

IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 39 OF 2018

IN THE MATTER of **COMMITTAL PROCEEDINGS** under Order 52 of the High Court Rules 1988 against the second Defendant/the Respondent for Contempt of Court Orders.

BETWEEN : **PARADISE TRANSPORT LIMITED** a limited liability Company having its registered office at Nayawa, Sigatoka, Fiji.

PLAINTIFF/APPLICANT

AND : **LAND TRANSPORT AUTHORITY** a body corporate established under Section 6 of the Land Transport Act 1998.

1ST DEFENDANT

AND : **SUNSET EXPRESS LIMITED** a limited liability Company having its registered office at Multispares Building, 26 Sonoma Street, Walu Bay, Suva.

2ND DEFENDANT/RESPONDENT

Appearances : Mr R. Singh for the plaintiff/applicant
No appearance for second defendant/respondent

Date of Hearing : 6 July 2018

Date of Ruling : 6 July 2018

R U L I N G

[Leave to issue committal proceedings]

[01] This is an application for leave to issue committal proceedings.

[02] By its *ex parte* application filed yesterday (5 July 2018) in conjunction with an affidavit sworn by Rohit Vijay Singh, the director of the plaintiff (*'the application'*), the plaintiff/applicant (*'the applicant'*) seeks leave to issue committal proceedings against Sunset Express Limited, the second defendant/respondent (*'the respondent'*) for violating the injunctive orders made against them.

[03] The application is made pursuant to Order 52, Rules 1 & 2 of the High Court Rules 1988 ('HCR') and under the inherent jurisdiction of the court. 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 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 or her 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."

- [04] The background surrounding this application is as follows: on 3 May 2018, the applicant obtained an injunction against the respondent. The injunction in effect prohibited the respondent from operating a public service on RRL 12/10/107. The applicant alleges that the respondent continues to operate its omnibus at the time permitted by Road Route Licence 12/10/107 despite the court order. The applicant applies for leave to issue committal proceedings against the respondent to punish for contempt of court committed in respect of an order issued by this court.
- [05] An order of committal cannot be made unless leave to make such an application has been granted. The application for leave to issue committal proceedings may be made *ex parte* to a judge in Chambers (see O 52, R 2 (2)).
- [06] The applicant has filed an affidavit verifying the facts relied on. The application is supported by a statement setting out the name and description of the applicant, the description and address of the respondent, the person sought to be committed and the grounds upon which the committal is sought as required by the HCR, O 52, R 2 (2). The applicant has complied with the HCR, O 52, R 2.
- [07] Having satisfied that the applicant has complied with all the requirements envisaged in O 52, R 2 for an application for leave to issue committal proceedings, I would grant leave to the applicant to apply for an order of

committal of the respondent for disobeying the order of this court made against them on 3 May 2018.

[08] Since leave has been granted to apply for an order of committal, the application for the order must be made by motion and there must be 8 clear days between the service of the notice of motion and the day for the hearing (O 52, R 3 (1)). This leave will expire 14 days from today (6 July 2018) (O 52, R 3 (2)). The notice of motion, accompanied by a copy of the statement and affidavit in support of the application for leave must be served personally on the respondent (O 52, R 3 (3)).

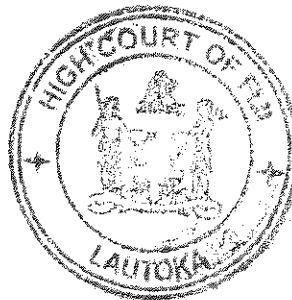
The Result

1. Leave to apply for an order of committal is granted.
2. This leave will expire after 14 days from today (6 July 2018).
3. The application for the order of committal must be made by motion giving 8 clear days between the service of the notice of motion and the hearing date.
4. The notice of motion with a copy of the statement and affidavit in support of the application for leave must be served personally on the respondent.

M.H. Mohamed Ajmeer
..... 6/7/18

M.H. Mohamed Ajmeer

JUDGE



At Lautoka

6 July 2018

Solicitors:

For the applicant: M/s Patel & Sharma, Barristers & Solicitors

For the respondent: No appearance