

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Case No. HBC 110 of 2017

BETWEEN: **KELERAYANI QATO DIMAICICIA** of Lot 25 Laal Place, Koroba Road, Makoi, Nasinu, domestic duties the **substituted plaintiff in place of the late SENIROQA COLATI** pursuant to leave of the Court granted on the 22nd of July 2024 by way of Ex Parte Notice of Motion and affidavit in support

PLAINTIFF

AND: **REPUBLIC OF FIJI MILITARY FORCES** of 4A Berkeley Crescent, Suva

1st DEFENDANT

AND: **THE ATTORNEY GENERAL OF FIJI** of Attorney General's Chambers, Level 4 – 7, Suvavou House, Victoria Parade, Suva.

2nd DEFENDANT

For the Plaintiff: **Mr. I. Fa (Jnr)**

For the 1st Defendant: **Mr. A. Paka**

For the 2nd Defendant: **Ms. G. Naigulevu**

Date of Hearing: **12th March 2025**

Date of Ruling: **23rd April 2025**

RULING ON APPLICATION FOR AMENDMENT OF PLEADINGS

1. This is the Ruling on the Summons filed by the 1st Defendants (the Applicants) on the 18th of February 2025 seeking the following orders from the Court: -

(a) That leave be granted to amend the Statement of Defence which is Annexure “A” to the affidavit of Aisake Oatley Rabuku, sworn and filed herein.

2. The application is made pursuant to Order 20 Rule 5 (1) of the High Court Rules 1988, and the inherent jurisdiction of the High Court.
3. The application is supported by the affidavit of Aisake Oatley Rabuku filed with the Summons.

Grounds for the Amendment

4. The Applicant deposed that this matter had been handled by a different counsel, Ms. Rosemary Drau and with the end of her employment with the Applicants in March 2025, the file was handed over to another legal officer.
5. Upon consideration of the file, new counsel has reconsidered the defence and prepared a proposed amended Statement of Defence for the Court to consider.
6. The nature of the amendment is as follows – “That furthermore, the Plaintiff’s claim is statute barred under section 52 of the RFMF Act 1949, which also provides immunity to the 1st Defendant for such claim.”
7. The Applicant submits that the new matter pleaded in the proposed Amended Statement of Defence arise out of the same facts as relied on in the present claim and will go a long way in assisting the Court and both parties to determine and hear all issues including the defences in this action.
8. The Applicant submits that the proposed amendment intends to bring the provisions of the Republic of Fiji Military Forces Act which will assist the Court and both parties in the interest of justice and the Applicant believe that the Plaintiffs will not be prejudiced due to the proposed amendments. The Applicant also submit that since the Trial has not

started then the amendment will not be prejudicial to the Plaintiff. They therefore seek an order in terms of the Summons.

9. The Summons and the affidavit in support was served on the Respondents on the 18th of February 2025.
10. The application was first called on the 5th of March 2025 and the Plaintiff advised the Court that the application was opposed and sought time to respond. The Attorney General did not adopt a formal position and would abide by whatever the Court decided.
11. The Plaintiff then filed the affidavit of Kelerayani Qato Dimaicicia in opposition and she deposes various grounds for opposing the application.

Grounds for Opposing the Amendment

12. She states that the change of counsel handling this case is now being used to justify the 1st Defendant's application to delay and/or vacate the Trial of this matter.
13. The Plaintiff states that the amendment sought by the 1st Defendant has no connection to the claim, nor does it arise out of the same facts relied upon in the pleading filed in the matter herein.
14. The Plaintiff states, upon advice from her counsel, that the provisions of the Republic of Fiji Military Forces Act have no relevance to the Plaintiff's claim. He further states that the 1st Defendant's application comes at the eleventh hour to deter the Plaintiff's claim from being determined.
15. The Plaintiff further states that the amendment sought will require that the Plaintiff engage additional financial resources to respond to the allegations put forward. She is further advised by her counsel that this application will cause substantial delay.
16. The Plaintiff therefore submits that the application for amendment should be refused with costs and the matter set down for another Trial date.

17. The Applicants then filed an affidavit in reply on the 10th of March 2025, reiterating the grounds in support of the application for amendment of the Statement of Defence,’
18. The Summons was heard on the 12th of March 2025, both parties making oral submissions and supplementing the same with written submissions.

Submissions for the Applicants

19. The Applicants rely on the provisions of section 52 of the RFMF Act 1949, which is a statutory bar to any civil claims against the institution or any service personnel.

The relevant provision states as follows: -

“Immunities of soldiers

52 (1) No action shall be brought against any officer or soldier for anything done by him or her under this Act unless the same is commenced within 3 months after the act complained of was committed nor unless notice of such action has been given at least one month before such action was commenced.”

20. The Applicant submits that the test for amendments is clear, that is, this amendment is necessary to determine the real controversy between the parties and does not result in injustice to either party.
21. The Applicants submit that there is no injustice here and the Court has the authority to allow such amendments at any stage of the proceedings by virtue of Order 20 Rule 5 of the High Court Rules.
22. The Applicant therefore submits that the Court should grant order in terms of the Summons and allow the Applicant to amend the Statement of Defence.

Submissions of the Plaintiff

23. The Plaintiff agrees that the Court has the power to grant this application, however the power is discretionary, and the Court must look at when the application is made at what stage of the proceeding the application is made.
24. The Plaintiff argues that the proposed amendment does not address the cause of action in this matter. The provision of section 52 does not act as a blanket provision that grants the RFMF blanket immunity from any civil liability filed in the High Court of Fiji.
25. The Plaintiff argues that section 52 does provide a bar from bringing a claim against any soldier or officer of the RFMF after the statutory three-month period. The substantive claim in this matter deals with an internal disciplinary issue with the RFMF. The claim against the 1st Defendant is one that relates to the 1st Defendant failing to reinstate the Plaintiff after the Plaintiff was cleared by a Board of Inquiry. The Plaintiff's claim is to hold the organisation accountable for the matters alleged in her claim and not to hold any officer or soldier accountable.
26. The Plaintiff submits that the Trial has been fixed well in advance and such an amendment will only cause further delay. The Plaintiff is a widow with children, and she does not have the same resources as the 1st Defendant. She seeks a determination of her claim at the earliest so that her family can move on with their lives.
27. The Plaintiff also filed written submissions to supplement the oral arguments filed in Court.
28. The matter is now adjourned for a ruling.

Analysis

29. The Application is made pursuant to Order 20 rule 5 of the High Court Rules, which provides as follows: -

“Amendment of writ or pleading with leave (O.20, r.5)

5.-(1) Subject to Order 15, rules 6, 8 and 9 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.”

30. The power is discretionary, and the test was formulated in the case of Peter Sujendra Sundar & Anor v Chandrika Prasad [1997] ABU 22/97 (apf HBC 233/93) Decision 10 November 1997 at 9, where the Court of Appeal stated: -

“The test to be applied is whether the amendment is necessary in order to determine the real controversy between the parties and does not result in injustice to the other parties; if the test is met, leave to amend may be given even at a very late stage of the trial...However, the later the amendment the greater is the chance that it will prejudice other parties or cause significant delays, which are contrary to the interest of the public in expeditious conduct of trials. When leave to amend is granted, the party seeking the amendment must bear the costs of the party wasted, as a result of it.”: per Tikaram, J

31. In determining the application before the Court, I find that the application was made after the Order 34 application was made to set the matter down for Trial and a Trial date was subsequently fixed. This application has effectively vacated that Trial date.

32. Looking at the record of these proceedings, I also find that this will be the second application to amend the Statement of Defence, the first application to amend was in 2023 and this will be the second amendment to the same.

33. The Plaintiff is the widow of the original Plaintiff, and she has been substituted after he died during these proceedings. She has an interest in having this claim determined at the final Trial of this matter and she has prosecuted this claim diligently and we are now at the verge of the Trial.

34. The Applicant is now raising this defence at this stage and although it is something that should have been apparent from the start, nevertheless they will be given a chance to ventilate this properly at the Trial of this matter.

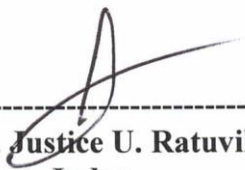
35. The Plaintiff is entitled to costs as this application has delayed these proceedings further.
The Court notes the stage of these proceedings and awards costs summarily assessed at \$1, 000.

This is the Court's Ruling in this matter: -

- 1. The 1st Defendant is given leave to file and serve the Amended Statement of Defence – 14 days to do so.**
- 2. The Plaintiff is given 21 to file and serve the Reply to the Amended Defence.**
- 3. The 1st Defendant will pay costs of \$1, 000 to the Plaintiff, one month to pay, in default the Amended Defence will be struck out and the Plaintiff shall be entitled to file the Order 34 Application to set the matter down for Trial.**

There is a right of appeal





Mr. Justice U. Ratuvi
Puisne Judge

- cc:
- 1. Fa & Company, Victoria Parade, Suva.**
 - 2. Republic of Fiji Military Forces (Army Legal Services, Suva)**
 - 3. Office of the Attorney-General, Suva**