

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 233 of 2009

BETWEEN : **MUHAMMED SHAMS-UD DEAN SAHU KHAN** of
Varadoli, Ba.

Plaintiff

AND : **MOHAMMED NASIR KHAN** of Sabeto, Lautoka,
Businessman.

Defendant

Appearances : Plaintiff In Person
Natasha Khan & Associates for the Defendant

R U L I N G

INTRODUCTION

1. The Writ of Summons and Statement of Claim in this case were filed by the plaintiff on 30 December 2009.
2. In the first ten paragraphs which are spread over five (5) entire pages, the plaintiff goes to great lengths to set out in detail all his accolades since 1964. This was the year he began practice as a Barrister and Solicitor in Fiji.
3. These include *inter alia* his term as Council member of the Fiji Law Society from 1966 to 1973 and from 1975 to 1979 and also his term as Vice President from 1980 to 1983 and as President from 1983 to 1987.
4. The plaintiff also sets out how he has been a member of LAWASIA from 1983 to 1987 and how in 2004, the Fiji Law Society awarded him a Certificate of Merit for his contribution to the legal profession in Fiji.
5. He also sets out how he was a founding member of the BA Rotary Club and how he was awarded **“the highest honour in Rotary Movement known as the Paul Harris Fellow in 1983”**.

6. The plaintiff then details his involvement in the Fiji Football Association since 1985, the Oceania Football Confederation and the Federationale Internationale Football Association (which bestowed upon him in 2004 the FIFA Centennial Order of Merit).
7. The then goes on to set out how he served as Advisor to the President of the Republic of Fiji and served on the President's Council under the 1992 Constitution of the Republic of Fiji from 1992 until the new Constitution of 1998 came into force.
8. In paragraphs 9 and 10, the plaintiff deposes as follows:
 9. THE Plaintiff has been held in high esteem in the Community in Fiji and in OFC and FIFA and in his profession.
 10. THE Plaintiff was honoured and awarded the Member of the Order of Fiji by His Excellency the President of the Republic of Fiji in January 2004 for his services to the Country.
9. Then from paragraphs 11 to 17 (pages 5 to 9) of his statement of claim, the plaintiff sets out the facts which form the basis of his claim. His claim stems from a letter dated 18 November 2009 which the defendant wrote to the Chief Registrar by which the defendant had complained about certain alleged untoward, unprofessional and unethical conduct on the part of the plaintiff as a legal practitioner.

SUMMONS TO STRIKE OUT

10. Before me is a Summons filed on 26 August 2011 by Natasha Khan & Associates for the defendants seeking the following Orders:
 - (i) that this Court decline jurisdiction to hear the Plaintiff's claim or alternatively
 - (ii) that the Plaintiff's claim be struck out as an abuse of process and/or as being without a reasonable cause of action and/or as being frivolous and vexatious.

11. The application is made under Order 18 Rule 18 of the High Court Rules 1988 and pursuant to an inherent jurisdiction which the defendant argues this Court possesses.
12. The application is supported by an affidavit sworn on 24 January 2011 of Mohammed Nasir Khan, the defendant.
13. Nasir Khan deposes at paragraphs 2 to 5 of his affidavit as follows:
 2. THAT the Plaintiff is suing me as is apparent from paragraph 11 of his statement of claim for a letter of complaint I wrote to the Chief Registrar of the High Court dated 18th day of November 2009 as alleged by him "concerning his profession and business as a Barrister & Solicitor"
 3. THAT I do verily believe that the Chief Registrar and Legal Commission have jurisdiction over my said complaint under the Legal Practitioners Decree 2009.
 4. THAT I therefore ask that the Honourable Court declines jurisdiction over such subject matter.
 5. THAT I also believe that the Plaintiff is trying to vex me by this proceeding that I may not continue with my said complaint to the Chief Registrar or alternatively to abuse of process by two tribunal consider whether my claim is true or not.

OPPOSITION TO STRIKING OUT APPLICATION

14. The plaintiff opposes the application by an affidavit he swore on 24 February 2011. He admits that he is suing the defendant because of a complaint that the defendant had lodged with the Chief Registrar.
15. In response to paragraph 3 (see above) of Nasir Khan's affidavit, the plaintiff deposes as follows at paragraph 4 of his own affidavit:
 4. THAT ... the Chief Registrar and the Independent Legal Services Commission have certain functions and powers to investigate and deal with complaints against Legal Practitioners under the Legal Practitioners Decree 2009 and I say as follows:
 - (i) No one has the right or privilege to make false and/or defamatory allegations against any legal practitioner under the pretext of making complaints against a Legal Practitioner under the Legal Practitioners Decree 2009.
 5. THAT as to paragraph 4 of the said affidavit I say as follows:
 - (i) The Legal Practitioners Decree 2009 does not oust the jurisdiction of the Court regarding any claims against anyone in respect of any false and/or defamatory allegations that may be made against a Legal Practitioner to the Chief Registrar.

- (ii) I verily believe that the Independent Legal Services Commission has no jurisdiction as such to deal with defamatory and/or false allegations made against a legal practitioner and/or to award damages for such allegations made.
- (iii) Accordingly the jurisdiction of the Chief Registrar and/or the Legal Services Commission deal with limited specified matters only where as this Honourable Court has unlimited jurisdiction to deal with matters particularly regarding claims for damages unless such jurisdiction is expressly excluded by legislation.

16. At paragraph 6 of his affidavit, the plaintiff deposes that he believes that the defendant has brought this application to delay the fair hearing of this action on merits and that the application is frivolous and vexatious. He adds that the defendant has been dilatory in filing documents and in not complying with Court Orders.

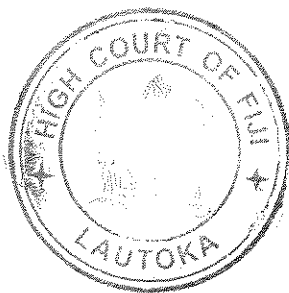
COMMENTS

- 17. I agree with the submissions of Ms Khan.
- 18. The very nature of the plaintiff's response to the defendant's affidavit (see paragraph 15 above) suggests that he is using the Court's process not in good faith, but as a means to derail the defendant's complaint with the Chief Registrar.
- 19. I am of the view that a legal practitioner who files a civil suit against a client or former client who has lodged with the Chief Registrar a complaint of professional misconduct or any other conduct of the sort, abuses the process of this Court.
- 20. If entertained by this Court, such claims would only arm the legal practitioner with muscle to intimidate a complainant and to frustrate and thwart the processes under the Legal Practitioner's Decree.

21. Indeed, it would emasculate the policy behind the **Legal Practitioners Decree 2009** in the sense that the threat of a suit will only impede clients from reporting misconduct on the part of a legal practitioner.
22. However, while I would not go so far as to adopt a bright line rule to immune from civil suit any member of the public who has lodged a complaint to the Chief Registrar for an alleged professional misconduct against a lawyer - I would say nonetheless that any civil suit for defamation against a complainant is, *prima facie*, an abuse of this Court's process, if instituted whilst the Chief Registrar is considering, or investigating or prosecuting the complaint. I say this because such a suit filed in this Court would be grounded on the basic theory that the facts alleged in the related complaint to the Chief Registrar - are false. To assert so in this Court, whilst the Chief Registrar is considering or investigating or prosecuting, the very issue is an abuse of the process of this Court and is vexatitious.

CONCLUSION

23. The plaintiff's claim is struck out with costs to the defendant which I summarily assess at \$1,500 (one thousand five hundred dollars only).



Anare Tuilevuka
JUDGE

16 March 2018.