

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 09 of 2022

BETWEEN : **MITIELI MATAITINI** of Namulomulo Village, Nadi, Director.

PLAINTIFF

A N D : **HASRAT BEGG T/A HASRAT RASHIDUN FAUZAN**
INVESTMENTS (HRF INVESTMENT CO.) having its principal place
of business at Lot 2. SO 4308, Nasou, Meigunyah, Nadi.

DEFENDANT

Before : Master U.L. Mohamed Azhar

Counsels : Ms. A. Swamy for the Plaintiff
Ms. J. Tunikula for the Defendant

Date of Ruling: 18 July 2024

RULING

01. The plaintiff is one of the directors of Yavusa Saumata Investment Pte Limited (Plaintiff's company). The defendant previously commenced Civil Action No. HBC 224 of 2019 against the plaintiff, his company and three others. There were consent orders in that case based on the settlement reached by the parties to that case. The plaintiff then commenced this action to set aside the said consent orders made in that civil case.
02. The defendant, without filing the statement of defence, filed the current summons pursuant to Order 18 rule 18 (1) (a) of the High Court Rules and inherent jurisdiction of the court and moved the court to strike out plaintiff's action. The summons is founded on the ground that the plaintiff does not have reasonable cause of action.

03. The law on striking out of pleadings is well settled. The Order 18 rule 18 of the High Court Rule gives the discretionary power to strike out the proceedings provides for grounds to do so. The said rule reads:

18 (1) The Court **may** at any stage of the proceedings **order to be struck out or amend** any pleading 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; 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 as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading (emphasis added)

04. The power to strike out the pleadings is permissive and not mandatory. Even though the court is satisfied on any of those grounds mentioned in the above rule, the pleadings should not necessarily be struck out as the court can, still, order for amendment. The underlying rationale is that, the access to justice should not, merely, be denied by glib use of summary procedure of pre-emptory striking out.

05. Marsack J.A. in his concurring judgment in Attorney General v Halka [1972] 18 FLR 210, explained how the discretionary power to strike out should be exercised by the courts and held that:

“Following the decisions cited in the judgments of the Vice President and of the Judge of the Court below I think it is definitely established that the jurisdiction to strike out proceedings under Order 18 Rule 18 should be

very sparingly exercised, and only in exceptional cases. It should not be so exercised where legal questions of importance and difficulty are raised”.

06. The general principle is that the order for striking out should only be made if it becomes plain and obvious that the claim or defence cannot succeed. The courts cannot strike out an action for the reason that, it is weak or the plaintiff or the defendant is unlikely to succeed in his or her claim or defence.
07. As stated above, the instant summons was filed by the defendant pursuant to paragraph (1) (a) of the Order 18 rule 18. No evidence shall be admissible in an application filed under that paragraph. The court has to examine the allegations in the pleadings to come to a conclusion on reasonable cause of action. His Lordship the former Chief Justice A.H.C.T. Gates (as His Lordship then was) in Razak v. Fiji Sugar Corporation Ltd [2005] FJHC 720; HBC208.1998L (23 February 2005) held that:
- “To establish that the pleadings disclose no reasonable cause of action, regard cannot be had to any affidavit material [Order 18 r.18 (2)]. It is the allegations in the pleadings alone that are to be examined: Republic of Peru v Peruvian Guano Company (1887) 36 Ch.D 489 at p.498”.
08. The factual background of this case, albeit brief, is that, the plaintiff’s company was the holder of Gravel Extraction Licence No. 47/2/26 issued by the Director of Land pursuant to Regulation 29 of State Lands (Leases and Licences) Regulation 1980. The Licence was valid for 12 months commencing from 19 November 2018. In the meantime, the plaintiff’s company entered into an agreement with the defendant to sub-license the extraction of gravel to the defendant. The Ministry of Lands and Mineral Resources too consented for sub-licensing to the defendant. Accordingly, the consent for Sub- Licence was valid from 23 November 2018 till 08 November 2019.
09. The defendant then commenced the said Civil Case against the plaintiff and his company and alleged that they breached the agreement for sub-licensing of the extraction of gravel. Thereafter parties entered into Terms of Settlement and thereby agreed to extend the sub-licence to the defendant to extract the gravel. The parties then obtained consent orders based on their Terms of Settlement. In fact, the consent for sub-licence had already expired when the parties entered into Terms of Settlement and obtained the consent orders. The plaintiff alleged in his Statement of Claim that, extension of sub-licence to the defendant by consent orders was contrary to Regulation 29 of State Lands (Leases and Licences) Regulation 1980, due to expiry of consent of Ministry of Lands. The plaintiff seeks to nullify the consent orders as they were contrary to Regulation 29 mentioned above. This is the first cause of action pleaded by the plaintiff.

10. Furthermore, the plaintiff claimed that, he was induced by the defendant to enter into such Terms of Settlement. The plaintiff also alleged that, he did not have an opportunity to obtain legal advice. Nor he was represented by an independent solicitor. The particulars of undue influence are pleaded in paragraph 19 of the Statement of Claim. The plaintiff seeks to set aside the consent orders on ground that, there was no true agreement by him, but was induced to enter into a settlement without independent and proper advice. This is the second cause of action pleaded by the plaintiff.
11. It appears that, the previous action commenced whilst the consent was valid. However, the consent had expired when they entered into Terms of Settlement. The question for determination in relation to first cause of action is whether the plaintiff and others, being the defendants in that case, could have validly extended the sub-licence to the defendant in the absence of or after expiry of consent from Ministry of Land. The other subsequent question is whether the consent orders should be set aside if the first question is answered negatively? It follows that, there is an arguable point in relation to the first cause of action pleaded by the plaintiff.
12. Likewise, a consent order can be set aside if there was no true consent. In Wilding v Sanderson [1897] 2 Ch. 534 at 544 Bryan J held that:

"And just as a consent order may be set aside upon any of the grounds upon which an agreement can be set aside, so it appears to me to follow that such an order may be set aside if it can be clearly proved that there is no agreement, and consequently, no true consent to the order made".
13. However, the question is whether the plaintiff was really influenced against his will to enter into Terms of Settlement as pleaded by him. Accordingly, this issue too becomes an arguable point which requires trial. It is well settled that a statement of claim should not be struck out and the plaintiff driven from the judgment seat unless the case is unarguable (Nagle v Feilden [1966] 1 All ER 689).
14. Both allegations in the statement of claim could be weak or unlikely to succeed. However, it is not the consideration for the purpose of Order 18 rule 18. In Ratumaivale v Native Land Trust Board [2000] FJLawRp 66; [2000] 1 FLR 284 (17 November 2000) the court held that:

"It is clear from the authorities that the Court's jurisdiction to strike out on the grounds of no reasonable cause of action is to be used sparingly and only where a cause of action is obviously unsustainable. **It was not enough to argue that a case is weak and unlikely to succeed,** it must be shown that no cause of action exists (A-G v Shiu Prasad Halka [1972])

18 FLR 210; Bavadra v Attorney-General [1987] 3 PLR 95". (Emphasis added).

15. His Lordship the former Chief Justice A.H.C.T. Gates in Razak v. Fiji Sugar Corporation Ltd (supra) held that:

"The power to strike out is a summary power "which should be exercised only in plain and obvious cases", where the cause of action was "plainly unsustainable"; Drummond-Jackson at p.1101b; A-G of the Duchy of Lancaster v London and NW Railway Company [1892] 3 Ch. 274 at p.277."

16. It cannot be said at this moment that, the causes of action, as pleaded against the defendant, is plainly unsustainable, because it depends on how effectively the plaintiff proves his allegations in his statement of claim. For the reasons mentioned above, I am of the view that, the statement of claim filed by the plaintiff discloses reasonable causes of action against the defendant. The court therefore cannot exercise the discretion under Order 18 rule 18 and strike out this matter.

17. In result, I make the following orders,

- a. The summons filed by the defendant is dismissed, and
- b. The defendant should pay a summarily assessed cost of \$ 2,000 to the plaintiff within a month from today.
- c. Matter to proceed for pre-trial steps.
- d. The matter to be mentioned on 7/08/24 for further directions.

At Lautoka
18.07.2024




U.L Mohamed Azhar
Master of the High Court