

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

CIVIL ACTION NO.: HBC 109 of 2015

BETWEEN : RAVENDRA'S NADRO FOOD MART LIMITED
PLAINTIFF

AND : B L NAIDU PROPERTIES LIMITED
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : No Appearance [Shelvin Singh Lawyers]

DEFENDANT : Ms D. Gandhi [Neel Shivam Lawyers]

RULING BY : Acting Master Ms Vandhana Lal

DELIVERED ON : 22 April 2022

INTERLOCUTORY RULING

1. The Defendant seeks leave to amend its statement of defence and counterclaim and has filed an affidavit in support sworn by Bala Krishna Naidu.
2. According to the Defendant, the current proceeding is in relation to the Defendant's commercial property on lots 3 and 4 on certificate of title 17614 on deposited plan 4556.

The Plaintiff had sought certain declaratory orders regarding the lease agreement it had with the Defendant.

Sometimes on 02nd October 2018, the building situated on the said piece pf land was destroyed in a fire. Despite this, the Plaintiff's solicitors informed the Defendant's solicitors that the Plaintiff intends to pursue with the current action.

Hence the Defendant now wishes to amend its statement of defence and counterclaim to plead the event of fire and now claim loss of mesne profits from 30th June 2015 till 02nd October 2018.

3. The Plaintiff opposes the application for addition of counterclaim for mesne profit as the Defendant had never pleaded any loss of mesne profit nor had they acknowledged the Plaintiff of their occupation on the property since 30th June 2015.

This additional claim is made after 4 years of the Plaintiff filing its claim, the Defendant had initially only made counterclaim for eviction of the Plaintiff.

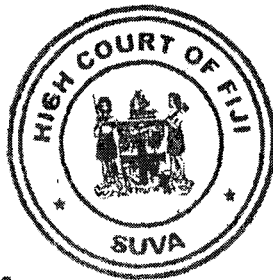
4. The Defendants statement of defence and counterclaim was filed on 21st August 2017 only seeking relief for dismissal of the Plaintiff's claim and an order for vacant possession of the premises.
5. In the affidavit in support, there are no reasons provided why it did not claim mesne profit in its initial pleading.
6. Prior to the Defendant filing its statement of defence, there was an earlier interlocutory application made by the Plaintiff regarding payment of the rental monies into the Court since the Plaintiff claimed that the Defendant had refused to accept payment of rental monies.
7. On 01st August 2017, the Court had made certain orders for rental monies with any rental dues to be paid into the Court.
8. Order 20 Rule 5 of the High Court Rules makes provision for *Court to allow at any stage of the proceedings a party to amend its pleading on such terms as to costs and/or otherwise as may be just and in such manner (if any) as it may direct.*

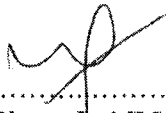
9. Upon perusing the statement of defence and counterclaim filed on 21st August 2017 and the proposed amended document as annexed to the affidavit in support, I note that there are no amendments being made to the statement of defence and to paragraphs 17-19 of the counterclaim.
10. The only amendments made are to paragraphs 20 onwards on the counterclaim and the relief being sought.
11. Though the Defendant had not pleaded claim for mesne profit in its counterclaim, this claim arises out of the same facts and there has already been certain orders made regarding the rental monies which the Court has to make orders for at the conclusion of the trial.
12. I do not find the Plaintiff will be prejudiced in any manner the building has been destroyed in fire and they are as a result not in possession of the same. The only prejudice being caused is the delay for which the Plaintiff can be compensated with costs.
13. In any event "*it is not the Court's object to punish the parties for mistakes made in the conduct of the case and amendments will not be allowed if the other party cannot be compensated for any costs or otherwise*" – Atkins Court Forms (2nd Ed) Volume 32 1996 Issue at page 53.
14. Hence, I will allow the Defendant to amend its pleading.
15. As stated earlier, amendments are made to only the counterclaim from paragraph 20 onwards. However, the Defendant in its proposed amended document has indicated amendments being made to the whole document which as I have stated earlier is not the case.
16. Hence, I find it proper to outline what the procedure/practice is when amendments are being made to a pleading.

17. *“No matter amendments are effected, however, they should be so made that the Court, when perusing the pleadings, can see what the original wording was, so as to appreciate the exact nature of the amendments. Thus, deleted words should remain legible, and amendments should be made in the appropriate colored ink” - Atkins (supra).*
18. Hence the Defendant is to mark the amendment only to paragraphs 20 onwards of its counterclaim and the relief sought and the document is to read as “amended counterclaim”.

Orders

19. The Defendant is granted leave to amend its counterclaim.
20. The amended counterclaim is to be filed and served by 4pm 6 May 2022.
21. Defence to the amended counterclaim is to be filed by 4pm 20 May 2022.
22. Plaintiff is entitled to cost which is summarily assessed at \$850 and is to be paid by the Defendant by 4pm 06 May 2022.




Vandhana Lal [Ms]
Acting Master
At Suva.

22 April 2022

TO:

1. Lautoka High Court Civil Action No. HBC 109 of 2015;
2. Shelvin Singh Lawyers, Solicitors for the Plaintiff;
3. Neel Shivam Lawyers, Solicitors for the Defendant.