

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

CIVIL ACTION NO. HPP 52 OF 2020

BETWEEN : **SURUJ LAL aka SURAJ LAL** of Dogavatu, Rakiraki, Retired. **PLAINTIFF**

AND : **ARVIND KUMAR and NILESHWAR PRASAD** both of Dogavatu, Rakiraki, Farmers. **1ST DEFENDANT**

AND : **THE TRUSTEE OF THE ESTATE OF RAM JANAM** late of Rakiraki, Farmer. **2ND DEFENDANT**

AND : **DIRECTOR OF LANDS** **3RD DEFENDANT**

AND : **REGISTRAR OF TITLES** **4TH DEFENDANT**

DATE OF SUBMISSIONS: Filed on 6th September 2023, by the Plaintiff
Filed on 9th October 2023, by the 1st Defendant

APPEARANCES : Mr. Laganilakeba – for the Plaintiff.
Ms. A. Ben for the first Defendants.
Mr. J. Mainavolau – for the 3rd and 4th Defendants (but not a party to this Committal Proceedings).

HEARING : Disposed by way of written submissions.

SUBMISSIONS : Filed by the Plaintiff on 06th September 2023.
: Filed by the first Defendants on 09th October 2023.

RULING : 28th November, 2023

JUDGMENT

(On Committal Charges)

A. INTRODUCTION:

1. Before me is an Application by way of the Notice of Motion dated and filed by the Plaintiff on 13th March 2023, seeking for the Committal of the First Defendants, namely, ARVIND KUMAR and NILESHWAR PRASAD for the alleged offence of contempt of Court as stated in

paragraph (1) of the prayer to the Notice of Motion, and for further Orders as per paragraphs (2), (3) and (4) thereof, which are reproduced bellow.

1. *Contempt of Orders of the High Court granted on 29th April 2022 as appearing and set forth in the Plaintiff's Statement Requesting Leave to issue Committal proceedings and Affidavit in support sworn on 15th February 2023 served with this application.*
2. *That both the Defendants pay to the Plaintiff his costs and incidentals to this application on an indemnity basis.*
3. *That should the Committal Orders be granted, both the first Defendants be ordered to;*
 - a. *Consent to their Monies held in Millbrook Hills Law Partners trust account to be utilized to pay their share of outstanding ground rent;*
 - b. *The balance of the ground rent (if any) to be paid by the first Defendants within 7 days;*
 - c. *The First Defendants to pay their share of sub-division costs into Millbrook Hills Law Partners trust account within 30 days, that sum being #3,000.00.(As conditions of the suspension of the execution of Committal Order.*
4. *Any other orders this Honorable Court deems just and equitable.*

2. The Application is brought pursuant to the leave granted by this court on the plaintiff's ex-parte Application supported by his Affidavit sworn on 15th February 2023 and filed on 20th February 2023 with the annexures marked from "SL-1" to "SL -19" .
3. Leave was granted since the allegation of contempt appeared to be as serious as that should be heard and dealt with, if proved. The allegation is that the first Defendants had committed the offence of the contempt of Court by violating and/or not obeying the orders granted by this court on 29th April 2022.
4. The Orders made by this Court on 29th April 2022, are as follows;
 1. *THAT Orders made in terms of Notice of Motion dated 23rd August 2021 are hereby made final leaving the issue of ground rental.*
 2. *THAT by consent \$400.00 (Four Hundred dollars only) is ordered as cost payable by the first Defendants.*
 3. *THAT the proceeding is terminated.*
 4. *THAT the Application for leave to issue Committal Proceedings is dismissed on being withdrawn. (this refers to a former application)*

B. BACKGROUND:

5. The Plaintiff, on 13th July 2020, had filed his Writ of Summons and the Statement of Claim before the High Court of Suva, seeking the following reliefs against the first and the second Defendants;
- a. *The appointment of the First Defendants pursuant to the Deed of Appointment was Fraudulent and be declared null and void;*
 - b. *The Deputy Registrar be the Court appointed Administrator of the Estate for the purposes of distribution;*
 - c. *The Directors of Lands be ordered to work with the Deputy Registrar in distributing the subject lease pursuant to the last will and testament of Bhagwati;*
 - d. *The First Defendants be restrained from annoying, harassing, contracting and/or approaching the Plaintiff and his wife;*
 - e. *The First and Second Defendants provide to the Plaintiff audited accounts of all the income and expenditure and balance sheet from 14 November 2014 in respect of the subject lease;*
 - f. *The First and Second Defendants provide to the Plaintiff all details of new leases issued on the subject property and the dealing thereto;*
 - g. *The First and Second Defendants provide to the Plaintiff an account of all properties of the Estate that came into their hands;*
 - h. *The First and Second Defendants provide to the Plaintiff details of all Estate properties;*
 - i. *The First and Second Defendants provide to the Plaintiff details of encumbrances on the Estate property;*
 - j. *The First and Second Defendants provide to the Plaintiff details of Estate property disposed by the Executors and Trustees;*
 - k. *The First and Second Defendants provide to the Plaintiff details of all borrowings (if any) in the name of the Estate and/or against the properties of the Estate including but not limited to the amount and purposes of such borrowings;*
 - l. *The First and Second Defendants provide a list of all Bank accounts in the name of the Estate;*
 - m. *The First and Second Defendants provide do pay the Plaintiff his share from the net proceeds derived from the properties of the Estate to be quantified at the date of trial;*
 - n. *The First and Second Defendants do pay the Plaintiff damages for their fraudulent conduct;*

o. The Defendants do pay the costs of this action on a solicitor/client indemnity basis as this proceedings could have been avoided had it not been for the fraudulent and negligent conduct of the Defendants;

p. Such further or other relief as this Honorable Court deems just.

6. After the 1st Defendants filing their Acknowledgment of service, and the 3rd -4th Defendants filing their acknowledgment of service cum the Statement of Defence before the High Court Suva, on an Application made by the Plaintiff, the High Court of Suva by Order dated 17th August 2020, transferred the matter to the High court Lautoka.

It is to be observed that no substantial reliefs had been prayed for against the 3rd and 4th Defendants.

7. Accordingly, the first Defendants filed their Statement of Defence before this Court on 16th September 2020 moving for the dismissal of the Plaintiff's action. In the meantime, an Application being made by the Plaintiff on 18th September 2020 moving for Summary Judgment against the 3rd and 4th Defendants, same was not pursued in view of the possible Settlement that was being discussed by and between the plaintiff and the first Defendants, as evidenced by the case record.

8. Thereafter, on 22nd July 2021, the Plaintiff filed a Notice of Motion, supported by his Affidavit sworn on 16th July 2021, which accompanied annexures marked as "A" to "F", including a copy of the "Terms of Settlement" marked as "C" signed by the Plaintiff, his Solicitors on 28th May 2021 which had been signed by the State Counsel on behalf of the 3rd and 4th Defendants.

9. By the said Notice of Motion dated and filed on 22nd July 2021, the Plaintiff had sought the following Orders **THAT**;

- 1. The first Defendants have agreed to the Terms of Settlement annexed to the Affidavit in support;*
- 2. The Terms of Settlement be made into Orders of the Court;*
- 3. The First Defendants to pay costs of this application on a strict solicitor client indemnity basis;*
- 4. Any other Orders this Honorable Court deems just and fair in the circumstances.*

10. After number of adjournments owing to the disagreement on the issue of Ground Rental embodied in the said Terms of Settlement, when the matter had come up before the learned Master (the Master) on the 3rd day of November 2021, parties had agreed on the contents of the Terms of Settlement, except for the clause 3.6 thereof, which was on the said Ground rental. Accordingly, the Master made orders in terms of the aforesaid Notice of Motion filed on 22nd July, 2021, leaving the issue of ground rental out. The Master's said Orders were sealed on 17th November 2021 and, reportedly, served on the Solicitors for the first Defendants on 21st November 2021.

11. As the first Defendants had not complied with the Orders made by the Master on 3rd November 2021, the Plaintiff on 25th March 2022 filed an Application seeking leave to issue Committal Proceedings against the first Defendants. However, when the Counsel for the Plaintiff on 5th April 2022 moved to support the Application for Leave to issue committal Proceedings, the court decided to put the said Application on hold and to consider the possibility of executing the consent Orders made by Master on 3rd November 2021.
12. Accordingly, when the matter came up before me on 29th April 2022, as the first Defendants agreed to forego their claim for part of the Ground Rental to be paid by the Plaintiff, which was the only unresolved issue as per the settlement entered before the Master on 3rd November 2021, this Court finally made Orders as stated in paragraph 4 above, bringing the whole matter to an end. The 1st Application made seeking leave to issue committal proceedings was, accordingly, withdrawn by the counsel for the Plaintiff.
13. However, since the first Defendants were alleged to be still observing the said final Orders, made on 29th April 2022 in breach, the Plaintiff on 20th February 2023 filed his 2nd Ex-parte Application seeking leave to issue committal proceedings. Accordingly, the Plaintiff, having obtained leave, filed his Notice of Motion on 13th March 2023 seeking to commit the first Defendants for the alleged breach of the Orders made on 29th April 2023.
14. The First Defendants filed their Affidavit in opposition for Committal on 27th June 2023, and when the Matter came up on 26th July 2023 to fix a date for hearing, both the Counsel agreed to have the hearing disposed by way of written submissions. Accordingly, both the parties have filed their respective written submissions as stated in the caption above.

C. DISCUSSION:

15. The Plaintiff and the 1st Defendants are, admittedly, the beneficiaries of the Estate of BHAGWATI, and the First Defendants are also the appointed Trustees thereof, which owns the State Lease No. 21151 'A' (the subject lease)
16. The subject Lease was issued to the First defendants by the Third Defendant and same was endorsed by the 4th Defendant. The parties had ended up in Court as the Plaintiff opposed the First Defendants' appointment as Trustees of the Estate and the legality of it. Thus, the parties are in tussle, inter alia, on the Sub-Division process, the issues of Survey Costs and on payment of the Ground Rental in relation to the subject lease until the sub-division is done.
17. In order to amicably resolve the matter, parties agreed to the terms embodied in the Terms of Settlement marked as "C" and annexed to the Plaintiff's Affidavit in Support sworn and filed on 21st July 2021.
18. The Plaintiff, his Solicitors and the Counsel for the 3rd and 4th Defendant had duly signed the said Terms of Settlement, and it was yet to be signed by the First Defendants. Despite the first Defendants had agreed to the terms therein, as evidenced by the written

communication between the Solicitors, the first Defendants avoided the signing of it, apparently, disputing the payment of the ground rentals.

19. However, when the matter had come up before the Master on 3rd November 2021, the parties agreed to resolve the matter as per the said Terms of settlement, except for the clause 3.6 thereof, which was on the issue of ground rental. Accordingly, the Master made orders in terms of the Notice of Motion filed on 22nd July 2021 and the Orders were sealed and reportedly served on the first Defendants on 22nd November 2021.
20. Subsequently, when the matter came up before me on 29th April 2022, with the full consent of the first Defendants, who were duly represented by their Counsel, the matter was finally resolved for the parties to abide by the Orders being made by me based on the Order made by the Master on 3rd November 2021, which was as per the Terms of Settlement filed of record, however, leaving out the issue of the ground rental. My minutes dated 29th April 2022 clearly shows that the first Defendants had agreed to forego their claim for the ground rental to be shared by the Plaintiff .
21. On careful perusal of the Orders made and other contents of the record, it is Crystal clear that the first Defendants have violated the Court Orders made on 29th April 2022 by this Court which was based on the Master's Order dated 3rd November 2021 and the Terms of Settlement that had been entered by and between the Plaintiff. I find that the Defendants are in continued violation of those Orders, which prompted the current Committal proceedings. The first Defendants have not adduced any evidence to disprove the charge of contempt brought against them by the Plaintiff.
22. In the written submissions filed on behalf of the first Defendants, their failure to abide by the Order of the Court has been clearly admitted. In paragraph 22 thereof, it has been submitted that the first Defendants' actions were not a deliberate attempt to not follow and comply with the Court Orders and they are trying all possible ways to comply with the Court Orders. They have prayed for further time to comply with the Court Orders.
23. The first Defendants in paragraph 3 of their Affidavit in opposition have averred that they never refused to sign the Terms of Settlement, however they agree with the Court Orders made with regard to the sub-division. Their only complain is about their, purported, inability to afford the payments involved. The first Defendants, being the Trustees of the Estate, cannot walk away from their fiduciary duties by citing such reasons for such a long time. However, this cannot be a reason for the first Defendant not to honor the decision of the Court. Once a decision is given by a Court of Law, it is valid, in force and must be obeyed by the parties concerned until it is varied or set aside by a Court.
24. In the case of **Hadkinson v Hadkinson [1952] 2 All ER 567 at page 569** where Romer LJ made the following observations;

"It is plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of the obligation is shown by the fact that it

extends even to cases where the person affected by an order believes it to be irregular or even void”.

25. In the same judgment the following observations of Lord Cotton LC in **Chuck v Cremer (1 Coop temp Cott 342)** were cited by the Court of Appeal;

“A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order is null or valid—whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That a course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed”.

26. Romer LJ also observed as follows;

“Such being the nature of this obligation, two consequences will, in general, follow from its breach. The first is that anyone who disobeys an order of the court (and I am not now considering disobedience of orders relating merely to matters of procedure) is in contempt and may be punished by committal or attachment or otherwise. The second is that no application to the court by such a person will be entertained until he has purged himself of his contempt”.

27. The Master made Orders on 3rd November 2021 based on the Terms of Settlement by leaving the question of ground Rental, which was the only issue not agreed upon by and between the parties. Thereafter, this Court made the final Order on 29th April 2022, before which the 1st Defendants had relinquished their claim to share the ground rentals by the plaintiff. This Order now remains in force requiring its implementation, failure of which has now put the first Defendants in this precarious position of being found guilty of contempt of Court.
28. The first Defendants, having taken more than two and half years from the date of Orders made by the Master, and more than one and half years from the date of Orders made by this Court on 29th April 2022, are still in violation of the Orders made.
29. In view of the decision in **Hadkinson v Hadkinson** (supra) the reasons adduced by the first Defendants for their failure to obey cannot be taken into consideration as a valid excuse. Unless and until the Orders are set aside by a competent Court or they comply with the Orders so made against them, they are bound to follow those Orders.
30. For the reasons aforementioned, I hold that the first Defendant are in contempt of the Court, and this court makes the following orders.

D. ORDERS:

- a. The Plaintiff’s Notice of Motion filed on 13th March, 2023 seeking for the Committal of the first Defendants succeeds;

- b. The first Defendants, namely, ARVIND KUMAR and NILESHWAR PRASAD, by disobeying the Court orders finally made by this Court on 29th April 2022, have committed the offence of Contempt of Court, thus they are found guilty for the same.
- c. Before this Court proceeds for convicting and imposing sentence, there will be a sentencing hearing,
- d. The first Defendants are hereby put on notice that the due compliance of the Orders made by this Court, could be considered as mitigating factors.
- e. Order on costs reserved.



A.M. Mohamed Mackie
Judge



At High Court Lautoka this 28th day of November, 2023.

SOLICITORS:

For the Plaintiff:

Messrs. Millbrook Hills Law Partners, Barristers & Solicitors

For the 1st Defendants:

Messrs. S. Nand Lawyers, Barristers & Solicitors