

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

CIVIL ACTION NO.: HBC 130 of 2019

**BETWEEN : RAJESH RAMAN
PLAINTIFF**

**AND : THOMAS SUGRIM CHAND
FIRST DEFENDANT**

**: JAI MALA
SECOND DEFENDANT**

**: RONALD RITESH CHAND
THIRD DEFENDANT**

**: ALESHNI ANJANA PRASAD
FOURTH DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Not Present [Appearing In Person]

DEFENDANT : Mr. A. Chand [Amrit Chand Lawyers]

RULING BY : Acting Master Ms Vandhana Lal

DELIVERED ON : 22 April 2022

INTERLOCUTORY RULING

Application

1. This is the Defendant's application seeking orders that the Plaintiffs claim be struck out pursuant to **Order 18 Rule 18 (1) (a), (b), (c) and (d)** of the **High Court Rules**.

The Plaintiff's claim against the Defendants

2. The Plaintiff's claim as outlined in paragraph 1 is for "*libel/slander for malicious falsehood*".

3. According to the Plaintiff, "*the Defendants lodged a fabricated report of arson against the Plaintiff as a result of which he was arrested and taken in for investigation. Since there was no sufficient evidence against the plaintiff, he was released from the custody without being charged*".

It is also alleged that Defendants spread rumors to the Plaintiff's friends and family members that the Plaintiff had tried to set the fire.

It's further alleged that the Defendants are using the newspaper article to defame the Plaintiff's character and embarrass and ridicule him in public.

4. At paragraph 10 the Plaintiff outlines the cause of action as follows:
 10. *The Plaintiff's claim damages for libel and/or slander for malicious falsehood against the Defendants on the following:*
 11. *The defamatory statement by the defendants agents on the article in the newspaper on the report of Arson in which the Plaintiffs name was mentioned.*

Law and principle for relief of Striking out application

5. **Order 18 rule 18 (1) (b), (c) and (d)** of the High Court Rules reads:

(1) The court may at any stage of proceedings order to be struck out or amended any pleadings or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that –

- (a) *It discloses no reasonable cause of action or defence, as the case may be;*
- (b) *It is scandalous, frivolous or vexatious;*
- (c) *It may prejudice, embarrass or delay the fair trial of the action;*
- (d) *It is otherwise an abuse of process of the court, and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be."*

6. In **Lindon v Commonwealth of Australia (No. 2) [1996] HCA 14; 70 ALJR 541; 136 ALR 251** Kirby J outlined applicable principles for summary relief of striking out and these are:

1. *It is a serious matter to deprive a person of access to the courts of law for it is there that the rule of law is upheld, including against Government and other powerful interests. This is why relief, whether under O 26 r 18 or in the inherent jurisdiction of the Court, is rarely and sparingly provided (General Steel Industries Inc v Commissioner for Railways (NSW) (1967) 112 CLR 125 at 128f; Dyson v Attorney-General (1911) 1 KB 410 at 418);*

2. *To secure such relief, the party seeking it must show that it is clear, on the face of the opponent's documents, that the opponent lacks a reasonable cause of action (Munnings v Australian Government Solicitor (1994) 68 ALJR 169 at 171f) or is advancing a claim that is clearly frivolous or vexatious (Dey v Victorian Railways Commissioners (1949) 78 CLR 62 at 91);*

3. *An opinion of the Court that a case appears weak and such that it is unlikely to succeed is not, alone, sufficient to warrant summary termination (Coe v The Commonwealth (1979) 53 ALJR 403;*

Wickstead v Browne (1992) 30 NSWLR 1 at 5-7). Even a weak case is entitled to the time of a court. Experience teaches that the concentration of attention, elaborated evidence and argument and extended time for reflection will sometimes turn an apparently unpromising cause into a successful judgment;

4. Summary relief of the kind provided for by O 26 r 18, for absence of a reasonable cause of action, is not a substitute for proceeding by way of demurrer (Coe v The Commonwealth (1979) 53 ALJR 403 at 409). If there is a serious legal question to be determined, it should ordinarily be determined at a trial for the proof of facts may sometimes assist the judicial mind to understand and apply the law that is invoked and to do so in circumstances more conducive to deciding a real case involving actual litigants rather than one determined on imagined or assumed facts;

5. If, notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it has failed to put in proper form, a court will ordinarily allow that party to reframe its pleading (Church of Scientology v Woodward (1980) 154 CLR 25 at 79). A question has arisen as to whether O 26 r 18 applies to part only of a pleading (Northern Land Council v The Commonwealth (1986) 161 CLR 1 at 8).....: and

6. The guiding principle is, as stated in O26 r18(2), doing what is just. If it is clear that proceedings within the concept of the pleading under scrutiny are doomed to fail, the Court should dismiss the action to protect the defendant from being further troubled, to save the plaintiff from further costs and disappointment and to relieve the Court of the burden of further wasted time which could be devoted to the determination of claims which have legal merit.

No Reasonable Cause of Action

7. In **Bidesi v. Howard** a Suva High Court Civil Case No 513 of 1992 Jesuratnam J. held that:

"It is not enough for the defendant to show at this stage that the Plaintiff has a weak case. He should go further and show the Plaintiff has no case at all".

8. **The Supreme Court Practice Volume 1, 1993 Part 1** at paragraph 18/19/7 outlines the principle as follows:

"A reasonable cause of action means a cause of action with some chance of success when only the allegation in the pleadings is considered (per Lord Pearson in Drummond – Jackson v. British Medical Association [1970]1W.L.R.688".

It further goes on to state that;

so long as the Statement of Claim or the particulars (Darey v. Bentinck [1893] 1 QB. 185) disclose some cause of action, or raise some question to 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 (Moure v. Lawson (1915) 31 T.L.R. 418, C.A.; Wenlock v. Moloney [1965] 1 W.L.R. 1238).

Frivolous and Vexatious

9. Paragraph 18/19/15 of **The Supreme Court Practice** (supra) defines the terms frivolous and vexatious as follows:

“By these words are meant case which are obviously frivolous or vexatious or obviously unsustainable, per Lindley L.J. in Alt – Gen of Duchy of Lancaster v. L. & N.W. Ry. [1892] 3ch. 274 p. 277”.

10. In **Goodson v Grierson, The Argus LR volume XIV, May 12 1908** at page 16, the Court held for a *“Defendant to succeed in an application to the Court under its inherent jurisdiction to put an end to an action as frivolous and vexatious, it was necessary for him to prove not that the Plaintiff might not succeed but that he could not possibly succeed.”*
11. In **Tracey v Minister for Justice, Equality and Law Reforms & Others [2019] IEHC 183 (delivered on 22 March 2019)** Eager J. found that:

“it is evident that the category of proceedings that will be considered to be frivolous and vexatious is broader and extends to proceedings which although they have reasonable prospect of success will not confer any tangible benefit on the plaintiff or are taken for collateral or improper motives.”

12. The High Court of Ontario in **Re Lang Michener v Fabian [1987] 37 D.L.R. 68** identified some factors to indicate a proceeding to be vexatious and these are:

- (a) the bringing up on one or more actions to determine an issue which has already been determined by a court of competent jurisdiction;*
- (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief;*
- (c) where the action is brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;*

- (d) *where issues tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;*
- (e) *where the person instituting the proceedings has failed to pay the costs of unsuccessful proceedings;*
- (f) *where the respondent persistently takes unsuccessful appeals from judicial decisions."*

13. Whilst hearing an appeal from a decision of the High Court refusing to strike out Plaintiff's claim on one of the grounds being the claim is frivolous and/or vexatious, Mc Cracken J. in **Fay v Tegral Pipes Limited [2005] IEHC 34 (delivered on 27 May 2005)** found that in an application for striking out "*while the words "frivolous and vexatious" are frequently used in relation to applications such as this, the real purpose of the jurisdiction is to ensure that there will not be an abuse of the process of the Courts. Such abuse cannot be permitted for two reasons. Firstly, the Courts are entitled to ensure that the privilege of access to the Courts, which is of considerable constitutional importance in relation to genuine disputes between parties, will only be used for the resolution of genuine disputes, and not as a forum for lost causes which, no matter how strongly the party concerned may feel about them, nevertheless have no basis for a complaint in law. The second, and equally important, purpose of the jurisdiction is to ensure that litigants will not be subjected to the time consuming, expensive and worrying process of being asked to defend a claim which cannot succeed.*"

Prejudice, Embarrass Or Delay The Fair Trial Of The Action

14. Martiono J in **Bertola v Australia and New Zealand Banking Groups Ltd [2016] WASC 165 (delivered on 08 June 2016)** held that the term prejudice, embarrass or delay a fair trial of action "*is a composite one which imports the notion the character of the pleading is such as to make the fair trial of the action more difficult to achieve, that the trial will be unduly protracted or delayed or the pleading is calculated to prejudice the legal process. Pleadings can be struck out on this ground because they are evasive, they*

conceal or obscure the real questions in controversy, they are ambiguous or not reasonably intelligible, they raise immaterial or irrelevant issues, they fail to confine the issues or state the party's case with reasonable particularity or they raise a case in terms which are simply too general".

Abuse of Process of the Court

15. Pathik J, in **Goldstein v. Narayan** a Suva High Court Civil Action No. HBC 0413 of 2001 considered following passage from **Halsbury's Laws of England 4th Edition Volume 37** at paragraph 434 to be pertinent when considering an application for striking out claim on grounds of abuse of process:

"An abuse of the process of the court arises where its process is used, not in good faith and for proper purposes. but as a means of vexation or oppression or for ulterior purposes. or more simply, where the process is misused. In such a case, even if the pleading or indorsement does not offend any of the other specified grounds for striking out, the facts may show that it constitutes an abuse of the process of the court, and on this ground the court may be justified in striking out the whole pleading or indorsement or any offending part of it. Even where a party strictly complies with the literal terms of the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of abuse of process, and where subsequent events render what was originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court."

16. On paragraph 18/19/17 of **The Supreme Court Practice** (supra at paragraph 8) reads:

"This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the

improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation”.

Defamation: Libel and Slander

17. Libel is defined as “*a defamatory statement made in permanent form such as writing, pictures or film*” [Oxford Dictionary of Law (9th Ed), Oxford University Press (2018)].
18. Whilst the term slander is defined as “*a defamatory statement made by such means as spoken words or gestures*” – Oxford Dictionary of Law (supra).
19. Malicious falsehood means “*a false statement made maliciously, that causes damage to another*” – Oxford Dictionary of Law (supra).
20. In **Kumar v Devi**, a Suva High Court Civil Action HBC 353 of 2015 (delivered on 10 June 2020) Amaratunga J, cited Gately on **Libel and Slander (10th Ed) (2003)** at page 7 which interpreted defamation as:

“Defamation is committed when the defendant publishes to a third person words or matter containing an untrue imputation against the reputation of claimant. Broadly speaking, if the publication is made in a permanent form or is broadcast or is part of a theatrical performance it is libel; if in some transient form, it is slander.”.

General rules regarding pleading

21. **Order 18 Rule 6 (1) and (2)** of the **High Court Rules** outlines the general rule regarding pleading and it reads:
 - (1) *Subject to the provisions of this Rule, and Rules 9, 10 and 11, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his*

or her claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

- (2) *Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.*

22. In **Chand v The Fiji Times and another**, a Fiji Supreme Court Civil Appeal CBV 05/09 delivered on 08th April 2011, The Supreme Court at paragraph 19 held:

Another cardinal rule of pleading in defamation cases is that the statement of claim generally must set out verbatim the precise words alleged to have been used by the perpetrator, and where the defamatory words are said to be contained in a lengthy document, identify the part or parts of the document that is or are alleged to be defamatory.

23. In **Kumar** [supra] Amaratunga J. cited the **Supreme Court Practice UK(1991 Ed)** where on paragraph 18/7/7 on page 282 it is stated that:

If a document be referred to in a pleading, but neither its effect stated nor its precise words set out, it cannot be read, without consent, on a summons or motion for judgment, or on a motion to strike out a statement of claim as not disclosing any reasonable cause of action (Harris v Warre (1879) 4 C.P.D125; but in leaving the case to the jury the judge may invite them to say whether the defendant used words to the like effect'(Howard v Hill [1887] W.N. 193 and see Williamson v L.& N.W.Ry (1879) 12 Ch.D. 787; and Smith v Baughan (1888) 36 W.R.631).

He further went on to state that *“the rationale in requiring the exact words in a defamation based on slander is to ascertain the meaning of the words that were uttered are defamatory. This is important when there are innuendos or imputation of defamation”*.

His Lordship further found out that:

41. *There is no such express requirement in the High Court Rules 1988 which is based on UK rules in 1988. These High Court Rules 1988 relates to pre- CPR, and to plead exact words that are defamatory was not expressly stated. In Fiji there is no Practice Directions issued such as in UK under new CPR addressing this issue. Hence absence of exact words of slander was not fatal for the claim when each party fully understood the allegation contained in the claim There is no such express requirement in the High Court Rules 1988 which is based on UK rules in 1988. These High Court Rules 1988 relates to pre- CPR, and to plead exact words that are defamatory was not expressly stated. In Fiji there is no Practice Directions issued such as in UK under new CPR addressing this issue. Hence absence of exact words of slander was not fatal for the claim when each party fully understood the allegation contained in the claim*

Does the statement of claim meet the standard of pleadings required in an action for defamation?

24. In the current proceeding, paragraphs 8 and 9 of the statement of claim consists of the alleged act or acts of slander by the Defendants.
25. However, on further reading of paragraphs 10; 11 and the prayer sought in paragraph 13 there is confusion whether the Plaintiff's claim is for slander and libel both or only for libel

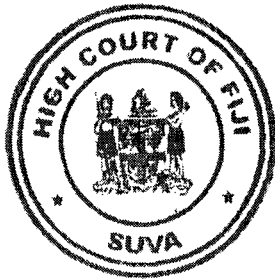
due to the publication of article in the newspaper and what are the alleged act or acts of libel and slander against each Defendants.

26. Hence, it's only prudent that the Plaintiff be asked to amend his statement of claim and provide sufficient particulars against each Defendants as to the defamatory statement by them; and/or the article or part of it that are alleged to be defamatory.

This will give the Defendants a clear understanding of the act or acts of slander/libel alleged against them.

Orders

27. The Plaintiff should file/serve an amended statement of claim by 4pm 13 May 2022.
28. The Defendants to file/serve their statement of defence to the amended claim by 4pm 27 May 2022.
29. Cost to be in cause.




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Vandhana Lal [Ms]
Acting Master
At Suva.

22 April 2022

TO:

1. Suva High Court Civil Action No. HBC 130 of 2019;
2. Rajesh Raman, appearing in person;
3. Amrit Chand Lawyers, Solicitors for all the Defendants.