

In the High Court of Fiji at Suva
Civil Jurisdiction
Civil Action HBC No. 228 of 2013
Between
Sekaia Suluka and Tevita Ralulu
on behalf of themselves and all other persons who are retired Police officers
Plaintiffs
And
Fiji Police Group Welfare Scheme
First defendant
And
Chairman of Fiji Police Group Welfare Scheme
Second defendant
And
Fiji Police Group Welfare Scheme Secretary
Third defendant
And
Commissioner of Police
Fourth defendant

COUNSEL: Mr K.Maisoma for the plaintiffs
Ms S. Pranjivan with Ms S.Taukei for the defendants
Date of hearing : 14th March,2017
Date of Ruling : 15th March,2017

Ruling

1. The writ issued against the Fiji Police Group Welfare Scheme, its Chairman and Secretary and the Commissioner of Police, describes the plaintiffs as “*Sekaia Suluka and Tevita Ralulu on behalf of themselves and all other persons who are Retired Police officers*”.
2. The statement of claim states that the plaintiffs were retired “*Regular Force and Special Constabulary within the Fiji Police Forces who worked in the Fiji Police Forces for several years or so*” and held different ranks. The Fiji Police Welfare Scheme was established for the purpose of a compulsory in house scheme for the benefit of the Regular Force and Special Constabulary Police Forces.

3. At the commencement of the trial, Ms Pranjivan , counsel for the defendants objected to the writ on two grounds. Firstly, that the statement of claim is devoid of the identity and interests of the retired police officers which the plaintiffs purport to represent. Secondly, damages for breach of contract are claimed on behalf of unknown persons whose contracts are not pleaded. As a result, their claims cannot be assessed. Ms Pranjivan relied on Or 6, r3 and Or 15, r 14.
4. Mr Maisoma, counsel for the plaintiffs submitted in reply that the plaintiffs had a common interest within the meaning of Or 15, r 14. In his written submissions, Mr Maisoma states that the plaintiffs are representing “*the unnamed plaintiffs..known to the plaintiffs*” with their consent .

The determination

5. Or 6, r 3 provides:

Before a writ is issued it must be indorsed –
(a) where the plaintiff sues in a representative capacity,
with a statement of the capacity in which he sues ...
(emphasis added)

6. ***The Supreme Court Practice*** ,1988, Vol 1,(The White Book) at page 44, states this rule -

requires the representative capacity, if any, of the plaintiff and the defendant to be indorsed on the writ before it is issued. It is the indorsement on the writ and not the statement in the title which is mere description (Bowler –v- John Mowhem & Co. (1954) 1 WLR 1445.

Representative capacity – *The plaintiff ought to be invested with a representative capacity at the date of the issue of the writ in order to sue in a representative capacity. If, however, the plaintiff was not then invested with such capacity, but has since acquired it, an amendment may be allowed under O.20, r.5(4) to alter his capacity even after the expiry of any relevant period of limitation.*

7. The writ in the present case is not endorsed with a statement of the capacity in which the plaintiffs represents the other parties.

8. The plaintiffs, Sekaia Suluka and Tevita Ralulu claim “*judgment in the sum of \$8,000,000.00*”, “*General Damages for: Breached of contract/agreement Negligent Fraud Legitimate expectation;*” Exemplary damages; Punitive damages; costs on an indemnity basis and interest on behalf of themselves “*and all other persons who are Retired Police Officers*”.

9. But the parties the plaintiffs claim to represent are not before Court and their contracts are not pleaded, as quite correctly pointed out by Ms Pranjivan.

10. In *Market & Co. Ltd v Knight Steamship Co. Ltd*, (1910) 1 KB 1021 Fletcher Moulton L. J. in interpreting this rule said:

The proper domain of a representative action is where there are like rights against a common fund, or where a class of people have a community of interest in some subject-matter. Here there is nothing of the kind. The defendants have made separate contracts which may or may not be identical in form with different persons. And that is all. To my mind it is impossible to say that mere identity of form of a contract or similarity in the circumstances under which it has to be performed satisfies the language of r.9. It is entirely contrary to the spirit of our judicial procedure to allow one person to interfere with another man's contract where he has no common interest. And to hold that by any procedure a third person can create an estoppel in respect of a contract to which he is not a party merely because he is desirous of litigating his own rights under a contract similar in form but having no relation whatever to the subject-matter of the other contract, is in my opinion at variance with our whole system of procedure and is certainly not within the language of r. 9.(emphasis added)

11. The question arises as to how damages can be assessed in respect of each retired police officer, in the event the Court decides to award damages. The damages “*..have to be proved separately in the case of each Plaintiff. therefore, the possibility of representation ceases*”, as stated in *Costerfield Ltd v Denarau International Ltd & Another*,(HBC 214 of 2012).

12. Mr Maisoma submitted that the parties have a common interest as provided in Or 15, r 14.

13. Or 15, r 14 reads:

Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in Rule 15, the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.(emphasis added)

14. In my view, the phrase I have highlighted resonates the requirement in Or 6, r 3.

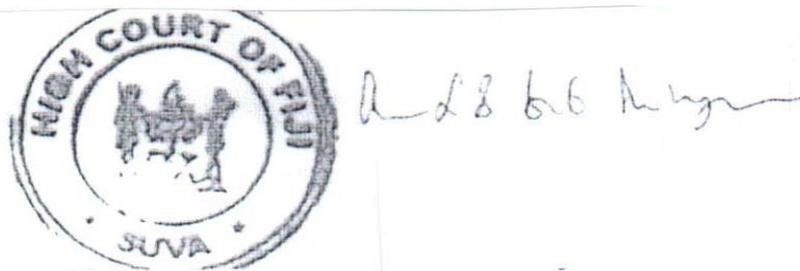
15. The plaintiffs have not made an application for amendment of the writ, although this matter is addressed in the written submissions filed on their behalf.

16. In my judgment, the present action cannot continue as a representative action. I hold that the action can proceed by the two named plaintiffs.

17. Orders

I make order as follows:

- (a) This action shall proceed to trial as an action instituted by the plaintiffs Sekaia Suluka and Tevita Ralulu.
- (b) Costs in the cause.



A.L.B.Brito-Mutunayagam
Judge
15th March, 2017