

IN THE HIGH COURT OF FIJI AT SUVA
CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. HBC 102 of 2024

IN THE MATTER of the property comprised of
NLTB Lease No. 4/12/500040764, Lot 3 on
Kalebalavu Subdivision (part of).

BETWEEN: **URMILA WATI** of Nadali Road, Nausori, Domestic Duties.

RESPONDENT/PLAINTIFF

AND: **SUSHILA KRISHNA** of Nadali Road, Nausori, Garment Factory
Worker.

APPLICANT/DEFENDANT

For the Plaintiff/Respondent : **Mr Kumar E.**

For the Defendant/Appellant : **Mr Kumar V.**

Date of Hearing : **26th June 2025**

Before : **Waqainabete-Levaci, S.L.T.T, Puisne Judge**

Date of Judgment : **7 November 2025**

J U D G E M E N T
(COMMITTAL PROCEEDINGS)

PART A – BACKGROUND

1. The Applicant/Defendant had sought and was granted Leave for Committal Proceedings on 7 November 2024 on the basis that the Respondent/Plaintiff had disobeyed interim restraining orders made on 16 October 2024 from being removed from the premises pending legal proceedings under Order 169 for vacant possession.

2. A Notice of Motion together with a supporting Affidavit was filed on 13 November 2024 and thereafter called up for appearance of the Plaintiff/Respondent.
3. The Orders that were alleged to have been disobeyed by the Respondent/Plaintiff were as follows:
 - a. The Plaintiff their agents, families and authorized persons are restrained from interfering or removing any of the properties of the Defendant located in Agreement to Lease No 3306 having NLTB No 4/14/44/14/50004073 being Lot 3 on pieces of Land being Kelebalavu (part of) of the Tikina of Nausori in Tailevu having an area of 0.1861 ha;
4. The Respondent/Plaintiffs had filed their Affidavit in Opposition and the Appellant/Defendants had responded accordingly.
5. At Hearing, Respondent/Plaintiff, no application for leave to cross-examine the Applicant/Defendant was made and both parties sort to rely on their Affidavits.
6. Both parties thereafter made their submissions.

PART B - AFFIDAVITS

7. The Affidavit by the Applicant/Defendant seeking leave of the Court was filed together with a Statement of facts in compliance with Order 52 of the High Court Rules.
8. The Affidavit deposed that the interim restraining orders were served on the Respondent/Plaintiff's lawyers on 17 October 2024 in the presence of police officer's and the meaning explained to her.
9. The Affidavit also alleged that the Respondent/Plaintiff shouted to her boyfriend and ran towards the Applicant/Defendant with a cane knife and injured her. Another also struck her brother narrowly injuring his face. Her property was damaged amounting to \$15,000, her power cut off and her food left to rot.
10. In her Affidavit in Response, the Respondent/Plaintiff denied that such alleged actions was committed by her, her brother or any other residing on the property and argued that the claim was baseless and contrary to conduct.

11. She was personally served with the Orders granting Leave to proceed with Committal Proceedings with a police officer. She alleged no one explained to her until she contacted her solicitors who were away overseas.
12. She deposed the sealed interim injunctive orders that was granted on 16 October 2024 was never served on her personally nor was a penal notice of the consequences of the Order explained to her at all. These interim injunctive Orders were served on her solicitors on 22 October 2024.
13. She stated no complaint was lodged at the Nausori Police Station regarding the incident.
14. In her affidavit she denied interference with electricity supply and only informed Energy Fiji Limited (EFL) on the Applicant/Defendant using candles on the property, for which an EFL officer checked and confirmed the main switch was turned off which was then turned back on.
15. She also deposed she had not turned off water supply, as they were located in an area where water cuts were regular and no water tank was installed for the Applicant/Defendant.
16. Finally she deposed the Applicant/Defendant had access to her side of the property without interference from Respondent/Plaintiff's family members nor from her.
17. In her Affidavit in Reply, the Applicant/Defendant reaffirmed her allegations that the Plaintiff/Respondent and her family had swung the knife at them to kill her and missed her neck but injured her relative on the flat part of the knife on his cheek.
18. She annexed the statement by the police who had accompanied her to serve the documents.
19. She deposed that she had personally built her house and missing was her railing and gate, her settee and prayer place which was on the porch, mop and tarpaulin on the porch, iron rods, 4x2 meters wood and electrical pipes and posts were missing with a broken back steps and clothesline.
20. She deposed that she had no power and water to her home and was deliberately turned off which was confirmed by EFL. She deposed her food in her fridge had rotted and appended pictures as exhibits.

21. She also deposed that the Respondent/Plaintiff took advantage of her by allowing her to build her house on the property and pay the land rent in return for permanent residency. She has spent \$2,250 from 14 to 22nd October 2025 for meals, electricity and water.

LAW, SUBMISSIONS AND ANALYSIS

22. Order 52 of the High Court Rules prescribes the procedures for an application for Committal Proceedings. Rule (1) and Rule (3) of Order 52 provides as follows:

Committal for contempt of court (Order 52, r.1)

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) An proceedings before the Court; or
- (ii) Proceedings in an inferior Court;

(b) Committed otherwise than in connection with any proceedings.

(3) An order of committal may be made by a single judge.

Application for order, after leave to apply granted (Order 52, r.3)

3-. (1) When leave has been granted under rule 2 to apply for an order of committal, the application for the order must 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.

(2) Unless within 14 days after such leave was granted the motion is enter for hearing the leave shall lapse.

(3) Subject to paragraph (4), the notice of motion, accompanied by a copy of the statement and affidavit in support of the application for

leave under rule 2, must be served personally on the person sought to be committed.

(4) Without prejudice, to the powers of the Court or judge under Order 65 rule 4 the Court or judge may dispense with service of the notice of motion under this rule if it or he thinks it just to do so.”

23. In Re: Application by Attorney General of Fiji [2009] FJHC 8; Action No. 124 of 2008 (22 January 2009) Hickie J explained the two forms of committal proceedings as follows:

As the New South Wales Law Reform Commission explained in its 2003 report on “Contempt by Publication” at paragraphs 1.9 and 1.11: **“Traditionally, the law of contempt is divided into ‘civil’ and ‘criminal’ contempt. ‘Civil contempt’ is concerned with the enforcement of court orders and undertakings given to a court in civil proceedings. ‘Criminal contempt’ is concerned with maintaining the authority and integrity of the court as a matter of public interest. It covers such conduct as misbehaviour in the courtroom and publishing material that tends to interfere with the proper administration of justice. Conduct of this nature is treated as a criminal offence and attracts criminal sanctions, most typically the imposition of a fine or a term of imprisonment.**

24. Allegations of disobedience to enforcement of court orders are ‘civil contempt’.

Procedural Requirements

25. The Respondent/Plaintiff argued that she was never personally served, despite the requirement in sub-rule (3) of Rule (3). She also argued that she was not served with the interim injunctive orders which was alleged to have been breached. Without being served with these Orders she was unaware of the breach.

26. The Court had granted leave to apply for committal proceedings with a ruling delivered on 16 October 2024.

27. The Applicant/Defendant had thereafter served the Notice of Motion, Statement of Facts and Affidavit in Support on Counsel for the Respondent/Plaintiffs who accepted service on behalf of the Defendants and filed an Affidavit of Service to that effect.

28. The Applicant/Defendant argued that they had properly served the Respondent/Plaintiff through their Counsel, with all the court documents required to be served.

29. There was no application for dispensation of service to the Court and at all times the Applicant/Defendant was required to personally serve the Respondent/Plaintiff as well. In this instance they agreed they did not served her personally, arguing that serving her counsel fulfilled the requirement for service as there was reassurance given by the clerk of the office for her counsel, that they would accept service on her behalf.
30. In the Supreme Court Practice 1988 (White Book) 52/3/1 page 782 explains about the importance of personal service:

"52/3/1 – Personal service – No order will normally be issued for the committal of a person unless he has been personally served with the order, disobedience to which is said to constitute the contempt, or, if the owner is directed to a group of persons or a corporation, some appropriate member has been personally served. Furthermore, the prosecutor must give each person sought to be committed the fullest notice that an application is being made for his committal (*R. v. Poplar Borough Council (No. 2)* [1922] 1K.B. 95 – e.g. by inserting his name in the notice of motion and serving personally upon him a copy of the notice and of the affidavit in support, showing what is alleged against him. Personal service of the notice of motion, enjoined by the rule, requires not merely the personal service of a copy, but an opportunity of inspecting the original (see *Parker v. Burgess* (1843) 3N. & M. 36). But the court may dispense with personal service where the respondent is evading service. Service may be dispensed with only where there is no other court available to uphold the authority of the court and protect the applicant; the dispensation should be recorded in the committal order (*Wright v. Jess, The Times*, March, 1987. C.A.).

31. In Kumar -v- Prakash [2013] FJHC 460; Probate Action 14.2012 (17 September 2013) where Kotigalage J held that where the Defendant was not personally served, the irregularity was fatal and hence the committal proceedings dismissed.
32. In Credit Corporation (Fiji) Ltd v Qamer [2013] FJHC 675; HBC89.2013 (10 December 2013) Kotigalage held that the service of the documents after leave was granted to the wrong person by the court registry meant that the leave had expired. He then made orders for a fresh service of the documents and Leave granted to be extended for a further 30 days.
33. Personal service of the Court documents, more particularly the sealed orders are a requirement under the High Court Rules so that the alleged misconduct is made known to the offender.

34. Service on Counsels for Respondent/Plaintiff is not personal service at all. The failure to personally serve renders the application invalid and the leave granted deemed abandoned. In Re Mahendra Chaudhary (1998) FLR 39 it was held that an Affidavit of Service filed and served on Counsel for the offender or served with papers is not within the meaning of Order 52 Rule (3) of the High Court Rules.
35. Even then, if it is a procedural error that can be rectified with the Courts own motion, the onus to apply to waiver personal service was on the Applicant/Defendant. They have failed to do this. Even then the Court finds no reasonable excuse to waive service on the Respondent/Plaintiff as there is no reason barring them nor any evidence of evasion of personal service. In DR -v- MR HBM 65 of 2008L where the offender refuse to accept service by running away and hiding in the drain and then informing server by counsel that he was told to refuse service, when the server came to serve at his home
36. Order 2 of the High Court Rules allows for irregularity in procedure and from not to invalidate the merits of an application. In this instance, Order 2 of the High Court Rules cannot aide the issue of service in these facts. This is not an irregularity that can be rectified through Order 2 of the High Court Rules given the circumstances of the case.
37. The Court therefore holds that a failure to personally serve the Applicant/Defendant renders the proceedings invalid and application dismissed.

Costs


38. Costs awarded for \$1000 to the Plaintiff/Respondent.

COURT ORDERS

39. **The Court Orders as follows:**

- (a) ***The committal proceedings dismissed.***
(b) ***That costs be awarded to the Plaintiff/Respondent for \$1,000.***




Ms Senileba LTT Waqainabete-Levaci
Puisne Judge of the High Court of Fiji