

**IN THE HIGH COURT OF FIJI  
(WESTERN DIVISION) AT LAUTOKA  
CIVIL JURISDICTION**

**CIVIL ACTION NO. HBM 18 OF 2022**

**IN THE MATTER OF COMMITTAL PROCEEDINGS** under Order 52 of the High Court Rules 1988 against the Defendant/ Respondent for Contempt of Court Orders.

**BETWEEN** **BIJMA KUMARI** aka **BIJMA KUMARI SINGH** aka **BIJAM KUMARI** of 5 Oliver Street, Bexley, North NSW 207, Australia as Executrix and Trustee of the Estate of Bhagat Singh  
**PLAINTIFF/ APPLICANT**

**AND** **PRANITESH SINGH** and **SONIA SINGH** both of Sabeto, Nadi  
**DEFENDANTS/ RESPONDENTS**

**APPEARANCES** : Ms. Arthi B. Swamy for the Plaintiff/ Applicant  
Respondents absent and unrepresented.

**DATE OF HEARING** : 20<sup>th</sup> May, 2022

**DECIDED ON** : 14<sup>th</sup> June, 2022

**DELIVERED ON** : 28<sup>th</sup> June, 2022

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

**A. Introduction:**

1. This is an Application by way of Notice of Motion preferred on behalf of the Plaintiff/Applicant ('the Applicant'), with the leave of this Court being obtained to issue Committal proceedings, for the committal of the first named Defendant-Respondent (the first named Respondent) namely, PRANITESH SINGH, for the alleged contempt of the court orders delivered against the Respondents by the Magistrate's Court of NADI.
2. The Orders alleged to have been **observed in breach** by the first named Respondent, are INTERIM ORDERS made by the learned Magistrate of NADI on 30<sup>th</sup> January 2019, sealed on 22<sup>nd</sup> February 2019 and, reportedly, served on him on 21<sup>st</sup> March 2019 and the subsequent PERMANENT ORDERS made on 1<sup>st</sup> May 2019, sealed on 20<sup>th</sup> May 2019 and, reportedly, served on 23<sup>rd</sup> of May 2019 in the Magistrates Court of NADI Civil Action bearing No-70 of 2018 filed by the Applicant against the Respondents.
3. This Application was filed pursuant to Order 52 Rule 3 of the High Court Rules 1988 ('HCR') seeking an order of committal against the first named Respondent PRANITESH SINGH, who was a Defendant in the said matter for his contempt of the said orders of the Magistrate's Court.

4. At the hearing before me , the Respondent was neither present nor represented by a counsel to defend the allegation. The applicant, BIJMA KUMARI a.k.a BIJMA KUMARI SINGH a.k.a BIJAM KUMARI, led her affidavit evidence sworn on 12<sup>th</sup> June 2021 supported by documents marked as "A" to "J".

**B. The Background to the Original Claim & Application.**

5. Briefly, the background facts are as follows.

a) The Applicant, being the Trustee of the Estate of Bhagat Singh, on 4<sup>th</sup> July 2018, filed Writ of Summons and Statement of claim, together with a Notice of Motion supported by Affidavit seeking restraining orders against the Respondents in the Magistrate's Court of NADI.

b) The Respondents **failed** to file their Statement of Defence and Affidavit in response to the Affidavit in support for interim relief. Having heard the Notice of Motion the learned Resident Magistrate on 30<sup>th</sup> January 2019 made following orders.

- i. *THAT the court granted an interim injunction to restrain the Defendants by themselves, their servants or agents or otherwise from repeating or continuing the said nuisance or any nuisance of a like kind.to restrain the Defendants from entering the Agreement for lease*
- ii. *THAT the Court granted an interim injunction to restrain the Defendants from entering the Agreement for lease Ref No. 6/10/7871 which is located at Sabato, Nadi.*
- iii. *THAT the Court granted an interim injunction to restrain the Defendants to be within 100m of distance of the Plaintiff at all material time.*
- iv. *COSTS of this Application be in the cause.*

c) The above orders were sealed and served on the Respondents on 21<sup>st</sup> March 2019, and since there was no response, the Hon. Magistrate on 1<sup>st</sup> May 2019 made the above orders permanent in following terms.

- a. *The interim injunctive orders granted and sealed on 22.2.2019 are ordered permanent forthwith against the Defendants; and*
- b. *The Defendants are ordered to pay the plaintiff costs summarily assessed \$ 750.00.*

d) The above permanent Order was also sealed and, reportedly, served on the Respondents on 23<sup>rd</sup> May 2019.

6. Though, the above permanent orders were duly served on the first named Respondent and he thus being aware of the orders made, is alleged to have acted on several occasions and still acting in the following manners, in contempt of those Orders.

- i. *Harassing the caretaker of the said property, or*

- II. *By damaging the property by setting fire in the farm,*
  - III. *By removing the farm equipment's from the property without the approval and consent of the applicant,*
  - IV. *By locking the gate which is meant to be used by the applicant's caretakers and after several attempts and involving Sabato Police Officers, the keys have not been provided to the caretaker.*
  - V. *He has parked his big truck in Applicant's Yard without her permission,*
  - VI. *Has got 4-5 dogs and left in the Applicant's Yard posing risk to her caretaker of the property and his family members.*
  - VII. *He has been going to the house where her caretaker used to live and put chemicals to destroy the grass,*
  - VIII. *Instructing laborers not to listen her instructions.*
  - IX. *Putting up false claims to charge one of her workers whom she instructed to get the farm masala to put on the farm.*
7. The Applicant's Solicitors by their letter dated 17<sup>th</sup> April 2020 had raised the issue with the Sabato Police Station about the said breaches and thereafter 4 separate complaints were made to the Police, but the Police have failed to take any action till to date.
8. The Applicant's Solicitors by their letter dated 06<sup>th</sup> April 2021 also issued a notice to the First named Respondent demanding him to stop the harassment to the caretaker and return the farm equipment's that the first named Respondent had removed from the property without her approval and consent.
9. As the first named Respondent failed to comply with the injunctive Orders of the Court and continues to violate the said Orders even after it was made permanent, the Applicant applied for leave to commence Committal proceedings against the first named Respondent and this Court on 26<sup>th</sup> April 2022 granted leave which was on 03<sup>rd</sup> May 2022 personally served on him, along with the Notice of Motion, Statement of the Applicant, the Affidavit in support and the annexed documents.

C. **The Legal Framework:**

10. Order 52, Rule 1 of the High Court Rules (HCR) provides that the High Court possesses the power to punish for contempt of court. That rule, so far as relevant, provides:

***"1 (1) The power of the High Court to punish for contempt of court may be exercised by an order of committal.***

***(2). This Order applies to contempt of court.***

***(a) Committed in connection with-***

***(i) Any proceedings before the Court; or***

***(ii) Proceedings in an inferior Court, or (emphasis mine)***

***(b) Committed otherwise than in connection with any proceedings.***

***(3) An order of committal may be made by a single Judge.***

*(4) Where by virtue of any enactment the High Court has power to punish or take steps for the punishment of any person charged with having done anything in relation to a court, tribunal or person which would, if it had been done in relation to the High Court, have been a contempt of that Court, an order of committal may be made by a single Judge."*

**D. Proceeding in the Respondent's absence**

11. The first named Respondent hereof did not appear before this court to face the charges. Nor was he represented by counsel. It appears to me the first named Respondent had opted not to challenge the contempt charges brought against him. If the respondent had appeared, he would have been entitled to give evidence pursuant to Order 52, Rule 5 of the HCR.
12. The Application seeking committal of the first named Respondent for disobeying the court order made in proceedings together with the statement and the affidavit in support have been duly served on the first named Respondent as required by Order 52, R 3 r (3) of the HCR.
13. The orders of the Magistrate's Court that required the obedience and compliance of the Respondent and the Order of this Court granting leave to issue committal proceedings, together with the Notice of Motion, the Affidavit and the documents pleaded have been served on the first Respondent personally as per the Affidavits of service filed of record. I am satisfied that the service of the committal Application was proper.

**E. Procedural Requirements .**

14. I have considered the procedural aspects of the committal application. The procedural requirements are laid down by the HCR, O 52.
15. A committal Application against any person cannot be made unless leave to make such an Application has been granted in accordance with the HCR, O 52, R 2(1). The Applicant has duly obtained leave to apply for an order of committal by my Ruling dated 26<sup>th</sup> April 2022.
16. After leave has been granted, the Application for the order of committal has to be made by Notice of 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 (HCR, O52, R3 (1)). The Applicant in this case had complied with this requirement.
17. Though, the originally fixed hearing date fell on 09<sup>th</sup> May 2022, as the service had been carried out only on 03<sup>rd</sup> May 2022, hearing was re-fixed for 20<sup>th</sup> May 2022 in order to facilitate the first named Respondent to appear and contest the charges, if he wished to. But for reason best known to him, he did not appear in person or through his Solicitor or counsel. Accordingly, I am satisfied that all the procedural requirements as laid down in the HCR, O52, R2 & 3, have been duly fulfilled.

**F. Burden of proof**

18. Any allegation of contempt of court has to be proved beyond reasonable doubt (see *Fiji Times Ltd v Attorney General of Fiji [2017] FJSC 13; CBV0005.2015 (21 April 2017) and Finau V Civil Aviation Authority of Fiji [2018] FJHC 500; HBC 117.2017 (12 June 2018). Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd [2005] FJCA 46; ABU0011 & ABU0011A.2004L (22 April 2005); Shalini v Basanti [2003] FJHC; HPP0036j.1999s (27 August 2003).*
19. The allegations of breach of an order obtained have to be wilful. The breach has to be wilful in the sense that it was deliberate and intentional: *Ali v Chaudhary [2004] FJHC 189; HBC0061J.2001L (29 March 2004).*
20. The Applicant hereof bear the duty to prove her case beyond reasonable doubt that the first named Respondent had wilfully breached the orders obtained from the Magistrate's Court of Nadi, namely the interim injunction order made on 30<sup>th</sup> January 2019, sealed on 22<sup>nd</sup> February 2019 and served on 21<sup>st</sup> March 2019 and the permanent order thereof made on 1<sup>st</sup> May 2019, sealed on 20<sup>th</sup> May 2019 and served on 23<sup>rd</sup> May 2019.
21. In Ali (supra), His Lordship Gates J (as he then was) sets out the general considerations of an allegation of contempt of court in the following terms:
- "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].*
22. 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.*
23. Where, as here, the contempt alleged is of disobedience to a court order the Accused contemnor must be shown to have wilfully 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 wilful. His lordship cited with approval observation of the Court of Appeal in *Fairclough v Manchester Ship Canal Co [1897] WN 7, 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."*

**G. The Issue before this Court.**

24. The Applicant is duty bound to establish and the Court must be satisfied that;
- a. There was an order made by the Court (which in this case is by the Magistrate's Court).
  - b. That order was clear and concise and inform the Respondent what was prohibited or not to be done.
  - c. That the Respondent had knowledge of the Orders and despite having knowledge of the Orders he observed them in breach.
  - d. That the breach is willful, deliberate and intentional.

**H. The Evidence Relied upon.**

25. The Applicant relies upon on her Affidavit evidence sworn on 12<sup>th</sup> June 2021 and annexures thereto marked as "A" to "J", which clearly demonstrate about the proceedings commenced by her against the Respondents at the Magistrate's Court and the Orders granted in her favor restraining the Respondents from repeating or continuing the nuisance or any like kind, restraining him from entering her land in Agreement for Lease Ref No-6/10/7871 situated at Sabeto , Nadi and further injunction to **restrain** the Respondents to be within 100m of the Applicant at all material time. These interim injunction orders have subsequently been made permanent on 1<sup>st</sup> May 2019, with an additional order to pay summarily assessed costs in a sum of \$750.00.

**I. The Submissions:**

26. Ms. Swami, learned counsel for the Applicant has made oral submissions at the hearing that there was an order of the Magistrate's Court. The order of the court was clear and concise and informed the Respondent what not to do. The Respondent had knowledge of the order and nevertheless he breached the same. The breach is willful, deliberate and intentional non-compliance. The facts before the court clearly show that there has been actual breach of the order made and as such committal order should be made against the Respondent.

**J. The analysis and finding:**

27. As I observed in foregoing paragraphs, the above orders have duly been served on the first named Respondent personally as substantiated by the affidavits of service filed in that proceedings, which have been produced before this Court as well by further evidence. The Notice of Motion for Committal proceedings before this Court, along with the Order granting leave by this Court, the Statement of the Applicant and the Affidavit in Support together with the documents also have been duly served as per the evidence before me.
28. The Respondent was aware of the Orders dated 30<sup>th</sup> January 2019 and the Orders made on 1<sup>st</sup> May 2019 by which he was ordered and expected to comply with, by same being duly served on him.

29. Though, the alleged acts of violations averred in paragraph 17 of the Affidavit in support are not specifically stated in the said injunctive Orders of the Court, the interim injunctions issued as per the Orders covers all the said acts and omission on the part of the first named Respondent.
30. It is observed that the evidence of the Applicant has remained unchallenged and thus I am satisfied that the Applicant has discharged her duty of proving the charge beyond reasonable doubt and the Rrespondent has acted and is continuing to act in contempt of the Court Order made by the Magistrate's Court of Nadi.
31. A person who disobeys a court order obtained in civil proceedings is said to commit a civil contempt of court and is described a 'contemnor'. The person who obtained the order may apply to the court for the contemnor to be punished by committal to the prison.
32. The HCR, O 52, empowers the court to punish for contempt of court committed in connection with any proceedings before the Court or **proceedings in an inferior Court** by an order of committal. An order of committal may be made by a single judge.
33. Punishment for a civil contempt of court is not itself is a remedy: it is a means of enforcing a remedy. A civil contempt is prosecuted as a matter between parties to proceedings and is punishable primarily in order to enforce with an order of the court, for the benefit of the party who obtained the order. Enforcing respect for court orders also serves the public interest of promoting respect for the rule of law, which is an essential element of our civil society (see Re S (A Child) (Contact Dispute: Committal) [2004] EWCA Civ 1790, [2005] 1 FLR 812).
34. Penalty imposed [for contempt of court] not only punish the contemnor but also to have a deterrent effect on the other members of the community and to enforce the principles that Orders made by the Court are complied with: ***Merchant Finance & Investment Company Limited v Jale Osisaya Baba [2006] HBC 225/05L***.
35. Enforcement of an order or judgment by committal must not take place unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question. The copies of the orders of the Magistrate's court, the order made by this court granting leave for committal proceedings together with the Notice of Motion, Aapplicants' statement and Affidavit in support, with the annexed documents, have been personally served on the Rrespondent and the Applicant has duly followed the prescribed procedures in this regard.
36. Mens rea (intention) is not an element of contempt of court charges. The Supreme Court in ***The Fiji Times Ltd v AG***, above said (at para [47]) that ... In any event, it is well established that under the common law, "mens rea" is not an element of the offence of contempt of Court and that is the position in Fiji.

**K. Penal notice**

37. The penal notice on the copy of the order served on the Respondent clearly states that "if you disobey this order, you will be liable for process of execution for the purpose of compelling you to obey the same". It satisfies me that the Respondent was well aware of the consequence of the disobedience.
38. The resulting position of this would be that it is no defence to say that the Respondent did not intend to disobey the court order.

**L. The defence**

39. The Respondent did not appear in court to answer the charge of contempt of the court order, albeit the charge and particulars were duly served on the respondent.
40. The Respondent had details of the alleged contempt charges and also had an opportunity to respond to the Application and prepare a defence. However, the first named Respondent by his own conduct had waived his right to defend and adduce evidence.

**M. Conclusion:**

41. On the unchallenged evidence before the court, I am satisfied that the Applicant was able to prove the allegation of contempt of the court charge against the first named Respondent beyond reasonable doubt. Thus, I am satisfied that the Respondent is in contempt of the court order and that he has wilfully violated and has been violating the Magistrate's Court Orders made on 30<sup>th</sup> January 2019 marked as "D" and the Permanent Order thereof dated 1<sup>st</sup> May 2019 marked as "F", despite those Orders duly being served on him. I therefore find the first named respondent, **PRATINESH SINGH**, is guilty of contempt of the court charges as alleged.

**N. Costs: -**

42. The Applicant was fully justified in moving for committal proceedings against the Respondent on account of latter's disobedience to the order of the court. The Respondent continues to violate the court order. The Applicant had to move for leave of the court initially, which she did by filing her supporting Affidavit sworn in Australia. The notice of the Application for committal with all the documents was served on the Respondent. There was a full hearing on the Application. The Applicant had also filed submission. In all the circumstances, it would be appropriate, fair, just and reasonable to order costs against the Respondent.
43. However, I reserve the order for cost to be considered when pronouncing the sentence, after hearing the Respondent, if he elects to appear in court and makes plea for mitigation and express his willingness, if any, for due compliance of the orders he breached.



**O. Outcome:**

**44.** For the reasons adumbrated above, I make the following orders.

- i. The first named Respondent PRANITESH SINGH is found guilty of Contempt of court charges levelled against him in this matter.
- ii. The sentence on him will be pronounced, after hearing him in mitigation, if he opts to appear in court on next date.
- iii. Matter shall be mentioned before me on 15<sup>th</sup> July 2022 to hear in mitigation and for the pronouncement of punishment.
- iv. This judgment shall be sealed and served on him and the Affidavit of service be filed within 07 days from today.
- v. Order for costs reserved.



**A.M. Mohammed Mackie**  
Judge

**At High Court Lautoka this 28<sup>th</sup> day of June, 2022**

**SOLICITORS:**

**For the Applicant: M/S Patel & Sharma, Barristers & Solicitors**

**For the Respondent: No appearance**