IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA
Civil Jurisdiction
Action No. 257 of 1979

Between :

SAILASA CAKAU — Plaintiff

- and -

CAUTATA BUS COMPANY — Defendant

Mr. Sharma for Mr. Krishna, Counsel for the Plaintiff
Mr. C. Gordon for Mr. Punja, Counsel for the Defendant

JUDGMENT

This is an application by the Cautata Bus Company (defendant) to set aside an order of this Court made on 19th February, 1982 whereby the plaintiff (Sailasa Cakau) was given leave to amend his writ of summons.

It is useful at this stage to give a brief history of the action which was a claim for damages by an administratrix against the said defendant arising out of a motor accident involving the defendant's bus in which one NAIBUKA was killed.

In the title to the action the Company was described in the specially endorsed writ as "CAUTATA BUS COMPANY having its registered office at Cautata." The writ was filed on 13. 9.79. An affidavit of service shows that it was served on "Cautata Bus Company by leaving a true copy at its registered office at Cautata village, Nausori."

There was no appearance and judgment was entered by default with damages to be assessed against "Cautata Bus Company having its registered office at Cautata." In other words the same description of the defendant was continued in the title.

On 13. 3.80 a summons issued to the defendants indicating 9th May, 1980 as the date for hearing the evidence as to quantum of damages. It was adjourned to 16th May, 1980 which date one Osea Voke, describing himself as manager and director purported to appear for the defendant Company. Damages were assessed by me at $19,700.00 and judgment for that amount was entered on 7th July, 1980.

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On 11.11.80 Messrs. Kato & Company, Solicitors engaged by the defendant Company took out a summons to set aside the judgment supported by the affidavit of the abovenamed OSEA NOKE. The first paragraph states:-

(1)"I am a Director of Cautata Bus Company Limited the abovenamed Second Defendant."

It is significant that he uses the word limited in giving the name of defendant. He does not protest that he was in any way misled by the absence of the word Limited. In paragraph 8 he complains that the second defendant is wrongly named "as it is a registered Company." It appears that paragraph 8 of his affidavit is misconceived as there is no way in which a registered company can be named other than the name under which it is registered. No doubt what OSEA NOKE means is that because it is a limited company it should be so described in the title. By section 309 Companies Act Cap. 216 the word "limited" becomes part of the name of the registered company but that only applies if it is registered as a company with limited liability.

He also alleged that a material witness, defendant No. 1 was in Lebanon at the time of the hearing and that the defendants had a good defence

That application to set aside the judgment was dismissed on 21.11.80.

On 12. 2.82 the plaintiff applied by summons to change the name of the judgment debtor by adding the word "Limited" on the ground that the word Limited had been omitted by oversight. The summons was left at the office of Peat, Morwick, Mitchell & Company, Accountants, at Sukuna House, Suva, on 15. 2.82, the process server affirming that that was the registered office of the defendant company. The application was heard on 19th February, 1982 when the defendant, judgment debtor, put in no appearance and it was granted.

A writ of execution issued on 9th March, 1982 and on 10th April, 1982 the judgment creditor filed the application now before me complaining that he had not been served with the summons for change of name and that the order to add the word "limited" should be set aside because he had not been heard.

In my view there was no need to have served the judgment creditor with the application to change the name which was simply correcting an error in the name. The use of the word "limited" by the defendant is required by law in order to give notice to third parties that liability for debts is limited. Although it is a breach of the law for the defendant to use the word "limited in its dealings and correspondence it is not a breach of the law for third parties to omit that word.

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In what way can the judgment debtor (defendant) have been misled by the omission of the word "limited" from the title of the proceedings? They could not have been misled into accepting that the 1st defendant was their employee or that the bus registered no. U333 was theirs. In fact the affidavit of the managing director OSEA in seeking to set aside the judgment accepts that the first defendant was their driver. He admits that the bus was involved in the accident and that it belongs to the Company. He did not dispute the accident but claimed that the Company had a good defence. There was no suggestion in his affidavit that the Company had not been served with the writ or that the Company had been in anyway misled by omission of the word limited. It is most unlikely for two Bus Companies to have been registered with the name Cautata Bus Company at the time of the accident and service of the writ because section 18 of the Companies Act forbids one company to register with the same name as another registered company.

If the service of the summons to add the word Limited were set aside what would defendant's next step be? Obviously to resist the application to add the word "limited" to their name on the ground that the proceedings and judgment were in the wrong name and therefore irregular. But there has already been one application to set aside the judgment (supra) and as I say it it was dismissed.

It cannot possibly cause the slightest injustice to the judgment debtor to add the word "limited" to its name. It is also ordered that the defendants address in the title be amended to read "registered office at Cromptons, Solicitors, Prouds Building, The Triangle, 66, Renwick Road, Suva."

In any event an error in the name which requires only to a simple amendment to the title is not in my view an irregularity and the error can be cured by the Court even after judgment. That view is supported by the judgment of Denning L.J. in Pearlman v Bartels 1954 (3)A.E.R. 659 at 660. In that case the defendant was sued as Bernhard Bartels and judgment given to the plaintiff for damages. After judgment the plaintiffs were given leave to alter the writ and all subsequent proceedings to show defendant as "Josef Bartels trading as Bernhard Bartels." Denning L.J. said at (F)

> "When the substantive judgment is not being altered, but only the title of the action it is to my mind quite plain that this Court has ample jurisdiction to correct any misnomer or midescription at any time whether BEFORE OR AFTER JUDGMENT."

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In a subsequent case Whittam v W. J. Daniel & Company Limited 1961 3A.E.R. 796 the plaintiff omitted the word "Limited" from the defendant's name. Leave to amend the writ was granted to allow "Limited" to be added.

The defendant argued that there was no firm called W. J. Daniel & Company and that no one had been sued; that without the word "Limited" the defendant was not a legal entity; he submitted that the omission was fatal. Donovan L. J. in his judgment at p.799 quoted from that of Devlin L. J. in Davies v. Elsby Bros. Limited:-

> "The test must be. How would a reasonable person receiving the document take it. If, ... he would say "It must mean me but they have got my name wrong" then there is a case of mere misnomer. - ....
> One of the factors which must operate on the mind of the recipient of a document ....is whether there is or is not another entity to whom the description on the writ might refer."

Donovan L.J. remarked that acting on that principle there could have been no doubt in the mind of the defendants when they got the writ that it was they whom the plaintiff intended to sue and that she had simply got the name wrong.

In the same judgment the learned Lord Justice quoted Lord Devlin in Davies v Elsby Bros. Limited (1960. 3.AER. at 675) where he rejected the contention that omission of the word "Limited" would prevent the Company from being identified as an entity at all.

The Court of Appeal ordered that the defendant's name be corrected by adding the word Limited.

In my view the position is clearly expressed in the above judgments.

It is obvious in every conceivable way that there has been no miscarriage of justice by omission of the word Limited from the defendant's name.

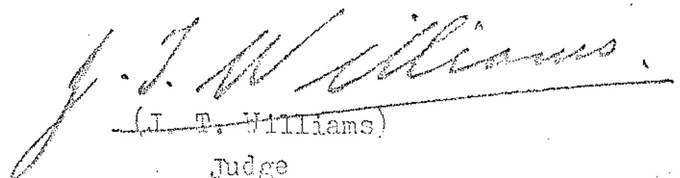
The order of the Court correcting the defendant's name will not be set aside as no useful purpose can possibly be achieved thereby.

The defendant's application is dismissed.

The defendant will pay the costs.

The writ and all subsequent proceedings should bear the defendant's correct registered address as well as the word Limited.

The defendant will pay the costs hereof which I fix at $35.00.



LAUTOKA,
25th June, 1982

(J. T. Williams)
Judge