

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**[CIVIL JURISDICTION]**

**CIVIL ACTION NO. HBC 13 OF 2022**

**BETWEEN** : **AKILESH NITIN MAHARAJ** of 49 Bellingham Avenue,  
Glendenning New South Wales Australia, Businessman.  
**PLAINTIFF**

**AND** : **SHERON SHANIL PRAKASH** formerly of 13 Tio Street  
Varadoli, Ba but now residing in Auckland, New Zealand.  
**1<sup>ST</sup> DEFENDANT**

**AND** : **ANJULA DEVI** of 13 Tio Street, Varadoli, Ba, Domestic Duties.  
**2<sup>ND</sup> DEFENDANT**

**AND** : **REGISTRAR OF TITLES**  
**3<sup>RD</sup> DEFENDANT**

**AND** : **ITAUKEI LAND TRUST BOARD** a statutory body duly  
constituted under iTaukei Land Trust Board Act having its  
registered office in Suva.  
**4<sup>TH</sup> DEFENDANT**

Before : Master P. Prasad

Counsels : N. Sahukhan for Plaintiff  
N. Padarath and M. Chand for 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Date of Hearing : 10 July 2024

Date of Decision : 31 July 2024

**RULING**

(Strike out)

1. The Plaintiff brings this action as the biological son of Lekh Ram Maharaj also known as Lekhram Maharaj (Lekh Ram), the previous registered lessee of Native Lease No. 16073 Nukudrala Subdivision Stage 1 Lot 13 on DP Ba 2341 (Property), now deceased. The 1<sup>st</sup> Defendant is Lekh Ram's stepson, and the 2<sup>nd</sup> Defendant is the 1<sup>st</sup> Defendant's mother and Lekh Ram's widow. The 2<sup>nd</sup> Defendant is the Plaintiff's stepmother.

2. The Plaintiff claims that Lekh Ram on 30 May 2012 allegedly executed a Will (Lekh Ram's Will) wherein he distributed the Property as follows:
  - a. Upstairs to 2<sup>nd</sup> Defendant for her life and thereafter to Sharon Prakash, Sheena Kumar and the 1<sup>st</sup> Defendant:
  - b. Downstairs to Plaintiff and Plaintiffs siblings Avinash Maharaj and Reshma Shivani Sharma.
3. The Property was transferred to the 1<sup>st</sup> Defendant on 30 January 2014 pursuant to a transfer document endorsed on 11 November 2013. Lekh Ram passed away on 8 January 2014.
4. The Plaintiff's claim essentially is that the signature of Lekh Ram on the transfer and consent to assign documents were forged and that the Defendants fraudulently colluded in defrauding the Plaintiff and other beneficiaries under Lekh Ram's Will by transferring the Property to the 1<sup>st</sup> Defendant.
5. On 1 June 2023, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a Summons under Order 18 Rule 18 of the High Court Rules 1988 and the Inherent Jurisdiction of this Honourable Court seeking that the Plaintiffs claim against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants (Defendants) be struck out on all four grounds of the rule. The application is supported by an affidavit of the 1<sup>st</sup> Defendant.
6. The Plaintiff opposes the Application and has filed an affidavit in opposition.
7. The Plaintiff relies on the Writ of Summons filed on 21 June 2022, affidavit in opposition of the Application and written submissions.
8. The Defendants rely on the Application, affidavit in support and written submissions.
9. Both counsels made oral submissions at the hearing.
10. The Defendants' submissions in essence were that the pleadings lack merit and do not disclose a cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and that the Plaintiff does not have legal standing to sue in his personal capacity.
11. The Plaintiff's counsel submitted that the Plaintiff has the right to sue personally, has legal standing, and that the current pleadings do not require amending to provide more detailed specifications of the fraud allegations.
12. Order 18 rule 18 provides:

*"18 (1) The Court may at any stage of the proceedings order to be struck out or amended 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 case 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;
  - 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."

13. Footnote 18/19/3 of the 1997 Supreme Court Practice reads

*"Striking out or amendment—The rule also empowers the Court to amend any pleading or indorsement or any matter therein. If a statement of claim does not disclose a cause of action relied on, an opportunity to amend may be given, though the formulation of the amendment is not before the Court (CBS Songs Ltd v. Amstrad [1987] R.P.C. 417 and [1987] R.P.C. 429). But unless there is reason to suppose that the case can be improved by amendment, leave will not be given (Hubbuck v. Wilkinson [1899] 1 Q.B. 86, p. 94, C.A.). Where the statement of claim presented discloses no cause of action because some material averment has been omitted, the Court, while striking out the pleading, will not dismiss the action, but give the plaintiff leave to amend (see "Amendment," para. 18/12/22), unless the Court is satisfied that no amendment will cure the defect (Republic of Peru v. Peruvian Guano Co. (1887) 36 Ch.D. 489)."*

14. Footnote 18/19/7 of the 1997 Supreme Court Practice reads:

*"Exercise of powers under this rule—It is only in plain and obvious cases that recourse 18/19/7 should be had to the summary process under this rule, per Lindley M.R. in Hubbuck v. Wilkinson [1899] 1 Q.B. 86, p. 91 (Mayor, etc., of the City of London v. Homer (1914) 111 L.T. 512, C.A.). See also Kemsley v. Foot [1951] 2 K.B. 34; [1951] 1 All E.R. 331, C.A., affirmed [1952] A.C. 345, H.L. It cannot be exercised by a minute and protracted examination of the documents and facts of the case, in order to see whether the plaintiff really has a cause of action (Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.)."*

15. Footnote 18/19/11 of the 1997 Supreme Court Practice on no reasonable cause of action or defence reads:

*"Principles—A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered (per Lord Pearson in Drummond-Jackson v. British Medical Association [1970] 1 W.L.R. 688; [1970] 1 All E.R. 1094, C.A.). So long as the statement of claim or the particulars (Davey v. Bentinck [1893] 1 Q.B. 185) 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 no ground for striking it out (Moore v. Lawson (1915) 31 T.L.R. 418, C.A.; Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.);..."

16. The legal principles regarding striking out pleadings are clear and widely understood. The Court of Appeal in **National MBF Finance v Buli** [2000] FJCA 28 determined the principles for strike out. In **Attorney-General v Shlu Prasad Halka** 18 FLR 210 at 214 Justice Gould V.P. in his judgment expressly stated the law to be "that the summary procedure under O.18, r.19 s to be sparingly used and is not appropriate to cases involving difficult and complicated questions of law."

17. Justice Winter (as he then was) in **Ah Koy v Native Land Trust Board** [2005] FJHC 49 aptly stated:

*"The practice in Fiji of preemptively applying to strike out a claim is wrong and must cease. Counsels ability to overlook the purpose of this summary procedure is astounding. The expense to the administration of justice, let alone clients, is a shameful waste of resources...."*

*Apart from truly exceptional cases the remedy should not be granted. The approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be provided at trial. 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 upon a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of such a factual contention...."*

*The rule of law requires the existence of courts for the determination of disputes and that litigants have the right to use the court for that purpose. The courts will be alert to their processes being used in a way that results in an oppression or injustice that would bring the administration of justice into disrepute. However, the court cannot and must not deny proper access to justice by the glib use of a summary procedure to pre-emptorily strike out an action no matter how weak or poorly pleaded the Statement of Claim supporting the case is...."*

*It is not for the court in deciding whether there is a reasonable cause of action to go into the details of the issues that are raised by the parties. This summary jurisdiction of the court was never intended to be exercised by a detailed examination of the facts of the case at a mini hearing to see whether the plaintiff really has a good cause of action merely a sufficient one. This is not the time for an assessment of the strengths of either case. That task is reserved for trial. The simple fact that these parties engaged in argument by*

*opinion over statutory interpretation must bring into existence a mere cause of action raising some questions fit to be decided by a judge.”*

18. The clear and unambiguous wording of Order 18 Rule 18 unmistakably indicates that the power to strike out pleadings is discretionary rather than obligatory.
19. The pleadings suggest that the Plaintiff is challenging the transfer of the property to the 1<sup>st</sup> Defendant in that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants unlawfully and fraudulently colluded to defraud the Plaintiff and other beneficiaries under Lekh Ram's Will.

#### Plaintiff's legal standing

20. Regarding legal standing, the Defendants contend that the Plaintiff, as a beneficiary, holds an equitable interest rather than legal title to the property. They further assert that the Plaintiff has not attempted to validate Lekh Ram's Will either through solemn form or probate.
21. The Plaintiff relies on *Roberts v Gill & Co* [2010] UKSC 22 to support their argument that a beneficiary can bring legal action in their personal capacity, even in matters concerning an estate. This position is used to assert that the Plaintiff has legal standing to pursue the current legal proceedings, emphasising the precedent set by the case regarding beneficiaries' rights to initiate actions independently in certain legal contexts and special circumstances.
22. The Court acknowledges and partially accepts this submission. In addition to being named as one of the beneficiaries in Lekh Ram's Will, the Plaintiff is also designated as one of the executors and trustees within the document. This dual role potentially strengthens the Plaintiff's legal standing in the proceedings, as he holds responsibilities not only as a beneficiary but also as an executor and trustee of the estate in question.
23. The established principle is that an executor's authority to sue is derived from the last will of the deceased rather than from the grant of probate itself. Courts have consistently recognised that the executor's right to take legal action becomes effective upon the death of the testator. This means that an executor can initiate legal proceedings before probate is granted, as all legal claims and rights of action of the deceased are transferred to the executor upon death.
24. However, it's important to note that while an executor can commence legal actions, they cannot obtain a court order or decree without the grant of probate. The procedural rules require the executor to prove their authority and title through the probate process during court hearings before any final judicial decision can be made. This requirement ensures that the executor's legal

standing and authority to act on behalf of the deceased's estate are formally recognised and confirmed by the court.<sup>1</sup>

25. Therefore, while the Plaintiff can initiate legal action in his personal capacity, it is necessary to amend the proceedings to specify that he is suing in his capacity as both the executor and beneficiary of the deceased Lekh Ram. This amendment clarifies the Plaintiff's dual role in the legal proceedings, emphasising his responsibilities and rights both as one of the executors tasked with administering the estate and as one of the beneficiaries entitled to receive assets according to Lekh Ram's Will.

26. This can be achieved by a simple amendment in the intitle. In the meantime, it would be prudent for the Plaintiff to attend to probate while this matter is still on foot.

#### Allegations of fraud not pleaded properly

27. Regarding the claim of no reasonable cause of action, the Defendants contend that the Plaintiff has failed to comply with Order 18 Rule 11(1)(a) by not specifically detailing allegations of fraud in the statement of claim.

28. The Defendants argue that the Plaintiff has not explicitly alleged which Defendant forged Lekh Ram's signature on the documents, but instead, the allegations are general.

29. The Plaintiff's Statement of Claim at paragraph 14 states that the Property was transferred to the 1<sup>st</sup> Defendant on 30 January 2014 pursuant to forged documents being the transfer document dated 11 November 2013 and application for consent to assign of 18 November 2013. The particulars of unlawfulness and fraud are then pleaded that Lekh Ram's signature on both the transfer and the consent to assign documents were forged and that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants unlawfully and/or fraudulently colluded in defrauding the Plaintiff and other beneficiaries by fraudulently transferring the Property unto their names.

30. Order 18 Rule 11(1)(a) provides that:

*"Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defense or other matter pleaded including, without prejudice to the generality of the foregoing words*

*(a) Particulars of any misrepresentation, fraud, breach of trust, willful default or undue influence on which the party pleading relies; ..."*

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<sup>1</sup> See *Chetty v. Chetty* [1918] 1 A.C. 603; *Ingall v Moran* [1944] 1 AER 97; *Balekabe v Jagdish* [2013] FJHC 547.

31. in **Farrell v. State for Defence** [1980] 1 W.L.R at 179 Lord Edmund-Davies held:

*"It has become fashionable in these days to attach decreasing importance to pleadings, and it is beyond doubt that there have been times when an insistence on complete compliance with their technicalities put justice at risk, and, indeed, may on occasion have led to its being defeated. But pleadings continue to play an essential part in civil actions, and although there has been since the Civil Procedure Act 1833 a wide power to permit amendments, circumstances may arise when the grant of permission would work in justice or, at least, necessitate an adjournment which may prove particularly unfortunate in trials with a jury. To shrug off a criticism as 'a mere pleading point' is therefore bad law and bad practice. The purpose is to define the issues and thereby to inform the parties in advance of the case they have to meet and so enable them to take step to deal with it."*

32. The House of Lords in **Three Rivers District Council v Bank of England** [2001] UKHL/16; [2001] 2 ALL E.R 513 at paragraphs 51-52 stated the following:

*"51. On the other hand, it is clear that as a general rule, the more serious the allegation of misconduct, the greater is the need for particulars to be given which explain the basis for the allegation. This is especially so where the allegation that is being made of bad faith or dishonesty. The point is well established by authority in the case of fraud.*

*52. In Wallingford v Mutual Society (1880) 5 App Cas 685, 697 Lord Selborne LC said:*

*'With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any court ought to take notice.'*

*In the same case Lord Watson said (at 709):*

*'My Lords, it is a well-known and a very proper rule that a general allegation of fraud is not sufficient to infer liability on the part of those who are said to have committed it. And even if that were not the rule of the common law, I think the terms of Order XIV, would require the parties to state a very explicit case of fraud, or rather of facts suggesting fraud, because I cannot think that a mere statement that fraud had been committed, is any compliance with the words of that rule which require the defendant to state facts entitling him to defend. The rule must require not only a general and vague allegation but some actual fact or circumstance or circumstances which take together imply, or at least very strongly suggest, that a fraud must have been committed, those facts being assumed to be true.'*

33. In dealing with allegations of fraud in pleadings, Calanchini J (as he then was) in ***Alam v Colonial National Bank*** [2012] FJHC 826 aptly stated that:

*“It is, of course, well settled that an allegation of fraud must be pleaded together with the facts matters and circumstances relied on to support the allegation. It is also the practice in pleading to particularise allegations of negligence. The Defendant is entitled to those particulars. If they are not provided in the Statement of Claim, they may be sought by way of application with the usual consequence that the defaulting party should pay the costs of the application.”*

34. In ***Three Rivers District Council v Bank of England*** [Supra] the House of Lords in their conclusion further held (at 192) that:

*“while cases should in principle be disposed of as expeditiously and cheaply as the circumstances permit, the most important principle of all is that justice should be done. But this does not mean justice to the plaintiff alone. It is not just to a plaintiff to strike out his claim without a trial unless it has no real prospect of success. It is not just to defendants to subject them to a lengthy and expensive trial to defend their integrity when there is no foundation in the evidence for the attack upon it.”*

35. The crux of the Plaintiff's claim is based on the assertion that the signatures of Lekh Ram on the transfer and the consent to assign documents were forged. The pleadings suggest that the Defendants, either independently or in collaboration with others, engaged in fraudulent activities to transfer the Property to themselves. This forms the core of the Plaintiff's legal argument, asserting deceitful actions aimed at unlawfully acquiring ownership of the property in question.

36. To substantiate their claim at trial, the Plaintiff has acquired an expert report and an amended expert report concerning the signature of Lekh Ram on the documents in question. The initial expert report relied on by the Plaintiff is of 28 March 2022 wherein the expert opined *“that there are indications that the questioned signature is an attempted copy or simulation of a genuine signature”*.

37. Similarly, the Defendants have also obtained an expert report addressing the same issue.

38. These expert reports are crucial as they provide expert analysis and opinions regarding the authenticity or otherwise of Lekh Ram's signature, which will likely play a pivotal role in the Court's assessment of the alleged forgery and fraudulent transfer of the Property.

39. The issues brought up by the Plaintiff's counsel and the counsel for the Defendants regarding the expert opinion on Lekh Ram's signatures will need to be dealt with during trial. This will occur when the relevant witnesses present their testimonies before the Court. Additionally, legal arguments and



submissions related to this matter will be made at the appropriate stage of the proceeding.

40. In response to the Defendants' concern that the Plaintiff had not provided a copy of the amended expert report they were relying on, the Plaintiff clarified that the amended expert report had indeed been included in their Affidavit Verifying List of Documents.
41. While the Plaintiff's claim may lack some of the necessary facts, details, and circumstances required to fully support the allegation of fraud, the pleadings as they currently stand do disclose some cause of action against the Defendants and do raise some questions to be decided at the trial of the action. The determination of whether Lekh Ram's signatures are forged, who forged them, when it happened, and how it occurred cannot be conclusively decided based solely on submissions and affidavits. These are critical factual questions that require thorough examination and presentation of evidence during trial.
42. It is also noteworthy that the Defendants did not previously seek additional and more specific details (particulars) during the earlier stages of these proceedings. This observation underscores that both parties have proceeded with the available information and allegations as presented in the pleadings without requesting further clarification or specifications regarding the claims made by the Plaintiff until the current application to strike out the entire claim.
43. "*[T]he mere fact that a case is weak and not likely to succeed is no ground for striking out*" is a well-established legal doctrine. A court should not dismiss or strike out a case simply because a plaintiff's arguments or evidence may not be particularly strong or because the case may face challenges in succeeding at trial. Instead, courts generally allow cases to proceed to trial where there is a reasonable basis for the claim, even if it is not guaranteed to succeed, so that all relevant evidence and arguments can be fully examined and evaluated in the appropriate legal proceedings.
44. I therefore find that there is a reasonable cause of action, and any lack of detail or clarity can be addressed and clarified through an amendment to the pleadings. The Plaintiff's claim is also not frivolous nor vexatious as there is some merit in the same based on the current pleadings and affidavit evidence at this stage.
45. In light of the aforementioned reasons, it is only proper to allow the Plaintiff to amend his pleadings to explicitly include the alleged fraudulent acts attributed to the Defendants instead of striking out the claim. The Defendants' counsel also conceded during the hearing of this application that the court had the discretion to allow an amendment to address any deficiencies in the Plaintiff's pleadings.
46. I note that allowing time to the Plaintiff to amend his pleadings will inconvenience the Defendants to some extent, as they were prompted to file

the current summons because of the way the statement of claim was originally drafted. Hence the Plaintiff should bear the costs of this application.

47. Accordingly, I make the following orders:

- (a) The Summons to Strike out filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is hereby dismissed;
- (b) The Plaintiff is to file and serve an Amended Writ of Summons and Statement of Claim within 21 days from today (by 21 August 2024);
- (c) The matter shall be mentioned before the Court on 27 August 2024 for normal course to follow;
- (d) The Plaintiff to pay costs summarily assessed at \$1,000.00 to the Defendants; and
- (e) The Statement of Claim shall be struck out if the Plaintiff fails to comply with Order (b) above.



A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line at the bottom.

**P. Prasad**  
**Master of the High Court**

**At Lautoka**  
**31 July 2024**