

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 68 of 2020

BETWEEN

ARIETA DUGUBALE of Lot 27, Senijale Street, Waqadra,
Nadi, Accounts Clerk.

1ST PLAINTIFF

AND

KOLORA KURUMALAWAI of 29 Halloran Drive, Jerrabomberra,
NSW 2619, Australia, Registered Nurse.

2ND PLAINTIFF

AND

OPETIA WAQA of Vakabalea, Deuba,
Navua, Farmer.

3RD PLAINTIFF

AND

JOSEFA TIPOU QALOTAKI of Lausa. Tavua,
Machine Operator.

4TH PLAINTIFF

AND

SALANIETA DAVETA QALOTAKI SERU of Ramlakhan Street,
Waila, Occupation unknown.

1ST DEFENDANT

AND

ASHOK PRASAD of Vakabalea, Navua,
Occupation Unknown.

2ND DEFENDANT

AND

THE DIRECTOR OF LANDS of iTaukei Trust Fund Complex,
South Building, Nasova, Ratu Sukuna Road, Suva.

3RD DEFENDANT

AND

THE REGISTRAR OF TITLES of Ground Floor, Civic Tower,
Victoria Parade, Suva.

4TH DEFENDANT

AND

THE ATTORNEY GENERAL OF FIJI, of Level 7, Suvavou House,
Victoria Parade Suva.

5TH DEFENDANT

Counsel : Mr. Vulakouvaki J. for the plaintiff
Mr. Lajendra N. for the 1st defendant
Mr. Nandan S. for the 2nd Defendant
Ms. Taukei S. for the 3rd, 4th and 5th Defendants

Date of Hearing : 19th April 2021

Date of Ruling : 05th October 2021

RULING

(On the application for Striking out)

[1] The plaintiff instituted these proceedings against the defendants seeking the following reliefs:

(a) Declaration that the 1st defendant fraudulently transferred the property to her name;

- (b) Declaration that the Family Deed of 9th April 2015 was procured by misleading and fraudulent means;
- (c) Declaration that the 2nd defendant is not a bona fide purchaser without notice;
- (d) Declaration that the plaintiffs have an interest and a share in the land;
- (e) An order directing the Registrar of Titles to register the plaintiff's name in the Title;
- (f) An order staying any dealing of the land by the Director of Lands until finalization of this matter;
- (g) Costs of this action on a solicitor client basis;
- (h) Interest; and
- (i) Any other order that the court deems just and expedient.

- [2] In this matter the dispute between the parties related to the property contained in Crown Lease 532179 for 30 years comprising of CT 32511 and CT 32540.
- [3] The plaintiffs and the 1st defendant are the children of Jone Ve'a Waqa aka Jone Vaea Qalotaki who was lessee of the said property. After the demise of Jone Ve'a Waqa his estate was administered by the Fiji Public Trustee Corporation. In the 1st defendant's statement of defence it is averred that there was a deed of family arrangement prepared by the Fiji Public Trustee Corporation wherein all the plaintiffs renounced their share in the Estate of Jone Ve'a Waqa and also agreed to transfer the property to the 1st defendant for love and affection. It is also averred in the statement of defence that as a result to the family arrangement the property was transferred to the 1st defendant.
- [4] It is the position of the 1st defendant that the transfer of the property to the 2nd defendant by the 1st defendant could not be completed because the 2nd defendant required the vacant possession of the property. The 3rd plaintiff is in occupation of the property.
- [5] The 2nd defendant filed the present application pursuant to Order 18 rule 18 of the High Court Rules 1988 seeking to have the claim against him struck out on the ground that it discloses no reasonable cause of action.
- [6] In **Carl Zeiss Stiftung v Rayner & Keeler Ltd** (No 3) [1970] Ch 506 it was held that the power given to strike out any pleading or any Part of a pleading under this rule is not mandatory but permissive, and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending plea.

In **Drummond-Jackson v British Medical Association** [1970] 1 W.L.R. 688; [1970] 1 All ER 1094 it was held;

Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases.

In the case of **Walters v Sunday Pictorial Newspapers Limited** [1961] 2 All ER 761 it was held:

It is well established that the drastic remedy of striking out a pleading or, part of a pleading, cannot be resorted to unless it is quite clear that the pleading objected to, discloses no arguable case. Indeed, it has been conceded before us that the Rule is applicable only in plain and obvious cases.

In **Narawa v Native Land Trust Board** [2003] FJHC 302; HBCo232d.1995s (11 July 2003) the court made the following observations:

In the context of this case I find the following statement of Megarry V.C. in *Gleeson v J. Wippell & Co.* [1971] 1 W.L.R. 510 at 518 apt:

“First, there is the 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, and only in plain and obvious cases that are clear beyond doubt. Second, *Zeiss No. 3* [1970] Ch. 506 established that, as had previously been assumed, the jurisdiction under the rules is discretionary; 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”.

- [7] From the decisions cited above it appears that the power to strikeout a claim is a discretion conferred upon the court and the court must exercise such discretionary power with great caution and only in an exceptional case.
- [8] The only relief prayed for against the 2nd defendant is a declaration that he is not a bona fide purchaser. The 2nd defendant has not purchased the property. There is no other claim

against the 2nd defendant and he is not a party to the dispute between the plaintiffs and the 1st defendant.

[9] The learned counsel for the plaintiffs referred to paragraph 23 of the amended statement of claim which reads as follows:

THAT ultimately the 1st defendant then proceeded sell the property to the 2nd defendant in late 2019 and early 2020 and pocketing the proceeds without any colour of light


[10] The property has not yet been sold to the 2nd defendant. Only the Transfer of Lease document has been executed but the transfer has not been completed.

[11] From the above it is clear that the plaintiffs cannot have any claim against the 2nd defendant.

ORDERS

- (1) The plaintiffs' statement of claim against the 2nd defendant is struck out.
- (2) There will be no order for costs.




Lyone Seneviratne

JUDGE

05th October 2021