

IN THE HGIH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 332 of 2020

BETWEEN

PRAMIL PRASAD of House No. 38, 5 ½ Miles, Waisasa Settlement,
Tamavua, Suva, Fiji, Taxi driver.

APPLICANT

AND

UMINENDRA SHARMA also known as **UVENDRA SHARMA** also known as
UMESH usually of Naseakula Village, Labasa, Fiji but currently of
Sakoca, Nasinu, Fiji, Occupation Unknown to the Applicant.

RESPONDENT

Counsel : Mr. Chang K. for the Applicant
Mr. Chand A with Ms. Dutt S. for the Respondent
Ms. Chand S. as Amicus Curiae

Date of Hearing : 26th March 2021

Date of Judgment : 08th October 2021

JUDGMENT

[1] The applicant filed this Notice of Originating Motion which was subsequently amended seeking the following reliefs:

1. An order for time of service of the notice of originating motion and affidavit be abridged to two (2) days by the Suva High Court Civil registry due to the urgency of the matter.
2. A declaratory order that the applicant's and his family's rights under sections 35, 36, 39, 41 and 42 of the Constitution of the Republic of Fiji have been breached by the respondent's actions and that the applicant and his family are entitled to a constitutional redress;
3. A permanent injunction granting the applicant and his family possession of the dwelling house located at House No. 38, 5 ½ Miles, Waisasa Settlement, Tamavua, Suva Fiji until he and his family are evicted by an order of a court;
4. A permanent injunction preventing the respondent from interfering, preventing or hindering the occupation, access and safe enjoyment by the applicant of the dwelling house premises located at House No. 38, 5 ½ Miles, Waisasa Settlement, Tamavua, Suva, Fiji in pursuant to the above order;
5. A permanent injunction restraining the respondent whether by himself or by his servants or agents or otherwise whosoever from disrupting utilities to the dwelling house located at House No. 38, 5 ½ Miles, Waisasa Settlement, Tamavua, Suva, Fiji;
6. The respondent pay damages to the applicant for humiliation, injury to feelings and the inhuman treatment as a result of the respondent's action in preventing the applicant and his family from using the dwelling house located at House No. 38, 5 ½ Miles, Waisasa Settlement, Tamavua, Suva, Fiji;
7. An order that the Station Officer of the Valelevu Police Station execution and facilitation of the above orders;
8. An order that costs of this application be paid by the defendant;

9. A permanent injunction restraining the respondent whether by himself, his agents or servants or whosoever and howsoever, from harassing, intimidating, threatening or abusing the applicant or any member of his family;
10. The respondent pay damages to the applicant for household items damaged and/or lost during the course of the arbitrary eviction; and
11. Any other orders deemed just and equitable in the circumstance(s).

[2] The applicant's case is that he moved into the house which is the subject matter of these proceedings in the year 2017 with his family, as the caretaker and after sometime of his moving into the premises he was informed that the respondent wished to charge rent and he paid \$300.00 per month as rent. The applicant states in his affidavit in support that after sometime the respondent informed him that the house could not be rented of lease since it was on a squatter land and got him to signed a statutory declaration stating the he was not the tenant of these premises but the caretaker. It is his position that he is not an educated person and he signed the document prepared by the respondent.

[3] The applicant states further in his affidavit in support that due to Covid 19 pandemic he could not pay \$300.00 per month instead he paid \$150.00 per month but the respondent was not prepared to accept \$150.00 per month and to give time for the applicant to settle the balance amount later. The respondent had then given notice verbally to the applicant to leave the house.

[4] When the respondent started threatening the applicant to leave the house he has complained to the Fijian Consumer and Competition Council (FCCC) and also to the Valelevu Police Station. The applicant states further the respondent apart from threatening him also disconnected the water supply.

[5] The applicant alleges that on 29th October 2020 between 4.30 - 6.30pm the respondent with about another 12 people came to his house and evicted him and the family and while doing that the respondent pushed his wife who had given birth to a child on 19th October via caesarean section and at that time she was holding her eight day ole baby. The medical report says left edge of the wound was slightly open. The applicant had then complained to the police and the Fiji Human Rights and Anti-discrimination Commission.

- [6] The respondent denies having the applicant evicted from the premises. He also denies payment of any rent by the applicant. He states that verbal notice vacate was given because his mother was occupying the respondent's bed room.
- [7] The respondent admits that the water supply was disconnected. He says it was not him who disconnected the water but by the Water authority for non-payment of water bills.
- [8] The applicant while denying the allegation of eviction states that when Mataqali owner went there with another 5 people the applicant said he did not want to remove the items from the house but told the Mataqali to put the item outside the house.
- [9] Section 39 of the Constitution of the Republic of Fiji Provides:
- (1) Every person has the right to freedom from arbitrary evictions from his or her home or to have his or her home demolished, without an order of a court made after considering all the relevant circumstances.
 - (2) No law may permit arbitrary evictions.
- [10] The learned counsel for the applicant also relied on section 35 of the Constitution which provides:
- (1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to accessible and adequate housing and sanitation.
 - (2) In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.
- [11] The above provisions is of no relevance to the matter before this court. Section 35 of the Constitution imposes a responsibility to take reasonable measures to provide adequate housing and sanitation to every person.
- [12] The respondent tendered a letter from Suliasi Nacolai, Chief of Tacirua village stating:
- I Suliasi Nacolai, retired, chief of Tadirua village do confirm that I had given part of our LOU (Land Owning Unit) or Mataqali Nawavatu land to one Umesh Sharma aka Urendra Sharma, Driver Nasekula Labasa on the 04th day of April 2015. He had

paid me the sum of two thousand five hundred dollars FJ (\$2,500.00) as consideration. I request the Police Department to grant him all the assistance he needs to remove a taxi driver called Pramil Prasad who has illegally taken over Urendra Sharma's home.

[13] It appears from this document that this has been issued by its author at the request of the respondent for the sole purpose of assisting him to evict the applicant.

[14] The respondent tendered another document signed by one Jekope Raibeve stating:

This letter is to inform, I the land owner (Jekape) went to the place where Pranil is staying to have a conversation with him. Upon arrival I was told by him to put his belongings outside as he will take it somewhere else.

[15] This letter has also been issued to assist the respondent to evict the applicant. None of these letters shows that the authors of the letters had any interest other than to help the respondent, in evicting the applicant from home. If the eviction was done with the consent of the applicant the wife of the plaintiff could not have received injuries in the process.

[16] The respondent says he did not go the house and the eviction was done by the Mataqali. Whoever who did it, the respondent's own documents show that he was behind this unlawful eviction.

[17] Respondent's position is that the applicant was not a tenant and in support of that he tendered a statutory declaration of the applicant where it says that he was not renting the house. Whether he was a tenant or unauthorised occupier, the respondent has no right to forcefully evict the applicant without obtaining a court order.

[18] From the above it is clear that the respondent has acted contrary to section 39 of the Constitution and breached the applicant's rights guaranteed by the said section.

[19] The applicant claims damages for the loss caused to the house hold items during the process of eviction. It is a commonly accepted principle of law that the person who claims damages must establish by adducing evidence that the damages he claims in fact caused to him and also the quantum of damage. It can be done only in a writ action. There must be evidence for the court to ascertain the extent of the damage. In this matter the

applicant tendered some quotations for various house hold items which are absolutely insufficient for the court to award damages.

[20] The learned counsel for the applicant and the learned counsel who appeared as *amicus curiae* made lengthy submissions referring the International Conventions on child rights.

[21] Section 41(1)(d) of the Constitution provides:

(1) Every child has the right –

(d) to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour; and

[22] In this matter there were two children in the house. The older child was 5 years old and the other child was only 10 days old. The applicant had had no regard for the safety of these children.

[23] The applicant has also averred in his affidavit in support that at the time of eviction his mother whose leg had been amputated was also forcefully put into a taxi and taken away.

[24] These proceedings were instituted by the applicant alleging that he and his family were affected by wrongful eviction but he did not make the member of the family parties to these proceedings. The question arises whether the applicant has the *locus standi* to represent the members of his family without making the wife and the mother parties and appointing himself as guardian of the two children.

[25] It is also alleged that the respondent disconnected the water supply in breach of section 36 of the Constitution which provides:

(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to be free from hunger, to have adequate food of acceptable quality and to clean and safe water in adequate quantities.

(2) In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

[26] This section does not have the effect of imposing responsibility on the people to provide water. It imposes that responsibility on the government.

[27] The respondent's position is that the water supply was disconnected due to non-payment of water bills which the applicant denies. The respondent admits that he disconnected the water supply. If the applicant had in fact paid the water bill he could easily have tendered the receipt to court but nor such payment receipt was tendered to court. However, as I stated above there is no breach of section 36 of the Constitution.

[28] Section 44 subsections (1) and (2) of the Constitution provides:

- (1) If a person considers that any of the provisions of this Chapter has been or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if another person considers that there has been, or is likely to be, a contravention in relation to the detained person), then that person (or the other person) may apply to the High Court for redress.
- (2) The right to make application to the High Court under subsection (1) is without prejudice to any other action with respect to the matter that the person concerned may have.

Subsection (4) of section 44 provides:

- (4) The High Court may exercise its discretion not to grant relief in relation to an application or referral made under this section if it considers that an adequate alternative remedy is available to the person concerned.

[29] The court has to consider, before granting relief, whether the applicant has an adequate alternative remedy available to him. In this matter there were alternative remedies available to him. The applicant had complained to the Fijian Consumer and Competition Council and also to the Police but to no avail.

[30] The question whether an application for constitutional redress should be refused on the ground that the party seeking redress has an adequate alternative remedy depends on the facts of each case. The discretion conferred upon the court by section 44(4) of the Constitution must be exercised cautiously and the court must always consider whether the alternative remedy available to the applicant is adequate before refusing an

application for constitutional redress. There are no set guidelines to follow in deciding whether a particular alternative remedy available to a party is adequate.

[31] In this matter the applicant and his family were arbitrarily evicted by the respondent and a group of people who supported him. The court cannot ignore severity of a matter of this nature and refused the application on the ground that the applicant has an adequate alternative remedy. I am of the view that this is not a matter which the court can refuse on the ground of availability of an adequate alternative remedy.

[32] For the above reasons the court is of the view that the applicant is entitled to compensation for the breach of his rights guaranteed by section 39 of the constitution, an order restraining the respondent from arbitrary eviction without an order of court and also an order restraining the respondent from harassing, intimidating, threatening or abusing the applicant.

ORDERS

- (1) The respondent is ordered to pay the applicant \$20,000.00 (Twenty Thousand) within 30 days from the date of this judgment.
- (2) The respondent is restrained from evicting the applicant from the dwelling house located at House No. 38, 5 ½ Miles, Waisasa Settlement, Tamavua, Suva without an order of a court.
- (3) The respondent is also restrained from harassing, intimidating, threatening or abusing the applicant.
- (4) The respondent ordered to pay \$2000.00 as costs of this application within 30 days from the date of this judgment.

Lyone Seneviratne

JUDGE

08th October 2021