

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

Civil Action No. 008 of 2018

BETWEEN : **SUPERIOR ROOFINGS (FIJI) LIMITED** a limited liability
Company having its registered office at Lot 22 Mariners Reach,
Denarau Island, Fiji

PLAINTIFF

AND : **MACIU VAKACEGUILOMALOMA NAIVALU** ("Matt
Naivalu"), roofing contractor, Lot 7 Nasoso Road, Nadi, Fiji.

DEFENDANT

Hearing : **Friday, 17th May 2019**

Appearances : **Mr. D.J. O'Connor for the plaintiff**
: **Mr. Mosese Naivalu for the defendant**

Sentence : **Friday, 09th August 2019**

SENTENCE

(A) INTRODUCTION

In a ruling delivered on 31st January 2019, the defendant was found guilty of contempt of court. On 17th May 2019 the parties appeared before this court for a mitigation hearing. On the day of the hearing Counsel presented oral and written submissions.

(B) BACKGROUND

- (01) The background facts were set out in detail in the earlier ruling and since they are relevant to sentencing it is appropriate to summarise them in this decision.
- (02) The plaintiff is an incorporated company having its registered office at Lot 22 Mariners Reach, Denarau Island, Fiji and carries on business as a roofing company. The defendant is a roofing contractor. The defendant was employed by the plaintiff as a site foreman.

- (03) On 16th February 2017, the defendant signed an employment contract (“employment contract”) with the plaintiff. Under clause 5(a) of the employment contract, the defendant could not engage in any other paid employment other than his employment with the plaintiff.

Clause 5(b) of the employment contract imposed a six month restraint of trade on the defendant (“Restraint of trade”):

“Except as otherwise agreed, the Employee shall not, at any time during the term of the Contract and for six (6) months after termination or expiry thereof, engage in the active conduct of any business within Fiji that it in competition with the Employer; provided however, that nothing herein shall be construed as preventing the Employee from investing his assets in such manner as will not cause any conflict of interest with the Employer”.

Under clause 5(c) of the Employment Contract, the defendant had a duty not to recruit or seek to employ current employees of the plaintiff either during or for a period of 12 months after his employment ends.

During the term of this Contract and for twelve (12) months following its termination or expiry, the Employee shall not recruit or seek to employ current employees of Superior Roofing Fiji Limited on behalf of any other entity in which the Employee may have an interest or by which he/she may be employed.”

- (4) On 4th December 2017, the defendant provided written notice of his resignation.
- On 6th January 2018, the defendant’s employment with the plaintiff ended.
- (5) On 22nd January 2018 the High Court granted injunction orders restraining the defendant from:
- (a) engaging in the active conduct of any business within Fiji that is in competition with the plaintiff for a period of six months after the date his employment contract ended with the plaintiff; and
 - (b) recruiting or seeking to employ any of the plaintiff’s current employees on behalf of any other entity in which the plaintiff may have an interest or by which he may be employed for a period of twelve months following the date his employment contract ended with the plaintiff.

On 23rd January 2018, the injunction orders were served on the defendant.

On 27th March 2018, the High Court granted Anton Piller Order to seize the defendant’s laptop computer and mobile phone to preserve evidence in this proceeding.

On 28th March 2018, the High Court granted leave to commence committal proceedings against the defendant for contempt for breaching the injunction orders.

On 6th April 2018, Anton Piller Order was served on the defendant. The police seized the defendant's mobile and laptop. The defendant acknowledged service of the documents. He continued carrying out roofing work in breach of the court orders and continued to employ the plaintiff's employees.

On 23rd April 2018, the committal proceedings were served on the defendant. The defendant acknowledged service of the documents. He continued carrying out roofing work in breach of the court orders and continued to employ the plaintiff's employees. The defendant's counsel raised a procedural point that the notice of motion for committal was served out of time (not 8 clear days before the committal hearing). As a result, the plaintiff withdrew the notice of motion. The defendant continued carrying out roofing work in breach of the court orders and continued to employ the plaintiff's employees. Again, another ex-parte motion for leave to apply for an order of committal pursuant to Order 52, rule 2(1) of the High Court Rules was filed and granted on 23rd July 2018.

On 24th July 2018, the court sealed the order granting leave for new committal proceedings to be issued.

On 26th July 2018, the committal proceedings were served on the defendant. The defendant acknowledged service of the documents. (The documents were served within 8 clear days before the hearing on Monday, 6th August 2018).

On 6th August 2018, the court adjourned the matter for hearing on 2nd October 2018. The Court made directions that the defendant file affidavit in response within 21 days (by 27th August 2018) and the plaintiff file any affidavit in reply within 7 days thereafter (by 3rd September 2018).

The defendant has not filed any affidavit in response. His restraint of trade ended on 6th July 2018. He continued to employ the plaintiff's employees in breach of the Court orders which expired on 6th January 2019.

(06) In his affidavit in support of the motion, sworn on 8th July 2018, 'Rasakaia Nadumu Heritage Geier' states that;

1. *I was employed by Superior Roofing as a roofer for about 19 months. I resigned on 4 January 2018.*
2. *On 14 January 2018, Matt Naivalu ("Mat") employed me as a roofer. I worked for Matt as a roofer for about 7 months. I no longer work for Matt. I am currently employed by Vinod Industries as a roofer.*

Injunction Orders served on Matt Naivalu

3. *I am aware that injunction orders were served on Matt on 23 January 2018 and the Court Orders prohibited Matt from engaging in the active conduct of any business within Fiji that is in competition*

with Superior Roofing for six months after his employment contract ended with Superior Roofing.

4. *The injunction Orders also restrained Matt from recruiting or seeking to employ any of the Superior Roofing's employees on behalf of any other entity in which the plaintiff may have an interest or by which he may be employed for a period of twelve months following the date his employment contract ended with the plaintiff.*
5. *Matt's employment contract with Superior Roofing ended on 6 January 2018. His six month restraint ended on 6 July 2018.*

Breach of Injunction Orders

6. *Matt has completed the following roofing work in breach of the injunction Orders served on him.*
 - (a) *Roofing and flashings for the Animal Shelter at Legalega. This job started last year and is continuing. Matt was doing the work for himself in secret when he was employed by Superior Roofing and carried on doing the work after he resigned.*
 - (b) *Roofing project for Jack's main department store in downtown, Suva. He started this job in about March and finished about 3 weeks ago.*
 - (c) *Roofing work for the commercial building owned by Damodar City in Suva. He started this in about March 2018 (the same time as the job for Jack's main department store) and finished the job in March.*
 - (d) *Roofing and flashings for a residential house at Sleeping Giant Road in Sabeto. He completed this work in March 2018.*
 - (e) *Roofing and flashings for a residential house at Hides Ville Street in Namaka. He did this work for TM Construction. He started this job in April 2018 and finished the job in about three weeks.*
 - (f) *Roofing and flashings for a residential house at Gray Road in Martintar. He started and finished this job in February 2018.*
 - (g) *Flashings for a residential house at Lot 27, the Peninsula Denarau. The building contractor is Mont Blanc. The work was done in late February and March 2018.*

- (h) *Roofing work (gutter, flashings), for a residential house at The Links, Denarau. This house is owned by Paula. I do not know her surname. He did his work in March 2018.*
 - (i) *Roofing work for house owned by Regan Berryman in Naisoso Island.*
 - (j) *Roofing and flashings for Western Builders on the Motibhai Building at the Naisoso junction. He did the work in late May and in June 2018.*
 - (k) *Roofing and flashings for Jack's commercial building in Nadi town. This was done in June 2018.*
7. *I was working for Matt when all the above mentioned roofing jobs were done. I was involved in all the above mentioned roofing jobs. I was Matt's foreman. I communicated with his employees. He had 13 staff (all roofers). I arranged for the roofing materials to be ordered and delivered to site. I was in charge of the time sheets for all Matt's employees. I inspected the roofing work on site. Sometimes, Matt would be with me. Other times, Matt would send me to inspect the roofing work by myself.*
 8. *Matt has employed roofers, who were employed by Superior Roofing in breach of the injunction Orders. Three of Matt's employees were employed by Superior Roofing, as well as myself. The names of those employees are Tavite Bulakoso, Atunaisa Rakota and Iliesa ("Lee"). He told them to resign and to work for him.*
 9. *Matt also told me to resign from my job at Superior Roofing and to work for him and I did.*
 10. *Matt paid his staff in cash. He gave me brown envelopes with cash to give to his employees. Matt provided pay slips to his employees. I have annexed and marked "A" a copy of all my pay slips from Matt for the period 11th April 2018 to 11th July 2018.*
 11. *Matt has deduced monies from my wages for my FNPF, but has not paid my FNPF over the 7 months I worked for him. I asked him why did not pay my FNPF. He said that he cannot afford to pay FNPF.*
 12. *Annexed and marked "B" is copy of my FNPF Statement.*

Delailomaloma Construction

13. *Matt's uncle is Ratu Saurara Baleisua. He is in his late seventies. He retired decades ago.*

14. *Matt's uncle has a company named Delailomaloma Construction. His company was not active, had no tax certificate and no licence.*
15. *Matt arranged for his uncle's company to become active again and he arranged to renew the company's licence. I was present with Matt when he was doing this.*
16. *On 6 February 2018, the licence was renewed. The licence is annexed and marked "C".*
17. *On 5 February 2018, a tax compliance certificate was issued. The tax compliance certificate is annexed and marked "D".*
18. *Matt has been using his Uncle's company, Delailomaloma Construction to carry out roofing work in breach of the Court Orders. Matt signs all the cheques himself on behalf of his Uncle's company to pay staff wages for the roofing work and roofing materials. Matt completed all the design work for the roofing jobs which he has carried out in breach of the injunction Orders. Matt decided what roofing materials needed to be purchased. Matt communicated directly with all clients. Matt employed all the roofers including myself to carry out the roofing work. Matt supervised the roofing work and carried out roofing work on site. At all times, Matt was in charge of the roofing work done.*

(07) In his affidavit in support of the motion, sworn on 19th July 2018, 'Vishal Kumar' states that;

1. *I am a sales representative at Bluescope Lysaght ("Bluescope").*
2. *Bluescope is a roofing and profile company. Bluescope sells roofing materials and roofing tools.*
3. *I know Matt Naivalu. Matt ordered materials from Bluescope when he was working for Superior Roofing. He would come to the office and also communicate with me by email and telephone to order materials for Superior Roofing. He communicated with me on a weekly basis to order roofing materials for Superior Roofing.*
4. *When Matt was working for Superior Roofing he told me that he was planning to start his own roofing business.*
5. *On 12 March 2018, Matt asked me whether he could purchase roofing materials on account. I gave an account form to Matt and asked him to complete the form. He said that he needs to talk to his lawyer before he completes the form.*

6. *On 13, 16 and 20 March 2018, Matt came to Bluescope's office and ordered roofing iron, flashings and roofing screws. He paid for the roofing materials in cash. A copy of the sales orders are annexed and marked "A".*
7. *I knew Matt has resigned from Superior Roofing when he ordered the roofing materials from Bluescope on 13, 16 and 20 March 2018. I asked Matt where he was working. Matt said that he had his own construction business now. Matt was wearing a lime green hi viz tee shirt. I had not seen a lime green hi viz tee shirt as a uniform for a roofing company.*
8. *Bluescope arranged for Matt's roofing materials to be delivered to site in Martintar.*
9. *On 19 March 2018, Rasakaia Heritage came to the office to collect some roofing screws on behalf of Matt. He paid for the roofing screws in cash. He was wearing a lime green hi viz tee shirt. I said that tee shirt looks familiar. He laughed and said I am now working for Matt. He said other employees had left Superior Roofing and are now working for Matt.*
10. *Matt has also purchased guttering and flashing roofing materials on behalf of TM Construction.*
11. *Matt told me that he was getting another roofing job lined up at Denarau Mariner.*

- (08) It is clear from the affidavit of 'Vishal Kumar' that the defendant carried out roofing work which is in competition with the plaintiff's business after his employment contract ended with the plaintiff. It is also apparent from the affidavit of 'Rasakaia Nadumu Heritage Geier' that the defendant employed the plaintiff's employees to carry out roofing work after his employment contract ended with the plaintiff.

(C) DISCUSSION

- (01) The task for the court now is to determine how should its powers to punish the defendant for contempt of court under Order 52 of the High Court Rules be exercised?
- (02) In determining what penalty should be imposed on the defendant by the court there are a number of factors that are usually considered to be relevant. In Attorney-General for the State of New South Wales v Radio 2UE Sydney Pty Ltd and John Laws (unreported appeal decision of the New South Wales Supreme Court No:- 40236 of 1998, delivered on 11th March 1998; (1998) NSWSC 29) Powell JA indicated that it was appropriate to consider the objective seriousness of the contempt and the level of culpability (i.e, intentional conduct, reckless conduct, negligent conduct or conduct without any appreciation of consequences.)

- (03) Apart from seriousness and culpability, other factors that should be considered in the case are (i) any plea of guilty, (ii) any previous convictions for contempt, (iii) any demonstrations of remorse and (iv) character and personal circumstances.
- (04) The considerations of public policy underlying the contempt jurisdiction generally are the protection of the administration of justice and the maintenance of the courts authority. There lies at the heart of both civil and criminal contempt the need for society both to protect its citizen's rights and to maintain the rule of law¹.
- (05) Those who commit contempt must be denounced, and that deterrence is an important consideration. However, as with all sentencing exercises the objective seriousness of the relevant conduct and the defendant's personal culpability for the conduct must be assessed. In accordance with ordinary sentencing principles a defendant's means and any personal aggravating or mitigating factors will be taken into account².
- (06) For the purposes of punishment, various classes of contempt have been identified in the cases. They include technical, wilful and contumacious contempt. For technical contempt, the court will usually accept an apology from the contemnor. It may order that the contemnor pay the costs of the proceedings brought to uphold the authority of the courts of law. An illustration of a technical contempt may be found in 'Ainsworth v Hanrahan³'. That was a case where counsel, in the course of cross-examination of a party, without leave of the relevant court, used answers given by the party to interrogatories administered in other proceedings. No penalty was imposed.
- (07) A similar approach is sometimes taken to contempt which are more than technical and which, although wilful, are not found to have been deliberate. An illustration of this class of contempt may be found in 'Attorney-General for New South Wales v Dean⁴'. In that case a police officer participated in a police media conference and identified a suspect in a murder investigation in such a way as to interfere in the suspect's right to have a fair trial according to law. The court found an absence of a specific intent to interfere in the administration of justice. But this was neither an answer nor a defence to the charge. Nor was ignorance of the law of contempt an excuse. The court, nevertheless, contended itself with a declaration that the police officer had been guilty of contempt. It ordered him to pay the costs of the proceedings.
- (08) The most serious class of contempt, from the point of view of sanction, is contumacious contempt. Not every intentional disobedience involved a conscious defiance of the authority of the court which is the essence of this class of contempt⁵. This class of contempt is reserved to cases where the behaviour of the contemnor has been shown to be aimed at the integrity of the courts and designed to degrade the administration of justice, as distinguished from a simple interference with property

¹ Arlidge, Eady & Smith on Contempt, Fifth Edition, p.158

² Solicitor – General v Krieger (2014) NZHC 172, Solicitor-General v Alice (2007) 2 NZLR 783

³ (1991) 25 NSWLR 155

⁴ (1990) 20, NSWLR 650

⁵ Australian Consolidated Press Ltd v Morgan (1965) 112 CLR 483 at 500

rights manifested by a court order⁶. In cases where such a measure of wilfulness is established, the court may proceed to punish the convicted contemnor by the imposition of a custodial sentence or a fine or both.

- (09) The first issue to consider is the seriousness of the contempt. A number of features of the case before me emphasise its objective seriousness.

The defendant signed a written employment contract included a restraint of trade clause and a clause retraining him from recruiting or seeking to employ current employees of the plaintiff for a period of 12 months after his employment ended.

On 6th January 2018, the defendant's employment ended with the plaintiff. The defendant carried out roofing work immediately after his employment ended and employed a team of roofers to support his new roofing business. He employed the plaintiff's employees in breach of the injunction orders.

On 22 January 2018, the High Court granted injunction orders to stop the defendant from carrying out roofing work and to stop him from employing the plaintiff's employees.

On 23 January 2018, the injunction orders were served on the defendant. The defendant acknowledged service. He was legally represented. He continued to breach the Court orders.

On 6 April 2018, Anton Piller orders were served on the defendant. The police seized the defendant's mobile phone and laptop. He continued carrying out roofing work in breach of the Court orders and continued to employ the plaintiff's employees.

On 23 April 2018, the committal proceedings were served on the defendant. The defendant continued carrying out roofing work in breach of the Court orders and continued to employ the plaintiff's employees.

The undisputed evidence is that the defendant carried out eleven separate roofing jobs in breach of the injunction orders; (See, the affidavit of Rasdakaia Nadum Heritage Geir dated 18-07-2018)

- (a) Animal Shelter at Legalega.
- (b) Residential house at Gray Road in Martintar. He started and finished this job in February 2018. (One month after Court orders served).
- (b) Jack's main department store in downtown Suva. He started this job in March 2018. (Two months after Court orders served.)
- (c) Commercial building owned by Damodar City in Suva. He started this job in March 2018, the same time as the job for Jack's main department store and finished in March. (Two months after Court orders served.)

⁶ Root v MacDonald 157 NE684

- (d) Residential house at Sleeping Giant Road in Sabeto. He completed this work in March 2018. (Two months after Court orders served).
- (e) Residential house at Lot 27, the Peninsula Denarau. The building contractor is Mont Blanc. The work was done in late February and March 2018. (Two months after Court orders served).
- (f) Residential house at The Links, Denarau. He did this work in March 2018. (Two months after Court orders served.).
- (g) House owned by Regan Berryman, Naisoso Island.
- (h) Residential house at Hides Ville Street in Namaka. He did this work for TM Construction. He started this job in April 2018 and finished in three weeks. (More than three months after Court orders served).
- (i) Motibhai building at the Naisoso junction. He did this work for Western Builders in May and June 2018. (Five months after injunction orders served; three months after Anton Piller Orders served; two months after committal proceedings served).
- (j) Jack's commercial building in Nadi town. This was done in June 2018. (Five months after injunction orders served; three months after Anton Piller Orders served; two months after committal proceedings served).

On 13, 16 and 20 March 2018, the defendant purchased roofing iron, flashings and screws from Bluecope Lysaght. Bluecope Lysaght issued invoices for the roofing material directly to the defendant. (Nearly one month after injunction orders served).

On 23 April 2018, the defendant emailed his invoices for roofing work to Jacks of Fiji. (Two months after injunction orders served, more than two weeks after Anton Piller order served; same day when committal proceedings served).

On 7 May 2018, the defendant emailed his portfolio and references for "future tenders" to Jacks of Fiji. (Nearly four months after injunction orders served; six weeks after Anton Pillar orders served; nearly three weeks after committal proceedings served).

On 10 May 2018, the defendant emailed his invoices for roofing work to Jacks of Fiji (Nearly four months after injunction orders served; six weeks after Anton Pillar orders served; nearly three weeks after committal proceedings served.).

The undisputed evidence is that the defendant signed cheques to pay staff wages and for roofing materials; he completed the designs for the roofing work; he decided the roofing material to be purchased, he communicated with clients; he employed the roofers and had 13 staff (all roofers) and supervised the roofing work. He employed four roofers, who were employed by the plaintiff in breach of the Court orders. The defendant told them to resign from Superior Roofing and to work for him. He continued to breach the injunction orders for the entire restraint period.

- (10) **It is clear to me that, in the present case, the defendant breached the injunction orders by (A) deliberately carrying out roofing work for the entire six months (b) deliberately employing four of the plaintiff's employee roofers. He continued to breach the injunction orders after the orders were served on him and after Anton Pillar orders were served on him and after committal proceedings were served on him.**
- (11) It is also clear to me that, in choosing that approach alone, the defendant is deliberately and wilfully making a decision not to comply with the strict terms of the injunction orders made by the court. This is a very serious intentional, contumacious flouting of orders of the court and hindrance to the due administration of justice.
- (12) **In my view, the defendant's approach puts beyond any reasonable doubt the fact that the defendant's breach of injunction orders [after the Injunction Orders were served on him, after Anton Pillar Orders were served on him and after committal proceedings were served on him] is both deliberate defiant and willful and his decision to disregard the Orders of the Court must be seen as contumacious.**
- (13) It is this repetition of defiance and the continuing defiance such as the persistent disobedience of Court Orders in this case, the most serious feature of the present case. Such repeated and continuing refusal to comply with the Orders of the Court simply cannot be accepted in a community governed by the rule of law. It is important that Courts ensure that injunctions are meticulously observed and show no reluctance to punish those who willfully disobey. The fact that the injunction orders are merely interlocutory makes no difference. They are Orders of the Court and if the Orders of the Court are not observed according to the letter anarchy or chaos may ultimately prevail.
- (14) The defendant's insulting offending was for substantial financial gain. The undisputed evidence by Mr. Henderson is that the value of the roofing work for just two of the defendant's roofing jobs (Jacks of Fiji and the Motibhai Building for Western Builders) exceeded FJ\$ 380,000. (See the affidavit of Brennan Lee Hendesen dated 21-06-2018, Para 17 and 21). The plaintiff had suffered loss as a result of the defendant's business activities. I have no affidavit evidence explaining the conduct of the defendant. The defendant did not take steps purge the contempt to ensure no further breaches can occur. As I mentioned, the plaintiff has been injured by the contempt committed by doing acts forbidden by the injunction. The defendant did not make reparation to the plaintiff for the transgression of rights of the plaintiff. The defendant did not purge his contempt by making of reparation for the damage done by the forbidden act. The defendant has not rectified the position even after the bringing of committal proceedings.
- (15) The principles that are generally applied in sentencing proceedings require the Court to consider the issues of genuine remorse and any plea of guilty. An early plea of guilty is regarded as one of the indicators of genuine remorse. In the present case, at all times up to and including the day of the sentencing hearing the defendant has maintained his plea of not guilty. As a result, the defendant cannot claim any credit from the Court on that basis. That leaves the question of remorse. In a case where there has been a plea of not guilty it is difficult to entertain the notion of genuine

remorse as a mitigating factor. To put it bluntly, a plea of not guilty is usually inconsistent with remorse and contrition.

- (16) One obvious mitigating factor that counts in favour of the defendant is the fact that there are no previous convictions for contempt. In written submissions filed on behalf of the defendant, it is stated that the defendant has no prior criminal conviction of any kind. It can fairly be stated that the defendant has a good character. Whether the contemnor is a first time offender and the general desire to keep offenders, and especially first-time offenders, out of prison⁷. This consideration, though relevant, is of much less weight and pales in the case of contumacious contemnor.
- (17) I have no affidavit evidence concerning the defendant's personal circumstances. There is no affidavit material filed on behalf of the defendant in support of mitigation.
- (18) The plaintiff urged Court to impose a substantial fine and a custodial sentence on the defendant. The defendant urged Court to impose a non-custodial sentence and a fine.
- (19) In the written submissions filed on behalf of the plaintiff, the relevant case law on sentencing in both this jurisdiction and in overseas jurisdictions is discussed in some detail. The written submissions filed on behalf of the defendant also discussed at length the case law in Fiji on sentencing for contempt scandalizing the Court.
- (20) Since these proceedings were commenced under Order 52 of the High Court Rules it is appropriate to consider any guidance as to penalty that might be provided by Order 52. It is abundantly clear that under Order 52 a person found guilty of contempt scandalizing the Court is liable to be convicted and sentenced to a term of imprisonment⁸.
- (21) This is a case where the contempt is sufficiently serious to warrant the imposition of a custodial sentence for 1 year because the Court has found;
 - (A) There was a serious deliberate and contumacious flouting of Orders of the Court.
 - (B) There was a continuing breach and the defendant has not rectified the position even after bringing the committal proceedings.
 - (C) The defendant did not take steps to purge his contempt.
 - (D) The defendant's offending was for substantial financial gain. The violation of the injunction arising from the performance by one or more of the defendant's acts forbidden by the Court is injurious to the rights of plaintiff and there is no reparation for the damage done by the forbidden act.

⁷ Templeton Insurance v Thomas (2013) EWCA Civ35 at 27, R V Kefford (2002) Cr. App. R (S) 106 and R v Seed and Stark (2007), 2 Cr. App. R (S) 69

⁸ Paramanondam v A.G (1972) 18 FLR 90 at p.99

- (22) As a result, I unhesitatingly sentence the defendant to a term of 12 months imprisonment. The power of Courts to punish for contempt is a necessary and integral part of the independence of the judiciary, and is absolutely essential to the performance of the duties imposed on them by law. Without it they are mere boards of arbitration whose judgments and decrees would be only advisory. If a party can make himself a judge of the validity of Orders which have been issued, and by his own act of disobedience set them aside, then are the Court's impotent, and what the Constitution now fittingly calls the "judicial power of the Fiji" would be a mockery. This power has been uniformly held to be necessary to the protection of the Court from insults and oppressions while in the ordinary exercise of its duties, and to enable it to enforce its judgments and orders necessary to the due administration of law and the protection of rights of suitors.

FINE

- (23) The Court has inherent jurisdiction to impose fines for contempt having regard to its seriousness. Neurom Ltd v Trans ,H.C. Auckland CP 623/SW 01, 14/05/2002. The Courts in Fiji have imposed fines of \$20,000⁹, \$25,000¹⁰ and \$50,000¹¹ for civil contempt. The defendant's offending was for substantial financial gain. The undisputed evidence by Mr Hendersen is that the value of the roofing work for just two of the defendant's roofing jobs (Jacks of Fiji and the Motibhai Building for Western Builders) exceeded FJ\$380,000¹².
- (24) In Taylor Bros Limited v Taylors Group Limited¹³, the New Zealand Court of Appeal held that the Court can apportion the payment of fine to both the Crown and the plaintiff.

The jurisdiction regarding a fine must and does extend to ordering that part of it be paid to a complainant who has set the Court proceedings in motion.... Perhaps there is no fundamental objection in principle to accepting even that the Court could order the whole fine to be paid to the complainant. We think, however, that this would be to go too far. The contempt jurisdiction exists in the public interest as a sanction to ensure that Orders of the Court are complied with. An element of amends to the public institution should always be present in a fine.

- (25) The New Zealand High Court in 'Blomfield v Slater¹⁴' ordered that a portion of the fine imposed for contempt be paid to the complainant.

⁹ Paradise Transport Ltd v Land Transport Authority (2018) FJHC 844

¹⁰ Credit Corporation Fiji Ltd v Sisters Aircool & Electrical Services Limited (2012) FJHC 1496

¹¹ In the matter of Rajendra Chaudhary, Civil Action No. HBC 313 of 2018

¹² Affidavit by Brennan Lee Hendersen dated 21-06-2018, para 17 and 21

¹³ (1991) (1) NZLR 91 (CA)

¹⁴ (2015) NZHC 2239

COSTS

- (26) The plaintiff seeks costs on a Solicitor client basis.
- (27) In National Australia Bank Limited v Juric (No-2)¹⁵ Gillard J observed at paragraphs (67) and (68) that where a contempt of Court is made out, the normal cause is to order the person in breach to pay costs on a Solicitor client basis.
- (28) In Neuronz Limited v Tran (supra) Williams J acknowledged that ordering costs on an indemnity basis was not always seen as a universal practice, his Lordship went on to say it is clear that costs on this basis can be awarded in appropriate cases, particularly where there has been egregious behaviour on the part of those who are in contempt. This is such a case.


ORDERS

I make the following Orders;

- (a) The defendant is convicted and sentenced to a term of 12 months imprisonment for contempt of court.
- (b) The defendant is fined FJ\$20,000.00 to be paid within 14 days from the date of this decision. In default, 03 months' imprisonment and would run consecutively.
- (c) Thirty per cent of the fine is to be paid to the plaintiff and seventy per cent to the State.
- (d) The costs to be paid on a Solicitor-client basis.
- (e) The plaintiff is directed to file and serve its detailed costs for the assessment of indemnity costs before the Master within 14 days from the date of this decision.



At Lautoka
Friday, 09th August, 2019


.....09/08/2019
Jude Nanayakkara
[Judge]

¹⁵ (2001) VSC 398