

IN THE SUPREME COURT OF NAURU

CIVIL ACTION NO. 17/98

BETWEEN : NIRMALA DEO SURANGI

PLAINTIFF

AND : KELLY D. EMIU

FIRST DEFENDANT

: ANGIE ITSIMAERA

SECOND DEFENDANT

: SECRETARY FOR JUSTICE

THIRD DEFENDANT

---

**DECISION OF DONNE, C.J.**

---

The Secretary for Justice having obtained ex parte leave under Order

10 Rule 5 to enter a conditional appearance pursuant to Order 10 Rule 6(1) of the Civil Procedure Rules 1972 has appeared to object to this action on three grounds to which I shall later refer.

A conditional appearance for which leave may be granted at any time, allows the party lodging it to be heard on matters relating to jurisdiction and procedure. It does not allow him to contest the merits. A conditional appearance is different from the appearance required to be filed and served on the plaintiff which introduces the defendant to the proceedings with the consequent rights as to statements of defence, discovery ,etc. It does not have the force and effect of an appearance unless and until the provisions of the subrule 2 of the Rule are satisfied. It is, however, a bar to the entry of judgment by default.

The Secretary for Justice challenges the legality of the proceedings on three points:

1. He claims the action is a claim in tort requiring the consent of the Cabinet under the Republic Proceedings Act 1972 before it can be instituted.
2. The first and second Defendants are improperly joined.
3. The Statement of Claim is oppressive, does not comply with the Rules of Court and cannot in its form be pleaded to.

**The Requirement of Cabinet's Consent.**

The action as far as it can be ascertained is for damages in respect of a breach of contract –wrongful dismissal.

The claim seeks specified damages for loss of earnings and for her daughter's education which she claims is specified in her employment contract. The Plaintiff claims general damages of \$150,000 for loss of reputation, \$100,000 damages for stress suffered and \$3,000 for monies borrowed by her for her daughter's travel. There is a claim also for \$800 per month for which no designation is assigned.

She can lawfully claim in her action for wrongful dismissal for loss of earnings for the remaining period of her contract and for her daughter's education fees provided for in the contract.

However claim for loss of reputation and mental stress cannot be the subject of a claim for general damages. Such claims are the proper subjects of actions in tort. Only if specified and defined pecuniary loss can be established may claims of these kinds be the subject of an action for breach

of contract. See Addis v Gramophone Co. 1909 A.C. 488; Foaminal Laboratories v British Artid Plastics (1941) 2 All E.R. 393 at pp. 399-400.

Non pecuniary loss by way of general damages for either loss of reputation or ill health cannot be the subject of claim for damages in an action for breach of contract. See Groom v Crocker (1939) 1 K.B. 194 (C.A.); Bailey v Bullock (1950) 2 All E.R. 1167; Withers v General Theatre Cooperation (1933) 2 K.B.536 (C.A.).

Such claims in contract would also be excluded on the principle of remoteness of damage as being matters which could not be considered as being in the contemplation of the parties when the contract of employment was entered into. This is the rule laid down in Hadley v Baxendale (1854) of Ex..341. This rule was restated very clearly in Victoria Laundry v Newman (1949) 2 K.B. 528 see pp. 539-540. The claim for borrowed money would also certainly be untenable on the basis of the said rule.

In summary, there is no question but that this Plaintiff, without Cabinet's consent, may sue in contract for wrongful dismissal. Her action, in law, cannot include the claims as framed for loss of reputation and for mental stress. Neither can a claim be made for payment of borrowed monies. The reasons for this are given above.

If the Plaintiff desires to claim for loss of reputation and for mental stress, she must do so in an action in tort in which case she is required to obtain the consent of Cabinet as provided in section 3 of the Republic Proceedings Act 1972.

**Joinder of Parties.**

It is trite law that while a master is responsible for the acts of his servant who acts in the course of their employment, a servant cannot be sued

in breach of a contract made between his employer and a claimant. There is no substance whatever in the contention by the Plaintiff that the First and Second Defendants, whom she admits in her pleadings are the employees of the Republic whom she claims wrongfully dismissed her in breach of her contract of employment, can be held answerable or liable for any alleged breach.

**The Statement of Claim.**

The Statement of Claim is the pleading in which the plaintiff formally pleads his/her cause. It must allege the cause of action and state the facts upon which the cause of action is based as well as claim the relief sought in respect of the wrong done by the defendant.

Order 15 Rule 7 fixes the scope of facts to be pleaded. Subrule (1)

reads:

“(1) Subject to the provisions of this Rule and Rules 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.”

The document to which the Defendants has claimed an inability to plead on the grounds that it is oppressive, is an extraordinary one and difficult to understand. It is presented as a Statement of Claim, but, as a pleading it contravenes the requirements of Rule 7(1) and it appears no attempt has been made to comply with the rule.

The Statement of Claim contains 78 paragraphs, the last six of which



detail the relief sought. These paragraphs state:

71. That the defendants owe moneys to the plaintiff for the wrongful termination of her contract before its completion.

72. that the plaintiff claims from the defendants the sum of AUD\$34,000.00 for the loss of earning for the wrongful dismissal of employment of the plaintiff.

73 and 74 are claims for damages for loss of reputation and stress

75 is a claim for money borrowed.

76 is a claim for the Plaintiff's daughter's educational fees.

77 is a claim without designation.

The only reference in the document of wrongful dismissal is contained in the clauses 71 and 72 set out above. They do not allege a cause of action. There is no express allegation of a cause of action based on wrongful

dismissal.

In an action of wrongful dismissal, the Statement of Claim should always give particulars of the employment agreement, its date, the names of the parties, whether it was written or oral and such details of it that are relevant, e.g. the terms as to notice, the particulars of the notice together with brief particulars in a summary form of the material facts on which the plaintiff relies for the claim. Paragraph 3 of the Claim refers to a signing of a contract. There is no plea of breach of a contract by wrongful dismissal.

The bulk of the Statement of Claim is, in essence, a brief of evidence with observations thereon. Apart from one paragraph in which a reference to a point of law is given, that of estoppel, the Statement gives no semblance of any other plea. It is grossly inadequate, certainly oppressive, impossible to plead to and I find it to be scandalous and vexatious. It is an abuse of the

process of Court. The objection to it is properly made and the application to strike it out is granted.

It should also be emphasised that irrespective of any objection being made by the opposing parties, no Court could or would allow the action to proceed on such an ineptly drawn Statement of Claim and would certainly on its own motion strike it out.

Having considered the above matters, I make the following orders:

- A. The following claims for damages are unsustainable in law and are dismissed from the action:
  - (a) The claim of \$150,000 for loss of reputation (para 73 of the Statement of Claim).

(b) The claim of \$100,000 for stress (para 74 of the Statement of Claim).

(c) The claim for \$3,500 for money borrowed (para 75 of the Statement of Claim).

(d) The claim for \$800 a month, being of no designation and therefore meaningless (para 77 of the Statement of Claim).


B. The First and Second Defendants are hereby dismissed from the action having been wrongly joined as parties.

C. 1. Pursuant to Order 15 Rule 19 of the Civil Procedure Rules 1972 I order the Statement of Claim filed in this suit to be struck out.

(C)(A)(D)W

2. The Plaintiff shall file a further and explicit Statement of Claim and serve the same on the defendant in accordance and in compliance with the said Rules.
  
3. The action shall be stayed until the Plaintiff complies with this order.


Costs are reserved.



**CHIEF JUSTICE**

A Certified True Copy  
of the Original:

11/3/99  
—



G. L. CHOPRA  
REGISTRAR, SUPREME COURT