

IN THE RESIDENT MAGISTRATE'S COURT
AT SUVA-CIVIL DIVISION

Civil Action No. MBC 236 of 2018

BETWEEN: **RAKESH KUMAR t/a DAYA RAM & KUMARS EARTH MOVING
WORKS** of Valelevu Nasinu and Wailoku Road, Tamavua, Suva

PLAINTIFF /RESPONDENT

AND: **PERMAL CONSTRUCTION Pte Ltd** of Lot 1 Bhindi Street, Bhindi Sub-
Division, Vatuwaqa Industrial, Suva. of Lot 16, Koroba Street, Nakasi,
Airline Pilot.

DEFENDANT/ APPLICANT

For the Plaintiff/Respondent : Mr. Kumar (SUNIL KUMAR ESQ)

For the Defendants/Applicant: Mr. Nandan (*REDDY 7 NANDAN LAWYERS*)

Date of Hearing : 16th September 2021

Date of Ruling : 30th September 2021

Ruling

1. There is an application filed¹ for and on behalf of the Defendant/Applicant seeking further and better particulars.

2. As a matter of chronology the following is the position of the substantive matter:
 - i. Writ and Claim is filed²;
 - ii. Moharsh Pillai Lawyers filed³ a Notice of Appointment of Solicitors;
 - iii. Notice of Intention to Defend is filed⁴;
 - iv. Affidavit of Service is filed⁵;
 - v. Statement of Defence is filed⁶;
 - vi. Reply to Statement of Defence is filed⁷;

¹ Motion and Affidavit issued on 9th September 2021

² Issued on 17th October 2018

³ Issued on 13th November 2018

⁴ Issued on 12th November 2018

⁵ Issued on 5th November 2018

⁶ Issued on 31st January 2019

- vii. Pre-trial minutes filed⁸;
 - viii. Hearing was fixed for 14th May 2020 however this was vacated upon the Application by the Defendant;
 - ix. Notice of Change of Solicitors filed⁹ by Reddy & Nandan Lawyers;
 - x. Hearing fixed for 14th August 2020 was vacated;
 - xi. Amended Writ of Summons filed¹⁰;
 - xii. A 2nd of Notice of Intention to Defend was filed¹¹;
 - xiii. Trial is fixed for 20th to 21st October 2021.
3. As we stand no Statement of Defence has been filed in terms of the Amended Writ of Summons.
4. In terms of the application, the law is well settled. This court particularly appreciates the decision Master Nanayakkara (as he then was) in *Kurop v Adrenalin Watersports (Fiji) PVT Ltd* [2016] FJHC 21; HBC83.2013 (15 January 2016) particularly paragraph 4. It is regurgitated herein as follows:

(4) The principles on grant of **further** and **better particulars** are set out in the judgment of Byrne J in *In re Estate of Harry Janson Ho* [1993] FJHC 43: His Lordship held:

"The general principle governing the delivery of further particulars of any pleading is that these will be ordered by the Court if it considered desirable to elucidate the issues to be tried and prevent "surprise" at the trial. No hard-and-fast line can be laid down as to the degree of particularity which is required of a pleader and which an opponent may demand of him when formulating either a claim or defence.

It is however, essential that each party should give his opponent a fair outline of the case which will be raised against him at the hearing, and for this purpose he must set out in the body of his pleading all particulars which are necessary to enable his opponent properly to prepare his case for trial.

*Particulars need be given only of facts and not of evidence but as much certainty or particularity will be directed in a particular case as is reasonable having regard to the circumstances and the nature of the acts alleged – see *Ratcliffe v. Evans* (1892) 2 Q.B. 524, at 532. In *Bullen and Leake and Jacob's Precedents of Pleadings 12th Edition* the authors remark at p.113 that the tendency of modern practice is to give full particulars as may be necessary of the matters pleaded, and to respond to a request for **further** and **better particulars** of pleading more fully than previously. However, the law has always held against a party to litigation attempting to obtain information by way of particulars which can only be obtained by interrogatories – see *Lister & Company Limited v Thompson* (1891) 7 T.L.R. p.107. The practical reason for this rule of practice is that whereas when interrogatories are delivered, the answers must be an oath and various objections to provide the answers such a privilege, oppressiveness and fishing and may be taken by the other party; the same is not true of **further** particulars. In addition, because answers to interrogatories must be sworn if, when the matter comes to trial the person interrogated when giving evidence appears to resile from or vary his answers to interrogatories, an attack may be made on his credibility.*

⁷ Issued on 12 February 2019

⁸ Issued on 8th November 2019

⁹ Issued on 13th August 2020

¹⁰ Issued on 3rd September 2020

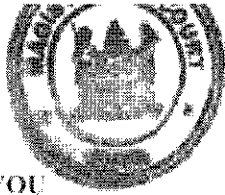
¹¹ Issued on 17th September 2020

This is not true of further and better particulars so that a party may obtain an advantage over his opponent if further and better particulars are supplied when they would not necessarily have been if interrogatories had been delivered."

5. Whilst noting the principles espoused in ***Kurop*** (supra) this Court draws its mind particularly to the issue of delay. Lord Denning's remarks in "***Astavlanis Compania Naviera SA v Linard***" (1972) 2 A.E.R. at page 649 was cited with approval in *Kurop's* case (supra). This court recites the same herein as follows:

"Without going into the rights or wrongs of the matter, the application should have been made as soon as the defence was delivered".

6. In *Kurop's* (case) the learned Master Nanayakkara considered three (3) weeks delay from the time the pleading was received by the Applicant's in that matter, was indefensible and inexcusable which gave rise to a waiver by the Defendant/Applicant's entitlement to further and better particulars.
7. This court noting that Defence counsel has been on board since 13th August 2020, had filed Notice of intention to Defend following the filing of the Amended Statement of Claim on 17th September 2020 and has waited until 19th April 2021 (received by the Registry on 19th April 2021 and issued on 9th September 2021) to formally seek further and better particulars equates as indefensible and inexcusable.
8. In these circumstances this Court shall dismiss the Application by the Defendant/Applicant seeking further and better particulars.
9. In ordinary times (without Covid 19) costs would have been a proper consideration but this Court shall reserve the costs as costs in the cause.
10. However, parties are put on notice that given the uplifting of many restrictions including how Court's handle matters the trial listed for 20th and 21st October 2021 shall be maintained.
11. The Court so orders.




JEREMIA N.L. SAVOU

Resident Magistrate