

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

**Civil Action No.33 of 2024**

**BETWEEN** : **LAUTOKA CITY COUNCIL** a duly incorporated body, having its registered office at 169 Vitogo Parade, Lautoka, Fiji, constituted under the provisions of the Local Government Act 1972

**PLAINTIFF**

**AND** : **MANOJ KUMAR** of 25 Mutlah Street, Lautoka.

**DEFENDANT**

**BEFORE** : Mr. A.M. Mohamed Mackie- J.  
**COUNSEL** : Mr. W. Pillay- for the Plaintiff.  
: Mr. Anand V. for the Defendant - on 13<sup>th</sup> May 2025.  
**HEARING** : Disposed by way of written submissions.  
**W. SUBMISSION** : Filed by the Plaintiff on 06<sup>th</sup> March 2025.  
: filed by the Defendant belatedly on 9<sup>th</sup> May 2025.  
**RULING** : Delivered on 14<sup>th</sup> May 2025.

**JUDGMENT**

**A. INTRODUCTION:**

1. Before me is an Originating Summons preferred by the Plaintiff, **Lautoka City Council ("LCC")** on 20<sup>th</sup> February 2024 against the Defendant, **Manoj Kumar**, seeking the following orders and/ or declarations.

1. **THAT** the Defendant and/or the entity that is the current lessee of Lot 5 on Deposited Plan 7039 at 25 Mutlah Street, Lautoka and fully described and contained in Lease No. 337404 and/or his/their agent and/or employees and/or contractor and/or nominee **remove, pull down and/or demolish and/or cause to remove, pull down and/or demolish the illegal additions to the existing legal structure,** namely the car port constructed meaning **15.7 meters by 2.5 meters** constructed on Lot 5 on Deposited Plan 7039 at 25 Mutlah Street, Lautoka and fully described and contained in Lease No. 337404 and together with all other illegal development/structure ancillary and/or related therein **AND** that all costs associated with the said removal, pulling down and/or demolishing be borne by the Defendant and/or the entity that is the current lessee of Lot 5 on Deposited Plan 7039 at 25 Mutlah Street, Lautoka and fully described and contained in Lease No. 337404 and/or his/their agent.
  
2. **THAT** the Defendant and/or the entity that is the current lessee of Lot 5 on Deposited Plan 7039 at 25 Mutlah Street, Lautoka and fully described and contained in Lease No. 337404 and/or his/their agent and/or employees and/or contractor and/or nominee **remove, pull down and/or demolish and/or cause to remove, pull down and/or demolish the illegal additions to the existing legal structure,** namely the double story structure constructed meaning **12 meters by 2.5 meters** constructed on Lot 5 on Deposited Plan 7039 at 25 Mutlah Street, Lautoka and fully described and contained in Lease No. 337404 and together with all other illegal development/structure ancillary and/or related therein **AND** that all costs associated with the said Removal, pulling down and/or demolishing be borne by the Defendant and/or the entity that is the current lessee of Lot 5 on Deposited Plan 7039 at 25 Mutlah Street, Lautoka and fully described and contained in Lease No. 337404 and/or his/their agent.
  
3. **THAT** the Court grant such further Orders that the Court deems just and necessary in the circumstances of this action and/or to give effect of the Orders of the Court.
  
4. **THAT** the costs of this action be paid by the Defendant to the Plaintiff on an indemnity basis on the grounds that:
  - A. In the affidavit of **Mohammed Anees Khan**, the Defendant has and was given sufficient notice to comply and/or rectify the building located at Lot 5 on Deposited Plan 7039 at 25 Mutlah Street, Lautoka and fully described and contained in Lease No. 337404 and specifically demolish the illegal additions to the existing legal structure, namely the car port constructed meaning 15.7 meters by 3.5 meters and the double story structure constructed meaning 12 meters by 2.5 meters constructed on Lot 5 on Deposited Plan 7039 at 25 Mutlah Street, Lautoka and fully described and contained in Lease No. 337404; and.
  
  - B. The Defendant has no legal defence as the Town Planning Act and the Regulation 18 (2) of the Town (Building) Regulations 1935 specifically states that clearly

*says that no written or verbal approval contrary to the law shall authorize the construction or alteration of any building.*

2. The originating summons is supported by the Affidavit of Mohammed Anees Khan, the Chief Executive Officer of the LCC, and filed along with annexures marked as “MAK-1” to “MAK-5”.
3. The Defendant on 12<sup>th</sup> September 2024 appeared in person, who was granted 28 days to show cause by way of filing his Affidavit in opposition as to why the said illegal/ unauthorized structures should not be removed or demolished. Accordingly, on 1<sup>st</sup> October 2024 he filed his Affidavit in with annexures marked as “MAK-1” & “MAK- 2”.
4. However, when the matter came up for Ruling on 13<sup>th</sup> May 2025 as it had been already fixed, Mr. Anand, representing the Defendant on behalf of Messrs. Iqbal Khan & Associates informed the Court that they have filed written submissions for the Defendant belatedly on 9<sup>th</sup> May 2025. Accordingly, with the consent of the Plaintiff’s Counsel Mr. W. Pillay, the Ruling was re-fixed for today 14<sup>th</sup> May 2025 in order to consider the contents of the written submissions filed by the Defendant as well.
5. Accordingly, this Ruling is pronounced by perusing the contents of the Originating Summons, those of the Affidavit in support thereof, the Affidavit in opposition, the annexures thereto and the written submissions filed by both parties.

## **B. THE LAW:**

6. The Originating Summons states that the Plaintiff relies on relevant provisions of the **Town Planning Act of 1946**, **Public Health Act** and The Town’s (Building) Regulations 1935, Order 7 of the High Court Rules and the Inherent jurisdiction of this Court.

7. Section 27 of the **Town Planning Act of 1946** states as follows:

*27. (1) Subject to the provisions of this section, the local authority may at any time-*

- (a) remove, pull down or alter, so as to bring into conformity with the provisions of the scheme, any building or other work which does not conform with those provisions or the removal, demolition or alteration of which is necessary for carrying the scheme into effect, or in the erection or carrying out of which any provision of the scheme has not been complied with; or*
- (b) where any building or land is being used in such a manner as to contravene any provision of the scheme, prohibit it from being so used; or*
- (c) where any land has since the material date been put to any use which contravenes any provision of the scheme, reinstate the land; or*

- (d) execute any work which it is the duty of any person to execute under the scheme in any case where delay in the execution of the work has occurred and the efficient operation of the scheme has been or will be thereby prejudiced.
- (2) **Before taking any action under this section the local authority shall serve a notice on the owner and on the occupier** of the building or land in respect of which the action is proposed to be taken and on any other person who, in its opinion, may be affected thereby, specifying the nature of and the grounds upon which it proposes to take that action. **(Emphasis mine)**
- (3) The date stated in a notice served under this section as the date on or after which the intended exercise of the power therein mentioned is intended to be begun shall not be less than three months when any building is affected and in any other event not less than one month after the service of such notice, and the local authority shall not do any act or thing in exercise of such power in relation to the building or land mentioned in the notice before the said date.
- (4) If any person served with such a notice as aforesaid considers the period fixed by such notice to be insufficient or desires to dispute any allegation or matter contained therein, he may within twenty-eight days from the date on which he received such notice give notice of objection, and of the grounds thereof, in writing addressed to the local authority, and such objections shall be submitted, heard, considered, and decided in the same manner as is provided in sections 21, 22 and 23.
- (Amended by 14 of 1961, s. 8.)
- (5) Every person who uses any building or land in a manner prohibited under the provisions of this section, or obstructs or interferes with the exercise by the local authority of any power vested in it shall **in addition to any civil liability be guilty of an offence and liable to a fine of one hundred dollars.**
- (6) **Any expenses lawfully incurred by the local authority under the provisions of subsection (1) may be recovered as a civil debt from the person in default. (all emphasis mine).**

### **C. JURISDICTION OF THIS COURT:**

8. As per the Section 27 (5) of the Town Planning Act, though the Plaintiff had the liberty of prosecuting the Defendant before the Magistrate's Court, the Plaintiff has opted to come before this Court for obvious reason. (Vide paragraph 17 of the Affidavit in Support).
9. In **Lautoka City Council v Singh [2010] FJHC 106; HBC212.2008L (7 April 2010)** Hon. Justice A. Tuilevuka, as the then Master of the High Court, in paragraph 10 and 11 of his judgment, by citing an English Judgment, stated as follows.
- "10. In such a situation, the High Court has often been called upon to exercise its reserve power [1] to enforce the applicable statute(s) and/or regulation(s) through the granting of an injunction or a declaration against a recalcitrant Defendant.

11. In **Stafford Borough Council –v- Elkenford Ltd [1977] 2 ALL ER**, such a power was held to apply even if the local authority responsible for enforcing the statute(s)/regulations has not exhausted the remedies provided by the statute”.

10. The Defendant has not raised any issue in this regard. Thus, I find that this Court is clothed with necessary jurisdiction to deal with this matter in order to enforce the provisions of the Town Planning Act of 1946 and other relevant statutes/regulations. Accordingly, I have no hesitation in exercising my jurisdiction and granting the relief against the Defendants in this case, as prayed for in the Originating Summons, unless the Defendant convinces me not to do so.

#### **D. ORDERS SOUGHT BY THE PLAINTIFF:**

11. The Plaintiff in its Originating Summons complains about two unauthorised structures, allegedly, erected by the Defendant in his Land depicted as lot 5 in deposited Plan No-7039 and situated at No-25 Mutlah Street, Lautoka, which is fully described and contained in Lease No- 337404. It moves for 2 Orders to remove, pull down and or demolish and / or cause to remove , pull down and/or demolish said illegal additions , namely , the **Car Port** constructed in the extent of 15.7 X 2.5 Meters and the **double story structure** constructed in the extent of 12X 2.5 Meters on the said Lot-5, which are in addition to the existed legally approved structures by the Water Authority Fiji on 27<sup>th</sup> February 2013, Housing Authority on 7<sup>th</sup> March 2013 and Lautoka City Council on 2<sup>nd</sup> May 2013 as prayed for in its Originating Summons.
12. Upon receipt of a complaint by a neighbour of the Defendant, the Plaintiff has caused an inspection done through its Building Inspector **Mr. Roneel Ronish Kumar** on 10<sup>th</sup> June 2020, who in turn furnished a written statement of his findings together with photographs of alleged illegal structures on the said lot-5, which are marked as “MAK-02” & “MAK-3”. Pursuant to this, the Plaintiff on 16<sup>th</sup> June 2020 sent the Notice to the Defendant as required by Section 27 (2) of the Act.
13. A further complaint being made to the National Fire Authority (NFA) by a neighbour, having inspected the relevant premises on 27<sup>th</sup> January 2022, the NFA, has submitted its **“Fire Safety Inspection Report”** marked as “MAK-5”, contents of which and that of the photographs annexed thereto clearly demonstrate the breach by the Defendant.

#### **E. DEFENCE:**

14. The Defendant in the Affidavit in opposition sworn on 30<sup>th</sup> September 2024 and filed on 1<sup>st</sup> October 2024, has not disputed, denied or contested any of the averments contained in the plaintiff's Affidavit in support. Instead, he has admitted the erection of the structures complained of by the Plaintiff.
15. The Defendant also states that he made a request to LCC to submit a plan to legalize the constructed structure. There is no evidence of making such a

request or for the submission of a Plan for the regularization of the unauthorised construction. The Defendant also alleges that there are many other illegal constructions in the area, and produced some photographs to demonstrate it. The Court cannot act on such unsubstantiated allegations until and unless it is moved by the Plaintiff supported by evidence.

16. Such allegations by the Defendant may be true .However, as long as those constructions, are condoned, tolerated and not complained by the people who are concerned about or affected by it, such violations may go unreported and unchecked. However, it cannot be a ground for the Defendant to evade his culpability in this matter.
17. Finally, the Defendant claims that one of the structures is his Prayer house and he has the right to worship in it. This is not a defence for the defendant to justify his, admitted wrongdoing and violation of the laws.
18. The Defendant in his belated written submissions is in an attempt to pin the blame on the **Fire Safety Inspection Report**, mainly on the ground that it is not signed. However, the Defendant in his submissions has admitted the fact that there was an inspection. If he was not satisfied of the method as to how the inspection was done, he could have obtained an alternative Report with the inspection done with the view taken from his side of the premises and in his presence.
19. The said Report was a part of the Affidavit in support. If the Defendant was challenging the Report, its contents and other aspects of the Originating Summons, he could have objected to the mode of filing this action and moved for the action to be converted as a writ action. He did not make such an Application. However, the Defendant in his Affidavit in opposition and in the written submissions has admitted the violation committed by him. His submissions are with no merits.
20. The Defendant received the Notice under Section 27 (2) of the Act in June 2020. He has had nearly five (5) years' time to have his unauthorized structures duly regularized or demolished. He has not complied with the Notice sent by the Plaintiff and thereby violated the provisions of Town (Building) Regulations of 1935 .The Defendant has not shown any acceptable defence and satisfied the Court to disallow the application . Thus, I have no reason to disallow the orders sought by the plaintiff.

#### **F. COSTS:**

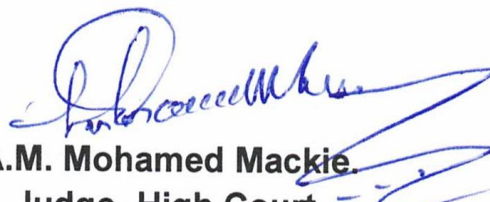
21. The Section 27 (5) of the Town Planning Act provides for the recovery of the expenses caused to the Plaintiff during this process. The Plaintiff is moving for a sum of \$ 17,800.00 on indemnity basis. The Defendant has had sufficient time nearly for last 5 years to have complied with the notice given or to have his alleged structures regularised. For the reason/s best-known to him, he has not acted diligently and continues to violate the relevant laws and regulations.

**G. FINAL ORDERS:**

- a. The Plaintiff's Originating summons against the Defendant succeeds.
- b. Orders 1 and 2 of the Originating summonses are granted.
- c. Costs to the Plaintiff is allowed on an indemnity basis, to be taxed, if not agreed.
- d. However, the Defendant is given 6 weeks' time from the date of service of this Orders to have the said unauthorized structures regularised to the satisfaction of the Plaintiff or to comply with the Orders granted above and have the said unauthorised structures removed and/ or demolished.
- e. Failure on the part of the Defendant to comply with these Orders within the said period, will result in the Plaintiff having the Orders executed on further Costs to be borne by the Defendant.

**On this 14<sup>th</sup> Day of May 2025 at the High Court of Lautoka.**



  
**A.M. Mohamed Mackie.**  
**Judge- High Court.**  
**Lautoka.**

**SOLICITORS:**

**For the Plaintiff: Messrs Gordon & Company – Barristers & Solicitors.**

**For the Defendant: Messrs Iqbal Khan & Associates – Barristers & Solicitors.**