

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

Civil Action No. HBM 66 of 2021

**IN THE MATTER** of an application by the  
**ATTORNEY-GENERAL OF FIJI** for leave to apply for  
an Order of Committal

AND

**IN THE MATTER OF VERONICA RALOGAIVAU**  
**MALANI**, employment unknown, 68 Upper Vesi Street,  
Laucala Bay Road, Flagstaff, Suva, and **MANOA**  
**MALANI**, employment unknown, 68 Upper Vesi Street,  
Laucala Bay Road, Flagstaff, Suva.

**BEFORE:** Honourable Mr. Justice Vishwa Datt Sharma

**COUNSEL:** Mr Sharma, S., Sherani J. and Solvalu D. - for the Plaintiff  
No appearance - for the Defendants

**DATE OF DECISION:** 17<sup>th</sup> September, 2021 @ 10.30am

**DECISION**

[Notice of Motion for Leave to Issue Order of Committal pursuant to Order 52, Rule 2 of the High Court Rules 1988 and the Inherent Jurisdiction of this honourable Court]

## INTRODUCTION

[1] The Applicant filed an Ex-Parte Notice of Motion for leave to issue an Order for Committal and sought for the following Orders:

*(a) That the Attorney-General be given leave to make an application for an Order of Committal against;*

*(i) Veronica Ralogaivau Malani, employment unknown, of 68 Upper Vesi Street, Laucala Bay Road, Flagstaff, Suva and*

*(ii) Manoa Malani, employment unknown, of 68 Upper Vesi Street, Laucala Bay Road, Flagstaff, Suva.*

*As set out in the statement filed herein and verified in the Affidavit of Aiyaz Sayed-Khaiyum and the Affidavit of Simione Sevudredre filed herewith.*

*(b) That Veronica Ralogaivau Malani and Manoa Malani be ordered to pay the costs of this application on an indemnity basis.*

[2] The Applicant at the hearing of this application relied upon the grounds set forth in the Affidavit of Aiyaz Sayed-Khaiyum filed herewith in support of this application.

[3] This application is made pursuant to *Order 52, Rule 2 of the High Court Rules 1988* and under the inherent jurisdiction of this Honorable Court.

[4] Apart from the above Ex-Parte Notice of Motion for Leave, the Applicant also filed a Statement, an Affidavit Verifying Statement and a Supplementary Affidavit of Simione Sevudredre.

[5] Further, the Applicant also by Oral Application sought for an alternative Order to effect service of the Application on the Respondents by leaving a copy each at the door of the residence at 68 Upper Vesi Street, Laucala Bay Road, Flagstaff, Suva.

## THE LAW

[6] **Order 52 of the High Court Rules 1988** deals with the procedure to be followed in an application for contempt of Court.

*Order 52 Rule 2 (2) states as follows:-*

*(2) An application for such leave must be made ex parte to a judge in chambers, and must be supported by a statement setting out the name and description of the Plaintiff, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.*

[7] The above provisions of the procedural law clearly state the manner in which the application for contempt should be made to Court.

[8] **Order 52 Rule 3** states as follows:

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 entered for hearing the leave shall lapse.

#### DETERMINATION

[9] There are two issues for this Court to deal with-

- (i) Whether leave to issue an Order for Committal be granted; and
- (ii) Whether apart from the personal service of the application as required by O.52, r.3 of the High Court Rules 1988 that be only granted and/or alternatively service be effected by leaving a copy each of the application at the door of the residence of the Respondents.

#### LEAVE TO ISSUE AN ORDER FOR COMMITTAL

[10] I have perused the Statement, Affidavit Verifying Statement of Aiyaz Sayed-Khaiyum coupled with the Supplementary Affidavit of Simone Sevudredre in its entirety.

[11] In summary, the Affidavit Verifying Statement deposes that the Applicant believes that the words and statements contained in the video marked "AS-K3" are contemptuous in that:

- (i) The statements have been deliberately made with the intention to scandalise the Judiciary and the Courts;
- (ii) The statements are a scurrilous attack on the Judiciary and the members of the Judiciary thereby lowering and undermining or posing a real risk of lowering or undermining the reputation, reputation, integrity and impartiality of the Judiciary, members of the Judiciary and the Court; and
- (iii) The statements made will undermine or pose a real risk of undermining the public confidence in the administration of justice in Fiji.

[12] The Applicant further believed that the integrity, authority and independence of the Judiciary and the Courts must be upheld at all times and therefore the making of such scandalous statements amount to a contempt of the Court.

[13] As per the Supplementary Affidavit of Simone Sevudredre, he deposed that on the request of the assistance sought by the Applicant Solicitors, he had transcribed and translated a video that was circulating on the online networking site Facebook ("Annexure SS-1").

[14] Upon a careful perusal and consideration of the Statement, Affidavit Verifying Statement and Supplementary Affidavit filed herein, I am satisfied prima facie that the Applicant's Ex-Parte Application for Leave to Issue an Order for Committal succeeds and is accordingly granted.

**SERVICE OF APPLICATION**

[15] In terms of the service, the High Court Rules 1988 (O.52, r.3) requires personal service of the Application to be effected on the Respondents.

[16] However, upon hearing the Oral Submissions of the Counsel representing the Applicant, I also grant the alternative service to be effected on the Respondents by leaving a copy each at the door of the residence of the Respondents at 68 Upper Vesi Street, Laucala Bay Road, Flagstaff, Suva accordingly.

[17] Question of any costs to be determined in the cause accordingly.

**ORDERS**

- (i) Leave to Issue an Order for Committal against Veronica Ralogaivau Malani and Manoa Malani succeeds and is hereby granted accordingly;
- (ii) The Applicant is also at liberty to make an alternative service of the Application on the Respondents by leaving a copy each of the Application at the door of the residence at 68 Upper Vesi Street, Laucala Bay Road, Flagstaff, Suva;
- (iii) Question of any costs to be determined in the cause accordingly.

Dated at Suva this 7<sup>th</sup> day of September, 2021.



A handwritten signature in blue ink, appearing to read "V D Sharma", is written over a horizontal dotted line.

Vishwa Datt Sharma  
Judge

cc: Office of the Attorney General, Suva.  
Veronica Ralogaivau Malani &  
Manoa Malani, Suva.