

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

**CIVIL CASE NO. HBC 188 OF 2014**

An Application for Committal under Order 52 Rule 3 of the High Court Rules 1988 and pursuant to the Inherent Jurisdiction of this Court.

**BETWEEN** : **BA PROVINCIAL HOLDING COMPANY LIMITED** a limited Liability Company, having its registered office at Level 3, Rogorogovuda House, Tavewa Avenue, Lautoka.

**Applicant/Original Defendant**

**AND** : **SOUTH PACIFIC FREE BIRD COMPANY LIMITED** a company Registered under the laws of Japan and trading as Ba Provincial Free Bird Institute.

**Respondent/Original Plaintiff**

**Before** : A.M. Mohamed Mackie-J.

**Counsel** : Mr. S. Nacolawa for the Applicant-Original Defendant.  
Mr. E. Moapa for the Respondent-Original Plaintiff.

**Date of Hrg** : 29<sup>th</sup> October 2018.

**Written**

**Submissions** : By the Applicant-Defendant on 7<sup>th</sup> December 2018.  
By the Respondent-Plaintiff on 19<sup>th</sup> December 2018.

**Date of Jdgmt:** 6<sup>th</sup> March 2019.

**J U D G M E N T**

(On Committal Proceedings)

**A. Introduction**

1. This judgment is pronounced pursuant to the committal Proceedings commenced by the Ba Provincial Holding Company Limited (BPHCL), the Applicant-Defendant (Applicant) in this action, through its CEO Mr. Isimeli

Bose, by way of its application filed on the 25th May 2018, seeking leave to issue committal proceedings against the Respondent-Plaintiff (Respondent), the South Pacific Free Birds Company Limited (SPFBCL).

2. The leave being granted on 1<sup>st</sup> June 2018 , the Applicant filed its Notice of Motion on 8<sup>th</sup> June 2018 and moved for an order, *inter-alia*;

*“THAT Ms. Mereseini Baleilevuka of Namaka, Nadi do stand committed to prison and/or fined for her contempt in disobeying and/ or not paying obedience to the Consent Order of this Court of which Orders the said Ms. Mereseini Baleilevuka had notice. (Vide paragraph 1 of the Notice of Motion)”.*

## B. Background

3. For the sake of lucidity, the background facts can be stated as follows.
  - i. That the Respondent commenced the substantial action in this Court on the 17<sup>th</sup> November 2014 against the Applicant by way of Originating Summons seeking the following reliefs.
    - a. *A Declaration that the Defendant is bound to refer the dispute between the Plaintiff and the Defendant regarding the MOU signed on the 28th June 2013 to Arbitration pursuant to Clause 12 of the MOU.*
    - b. *A Permanent Injunction restraining the Defendant whether by itself or its servants or agents or howsoever from taking over the Management at the Ba Provincial Secondary School at Lautoka from the Plaintiff and or terminating or cancelling or treating the MOU signed on the 28th June 2013 as terminated or cancelled until further order of this Court.*
    - c. *An Order for the Defendant to pay cost to the Plaintiff for these proceedings on an indemnity basis.*
  - ii. In addition to the aforesaid Originating Summons, the Respondent also filed on this day a Summons (application) seeking an Interim Order to

the following effect under Order 29 Rule 1 of the High Court Rules 1988 and pursuant to the Inherent Jurisdiction of the High Court.

*“That the Defendant by itself or its servants or agents howsoever be restrained until further Order of this Court from taking over the Management of the Ba Provincial Secondary School at Lautoka from the Plaintiff and/or terminating or cancelling or treating the Memorandum of Understanding signed on 28<sup>th</sup> June 2103 as terminated or cancelled until final determination of the proceedings filed herein”*

iii. At the inter-partes hearing that had held into the application for Interim Orders before the then presiding judge of this Court on 20<sup>th</sup> November 2014, both the parties through their respective learned counsel had entered into an agreement for the Applicant to abide by the Order sought in the interim injunction application. The said order, inter-alia, included the following orders:-

a) *That the Defendant undertakes whether by itself or its servants or agents or howsoever not to take over the management of this Ba Provincial Secondary School now known as BPFBI of Lautoka from the Plaintiff and the Defendant further undertakes not to terminate or cancel or treat the MOU signed on the 28<sup>th</sup> June 2013 as terminated or cancelled.*

b) *That the aforesaid undertaking will expire at 5 o'clock pm on Friday 28<sup>th</sup> November 2014.*

iv. Subsequently, when the matter had come up before the same judge on 28<sup>th</sup> November 2014 both parties agreed to enter into a Consent Order , terms of which are as follows;

i) *The Plaintiff will continue observing and complying with all the terms of the Memorandum of Understanding signed on 28<sup>th</sup> June 2013 (hereinafter referred to as the “Memorandum of Understanding”) and to continue paying Ba Provincial Secondary School Management the sum of \$10,000.00 per month as long as Ba Provincial Holding Co Ltd has the authority and continue to hold the authority from Ba Provincial*

*Council to oversee the management of Ba Provincial Free Bird Institute.  
(Emphasis mine)*

- ii) Subject to i above, the Defendant will, observe and comply with all the terms of MOU and to allow the Plaintiff to exercise all its rights and powers under the MOU without any interference from the Defendant either by itself, its servants or agents.*
- iii) Subject to i and ii above, neither party will take steps that would undermine or inhibit the rights or exercise of any rights that has been conferred on either party under the MOU unless that party has the sanction and Order of this Honourable Court and either party will be at liberty to apply to the Court generally to enforce the orders that has been made this day or to obtain such Order that may be deemed necessary.*

4. In paragraph 4.0 of the Notice of Motion, it is alleged that since June 2017 the Respondent has failed to honor its undertaking as per the terms in paragraph (i) of the above Consent Order (paragraph **1.1 in the Notice of Motion**) by failing to make the monthly payment of \$10,000.00 till the date of this application.
5. In paragraphs 5 and 6 of the Notice of Motion, it is also alleged that the Respondent has failed to comply with the terms in paragraph iii of the Consent Order (Paragraph **3.1 in the Notice of Motion**) by deliberately defying the Court Order in not complying with the payment of \$10,000.00 , the Respondent has taken steps to undermine or inhibit the rights that have been conferred on the Applicant under the Consent Order, despite the Respondent had notice of the Consent Order made by the Court as stated above and yet disobeyed and/ or failed to obey those Orders.
6. In paragraph 7 and 8 of the Notice of Motion, the Applicant also moves for orders for the Respondent to comply with the payment of \$10,000.00 from June 2017 together with the costs until further Orders of this Court.

C. Hearing

7. After the filing of affidavits in reply and response thereto , at the hearing held before me, both the learned counsel have addressed the Court orally and subsequently filed helpful written submissions, as per the direction made by the Court, for which I immensely thank them. However, the Applicant did not file reply submissions to that of the Respondent, though the right had been reserved.

D. Legal Framework:

8. Order 52 of the High court Rules 1988, as amended ('HCR') are relevant to the committal proceedings.

**Committal**

*Committal for contempt of court (O.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) *The Order applies to contempt of court-*
- (a) *Committed in connection with –*
- (i) *Any proceedings before the court; or*
- (ii) *Proceeding 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;*
- (4).....

*Application for committal (O.52, R.2)*

- 2 (1) *No application for an order of committal against any person may be made unless leave to make such application has been granted in accordance with this rule.*
- (2) *An application for leave must be made ex parte to a judge in chambers and must be supported by;*

- (a) a statement setting out the name and description of the applicant;
- (b) the name, description and address of the person sought to be committed; and
- (c) the grounds on which the committal is sought; and
- (d) an affidavit to be filed before the application is made verifying the facts relied.

- (3) The applicant must give notice of the application for leave not later than preceding day to the Registry and must at the same time lodge at the Registry copies of the statement and affidavit.

***Application for order after leave to apply granted (O.52, R.3)***

*The above Order 52 rule 3 provides for the application for the order for committal after leave to apply is granted. Sub rule 1 of Rule 3 requires the application for committal be by way of motion and all applications under Order 52 rule 3 (3) must be served personally to the person sought for committal.*

*Order 52 rule 5 (3) provides no grounds shall be relied upon at the hearing except on the grounds set out in the statement under rule 2.*

**E. The Issue:**

9. The issue that lies for adjudication before this Court is whether the Respondent Company, acting through its within named officer/s, has violated the relevant provisions of the Consent Order made by this Court on 28<sup>th</sup> day of November 2014, by its failure to observe, comply and abide by the terms in paragraphs (i) and (iii) of the said Consent Order and thereby committed the offence of contempt punishable by this court.

**F. Discussion:**

10. For the purpose of clarity and easy reference, at the expense of repetition, I shall reproduce the said Consent Order in its exact form, which seems to be the source for present contention between the parties and the alleged violation of which has given birth to this committal proceedings.

**ORDER**

**BEFORE THE HONORABLE MR. JUSTICE LAL ABEYGUNARATNE IN COURT  
ON FRIDAY THIS 28<sup>TH</sup> DAY OF NOVEMBER 2014.**

**UPON READING** the Terms of Settlement dated 28<sup>th</sup> November 2014 and filed herein

AND UPON HEARING Mr. C.B. Young of Counsel for the Plaintiff and Mr. S. Nacolawa of Counsel for the Defendant.

**IT IS HEREBY ORDERED BY CONSENT** that;

- i. The Plaintiff will continue observing and complying with all the terms of the Memorandum of Understanding signed on 28th June 2013 (hereinafter referred to as the "Memorandum of Understanding") and to continue paying Ba Provincial Secondary School Management the sum of \$10,000.00 per month as long as Ba Provincial Holding Co Ltd has the authority and continue to hold the authority from Ba Provincial Council to oversee the management of Ba Provincial Free Bird Institute.
- ii. Subject to i above, the Defendant will, observe and comply with all the terms of MOU and to allow the Plaintiff to exercise all its rights and powers under the MOU without any interference from the Defendant either by itself, its servants or agents.
- iii. Subject to i and ii above, neither party will take steps that would undermine or inhibit the rights or exercise of any rights that has been conferred on either party under the MOU unless that party has the sanction and Order of this Honourable Court and either party will be at liberty to apply to the Court generally to enforce the orders that has been made this day or to obtain such Order that may be deemed necessary.
- iv. Each party will bear its own costs in this matter.

**SEALED** this 8<sup>th</sup> day of DECEMBER 2014.

**BY THE COURT**

Sgd

DEPUTY REGISTRAR

## Preliminary Objections

11. Before proceeding to consider the matter on its merits, let me pay my attention to the objections raised by the learned counsel for the Respondent, both in his oral and written submissions, with regard to the propriety of the initial and supplementary affidavits filed by the Applicant and particularly with regard to the alleged failure in serving the affidavit.

My attention should also be focused on the apparent ambiguity that appears as per the papers filed as to who, on behalf of the Respondent Company, actually, have or has violated the Consent Order so entered and become punishable as alleged by the Applicant.

### **Propriety of the Affidavit**

12. The learned counsel for the Respondent states that there is no **affidavit verifying facts** served and the affidavit of service does not refer to the service of such an affidavit. The only affidavit mentioned in the affidavit of service was the "**Affidavit of Isimeli Bose in support of Ex Parte**" which the Respondent also possessed, according to the learned counsel.
13. Learned counsel states further that if such an affidavit has in fact been filed, the Respondent is at a disadvantage of not being served with that affidavit. In order to substantiate his position, the counsel drew my attention to the paragraph 1 of the supplementary affidavit sworn by **Isimeli Bose** and filed on the 22nd June 2018, which refers the Respondent's affidavit already filed as "*an affidavit in support of the Applicant Committal Statement*", which he alleges was not served either on the Respondent, on its Solicitors or at their office.
14. Accordingly, learned counsel argues that the Order 52 rule 2 has not been complied with by failing to file any affidavit verifying facts/or in support of the committal statement and until to date same not being served on the Respondent. He also alleges that if the Applicant relies on the supplementary



affidavit, it must comply with Order 52 rule 2 (3) – to be filed in the Registry at the same time.

15. Further, Mr. Isimeli Bose being the deponent of the Supplementary affidavit, referring to him as the Applicant in paragraphs 1 and 14 of the supplementary affidavit, while in fact the Applicant is Ba Provincial Holding Company Limited, also has been taken as an issue by the learned counsel. Hence, the Respondent opposes the usage of such supplementary affidavit and the original affidavit filed in support of ex-parte application.
16. Perusal of the record shows that the Applicant has initially filed the affidavit with the title “AFFIDAVIT OF ISIMELI BOSE IN SUPPORT OF EX-PARTE APPLICATION”. This affidavit has accompanied the “STATEMENT FOR COMMITTAL” as well as required by the relevant rule. This affidavit on close scrutiny of it shows that it is pregnant with sufficient details and information, which are needed for the purpose. Wrong description of the affidavit on its heading need not necessarily have prejudiced or misdirected the Respondent-Plaintiff. Describing the deponent as the applicant is only an oversight that should not stand on the way of justice for the Applicant. Accordingly, it is my considered view that the Applicant has sufficiently complied with the Order 52 rule 2 and I disregard the objection of the learned Counsel for the Respondent.

*The person sought to be committed*

17. I see that the submissions of the learned counsel for the Respondent on this point has some substance that warrants the favorable consideration in the light of the following observations.
  - i) The Notice of Motion dated 7th June 2018 and filed on 8th June 2018 in paragraph 1 thereof seeks Mrs. Mereseini Baleilevuka to stand committed to prison and or fined for contempt of Court.
  - ii) The last paragraph 3 (i) of the Statement for Committal also seeks that Ms. Mereseini Baleilevuka be committed for contempt of Court, while the

paragraph 2 thereof seeks to commit both Mr. Hiroshi Taniguchi, as CEO of the Respondent Company, namely, Ba Provincial Free Bird Institute (BPFBI) and Mrs. Baleilevuka as General Manager and Director thereof.

- iii) On the other hand, in paragraphs 10 to 15 of the supplementary affidavit of Isimeli Bose, it has been deposed that Mr. Hiroshi Taniguchi has breached the consent order unilaterally. This affidavit does not utter a word about any breach by Mrs. Mereseini Baleilevuka. It appears that the Applicant wants Mrs. Mereseini Baleilevuka to be punished for an action or omission allegedly committed by Mr. Hiroshi Taniguchi.
- iv) This has brought in an uncertainty as to who in deed breached the Consent Order and whom to be found guilty and punished. The Applicant, having pleaded that Mr. Hiroshi Taniguchi has breached the consent Order, finally prays for the committal of Mrs. Mereseini Baleilevuka. It is also to be noted that none of the papers have been personally served on Mr. Hiroshi Taniguchi.
- v) On the above ground adduced by the counsel for the Respondent, a reasonable doubt is created as to who actually breached the consent order and I am of the opinion that, even if there is a violation as alleged, the benefit of this doubt arose due to the ambiguity, should accrue to the Respondent resulting an acquittal of its officers named for committal.
- vi) Without prejudice to the above finding, I shall now turn towards the merits of the matter to see whether a conviction can be brought home against the Respondent Company on account of the alleged breach of the consent Order as it stands charged.

#### *The alleged breach of Consent Order*

- 18. As per the pleadings, it appears that the impugned Consent Order has been observed without any breach for a period of two and half years from the date it was entered till the Month of May 2017. The issue has cropped up, leading to this committal proceeding, on the alleged monthly non-payment of \$10,000.00 as per the Consent Order.

19. When the clause (i) of the Consent Order is closely scrutinized, it will become well and truly clear, with no room for any doubt, that the Respondent Company was bound to make a monthly payment of \$10,000.00 unto the Management of the Ba Provincial Secondary School only till the Applicant-Defendant Company had the authority and continue to hold the authority from the Ba Provincial Council to oversee the Management of Ba Provincial Free Bird Institute. The inbuilt wording "as long as" in clause (i) of the Consent Order clearly demonstrates this requirement of authority to keep on receiving payment as per the order.
20. Further, perusal of the clause (iii) of the Consent Order makes it abundantly clear that the liberty of both the parties to come before the Court for sanctions, further orders or enforcement in terms of the Consent Order is subject to clauses (i) and (ii) of the Consent Order. It means that for the Consent Order to be a living and enforceable document, the Applicant, namely, Ba Provincial Holding Co Ltd, should have had the authority and continue to hold the authority from the Ba Provincial Council to oversee the Management of Ba Provincial Free Bird Institute . When such authority ceases to exist, undoubtedly, the right to receive the Money too will extinct.
21. Factually, what has taken place after two and half years from the date of entering the Consent Order is the reversion of the School Management from the Ba Provincial Holding Company Ltd unto the Ba Provincial Council as per the resolution of it said to have been passed on 27<sup>th</sup> of July 2017. It is due to this resolution, the payment of Money has been stopped.
22. The Consent Order has no any provision to inhibit or stop the transition of management. The right and the authority of the BPC to pass any resolution or to take any step at its will has remained intact and rightly or wrongly the BPC has moved to revert the Management of the School from the Applicant Company unto the BPC and accordingly , the payment that was being made till May 2017 has been stopped.
23. The process allegedly followed by the BPC for the reversion of the Management from the Applicant Company may be questionable as stated by

the Applicant. Most of the paragraphs in the Statement for Committal and the affidavits filed for and on behalf of the Applicant have been dedicated to explain the manner in which the transition took place and how it should have taken place.

24. But the fact remains and I observe that all the above activates of reversion have taken place without offending any of the provisions in the Consent Order as the liberty of the BPC or that of the Respondent had not been restricted by any provision thereof. The clause (i) of the Consent Order authorizes the payment of \$10,000.00 only as long as the Management of the School concerned remains with the Applicant with the authority drawn from the BPC.
25. If the reversion process affected any right of the Applicant or it took place in a manner prejudicial to it, the Applicant could have resorted to stop it or to challenge the propriety of it through appropriate proceedings, provided it had a valid cause of action for same. Instead, the Applicant cannot be allowed to make use of the Committal Mechanism of this Court in order to achieve something that it failed to achieve through other avenues.
26. Perusal of the case record shows that an Inter-partes Summons filed by the Applicant Company on 18<sup>th</sup> August 2017 seeking certain orders against the resolution for the reversion of the Management of the School, which terminated the authority enjoyed by the Applicant, was withdrawn before me on 5<sup>th</sup> September 2017 for the reason best known to the Applicant.
27. In view of the above, this court cannot agree with the allegation of the Applicant that the Consent Order has been willfully violated by the Respondent Company. The inescapable conclusion that can be arrived at is that the change of Management in July 2017 as per the impugned resolution of the BPC cannot be construed or considered as a deliberate or willful violation of the Consent Order entered into between the parties on 28<sup>th</sup> November 2014.

The allegations of breach of an order obtained have to be willful. The breach has to willful in the sense that it was deliberate and intentional: *Ali v Chaudhary* [2004] FJHC 189; HBC0061J.2001L (20 March 2004).

28. In Ali (above), His Lordship Gates J (as he then was) sets out the general considerations of an allegation of contempt of court in the following terms;

*“A jurisdiction and a power to punish persons for contempt of court in accordance with the law is bestowed on the superior courts including the High Court by Section 124 of the Constitution 1997 [previously Section 121 Constitution 1990].*

*The onus of proof in such proceedings is on the mover of the motion. Proof is to be established to that standard applying in the criminal courts, namely proof beyond reasonable doubt: Barclays de Zoete Wedd Securities Ltd and Others v Nadir [1992] TLR 141; Dean v Dean [1987] FLR 517 CA; Vijay Kumar v Shiu Ram & Anor. (Unreported) Suva High Court Action No. HBM0026.00s, 19 September 2001, Shameem J.*

*Where, as here, the contempt alleged is of disobedience to a court order the Accused contemnor must be shown to have willfully disobeyed the order. An unintentional act of disobedience is not enough: Steiner Products Ltd & Anor v Willy Steiner Ltd [1966] 1 WLR 986 where Stamp J found breach of a consent order to have been willful. His Lordship cited with approval observation of the Court of Appeal in Fairclough v Manchester Ship Canal Co [1897] WN7, CA which had said:*

*In these cases, casual, or accidental and unintentional disobedience to an order of the court is not enough to justify either sequestration or committal; the court must be satisfied that a contempt of court has been committed in other words, that its order has been contumaciously disregarded.”*

Stamp J added at p 991:

*“I do not think that the Court of Appeal intended to use the word “contumaciously” as meaning something different from “willfully”.*

*In the instant case if the Accused contemnor deliberately lodged the caveats, a positive act, though he only intended to exercise his lawful rights, the lodging would be a deliberate act. It would be sufficient to prove a willful disobedience if the lodging were deliberate even if it were not known to be in conflict with the orders: R v Sheppard [1981] AC 394. “Willful” in this contempt means either*

*deliberately doing an act knowing that there is some risk of the consequences, or doing an act not caring about the risks involved."*

*The task for the judge*

*Speaking on the task for the judge hearing an application for committal for breach of an order, Sir James Munby President of the Family Division in Re L-W (Enforcement and Committal: Contact) [2010] EWCA Civ 1253, with whom Jacob and Sedley LJJ agreed, said this (para [34]):*

*"(1) The first task for the judge hearing an application for committal for alleged breach of a mandatory (positive) order is to identify, by reference the express language of the order, precisely what it is that the order required the defendant to do. That is a question of construction and, this, a question of law.*

*The next task for the judge is to determine whether the defendant has done what he was required to do and, if he has not, whether it was within his power to do it. To adopt Hughes LJ's language, Could he do it? Was he able to do it? These are questions of fact. (3) The burden of proof lies throughout on the applicant: it is for the applicant to establish that it was within the power of the defendant to do what the order required, not for the defendant to establish that it was not within his power to do it. (4) The standard of proof is the criminal standard, so that before finding the defendant guilty of contempt the judge must be sure (a) that the defendant has not done what he was required to do and (b) what it was within the power of the defendant to do it. (5) If the judge finds the defendant guilty the judgment must set out plainly and clearly (a) the judge's finding of what it is that the defendant has failed to do and (b) the judge's finding that he had the ability to do it."*

29. In the present case the basis for the application for contempt by the Applicant is the alleged violation of the Consent Order sealed on 28th November 2014.
- i) The paragraph (i) of the Consent order has an inbuilt condition "as long as". Such condition requires the Respondent to continue paying Ba Provincial Secondary School Management (BPSSM) (now Ba Provincial Free Bird Institute – BPFBI) only till the Applicant had the authority and continue to hold that authority from the Ba Provincial Council (BPC) to manage the School.

- ii) The directive from the Ba Provincial Council, which is the holding authority, to change the administration of BPFBI and to withhold the payment of \$10,000 per month is not an act of violation of the consent order. The condition in the Consent Order has been observed and stands fulfilled. It cannot be enforced any further since the Applicant no longer holds authority from BPC to oversee the management of BPFBI.
- iii) The Applicant, as a party to the consent order, undeniably recognized the holding authority of the BPC and consented for the conditions to be included in that Consent Order for the payments to be received only “as long as” BPHCL holds and continue to hold the authority from BPC.
- iv) There is nothing restraining or stopping or preventing the Respondent from depositing of \$10,000 per month into the account of BPC, should the BPC withdraws its authority from BPHCL.
- v) There is no order preventing the Respondent from receiving fresh instructions from BPC or entering into a new MOU with it. The consent order allow the parties to apply to court for such further orders, sanctions, clarifications and enforcement only within the framework of the consent Order, if necessity arises.
- vi) The position of the Respondent is very clear. It has done what had been required to do by the holding authority. The BPC resolved the reversion of the administration of the BPFBI to the BPC. Hence the Applicant ceased to hold authority in the administration of BPFBI.
- vii) The alleged act by the Respondent was not deliberate or intentional but basically on the strength of the letter and directive from the holding authority, BPC, and in accordance with the conditions of the court order.
- viii) From the contents of the written and oral submissions made on behalf of the Applicant with all due respect I see, that the Learned Counsel for the Applicant is in an attempt to downplay the significance and the extent of the application of the paragraphs (i) and (iii) of the Consent Order.

- ix) The learned counsel for the Applicant in his written submission states that paragraph (i) of the Consent Order “does not make sense”. He was the counsel on record for the Applicant when the Consent Order was drafted and entered into before it was accepted and acted upon by the Court.
- x) If the Applicant was confused or not sure of the terms of the consent order, it must have applied to the court for the necessary interpretation/direction/ sanction from the Court, but it failed to exercise that option.

**G. Conclusion:**

1. Therefore, for the reasons adumbrated above, I see no breach of the Consent Order by the Respondent and what exactly the Respondent has done is obeying the direction given by the BPC pursuant to the reversion of the Management authority as per the resolution dated 27th July 2017. Thus, the Respondent cannot be found guilty on the alleged contempt charge advanced by the Applicant.
2. The argument advanced in relation to the propriety of the Affidavit of the Applicant- Defendant and service of it will not hold water and the objection for same has to be rejected.
3. Failure to serve all Court documents personally on Mr. Hiroshi Taniguchi is fatal, if the Applicant had in fact intended to commit him.
4. Even if there was a violation of the Consent Order as alleged, the ambiguity that existed due to contradicting stance of the Applicant in its Statement for Committal, Affidavit and Notice of Motion as to who in fact violated the Consent Order, will not allow this court to enter a conviction.
5. In the light of what transpired above, I am of the view that the application for Committal should be dismissed and the Respondent should be entitled for a reasonable cost from the Applicant.



H. Final Orders

- a. The Application for Committal is hereby struck out and dismissed.
- b. The Applicant shall within 28 days pay unto the Respondent a sum of \$2,500.00 being the summarily assessed costs.



A. M. Mohammed Mackie  
Judge

At Lautoka  
6<sup>th</sup> March, 2019