

IN THE EMPLOYMENT RELATIONS COURT AT SUVA
CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. HBC 298/2020

BETWEEN: **JOSUA NATAKURU**
APPLICANT/PLAINTIFF

AND: **SC 4321 PAULIASI BOSEIWAQA**
RESPONDENT/1ST DEFENDANT

AND: **CPL SALEN**
RESPONDENT/2ND DEFENDANT

AND: **COMMISSIONER OF POLICE**
RESPONDENT/3RD DEFENDANT

AND: **ATTORNEY GENERAL OF FIJI**
RESPONDENT/4TH DEFENDANT

Date of Hearing : 1 May 2024
For the Applicant : Not Present
For the Defendants: Mr Chauhan
Date of Decision : 22 May 2024
Before : Waqainabete-Levaci, S.L.T.T Puisne Judge

JUDGEMENT
(LEAVE TO FILE WRIT OF SUMMONS OUT OF TIME)

PART A: BACKGROUND

1. The Applicant/Plaintiff had filed their Claim together with a Summons seeking an extension of time to commence action against negligence for personal injuries sustained whilst awaiting his court case.
2. He claimed he was allowed to sit at the vacant table and chair in the administration area of the holding cell beside the Magistrates Court by the officer in charge.
3. It is alleged that the First Defendant directed the Applicant/Plaintiff back into the remand cell. Applicant/Plaintiff refused.
4. The allegations is that he was forcefully grabbed and pushed onto the floor by the Defendants and stomped and kicked on his ribs whilst lying on the floor by the first and second defendants.
5. As a result it is alleged that the Applicant/Plaintiff suffered pain and tenderness on his rib cage and his back, fractures on his ribs and was treated for his pains and fracture which was not earlier detected until an x-ray was conducted after High Court in Lautoka ordered for such.
6. He claims for damages both general and aggravated with interests for the injuries sustained.

PART B: AFFIDAVIT EVIDENCES

7. The Appellant relied upon his two Affidavits: one was in Support and the other a Supplementary Affidavit of his Application which he deposed that he had called and sort assistance from counsel on 19 June 2017 with continued discussions of the same until they informed him in 2017 and also 2 years consistently after that they could not represent him.
8. He deposed that he obtained assistance from another Counsel who agreed thereafter filed a personal injury claim for another matter on 13 February 2020.
9. He filed his claim by way of Writ of Summons on 14 February 2020 at the High Court Registry and Deputy Registrar refused to waive his fees. He received all documents on 24th

March 2020, a day before COVID 19 when court related movements from the West to the Central Division were restrained. His claim was later filed on 8 October 2020.

10. In reply, the Respondent/Defendants Affidavit denied the allegations or made no comments to each paragraph but for stating that the claim was time barred and should be struck out.

PART C: LAW AND ANALYSIS

11. The Applicant/Plaintiff seeks leave of the Court for extension of time to file their Writ of Summons claiming personal injuries against the Respondent/Defendants.
12. Section 4 of the Limitation Act stipulates the time limitation for a common law claim for personal injuries and time is calculated either from the date in which the injury occurred or from the date of constructive knowledge of the material facts relating to the cause of action.
13. Section 17 (3) of the Limitation Act prescribes the requirements to be fulfilled before the Court may exercise its discretion to grant Extension of Time to file a cause of action.
14. Hence if these requirements are not fulfilled, the Court has no jurisdiction to exercise its discretion as to whether leave is granted or not.
15. Section 17 (3) of the Limitation Act prescribes as follows-

‘(3) where such an application is made after the commencement of a relevant action, the court may grant leave in respect of any cause of action which the application relates to, but only if on evidence adduced by or on behalf of the plaintiff, it appears to the court that if the like evidence were adduced in that action, the evidence would in the absence of any evidence to the contrary, be sufficient-

(a) To establish that cause of action, apart from any defence under section 4(1); and

(b) To fulfill the requirements of section 16(3) in relation to that cause of action,

And it also appears to the court that until after the commencement of that action, it was outside the knowledge (actual or constructive) of the plaintiff that the matters constituting that cause of action had occurred on such a date as, apart from the last preceding section, to afford a defence under section 4(1).’

16. Section 16 (3) of the Limitations Act provides for the second requirement as follows-

“Extension of time limit for actions in respect of personal injuries

16.-(3) The requirements of this subsection shall be fulfilled in relation to a cause of action if it is proved that the material facts relating to that cause of action were

or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which-

(a) either was after the end of the three-year period relating to that cause of action or was not earlier than twelve months before the end of that period; and

(b) in either case, was a date not earlier than twelve months before the date on which the action was brought.”

17. Counsel for the Defendant had submitted written submissions and referred to the case of Surya Deo Sharma -v- Jovesa Sapolevu and AG (Court of Appeal, 1999) where Tikaram P, Ward and Tompkins, JJA, held that:

“In respect of section 17 (3) a court can grant leave only if the un-contradicted evidence establishes the cause of action relied on, and the requirements of section 16 (3) are fulfilled. The final ingredient of s. 17 (3) is not easy to understand. It means that the appellant must show that, when he commenced the action on 11 November 1994, it was outside his actual or constructive knowledge that the matters constituting the cause of action had occurred more than 3 years before the action was commenced. All of the three elements of section 17 (3) must be established.”

18. Section 19 and 20 of the Limitation Act defines the meaning of “material facts relating to a cause of action” as –

“**19.**In sections 16 and 18 any reference to material facts relating to a cause of action means a reference to any one or more of the following:-

(a) the fact that personal injuries resulted from the negligence, nuisance or breach of duty constituting that cause of action;

(b) the nature or extent of the personal injuries resulting from that negligence, nuisance or breach of duty;

(c) the fact that the personal injuries so resulting were attributable to that negligence, nuisance or breach of duty, or the extent to which any of those personal injuries were so attributable.

“Meaning of "facts of a decisive character"

20. For the purposes of sections 16 and 18, any of the material facts relating to a cause of action shall be taken, at any particular time, to have been facts of a decisive character if they were facts which a reasonable person, knowing those facts and having obtained appropriate advice within the meaning of section 22 with respect to

them, would have regarded at that time as determining, in relation to that cause of action, that, apart from any defence under subsection (1) of section 4, an action would have a reasonable prospect of succeeding and of resulting in the award of damages sufficient to justify the bringing of the action.”

19. Even if the Court finds the requirements are met, the Court will only exercise its discretion taking into consideration matters as follows (Surya Deo Sharma -v- Sabolevu (Supra):

“If the requirements are fulfilled the court ‘may’ grant leave, that is the court then has a discretion. In exercising that discretion the court will have regard to such matters as the cause or reason for delay, and whether, and if so to what extent, the defendant may have been prejudiced in his defence by the delay. Further the court can then consider whether, having regard to all the circumstances, it is just to grant leave”.

20. The facts before me is of a claim for personal injuries sustained from alleged assault against the Applicant/Plaintiff whilst in remand at the Magistrates Court Remand Cell. In his supplementary affidavit, the Applicant/Plaintiff has appended a medical report which explains the x-ray report pertaining to injuries on 12 October 2016. He alleges the incident occurred on 12 September 2016.
21. The Applicant contends he had no knowledge he could claim for damages as he had sort assistance from a private solicitor in 12 September 2017 together with his medical documents who later sent his documents to another colleague and only knew in 2019 that he could make a claim for personal injuries when he viewed a claim made for similar injuries sustained for another matter that was filed into High Court. This matter was later struck off for non-appearance of parties.

Submissions by Counsel for Defendant

22. The Defendant/Respondent, contends that the Applicant/Plaintiff knew of his medical condition on 12 October 2016 and should have filed within the time limitations under section 16 (3) of the Limitation Act. The current claim is now statute barred and should be struck off. The Defendant/Respondent also argued that there was insufficient evidence from the material facts to relating to the cause of action which was outside of the knowledge of the Plaintiff.
23. The Applicant/Plaintiff served his lawyers with his documents including the medical report which he admitted to having received injuries on his ribs, he should have known or ought to have known certainly the nature and extent of his injuries from when he receipt his medical

report on 12 October 2016 and up until his interaction with his counsel in 2017. He came to know in 2019 which fell within the 12 month period.

Deliberation and Determination

24. The claim was filed on 8 October 2020.
25. The Applicant/Plaintiff underwent medical examination and assessment and he knew the extent of his injuries and the nature of the injuries in October of 2016 within the three year period which expired on October 2019. He knew of this earlier than 12 months before the date of expiry.
26. His dilemma though was that he was unable to obtain proper legal advise of his prospects of succeeding in awarding of damages to justify bringing the action from 2017 until 2019 when he secured a counsel pro bono to assist him in a separate matter prior to the end of the 3 year period.
27. The court finds therefore that prior to the end of the 3 year limitation period, he had actual and constructive knowledge of a decisive character, after obtaining legal advise, that the action would have a prospect of success. He became aware on the last 12 months of the 3 year period.
28. The Court finds he has fulfilled a part of section 16 (3) of the Limitation Act.
29. For the purposes of the last requirement under section 17 (3) of the Limitation Act, the Applicant/Plaintiff knew that his injuries were sustained in October 2016 and knew that when he was lodging his application in 2020, it had occurred way past 3 years.
30. It is on this basis that the Court will refuse the application as the applicant has not fulfilled the requirements under section 17 (3) of the Limitation Act.
31. Despite the application being filed, the Applicant/Plaintiff has failed to attend court twice, including the hearing date and hence the Court will issue costs against him.

Orders of Court:

32. The Court orders as follows:

(a) That the Application for Leave is refused;

(b) That costs be awarded to the Defendant for the sum of \$300.



A handwritten signature in blue ink, consisting of a large, stylized 'S' followed by a horizontal line.

Ms Senileba L.T.T Waqainabete-Levaci

Puisne Judge