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**RULING**  
**(Application to Strike Out Plaintiff's Claim**  
**Against 4<sup>th</sup> Defendant)**

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**1.0 Introduction**

1.1 On 23 March 2017, 4th Defendant (hereinafter referred to as **“the Applicant”**) filed Application by way of Notice of Motion dated 23 March 2017 to strike out Plaintiff's claim against it on the grounds that:-

“(a) it discloses no reasonable cause of action; or

(b) it is scandalous; frivolous or vexatious; or

(c) it is otherwise abuse of the process of the court.” (**“the Application”**)

1.2 On 18 May 2017, being returnable date of the Application parties were directed to file Affidavits and Submissions and the Application was adjourned to 18 July 2017 at 2.30pm, for hearing.

1.3 On 18 July 2017, parties were granted further time to file and serve Submissions and the Application was adjourned to 12 September 2017, for hearing.

1.4 The Application was next called on 28 September 2017, when Counsel for the Applicant and Respondent informed the Court that they rely on Submissions filed and such the Application was adjourned for Ruling on none.

**2.0 Application to Strike Out**

2.1 It is well established that jurisdiction to strike out claim or pleadings should be used very sparingly and only in exceptional case **Timber Resource Management Limited v. Minister for Information and Others** [2001] FJHC 219; HBC 212/2000 (25 July 2001).

2.2 In **National MBF Finance (Fiji) Ltd v. Buli** Civil Appeal No. 57 of 1998 (6 July 2000) the Court stated as follows:-

*“The Law with regard to striking out pleadings is not in dispute. Apart*

*from truly exceptional cases the approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be proved. 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 on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention. it follows that an application of this kind must be determined on the pleadings as they appear before the Court....”*

### **No Reasonable Cause of Action**

- 2.3 In **Razak v. Fiji Sugar Corporation Ltd** [2005] FJHC 720; HBC 208. 1998L (23 February 2005) his Lordship Justice Gates (current Chief Justice) stated as follows:-

*“A reasonable cause of action means a cause of action with “some chance of success” per Lord Pearson in **Drummond-Jackson v. British Medical Association** [1970] 1 All ER 1094 at p.1101f. The power to strike out is a summary power “which should be exercised only in plain and obvious cases”, where the cause of action was “plainly unsustainable”; Drummond-Jackson at p.110b; **A-G of the Duchy of Lancaster v. London and NW Railway Company** [1892] 3 Ch. 274 at p.277.*

- 2.4 On 11 August 2016, Respondent filed Writ of Summons with Statement of Claim.
- 2.5 On 20 September 2016, Applicant filed Statement of Defence.
- 2.6 Applicant submits that no cause of action is pleaded against the Applicant and Applicant’s name only appear at paragraph 15 of the Statement of Claim which reads as follows:-

***That no communication was forthcoming from the 1<sup>st</sup> Defendant by way of reply and on January of 2013 the Plaintiffs were suddenly told that the leases had been re-entered due to Rental arrears and that approval notices had been issued in the name of the 4<sup>th</sup> Defendant, Satish Motormart Limited.***

- 2.7 It is Respondents claim that 1<sup>st</sup> Defendant leased subject property comprised in Lease Nos. 3300 and 3301 to Applicant after it re-entered the subject property.
- 2.8 Respondents also submit that the improvement on the property belongs to them even after 1<sup>st</sup> Defendant re - entered the subject property.

- 2.9 In this instance, the 1<sup>st</sup> Defendant leased the subject property to the Applicant with improvements thereon which lease was taken by the Applicant.
- 2.10 It is apparent from the Statement of Claim, that apart from Applicant's name being mentioned at paragraph 15 of the Statement of Claim no cause of action is pleaded against the Applicant with particulars.
- 2.11 No reasonable cause of action is pleaded or ascertainable against the Applicant the 4<sup>th</sup> Defendant.
- 2.12 Even though the Plaintiffs action can be dismissed on ground that there is no reasonable cause of action this Court will deal with other grounds as well.

### **Frivolous or Vexatious**

- 2.13 At paragraph 18/19/15 of Supreme Court Practice 1993, Vol 1 (White Book) it is stated:-

*“By these words are meant cases which are obviously frivolous or vexatious or obviously unsustainable per Lindley LJ in **Attorney General of Duchy of Lancaster v. L. & N.W.Ry** [1892] 3 Ch. 274;.... The Pleading must be “so clearly frivolous that to put it forward would be an abuse of the Court” (per **Juene P. in Young v. Halloway** [1895] P 87, p.90; ....”*

- 2.14 The Oxford Advanced Learners Dictionary of Current English 7<sup>th</sup> Edition defines “frivolous” and “vexatious” as:-

*frivolous: “having no useful or serious purpose”*

*vexatious: “upsetting” or “annoying”*

- 2.15 Since, no allegation is made against the Applicant in the Statement of Claim with particular it is obvious that Respondents claim against Applicant is unsustainable, having no useful or serious purpose and is just to upset or annoy the Applicant.

### **Abuse of Process**

- 2.16 It is well settled that this Court has inherent jurisdiction to strike out the claim or pleadings for abuse of Court process as well as under Order 18 Rule 18(1)(d) of High Court Rules (paragraph 18/19/18 of Supreme Court Practice 1993 Vol. 1).
- 2.17 At paragraphs 18/19/17 and 18/19/18 of Supreme Court Practice 1993 (White Book) Vol. 1 it is stated as follows:-

**“Abuse of Process of the Court”** - Para. (1)(d) confers upon the Court in express terms powers which the Court has hitherto exercised under inherent jurisdiction where there appeared to be “an abuse of the process of the Court.” This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation (see **Castro v. Murray** (1875) 10 P.59, per Bowen L.J. p.63). See also “Inherent jurisdiction”, para.18/19/18.”

**“Inherent Jurisdiction** - Apart from all rules and Orders and notwithstanding the addition of para.(1)(d) the Court has an inherent jurisdiction to stay all proceedings before it which are obviously frivolous or vexatious or an abuse of its process (see **Reichel v. Magrath** (1889) 14 App.Cas.665) (para 18/19/18).”

2.18 It is undisputed that:-

- (i) On 22 January 2014, Applicant filed eviction proceedings against the 2<sup>nd</sup> Plaintiffs as Defendants in regards to the subject property in Civil Action No. 18 of 2014.
- (ii) On 13 June 2014, the then Master of the Court delivered Judgement ordering 2<sup>nd</sup> Plaintiffs who were Defendants in that Action to deliver vacant possession.
- (iii) Firstnamed 2<sup>nd</sup> Plaintiff appealed Master’s decision.
- (iv) On 13 August 2015, Plaintiff and Firstnamed 2<sup>nd</sup> Plaintiff entered into a Deed of Settlement in respect to the Appeal of Master’s decision.
- (v) Term of condition of Deed of Settlement is as follows:-

“2 FULL AND FINAL STATEMENT OF CLAIM.

The parties to this Deed have agreed to settle this action by way of this Deed of Settlement as follows:

- a.) The Appellant/ Defendant shall unconditionally withdraw his Appeal and the Parties agree that upon the said withdrawal the MASTER’S Decision delivered on 13<sup>th</sup> June, 2014 is deemed to be upheld in the effect.
- b.) The Appellant/ Defendant shall pay costs in the sum of \$1500.00 (the Amount) inclusive of the costs awarded in the Master’s Decision to the Plaintiff’s Solicitors Messrs Reddy &

Nandan Lawyers within 7 days of the signing of this Agreement.

- c.) The Respondent/Plaintiff shall allow the Appellant / Defendant to occupy the property comprised in the Crown Lease No. 19232 for 3 months from the date hereof.
- d.) The Appellant/ Defendant shall make all reasonable endeavours to give vacant possession of the Premises to the Respondent/ Plaintiff within 2 months from the date hereof but he is unable to then clause (c) herein above applies.
- e.) During the occupancy of the Appellant/ Defendant, the Respondent/ Plaintiff and/ or its agents shall not interfere with the peaceful enjoyment of the environment of the Defendant's occupation on Crown Lease No. 19232 but this clause does not restrict the Respondent/ Plaintiff to carry out works on the adjoining Lots of the Respondent.
- f.) The Appellant/ Defendant shall pay rent to the Respondent/ Plaintiff at the rate of \$1440.00 per month on the 15<sup>th</sup> of every month during their occupation of the premises.
- g.) After expiration of 3 months, the Respondent/ Plaintiff has liberty to proceed with the execution of the Master's Orders made on the 13<sup>th</sup> June, 2014 in the event the Appellant/ Defendant fails to vacate the premises as agreed."

2.19 Secondnamed 2<sup>nd</sup> Plaintiff did not appeal the then Master's decision in Civil Action No. 18 of 2014.

2.20 The Respondents (2<sup>nd</sup> Plaintiffs) having accepted Master's decision by not appealing the decision and by entering into Deed of Settlement acknowledged that, Applicant is the lessee of the subject property.

2.21 As stated earlier no allegation is made against the Applicant for any wrongdoing on its part in obtaining the Lease over the subject property and as such joining it as a Defendant is abuse of court process.

### **3.0 Conclusion**

3.1 I hold that the Statement of Claim discloses no reasonable cause of action, is frivolous and vexatious and abuse of court process as against the Applicant (4<sup>th</sup> Defendant)

3.2 Accordingly I make following Orders:-

- (i) Plaintiffs claim against the 4<sup>th</sup> Defendant is struck out;
- (ii) Plaintiffs do jointly and severally pay 4<sup>th</sup> Defendant costs assessed in the sum \$1000.00 within fourteen (14) days from date of this Ruling



A handwritten signature in blue ink, appearing to be "Kamal Kumar". The signature is fluid and cursive, with a large initial "K" and a long horizontal stroke at the end.

Kamal Kumar  
**JUDGE**

At Suva  
21 February 2019

**Nawaikula Esquire** for Plaintiff/Respondent

**Office of the Attorney-General of Fiji** for the 1<sup>st</sup> Defendants

**Reddy & Nandan Lawyers** for the 4 Defendant/Applicant