

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No HBM 102 of 2022

BETWEEN

PATERESIO FINAU, JALE LILI, RAVE TAIPO, VACISEVA TUBUNA, ASERI & PAULA RAIBIRIKI, ISEI SOROLAGILAGI, KOLETA MARAMA, ETA KURUNAVAVAGI, LOROSIO LABAIVALU, SEINI COKACIRI, MIKAELE NAISOROSUI of Qoya, Wailekutu, Old Queens Highway, Lami, Suva.

APPLICANTS

AND

VICTORIA MARINE PTE LTD a limited liability company incorporated pursuant to the Companies Act 2015 and having its registered office at 2 MIS building, 22 Tofua Street, Walu Bay, Suva.

RESPONDENT

Counsel - Mr. I. Romanu for Applicant
Ms. M. Vasiti for Respondent
Date of Hearing - 12th June 2023
Ruling delivered - 31st July 2023

RULING

[On Respondent's application for Strike Out]

- [1] The Respondent has made an application to the Court by way of Summons to seek following orders.
- I. The Applicant's ex-parte Summons filed on 18.08.2022 be struck out on the basis it;
 - a. discloses no reasonable cause of action;
 - b. frivolous or vexatious; and
 - c. is an abuse of Court process.
 - II. The Applicants to provide immediate vacant possession of the property approved pursuant to Approval Notice of Lease No.1590;
 - III. Costs of the application; and
 - IV. Any other orders the Court may deem necessary.
- [2] The Respondent's Summons has been made pursuant to Order 18 Rule 18 (1) (a) (b) and (d) of the **High Court Rules 1988**.
- [3] Brief chronology of this application is as follows.
- a. The Applicants filed ex-parte summons for a declaration against arbitrary eviction under the Constitution, Respondent to stop from further interfering with Applicant's property and to provide police assistance. The summons was supported by an affidavit and was filed on 18.08.2022 before Hon. Justice Nanayakkara. It was made inter-parte and listed for first call on 25.08.2022.

- b. The Court did not sit on 25.08.2022. The matter was next listed on 31.08.2022.
- c. On 31.08.2022 Nanayakkara J. directed the Applicants to file supplementary affidavit in relation to the service of the summons. It was listed for hearing on 02.09.2022.
- d. On 02.09.2022 Nanayakkara J. issued an ex-parte interim injunction for 24 days. The matter next listed on 26.09.2022.
- e. On 26.09.2022 the Court granted 14 days for the Respondent to file their affidavit in opposition and 7 days thereafter for the applicant to file their reply. Interim injunction extended till 28.10.2022.
- f. On 28.10.2022 the Court granted further 7 days for the applicants to file their reply and the matter listed on 09.11.2022. The interim injunction extended until 09.11.2022.
- g. On 27.10.2022 the Applicants filed summons seek to amend ex-parte summons to join Yavusa Navakavu Development Trust as the second respondent. The summons was listed for first call on 09.11.2022.
- h. On 09.11.2022 14 days granted for the Respondent to file affidavit in opposition and 7 days for the Applicant's reply. Matter listed on 16.01.2023 and the interim injunction extended until 16.01.2023.
- i. The matter was vacated on 16.01.2023 without further directions. The matter was reallocated to this Court as Justice Nanayakkara has left the bench. It was called before me on 21.04.2023 for directions on strike out application.

[4] In the supporting affidavit deposed by the company director Mr. Josateki Tagi states that the Applicants have failed to file proper documents to institute the proceedings pursuant to **High Court (Constitutional Redress) Rules 2015**. Further he states that the Applicants have not provided any evidence to remain on the subject land. Respondent's view is that the Applicants have conceded to the fact that they do not own the foreshore area. Hence they do not have legal or equitable interest in the subject land. The Respondent believes that there has been a parallel action filed by the Applicants in the High Court under Civil Action No 186 of 2022 without a reasonable cause. Hence Respondent submits that this has been an abuse of Court's process.

- [5] In opposition the Applicants state that early this year they became aware of the Approval Notice of Lease issued by the Director of Lands. As the majority of the Applicants have been in occupation of the said land between 15 to 30 years they were advised by the Lands Department that they may cancel the Approval Notice. There had been a proposed meeting between the Applicants, Respondents and the Lands Department officials which has not been eventuated yet. The Applicants further state the Civil Action No 186 of 2022 which was before Sharma J. has been withdrawn by consent.
- [6] There are 10 households situated on the subject land at Qoya, Wailekutu. Applicants claim that they have been living on the land between 15 to 30 years. The land is a State freehold land within the purview of Ministry of Lands. In February 2022 the Respondent's agents made representations to the Applicants that they are the owner of the land.
- [7] According to Applicants the Respondent offered money for them to move to another land and to build new homes for all. Two families dismantled their homes and found out that the land promised has been bought by another buyer. After this incident the Applicants have decided not to move out from the land. Applicants say that the Respondent made attempts to dismantle their houses in August 2022.
- [8] The land in question is a State Land. The fishing right of the subject land comes under Yavusa Navakau. The Respondent and Yavusa Navakau entered into an agreement in March 2018 for the Respondent to develop the foreshore land adjacent to the Yavusa Navakau's land. In June 2019 the Respondent wrote to the Director of Lands requesting for a foreshore lease. In February 2022 the Respondent was informed by the Director of Lands that the Ministry of Lands has approved the processing of the foreshore lease request. In June 2022 the Ministry of lands informed the Respondent of the approval to register allocation of the state foreshore land, subject to fulfilling the foreshore process, particularly the endorsement of the waiver of the fishing rights from Vanua Navakavu and public advertisement for any objections.
- [9] The Respondent further states that on 14.03.2023 they have received the Approval Notice of Lease. Though they had a meeting with the Applicants there has been no agreement for them to vacate the subject land.
- [10] Order 18 Rule 18 states as follows;
18. – (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that –

- (a) it discloses no reasonable cause of action or defence, as the case may be; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the 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.

(2) No evidence shall be admissible on an application under paragraph (1) (a)

(3) This Rule shall so far applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

- [11] In **Hemant Kumar v Suresh Kumar & Others** [2003] Civil Action No. 33 of 2003 the Court stated "I think it is definitely established the jurisdiction to strike out proceedings under Order 18 should be very sparingly exercised and only in exceptional cases. It should not be exercised where legal questions of importance and difficulty arise."
- [12] The Court of Appeal in **National MBF Finance (Fiji) Ltd v Buli** [2000] ABU0057 of 98 held that If a legal issue can be raised on the facts as pleaded then the courts will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention.
- [13] The Respondent's preliminary concern is that the Applicants have failed to invoke the Constitutional Redress jurisdiction through filing of proper pleadings. The Respondent believes that Applicant should have come to Court by way of a Writ of Summons with attached Statement of Claim. Examination of Rule 3 of the High Court (Constitutional Redress) Rules 2015 provides clarity to this as the rule does not have any mandatory requirement on the mode of application that needs to be made to come before the Court. The language used in rule 3 is 'an application... for redress... may be made by a motion supported by affidavit'. It is therefore my view that mere fact of using an irregular application must not hinder a party or a person to invoke his/her right guaranteed by the Constitution.
- [14] The Respondent is also of the view that the Applicants have failed to disclose a reasonable cause of action. It has been well established by the legal precedents that a reasonable cause of action means a cause of action with some chance of success based on the allegations pleaded by the party.

- [15] In **Moore v. Lawson** [1915] 31 T.L.R 418,CA it was said 'so long as the statement of claim or the particulars 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 not a ground for striking out'.
- [16] The Respondent argues that the Applicants have not provided any documentation in their application to contest the validity of the process followed by the Director of Lands and to contest the ownership of the foreshore area, represented by the Yavusa Navakavu Development Trust, who were in discussion with Director of Lands prior to the foreshore surrender. Thus the Respondent's view is that this application is frivolous or vexatious and therefore an abuse of process.
- [17] I have examined the conditions of the Approval Notice of Lease signed by the Director of Lands and the detailed Development Lease Conditions registered on 14.03.2023.
- [18] At clause 4(i) it states 'the lessee shall not carry out any development adjacent to the old queens road unless or until the relocation or the resettlement of the informal settlers is finalized by the lessee'. This has been agreed by the Respondent.
- [19] The words used in the clause is relocation or resettlement and not eviction. The affidavit evidence so far provided before me tend to favour an eviction process. It would allow the Applicants to invoke their rights under the Constitution against arbitrary eviction. However it may be open for the Respondent to counter this proposition at a hearing on the substantive application.
- [20] At this stage I think it would be too early to strike out the summons of the Applicants especially when two applications made by them pending before the Court. One is on the injunction application and the other on leave to amend the summons. Further the Respondent is unable to use the Strike out application which has been made under Order 18 Rule 18 to evict the Applicants as sought in prayer 2 in the summons.
- [21] Rule 18 also allows the Court to allow amend any pleadings at any stage of the matter. In **CBS Songs Ltd v. Amstrad** [1987] R.P.C 417 it was held an opportunity to amend can be given even though the formulation of the amendment is not before the Court.
- [22] In conclusion I am of the view that the summons to strike out of Applicant's action lacks merit. Court orders as follows.

ORDERS

1. Summons to strike out hereby dismissed.
2. Respondent shall pay a total cost of \$1500 (one thousand five hundred dollars) to the Applicants within 14 days of this ruling.



A handwritten signature in blue ink, appearing to be "Yohan Liyanage". The signature is stylized and written in a cursive script.

Yohan Liyanage

JUDGE

At Suva on 31st July 2023