

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HPP 56 of 2022

In the Estate of Masla Mani

Sri Sanjay Mani

Applicant

v

Lajendra Mani

Vijendra Mani

Latchmi

Respondents

The applicant in person

Counsel: Mr S.Gosai f or the respondents

Date of hearing: 2nd September,2022

Date of Ruling: 27th February,2022

Ruling

1. The respondents in their summons filed on 8th August,2022, seek that the applicant's writ of summons and statement of claim be struck out on the grounds that it is frivolous, vexatious, prejudicial and abuse of process and his application for an injunction be struck out. The respondents also seek that the time to file their statement of defence be suspended pending the hearing and the applicant be restrained from taking any steps to obtain default judgment or any order against the respondents.

2. The third defendant in his affidavit in support states that he is one of the executors and trustees of the estate of Masla(deceased). The applicant had filed a caveat in Probate action no. 60935, Caveat no 36 of 2017. On 30th January, 2019, Sharma J removed the caveat. After the caveat was removed, probate was granted to the respondents, The applicant ought to have raised all crucial questions initially and not by the way of a separate action. The present case is res-judicata, as the issue in this action was determined in Probate No. 60935, Caveat No. 36 of 2017. This action is frivolous, vexatious and an abuse of process of the court.

3. The applicant in his reply of 25th August,2022, states that the respondents failed to file statement of defence on 15th July,2022.

The determination

4. The applicant in his statement of claim alleges that the Will made by the deceased on 14th January,2015, is a forgery. The particulars of fraud are set out. The applicant seeks a revocation of the probate granted to the respondents and that probate be issued to him.

5. In Probate No. 60935, Caveat No. 36 of 2017, the caveat filed by the applicant was removed. Sharma J in his Decision of 30th January, 2019, referred to the contentions of the applicant that the Will was a forgery as well as the response of the respondents that the allegation is false and stated that:

On the other hand, if the Applicants intention was to challenge the Will dated 14th January, 2015 then, I reiterate that he should have initiated legal probate proceedings in terms of Order 76 of the High Court Rules 1988 rather than filing a Caveat to obstruct the issuance of Probate Grant in the Deceased's Estate of Masla Mani.

The Applicant must remember that the Caveat he had lodged with the Court is only a temporary measure in order to maintain the status quo of the matter until such time the rights and entitlements of the parties are eventually deliberated upon by the Court of Law. (emphasis added)

6. A determination was not made on the allegation that the Will was a forgery. In my view, this action is not res judicata.

7. The law with regard to striking out pleadings is settled.
8. An action may be struck out on the ground that it does not disclose a reasonable cause of action only in plain and obvious cases.
9. Lord Pearson in *Drummond -Jackson v. British Medical Association*, [1970]1 All ER 1094 at 1101 explained the concept of reasonable cause of action as follows:

I think 'reasonable cause of action' means a cause of action with some chance of success, when .. only the allegations in the pleading are considered. If when those allegations are examined it is found that the alleged cause of action is certain to fail, the statement of claim should be struck out..(emphasis added)

10. Lord Pearson cited *Danckwerts LJ in Nagle v Feilden Danckwerts*, ([1966] 1 All ER at 695 as follows:

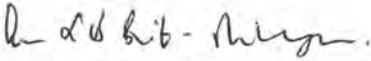
The summary remedy which has been applied to this action is one which is only to be applied in plain and obvious cases, when the action is one which cannot succeed or is in some way an abuse of the process of the court.

11. Gates J(as he then was) in *Razak v Fiji Sugar Corporation Ltd*, [2005] FJHC 720; HBC208.1998L (23 February 2005) cited the following passage from the judgment of O'Connor J of the High Court of Australia in *Burton v President &c., of the Shire of Bairnsdale*, [1908] HCA 57; [1908] 7 CLR 76 at p.92 :

Prima facie, every litigant has a right to have matters of law as well as of fact decided according to the ordinary rules of procedure, which give him full time and opportunity for the presentation of his case to the ordinary tribunals, and the inherent jurisdiction of the Court to protect its process from abuse by depriving a litigant of these rights and summarily disposing of an action as frivolous and vexatious in point of law will never be exercised unless the plaintiff's claim is so obviously untenable that it cannot possibly succeed.(emphasis added)

12. The application to strike out the applicant's action is declined.

13. The respondents seek that the time to file statement of defence be suspended pending the hearing.
14. On 6th July,2022, I gave directions for the respondents to file statement of defence on 15th July,2022, and opposition to the applicant's affidavit on 20th July,2022. The applicant to reply on 27th July,2022.
15. The respondents failed to comply with my directions. The High Court Rules sets out the consequences that follow.
16. **Orders**
 - a. The summons of the respondents is declined.
 - b. The respondents shall pay the plaintiff costs summarily assessed in a sum of \$ 500.00.


A.L.B. Brito-Mutunayagam
JUDGE
27th February, 2023

