

**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.

**1<sup>ST</sup> DEFENDANT**

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

**2<sup>ND</sup> DEFENDANT/RESPONDENT**

**Appearances** : Mr R. Singh with Ms Vreetika for the applicant/plaintiff  
No appearance for the respondent/2<sup>nd</sup> defendant  
**Date of Hearing** : 07 August 2018  
**Date of Judgment** : 11 September 2018

**J U D G M E N T**

## Introduction

- [01] This is an application by the plaintiff/applicant (*the applicant*), with the leave of the court to issue committal proceedings, for the committal of Sunset Express Limited, the second defendant/respondent (*the respondent*) for an alleged contempt of the court order delivered against the respondent on 3 May 2018 (*the order*)
- [02] The application filed pursuant to Order 52 Rule 3 of the High Court Rules 1988 (*HCR*) seeks an order of committal against the respondent, a limited liability company having the registered office at Multispares Building, Sonoma Street, Walu Bay, Suva for its contempt of the orders of the High Court granted against the respondent on 3 May 2018. The relevant part of the order (*the order*) reads:
- “That a restraining order has been granted against the 2<sup>nd</sup> defendant (the respondent) from operating a public bus service on RRL12/10/107.”*
- [03] At the hearing, the respondent was not present to defend the allegation. The applicant relied and led affidavit evidence of Rohit Vijay Singh, the Director of the application sworn on 25 June 2018.

## The Background of the Original Claim

- [04] Briefly, the background facts can be as follows.
- [05] On 23 August 2017, the Land Transport Authority, the first defendant (*LTA*) issued a temporary permit to the respondent to operate its omnibus from Suva-Lautoka-Suva route. The temporary permit was to be valid for a period of 3 months from the date of issue, which expired on 23 November 2017. Despite the expiration to the temporary permit, the respondent continued to operate the bus-service. The applicant issued proceedings against the respondent for damages arising from the respondent’s operation based on the expired permit. At the same time, the applicant also sought an interim injunction against the respondent to restrain them from operating the bus-service as permitted by the expired permit. The *inter partes* injunction hearing was taken up for hearing 3 May 2018, when Ms Lidise of counsel appearing for the respondent did not seriously challenge the injunction application. Mr Kumar counsel for the LTA

confirmed that the temporary permit issued to the respondent had expired. Having heard the submissions advanced by the parties, the court granted an interim injunction against the respondent as mentioned in para 02, above.

[06] The applicant applies for the committal of the respondent alleging that the respondent had violated and continues to violate the injunctive orders.

### **The Legal Framework**

[07] It is provided in the HCR, Order 52, Rule 1, the High Court possesses the power to punish for contempt of court. That rule, so far as relevant, provides:

*"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) ...;*

*(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."*

### **Proceeding in the respondent's absence**

[08] The respondent did not appear in court to face the charges. Nor was it represented by counsel. It appears to me the respondent had opted not to challenge the contempt charges brought against them. If the respondent had appeared, they would have been entitled to give evidence pursuant to Order 52, Rule 5 of the HCR.

- [09] The application seeking committal of the respondent for disobeying the court order made in proceedings together with the statement and the affidavit in support was served on the respondent. It will also be noted that the respondent was present in court by its solicitors at the time when the court made the order in question.
- [10] The hearing was before me in open court.

### **Service of the Committal Application**

- [11] An application for an order of committal must be served personally on the person sought to be committed (*HCR, O 52, R 3 (3)*).
- [12] The respondent is a company-a body corporate. The order of the court and the application for leave to issue committal proceedings against the respondent had been served on the respondent personally at the office of Mamlakah Lawyers solicitors for the respondent at McGregor Road, Suva and also at the principal office of the respondent at Multispares Buildings, 26 Sonoma Street, Walu Bay, Suva.
- [13] There was no dispute over the service of the application to the respondent. I am satisfied that the service of the committal application was proper.

### **Procedural Requirements**

- [14] I have considered the procedural aspects of the committal application. The procedural requirements are laid down by the HCR, O 52.
- [15] A committal application against any person cannot be made unless leave to make such an application has been granted in accordance with HCR, O 52, R 2(1). The applicant has obtained leave to apply for an order of committal.
- [16] After the leave has been granted, the application for the order of committal has to be made by motion and, unless the Court granting leave has otherwise directed, there must be at least 8 clear days between the service of the notice of

motion and the day named therein for the hearing (HCR, O52, R3 (1)). The applicant in this case had complied with this requirement.

- [17] In this case, I am satisfied that all the procedural requirements as laid down in the HCR, O52, R2 & 3, have been fulfilled.

*Burden of proof*

- [18] Any allegation of contempt of court has to be proved beyond reasonable doubt (see *Fiji Times Ltd v Attorney General of Fiji* [2017] FJSC 13; CBV0005.2015 (21 April 2017) and *Finau V Civil Aviation Authority of Fiji* [2018] FJHC 500; HBC 117.2017 (12 June 2018)).

**The Evidence Relied Upon**

- [19] The applicant relies upon the affidavit of Rohit Vijay Singh sworn on 25 June 2018 and annexures attached thereto.

*The Summary of evidence relied upon by Applicant*

- [20] The summary of the affidavit evidence of the applicant deposes as follows: on 3 May 2018 this Court ordered among other things that the respondent shall be restrained from operating a public service on RRL 12/10/107. The order was made in the presence of solicitors for the LTA and for the respondent in open court. The orders were sealed and served on the respondent on 22 May 2018 (see annexure "A). The respondent was aware of the Court Orders, which restrained the respondent from operating an omnibus for a public service on and using Road Route Licence 12 /10/107. The applicant operates its omnibus on a legal and valid route- departing Suva Bus Station at 5.30 am and reaching Sigatoka Bus Station at 8.00 am, departing from Sigatoka Bus Station at 8.15 am and reaching Nadi Bus Station at 9.15 am, from the Nadi Bus Station the Plaintiff's omnibus reaches Lautoka Bus Station at 10.10 am and thereafter departing for Suva at 2.30 pm from the Lautoka Bus Station, stopping at Nadi and Sigatoka Bus Station. The respondent despite being restrained by the Court Order is still operating their omnibus for public service on and using Road Route Licence 12/10/107. The respondent and its servants operate an omnibus under the Road Route Licence

12/10/107 by leaving Suva Bus Station around 5.30/6.00 am, making its way to Lautoka by stopping at Sigatoka Bus Station and Nadi Bus Station and then getting to Lautoka. Thereafter the respondent takes its omnibus back to Suva by departing Lautoka Bus Station at 2.40 pm. These times at times vary by 10 to 15 minutes. The servants and agents of the respondent whilst operating their omnibus as aforesaid, pick up, take and load passengers along the way. The respondent has no valid Road Route Licence to operate their omnibus for public service along the times as complained of. I am advised by my solicitors to state that the LTA has conceded in court that the Road Route Licence 12/10/107 is not valid and the respondent does not hold a valid Road Route Licence to operate an omnibus for public service at the times the applicant has complained of. The respondent is acting in contempt of the Court Order made by this Court.

[21] It will be noted that the evidence of the applicant remains unchallenged.

### **The Submissions**

[22] Mr Singh of counsel for the applicant submits that there was an order of the High Court. The order of the court was clear and concise and informed the respondent what not to do. The respondent had knowledge of the order and despite having knowledge of the order, it nevertheless breached the same. The breach is wilful, deliberate and intentional non-compliance. The facts before the court clearly show that there has been actual breach of the order made and as such committal order should be made against the respondent.

### **The analysis and finding**

[23] It is alleged that the respondent had and has been violating an order issued by this court against the respondent on 3 May 2018, which basically restrained the respondent from operating omnibus for public service on the Road Route Licence 12/10/107 ('the Licence'). The licence had expired on 23 November 2017. The LTA confirmed this in open court through its counsel, Mr Kumar. The applicant complains that the respondent is still operating the omnibus service in violation of the court order.

- [24] A person who disobeys a court order obtained in civil proceedings is said to commit a civil contempt of court and is described a 'contemnor'. The person who obtained the order may apply to the court for the contemnor to be committed to the prison.
- [25] The HCR, O 52, empowers the court to punish for contempt of court committed in connection with any proceedings before the Court or proceedings in an inferior Court by an order of committal. An order of committal may be made by a single judge.
- [26] Punishment for a civil contempt of court is not in itself a remedy: it is a means of enforcing a remedy. A civil contempt is prosecuted as a matter between parties to proceedings and is punishable primarily in order to enforce with an order of the court, for the benefit of the party who obtained the order. Enforcing respect for court orders also serves the public interest of promoting respect for the rule of law, which is an essential element of our civil society (see *Re S (A Child) (Contact Dispute: Committal)* [2004] EWCA Civ 1790, [2005] 1 FLR 812).
- [27] Penalty imposed [for contempt of court] not only punish the contemnor but also to have a deterrent effect on the other members of the community and to enforce the principles that Orders made by the Court are complied with: *Merchant Finance & Investment Company Limited v Jale Osisaya Baba* [2006] HBC 225/05L.

*Service of order*

- [28] Enforcement of an order or judgment by committal must not take place unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question. However, an order requiring a person to abstain from doing an act may be enforced before service of the order if the court is satisfied that the person had notice of it by being present when it was made.
- [29] The respondent was present in court by its lawyer (Ms Lidise) on 3 May 2018 when the court made the order to abstain the respondent from operating omnibus service for public on the expired licence (RRL 12/10/107). Additionally, a copy of the order and a copy of the application for committal proceedings together with the applicant's statement were personally served on the respondent.

[30] It is provided in the HCR, O 52, R 3 (3), that 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 person sought to be committed. The applicant had complied with this rule.

[31] I am satisfied that the respondent had notice of the order in question before enforcement of the order by being present in court when the order was made and by personal service thereof.

*Penal notice*

[32] The penal notice on the copy of the order served on the respondent states that if you disobey this order you will be liable for process of execution for the purpose of compelling you to obey the same.

[33] It satisfies me that the respondent was well aware of the consequence of the disobedience.

*Mens Rea*

[34] *Mens rea (intention)* is not an element of contempt of court charges. The Supreme Court in *The Fiji Times Ltd v AG*, above said (at para [47]) that ... *In any event, it is well established that under the common law, mens rea is not an element of the offence of contempt of Court and that is the position in Fiji.*

[35] The resulting position of this would be that it is no defence to say that the respondent did not intend to disobey the court order.

*The defence*

[36] The respondent did not appear in court to answer the charge of contempt of the court order, albeit the charge and particulars were duly served on the respondent.

[37] The respondent had details of the alleged contempt and an opportunity to respond to the application and prepare a defence was afforded. However, the respondent by their own conduct had waived their right to defend and adduce evidence.



## **Conclusion**

[38] The respondent had sufficient notice of the order in question before enforcement. The respondent had failed to respond to the allegation even though they had details of the allegation. On the unchallenged evidence led before the court, I am satisfied that the applicant was able to prove the allegation of contempt of the court order beyond reasonable doubt. I am also satisfied that the respondent is in contempt of the court order and that they had wilfully violated/have been violating the court order made on 3 May 2018. I therefore find the respondent, Sunset Express Limited guilty of contempt of the court order as alleged.

## **Costs**

[39] The applicant was fully justified in bringing the application in the light of the disobedience of the court order by the respondent. The respondent continues to violate the court order. The applicant filed an application for leave to issue committal proceedings against the respondent. That application was supported by an affidavit. Thereafter, the notice of the application for committal with all the documents was served on the respondent at their usual place of business and at their registered office. The applicant made a number of applications in these proceedings through its solicitors. There was a full hearing on the application. The applicant had also filed submission. In all the circumstances, it would be appropriate, fair, just and reasonable to order costs against the respondent. The applicant submits that they have incurred a sum of \$12,500.00 in these proceedings. In my view, the application is entitled to claim such a sum. Accordingly, I order the respondent to pay a sum of \$12,500.00 as costs of these proceedings.

## **Penalty**

[40] I will now proceed to sentence the respondent for contempt of court order.

[41] The respondent did not attend the hearing. As such, there was no mitigation.

- [42] Contempt of court is punishable, either by imprisonment or fine. In this case, the contemnor is a company. The appropriate punishment in this instance is to impose a fine.
- [43] There has been a deliberate disobedience of the court order. The non-compliance with the court order continues. The respondent has shown no respect to the court order.
- [44] Enforcing respect for court orders also serves the public interest of promoting respect for the rule of law.
- [45] An act which contravenes a court order in civil proceedings may be both a civil contempt of court and a criminal offence.
- [46] Committal and sequestration punish non-compliance with an order. Sequestration is most commonly used where committal is not possible because the contemnor is a non-natural person, such as a company or a trade union.
- [47] The respondent has been found to be in contempt by failing to comply with an order made in proceedings, and the respondent has made no attempt to purge that contempt. The contempt continues. The penalty to be imposed for non-compliance with the court order must deter contemnors or persons from disobeying the court orders. It must also signify that the court and the community denounce any act which contravenes a court order. Any contempt of court order frustrates or impedes the due administration of justice. I take all into my account and I convict the respondent as charged and impose a fine of \$20,000.00 in default 3 months' imprisonment.

### **The Result**

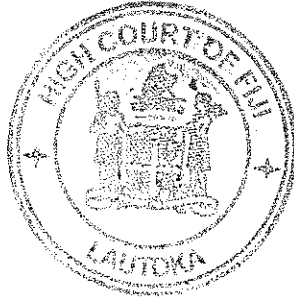
1. The respondent, Sunset Express Limited is found guilty of the allegation of contempt of the court order made against them on 3 May 2018 and convicted accordingly as charged.
2. The respondent shall pay a fine of \$20,000.00 in default 3 months' imprisonment.

3. The respondent shall also pay costs of \$12,500.00 to the applicant.

*M.H. Mohamed Ajmeer*  
*11/9/18*

.....  
M.H. Mohamed Ajmeer

JUDGE



At Lautoka

11 September 2018

Solicitors

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

For the 2<sup>nd</sup> defendant/respondent: no appearance