

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 122 of 2009

BETWEEN

MANOJ KUMAR

PLAINTIFF

AND

SHAHEED AHMED

FIRST DEFENDANT

AND

THE DIRECTOR OF LANDS, LAUTOKA

SECOND DEFENDANT

AND

THE ATTORNEY GENERALS OFFICE, LAUTOKA

THIRD DEFENDANT

Appearances: Mr. Dass for the Plaintiffs
Mr. Vakacakau for the first Defendant
Mr. Kant for the second and third Defendants

Date of Hearing: 23 October 2023
Date of Ruling: 07 November 2023

R U L I N G

1. The plaintiff, Mr. Manoj Kumar, has been trying to enforce a costs order which he obtained in 2019 against the defendant, Mr. Saheed Ahmed. To that end, Kumar had filed an *ex-parte* application on 11 August 2023 to seek leave to file committal proceedings. Leave was granted on 17 August 2023. Seven days later, on 24 August 2023, Kumar filed a Notice of Motion for an Order of Committal.

2. When the Notice of Motion was issued, the Registry gave it the returnable date of 15 September 2023. On 15 September 2023, the Court merely timetabled the filing of affidavits. Notably, the learned counsel for the applicant did not seek time to extend the leave.
3. Order 52 Rule 2 (1) of the High Court Rules 1988 stipulates that, before an application for committal against any person may be made, leave must be granted first.
4. If the Court grants leave, the Applicant must then apply by Notice of Motion for an order for committal provided that there must be eight (8) clear days between service of the Notice of Motion and the date named thereon (see Order 52 Rule 3 (1)).
5. Order 52 Rule 3 (2) provides that the leave shall lapse unless the motion is set for hearing within fourteen (14) days after such leave is granted.
6. In this case, the Applicant did file a Notice of Motion 7 days after leave was granted. However, the Registry did give a returnable date which was well outside the stipulated 14 day period (**i.e. 15 September 2023**).
7. Mr. Dass argues that it was the Registry's fault.
8. Mr. Vakacakau argues that this oversight happens often. However, at the end of the day, it was incumbent on the lawyer to then have sought an extension on the 15 September 2023. Thus, the leave therefore remains "lapsed".
9. So for, there has been no indication by Mr. Dass that he intends to seek an extension.
10. Consequently, given that leave has lapsed, and there is no plea from the applicant to this Court to seek an extension, I must dismiss the application for committal proceedings with costs to the respondent which I summarily assess at \$300.
11. The applicant of course is free to file a fresh application for leave.



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Anare Tuilevuka
JUDGE
Lautoka

07 November 2023