, in its summons filed on 6th November, 2019, seeks that the following questions or issues of fact and of law be tried under Or 33, r.3 :
 - (a) *Whether the Plaintiff was read over and explained the terms and effect of LD form C/9 called the Form of Agreement as to Compensation to be paid by this Employer dated 13 November 2015 counter-signed by the Second Defendant on 17 November 2015.*
 - (b) *Whether the Agreement constitutes a valid agreement under section 16(1) of the Workmen's Compensation Act 1965 ("Act")*
 - (c) *Whether the action is statute barred by operation of section 25(1)(c) of Act and should be dismissed.*
3. The supporting affidavit filed by the Assistant Labour Officer states that the plaintiff was well explained the total sum of compensation. She goes on to review the plaintiff's affidavit of 22 May, 2017, in answer to the affidavit in support of the striking out filed on behalf of the second defendant.
4. The plaintiff, in her affidavit in reply reiterates her assertion in her affidavit of 22 May, 2017, that she did not sign the Form of Agreement as to Compensation on 13 November, 2015, and it was not explained to her.
5. Ms Jackson, counsel for the first defendant submitted that the summons will determine the case.
6. On 30th March, 2017, the second defendant filed summons to strike out the claim. The Master held that there are triable issues. The questions whether the Agreements executed with the Labour Ministry was done in a fair and justifiable manner and the consequences of the contents of the Agreement executed were fully explained to the plaintiff needs to be dealt with at a full hearing.
7. I dismissed the appeal filed by the second defendant against the Master's Ruling. I held that I am unable to conclude a valid agreement was executed under section 16(1) and that it was a bar to proceedings under section 25, without hearing evidence, since the plaintiff claims that she did not sign the agreement.

8. McMullin J.A. in *Muni Deo Bidesi v Public Trustee of Fiji*, [1975] FJCA 6; [1975] 21 FLR 65 at pg 76 (25 July 1975) stated:

An order for the trial of some issues before others should, however, only be made in "exceptional and extraordinary cases" or where the Judge has serious reason to believe that the trial of the issue will put an end to the action – per Jessel M.R. in Piercy v. Young 15 Ch. D 475 at 480

9. In *Attorney-General of Fiji v Pacoilo Fiji Ltd*, [2000] FJCA 3; ABU0014U.99S (7 January 2000), the Court of Appeal said :

This case affords another example of the disadvantages of split trials . Almost invariably they end up taking far more time and involving greater expense than if all issues had been determined at a single hearing. We cannot emphasise too strongly that only in the most exceptional cases will separate trials on liability and damages be warranted.

10. I am of the view that a determination on the issues raised in the summons will not be decisive. If I answer the issues in the negative, the case for the plaintiff will remain to be heard. The proper course is a complete hearing of the entire cause at a single trial.

11. **Orders**

- (a) I decline the second defendant's summons. The issues will be determined at the substantive hearing.
- (b) The second defendant shall pay the plaintiff costs summarily assessed in a sum of \$ 1000 within 15 days of this Ruling.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam
Judge
4th June, 2020