

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBM 128 of 2020

Pranil Sharma Investments

Applicant

v

Vodafone Fiji Ltd

Respondent

Counsel: The applicant in person
Ms D. Ghandi for the respondent

Date of hearing: 5th November, 2020

Date of Ruling: 19th November, 2020

Ruling

1. This is the respondent's application to strike out the applicant's notice of motion seeking a declaration and compensation for violation of his human rights under section 11 of the Constitution of Fiji based on the outcome of the investigation by the Consumer Council of Fiji, (CCF).
2. The applicant's supporting affidavit states as follows. On 19th August, 2020, CCF stated that it viewed the CCTV footage which confirmed that the security had "*physically mishandled the applicant out of the premises*" and informed the respondent that their staff should not make physical contact with consumers, while escorting them out of their premises. The letter of 19th August, 2020, from CCF is attached.

3. The respondent moves to strike out the application on the ground that it does not disclose a reasonable cause of action, is frivolous, vexatious, may prejudice, embarrass or delay the fair trial of the action and is an abuse of process of Court, as the applicant has failed to provide sufficient particulars.
4. Dinesh Chand, Team Leader-Debt Collection of the respondent, in his affidavit in support states that the applicant purchased a mobile phone from the respondent, which allegedly subsequently displayed a blank screen. He visited the respondent's retail outlet and insisted that he be given a replacement. He was "*diplomatically and calmly*" advised that in accordance with company procedure, replacements are not made available to prepay customers. He is a prepay customer. He became verbally abusive and aggressive with the staff. The security personnel were compelled to escort him out of the premises, as he was creating a disturbing scene for other customers. The applicant lodged a complaint against the respondent with CCF. The allegations are without merit, baseless and untenable.
5. The affidavit concludes that the claim is meritless on its face, is specifically pursued to harass annoy or cause unnecessary and unjustified financial cost to the respondent. It has not been brought in good faith.

The determination

6. The application to strike out is made on the ground that the applicant has failed to provide sufficient particulars as to the manner he was discriminated. The respondent contends that the claim does not disclose a reasonable cause of action and it is obvious that the application has no reasonable prospect of success.
7. Section 7 of the High Court (Constitutional Redress) Rules, 2015 provide that the High Court Rules apply to applications for constitutional redress.
8. The principles of law applicable on the aspect of striking out are well settled. The jurisdiction of the Court is exercised sparingly and only where a case is obviously and beyond doubt unsustainable.

9. In *Attorney General v Shiu Prasad Halka*, 18 FLR 210 at pg 214 Gould VP stated:

Though these cases indicate that in a proper case a Statement of Claim will be struck out notwithstanding that it raises a constitutional question, they do not detract, in my view, from the rule that the summary procedure under Order 18 Rule 19 is to be sparingly used and is not appropriate to case involving difficult and complicated questions of law.

10. In *Dey v Victorian Railways Commissioners*, (1948-49) CLW 62 at pg 84 -85 Latham CJ said:

..the summary procedure.. was appropriate only to cases which were plain and obvious, so that any master or judge could say at once that the statement of claim was insufficient, even if proved, to entitle the plaintiff for what he asked...If, as a result of argument, the court reaches a clear decision which could not be altered by any evidence which could be adduced at the trial, then it is proper in the interests of both parties to dismiss the action instead of allowing the parties to incur completely useless expense. (emphasis added)

11. The Notes to Or. 18, r.19/7 in the *SUPREME COURT PRACTICE*, 1988, Vol. 1, pg 315 states:

*..... A reasonable cause of action means a cause with some chance of success when only the allegations in the pleadings are considered (per Lord Pearson in *Drummond Jackson v. British Medical Association* [1970] 1 ALL E.R. 1094, C.A.). But the practice is clear. So long as the statement of claim or the particulars (*Davey v. Bentinck* [1893] 1 Q.B. 185) disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak, and not likely to succeed is no ground for striking it out (*Moore v. Lawson*)(1915) 31 T.L.R. 418, C.A.; *Wenlock v. Moloney* [1965] 1 W.L.R. 1238 [1965] 2 All E.R. 871, C.A.).*

12. The detailed affidavit in support filed by the respondent states what transpired between the parties at its outlet.
13. In my view, the applicant's supporting affidavit read with the attached letter from CCF contain sufficient particulars of his allegation that he was physically mishandled on 3rd August, 2020, at the respondent's premises. The allegation, in my view, raises an issue to be decided at a substantive hearing.
14. The respondent contends that the "*unreasonable causes of actions*" instituted by the applicant in various courts against several offices and institutions is an abuse of the process of court.
15. The applicant cannot be denied access to justice, which is a basic principle of the rule of law as enshrined in section 15 of the Constitution of Fiji.
16. The respondent states that there is a duplicity of proceedings instituted by the applicant against the respondent. The claim he filed in the SCT was dismissed. He has filed action in the Magistrates' Court.
17. The applicant states that the Magistrates' Court does not have jurisdiction in applications for constitutional redress.
18. The Court has not been apprised of the facts and the present position in the case filed in the Magistrates' Court.
19. In any event, as Megarry V. C. stated in *Gleeson v J. Wippell & Co*, [1977] 1 W.L.R. 510 at 518 "*.. even if the matter is or may be res judicata, it may be better not to strike out the pleadings but to leave the matter to be resolved at the trial*". (emphasis added)

20. Finally, the respondent submits that the caption to the application should reflect the applicant's name and not the name of his sole trading business. "*Pranil Sharma Investments*" has no cause of action nor locus standi to bring these proceedings.
21. The material fact is that the notice of motion seeks a declaration on the violation of the human rights of the "*Applicant namely Pranil Sharma*".
22. Accordingly, I am satisfied that the "*the mistake was ..not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue*", as provided in Or 20, r.5(3).
23. I direct the applicant to substitute his name for "*Pranil Sharma Investments*" in his notice of motion and affidavit.
24. In my view, the respondent has not made out that there is no reasonable cause of action in the application nor that it is an abuse of process.
25. I decline the application to strike out the notice of motion.

26. **Orders**

- a) The application to strike out the applicant's application is declined.
- b) The applicant is directed to substitute his name for "*Pranil Sharma Investments*" in his notice of motion and affidavit and file and serve same on the respondent on or before 3rd December, 2020.
- c) The matter is to be called before me on 4th December, 2020, at 9.30 am.
- d) The respondent shall pay the applicant costs summarily assessed in a sum of \$ 350 within 14 days of this Ruling.



A.L.B. Brito-Mutunayagam

A.L.B. Brito -Mutunayagam
JUDGE

19th November, 2020