

IN THE HIGH COURT OF FIJI

WESTERN DIVISION AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION No. HBC 249 OF 2016

BETWEEN : GANESH SAMI formerly of Legalega, Nadi, but residing in Sydney, Australia, Nurse.

FIRST PLAINTIFF

AND : SHIVNESH SAMI currently of Legalega, Nadi, Pundit.

SECOND PLAINTIFF

AND : I-TAUKEI LAND TRUST BOARD is a Statutory Board having its registered office at 431 Victoria Parade, Suva.

FIRST DEFENDANT

AND : RATU TAITO LOU NALUKUYA of Saunaka Village, Nadi, Landowner.

SECOND DEFENDANT

AND : SHIVANI NAIR of Legalega, Nadi, Domestic Duties.

THIRD DEFENDANT

Appearances : Mr M. Raratabu for the applicant
Non-appearance for the defendants
Date of Hearing : 3 November 2017
Date of Ruling : 3 November 2017

R U L I N G

[01] This is an *ex parte* notice of motion (*the application*) filed by the plaintiffs with a statement requesting leave to issue committal proceedings against the first and third defendants (*the defendants*) for contempt of court. Precisely, the application seeks leave of the court to issue committal proceedings against defendants for violating the court order dated 23 August 2017 and served on 21 September 2017 on the defendants. Affidavits of Apenisa Tuivuna, a clerk at Messrs Iqbal Khan & Associates (solicitors for the plaintiffs) has been filed in proof of the service on the defendants.

[02] The application is made pursuant to Order 52, rules 1 & 2 of the High Court Rules 1988 (*the HCR*). The relevant rules provide:

Committal for contempt of court (O.52, r.1)

1.-(1) *The power of the High Court to punish for contempt of court may be exercised by an order of the committal.*

(2) *This Order applies to contempt of court-*

(a) *committed in connection with-*

(i) *any proceedings before the Court, or*

(ii) *proceedings in an inferior Court;*

(b) *committed otherwise than in connection with any proceedings.*

(3) *An order of committal may be made by a single judge.*

(4) *Where by virtue of any enactment the High Court has power to punish or take steps for the punishment of any person charged with having done any thing in relation to a court, tribunal or person which would, if it had been done in relation to the High Court, have been a contempt of that Court, an order of committal may be made by a single judge.*

Application for order of committal (O.52, r.2)

2.-(1) No application for an order of committal against any person maybe made unless leave to make such an application has been granted in accordance with this rule.

(2) An application for such leave must be made ex parte to a judge in chambers, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for leave not later than the preceding day to the Registry and must at the same time lodge at the Registry copies of the statement and affidavit.

- [03] By its judgment dated 23 August 2017 among other things ordered that an injunction against the defendants restraining them from engaging in any sort of transaction in respect of Native Lease Agreement TLTB Ref No. 10/7841 and the first defendant to cancel any third party application for residential lease for Native Lease Agreement for Lease TLTB Ref No. 10/7841.
- [04] The plaintiffs allege that the defendant had disobeyed and violated the court order made on 23 August 2017 by changing the lot and reference number with the view to avoid compliance with the court order.
- [05] I have considered the application, the statement including the supplementary statement filed by the plaintiff and the submissions made by counsel for the plaintiffs and it appears to me that the defendants had violated the court order by demolishing the temple and building the fence around the property despite prohibition by the court order.

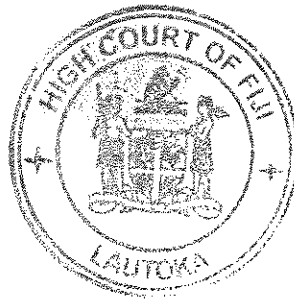
[06] I would, therefore, grant leave under O.52, r. 2 to the plaintiffs to issue committal proceedings against the defendants.

[07] The plaintiffs are to follow the High Court Rules applicable following the grant of leave for issuing committal proceedings against the defendants for contempt of court.

M.H. Mohamed Ajmeer
3/11/17

M.H. Mohamed Ajmeer

JUDGE



At Lautoka

3 November 2017

Solicitors:

For the applicants: M/s Iqbal Khan & Associates, Barristers & Solicitors