

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 89 of 2013

BETWEEN : **CREDIT CORPORATION (Fiji) LIMITED** a limited liability company
having its offices at Credit House, 10 Gorrie Street, Suva.

Plaintiff

AND : **MOHAMMED IMRAN QAMER** of Lot 34A, Kabi Place, Nakasi,
Businessman.

Defendant

APPEARANCE: **MR TUITOGA H.** with **MS HAZELMAN** for the **Plaintiff**

NO APPEARANCE for the **Defendant**

DATE OF JUDGMENT: 10th December 2013

INTERLOCUTORY JUDGMENT

1. Ex-parte Notice of Motion was filed on 4th June 2013 by the Solicitor of the Plaintiff and sought the following orders:

(1) *that Leave be granted to the Plaintiff to issue committal proceedings against the Defendant Mohammed Imran Qamer of Lot 34A, Kabi Place, Nakasi, Businessman;*

- (2) *that the Defendant pay the Plaintiff the costs of the application;*
- (3) *further and other orders as this court deems just.*

2. The said ex-parte motion was filed pursuant to the orders made by the Learned Master on 19th April 2013 and it was alleged that the Defendant failed to comply with the paragraph 2 of the said order:

“(2) the order requiring the Defendant whether by himself his servants and/or agents to release the custody and possession of Motor Vehicle Registration No. DF079 together with all the other parts/tools and or accessories to the Plaintiff and/or its servants/agents/employees/bailiffs.”

3. The Learned Master’s Order dated 19th April 2013 was duly served on the Defendant on 8th May 2013 and affidavit of service was filed on 4th June 2013.
4. Having heard the submissions made by the Plaintiff’s counsel on 4th July 2013, this court granted Leave for the committal proceedings and fixed the case for 24th July 2013.
5. Notice of Motion for an Order of committal was filed by the Plaintiff’s solicitor on 17th July 2013. I find that the Plaintiff has moved the court to hear the matter on 24th July 2013 by the said motion. As such I conclude the Plaintiff had complied with Order 52 rule 3(2) of the High Court Rules 1988 which states:

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

The Plaintiff cited the paragraph [5] and [6] of the Judgment in Civil Action No. HBM 1 of 2010 (unreported decided on 25th May 2011) Inoke J. had stated:

“Paragraph [5] – the preliminary objection rests on the meaning of the words ‘entered for hearing’. The proper place to start is Order 52 Rule 3(2). It deals with the time within which the motion must be filed. The motion cannot be entered for hearing unless and until it is filed and when it is filed ‘the motion is entered for hearing’. The Applicant is given 14 days after service of the motion to file the motion otherwise leave will lapse. That is the only way to interpret the provision.”

I agree with Inoke J. and conclude that the Plaintiff complied with the Order 52 Rule 3(2) by moving the court within 14 days to fix the hearing of the Notice of Motion filed on 17th July 2013 (within 13 days from the date of the Leave granted).

6. When the matter was taken up on 24th July 2013 this court had ordered to mention the case on 10th September 2013 and notice to be served on the Defendant. Accordingly, it was noted that the notice was sent by the Registry to the Plaintiff's solicitor and stated to the 1st Defendant to H M Lawyers and to the 2nd Defendant In Person (Kenneth Chambers) who are not parties to this action. As such I conclude the High Court Registry erroneously sent the notice intended for the Defendant Mohammed Imran Qamer to two other unrelated parties to this matter. When the matter was mentioned before this Court on 10th September 2013 on the belief the Notice of Motion was served on the Defendant the matter was fixed for 10th September 2013. I find now the Notice of Motion dated 10th July 2013 was not served on the Defendant. As such I further conclude the said order made by me was based on incorrect information and the Order dated 10th September 2013 was made per incuriam and the said order has no effect.
7. The matter was fixed for 11th October 2013 and the counsel who appeared for the Plaintiff stated since the Defendants whereabouts are not known and unlocated the notice was not served. Accordingly, the court made order that pursuant to Order 52 Rule 3 the Leave is lapsed and the Plaintiff to take further steps. By the statement made by the counsel for the Plaintiff, it was further evident there was no possibility of serving any notice on the Defendant since his whereabouts are not known.
8. On 15th November 2013 the Plaintiff filed Ex-parte Notice of Motion and sought the following Orders pursuant to Order 2, 3 and 52 of the High Court Rules 1988:
 1. *That the Notice of Motion for an Order and Committal dated 10th July 2013 and filed on 17th July 2013 be reinstated to the cause list.*
 2. *That the Leave granted by Honorable Justice Chandrasiri Kotigalage on 4th July 2013 to issue committal proceedings be extended to indefinitely or until further orders of this Honorable Court.*
 3. *That service of the Notice of Motion for Order for committal dated 10th July 2013 and filed on 17th July 2013 on the Defendant be dispensed with.*
 4. *That the Defendant pay the Plaintiff the costs of this application.*
 5. *Further and/or other Orders as this Honorable court deems just.*
9. As stated in paragraph (5) of this Judgment, the Plaintiff had entered the matter for hearing and as such I conclude the Leave granted on 14th July 2013 remains in force. However, as stated in paragraph (6) and (7) of this Judgment, the Notice of Motion for Committal filed on 17th July 2013 was not served on the Defendant and as such all proceedings pursuant to the said motion is nullity.

10. Accordingly, I make the following **Orders**:

- (a) *Notice of Motion for an Order for Committal dated 10th July 2013 and filed on 17th July 2013 to be filed in fresh and the Plaintiff take steps to serve the said Notice of Motion on the Defendant within thirty (30) days of this Order;*

- (b) *The Leave granted by this court on 4th July 2013 to issue committal proceedings is extended for thirty (30) days from this Judgment and during such period the Plaintiff should take steps as detailed in paragraph (a) above;*

- (c) *Applicant to dispense with the service of the Notice of Motion for an Order for Committal dated 10th July 2013 filed on 17th July 2013 on the Defendant is refused.*

- (d) *No Order for costs.*

Delivered at Suva this 10th day of December 2013



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C. KOTIGALAGE
JUDGE