

BETWEEN: Tanmalum Tavulae
Claimant

AND: John Tamata Tavulae and Family
Defendant

Before: Justice Oliver A. Saksak
Counsel: Mr Jim Vohor for the Claimant
Mr Steven Garae for the Defendants
Date of Conference: 19th July 2024

DECISION

1. An application to strike out claim was filed by the defendant on 17th July 2024 on grounds that there is no cause of action established in the pleadings, hence no case to be proceeded within this Court.
2. Mr Vohor indicated he had been served and had instructions to seek leave to amend the claim.
3. Mr Garae objected to an oral request for leave but preferred a formal application so he could have an opportunity to respond properly to it.
4. I accepted Mr Garae's objection. I was not inclined to grant leave to amend the claim where there is no cause of action established in the first place as there was really nothing to amend. The best course is to withdraw or discontinue the proceeding.
5. It appeared that is not what the claimant wants as he filed a notice to cross-examine defence witnesses on 16th July.
6. The position as to representative is not clear. Mr Tevi not filed any notice to cease to act and yet at the Court's enquiry Mr Vohor indicated he was now acting for the claimant. But Mr Vohor has not filed any notice of beginning to act. I understood he only appeared holding papers for Mr Tevi.
7. In any event, the strike out application was properly made and it should be allowed in the circumstances.
8. Accordingly, it is allowed. This proceeding is now struck out.
9. Mr Garae made a request for general costs of VT 50,000 which was agreed or accepted by Mr Vohor. The claimant shall pay VT 50,000 as costs of the proceeding to the defendant through the Public Solicitor's Office within 21 days from the date of this Order (by 7th August 2024).

DATED at Luganville this 19th day of July 2024

BY THE COURT

Hon. OLIVER A SAKSAK
Judge

