

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No: HBC 202 of 2022

BETWEEN: **THE ATTORNEY GENERAL OF FIJI** of Level 4-8, Suvavou House, Victoria Parade, Suva.

APPLICANT

AND: **RICHARD KRISHNAN NAIDU** Legal Practitioner, Duncan Road, Domain in Suva C/- Munro Leys, Level 3 Pacific House, Butt Street, Suva.

RESPONDENT

Counsel : Mr. Sharma. D with Ms. Fatima G for the Applicant
 Mr. Apted. J with Mr. O’Driscoll. G, Ms. Vaurasi L, Mr. Vosarogo. F, Mr. Parshotam. S and Mr. Nagin. H. K for the Respondent

Hearing : Wednesday, 13th July, 2022

Ruled on ; Wednesday, 13th July, 2022

Reasons given on : Thursday, 14th July, 2022

REASONS

[O1] Pursuant to leave granted on 27.06.2022 under Order 52, Rule 2 of the High Court Rules, 1988, the applicant, on 28.06.2022 filed notice of motion pursuant to Order 52, Rule 3(1) of the High Court Rules, 1988 seeking following Orders:

1. *That the Applicant be granted an Order for Committal against the Respondent, Richard Krishnan Naidu.*
2. *An Order that the Respondent Richard Krishnan Naidu do pay costs on an indemnity basis in this application.*

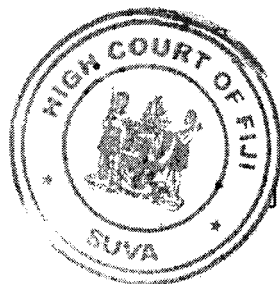
3. *And such further or other Orders and directions as may be appropriate for this Court to make.*

- [02] On 01.07.2022, the applicant filed an affidavit of service in respect of the service of the notice of motion, affidavit in support of the motion, statement and the Order sealed on 29.06.2022.
- [03] The day named in the notice of motion for hearing was 08.07.2022. On the 08th July 2022, Mr. Apted, counsel for the respondent relying on Order 52, Rule 3 (1) of the High Court Rules, 1988, submitted to Court that there was no eight (08) clear days between the service of the notice of motion and the day named therein for the hearing.
- [04] Mr. Sharma, counsel for the applicant frankly conceded that there was no eight (8) clear days.
- [05] In the circumstances and in the absence of any opposition raised by the respondent, the Court granted leave to the applicant to re-date the notice of motion and serve the re- dated notice of motion on the respondent.
- [06] Mr. Apted, counsel for the respondent informed Court that there is no need to have a further eight days between the service of the re-dated notice of motion and the next hearing date.
- [07] Accordingly, the hearing of the committal proceedings was adjourned for 13.07.2022 to allow the applicant to serve the re- dated notice of motion on the respondent.
- [08] On 12.07.2022, the applicant filed an affidavit of service in respect of the service of the re-dated notice of motion on the respondent.
- [09] On 13.07.2022, relying on Order 52, Rule 3(3) of the High Court Rules, 1988, Mr. Apted submitted to Court that even though the respondent has been served with the re-dated notice of motion, it had not been accompanied by the statement. Mr. Apted contends that still the respondent has not been properly served.
- [10] In reply, counsel for the Applicant, Mr. Sharma submitted that on 08.07.2022, the objection raised by Mr. Apted was that the notice of motion was not served within eight clear days and the Court directed that the notice of motion be re-dated and the notice of motion be served. Mr. Sharma said that this directive has been complied with.
- [11] In counter submissions, Mr. Apted submitted that even though on 30.06.2022, the respondent was served with the statement accompanied by the original motion, the motion was defective at that time. He argued that because the statement contained

the details of the alleged contempt, the statement and the affidavit needs to be re-served again with the re-dated motion.

- [12] It should be noted that the Order of this Court on 08.07.2022 was to serve only the notice of motion which was re-dated because the details of the alleged contempt, the statement and the affidavit was already served on 30.06.2022 and the contents remain the same.
- [13] Under Order 52, Rule 3(3) the notice of motion accompanied by a copy of the statement and affidavit in support of the application for leave must be served personally on the person sought to be committed.
- [14] As per the affidavit of service filed by the applicant on 01.07.2022, on the 30.06.2022, the respondent was personally served with copies of notice of motion, affidavit in support, statement and the sealed Order.
- [15] Order 52, Rule 3 (1) speaks only about the **entering** the notice of motion for hearing and there should be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.
- [16] Order 52, Rule 3 (3) deals with **service** of notice of motion accompanied by the statement and the affidavit. **Order 52, Rule 3(3) has not imposed any restriction on the time factor of the notice of motion to be served.** Besides, I am cognizant of the fact that under Order 52, Rule 3 (4) the Court has the discretion to dispense with the service of notice of motion required under Order 52, Rule 3 (3).
- [17] For the aforesaid reasons, I reject the submission of counsel for the respondent that the respondent has not been properly served.

I unhesitatingly conclude that the service is adequate.



Jude Nanayakkara

JUDGE

High Court – Suva
Wednesday, 14th July 2022.

**Solicitors: R. Patel Lawyers for the Applicant
Munro Leys with others for the Respondent**