

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

Civil Action No: **HBC 371 of 2018**

**BETWEEN** : **FIJI PORTS CORPORATION LIMITED** a company having  
its registered office at Muaiwalu House, Lot 1 Tofua Street,  
Walu Bay, Suva, in the Republic of Fiji.

**PLAINTIFF**

**AND** : **GOLDEN MACHINERY (FIJI) LIMITED** a limited liability  
company having its registered office at 6 Usher Street, Suva,  
Fiji.

**DEFENDANT**

**BEFORE** : M. Javed Mansoor, J

**COUNSEL** : Mr E. Narayan for the Plaintiff

**Date of Hearing** : 26 July 2019

**Date of Judgment** : 28 February 2020

# JUDGMENT

## DAMAGES

Losses caused by a vessel to port management company – Removal order – Costs of tugging and mooring – Offences committed by the master of the vessel – Section 4 & 27 of the Sea Ports Management Act – Sea Ports Management Regulations 2008 – Orders 13, 19 and 37 of the High Court Rules 1988

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1. The plaintiff filed a writ of summons and statement of claim on 7 December 2018 seeking *inter alia* judgment in a sum of \$27,100.79 and an order to remove the vessel FV Danuri. The defendant did not file a statement of defence. The affidavit of service states that the defendant was personally served summons at its office on 30 January 2019. Acknowledgement of service was filed on 7 December 2018. Thereafter, default judgment was entered against the defendant.
2. Thereafter, the plaintiff filed a summons on 7 May 2019, supported by affidavit dated 6 May 2019 given by Pauliasi Vakaloloma, enforcement officer and port pilot, seeking judgment against the defendant in a sum of \$27,100.79, and for interlocutory judgment and damages against the defendant. This application was made pursuant to Order 19 Rules 2, 3, 6 & 7 and Orders 13 and 37 of the High Court Rules 1988.
3. The plaintiff's case is that it operates the ports of Suva, Lautoka and the port of Levuka by virtue of the Sea Ports Management Act 2005 (the Act). The defendant is the owner of the vessel FV Danuri. On 26 May 2018, the vessel, FV Danuri drifted towards the Lami bay and ran aground. Subsequent investigations revealed that the vessel drifted after its moorings broke due to strong winds. As no action was taken by the defendant, the plaintiff, on 29 May 2018, issued an order on the defendant for the removal of the vessel pursuant to section 27 of the Act, and, thereafter, removed the vessel when its order was ignored. As the port management company, the plaintiff is seeking damages in this action to recover the expenses it incurred due to the failure of the defendant to take necessary measures to safely anchor the vessel.

4. Mr. Pauliasi Vakaloloma, who gave evidence on behalf of the plaintiff, when the matter came up for formal proof on 26 July 2019, said that in terms of the Act, the chief executive officer<sup>1</sup> of a port management company may order the removal of any derelict or dangerous vessel from a port or the approach to a port with the approval of such company's board of directors. He said that the issuance of an order by the chief executive officer of the plaintiff for the removal of a vessel is well within the ambit of Section 26 (1) (b) and Section 27 of the Act.
5. Section 27 (3) of the Act states that if no action is taken in relation to a vessel in respect of which a notice to remove such vessel within a stated time has been given, the chief executive officer of the port management company may arrange for the removal of the vessel and for its sale by auction or its destruction. The enactment further provides that an owner or master of a vessel who refuses or fails to comply with the removal order given under section 27 of the Act commits an offence, and is liable upon conviction to a fine not exceeding \$250,000 or a term of imprisonment not exceeding 3 years or both.
6. In his testimony, the witness said that the plaintiff has spent substantial amounts due to the defendant's neglect of the vessel and its failure to comply with the orders made by the plaintiff, including the order to remove the vessel. Mooring charges were incurred when the vessel was moored to a buoy. Tugging charges were a result of the vessel running aground, and the vessel had to be tugged from the Lami bay to the Suva port. He said that the plaintiff had also incurred expenses in order to keep the vessel afloat, and that water was periodically pumped out. As a result of these charges, the witness testified, the defendant owes the plaintiff a sum of \$27,100.79, and that although demand for this amount was made, the defendant failed to make payment.
7. The witness stated in his evidence that the owner undertook to repair the vessel, but did not do so, and that the removal order was issued since the

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<sup>1</sup> Defined in section 2 of the Sea Ports Management Act

vessel was not moored despite orders being issued to that effect to the owners. He said that the removal orders issued by the plaintiff were ignored by the defendant.

8. I accept the evidence of the plaintiff's witness. The cost of removing a vessel and of its destruction are regarded to be debts payable to the port management company by the owner of the vessel<sup>2</sup>; in this case that liability would fall upon the defendant to pay the plaintiff.
9. Counsel for the plaintiff submitted that several provisions of the law were violated by the defendant. He submitted that the failure to report on the condition of a dangerous vessel before entering port was in breach of regulation 13(1) of the Sea Ports Management Regulations 2008 and that the failure to properly and safely anchor the vessel in port was in breach of regulation 44<sup>3</sup>. He submitted that the causing of an obstruction in a port area without the written approval of the Fiji Port Corporation Limited (FPCL) was in breach of section 55 of the Regulations.
10. Counsel for the plaintiff submitted that the provisions of the Act provided for a fine to be imposed on the defendant for breach of such regulations by the master of the vessel. He submitted that a person who commits an offence is also liable upon conviction to a term of imprisonment.
11. Criminal proceedings in a competent court have to be initiated by the procedure prescribed by law. The question then arises whether this Court is competent to hear matters relating to offences under the Act. More fundamentally, however, a person has to be charged with an offence for a hearing to take place. The defendant in this case is not charged with an offence. Therefore, the need to consider the reliefs claimed by the plaintiff for the imposition of a fine and/ or order imprisonment does not arise.

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<sup>2</sup> Section 27 (4) of the Sea Ports Management Act 2005

<sup>3</sup> Sea Ports Management Regulations 2008

12. On 3 February 2020, counsel for the plaintiff informed Court that the subject vessel has sunk. He sought time to obtain further instructions from the plaintiff. When this matter was mentioned on 24 February, counsel for the plaintiff submitted that there were no fresh instructions. As the vessel has sunk, the first relief sought by the plaintiff i.e: for an order that the vessel FV Danuri be removed forthwith by the defendant, is now redundant.
13. The plaintiff also sought damages to the environment. However, no evidence was led before me concerning the damage to the environment. Nor was loss on the part of the plaintiff established as a result of any possible damage to the environment. No submissions were made by the plaintiff under this head. This relief cannot be granted.

**ORDERS**

- A. The defendant is ordered to pay the plaintiff damages in a sum of \$27,100.79.
- B. The defendant is ordered to pay the plaintiff costs summarily assessed in a sum of \$2000.

Delivered at Suva this **28th** day of **February, 2020**



Justice M. Javed Mansoor  
Judge of the High Court