

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER: ERCC 09 of 2019

BETWEEN: **BASANT KUMAR**

PLAINTIFF

AND: **OUTRIGGER ON THE LAGOON**

DEFENDANT

Appearances: *E. Craig for the Plaintiff.*

Mr. V. Singh and E. Kumar for the Defendant.

Date/Place of Judgment: *Thursday 08 September 2022 at Suva.*

Coram: *Hon. Madam Justice Anjala Wati.*

JUDGMENT

A. Catchwords:

Employment Law –Unlawful and Unfair Dismissal – Whether the plaintiff’s termination from employment was unlawful and unfair – to determine the lawfulness of the action, the reasons for termination and the procedure invoked in terminating the employee examined – to determine whether the termination was fair, the manner in which the termination was carried out examined – the appropriate remedy under s. 230 of the ERA.

B. Legislation:

- 1. The Constitution of Fiji: ss. 12; 15(12); and 24.*
 - 2. The Employment Relations Act 2007 (“ERA”): s. 30 (6); 33(2); 34, 114, and 230.*
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Cause/Background

1. The Plaintiff Mr. Basant Kumar ("***Basant***") was employed by the defendant as a Chief Engineer at the Outrigger on the Lagoon ("***Resort***") since 1 February 2010. He was summarily dismissed from his employment on 11 July 2014 on the basis that he had stolen 6 buckets of paint from the defendant. Each bucket is allegedly a 10 litre bucket. He brings this claim against the employer for unlawful and unfair dismissal from employment.
2. I will very briefly set out the background of the dispute between the parties. The defendant operates a resort in Sigatoka. The resort is renowned for carrying out community projects in Sigatoka. The purpose of doing community projects is to build a better community around the resort. The resort has in the past carried out various community projects like building or renovating the hospitals, schools, police posts, bus shelters and the likes. Majority of the villagers from Sigatoka work in the resort.
3. In 2014, it was decided that maintenance will be carried out at Conua District School in Sigatoka. The project included painting works to be carried out at the school. The interior and the exterior of the school including the roof was to be painted. The work was assigned to the Engineering Department of the resort and was headed by the Chief Engineer Basant.
4. The money for the project came from the rugby players in Australia, donations by guests and other people. The project was to be completed in 2 weeks. The Engineering Department proceeded with the project.
5. In the middle of the project, it was found that there was shortage of paint. This was reported to Basant by the foreman Lognadan. Basant then informed Mr. Peter Hopgood, the General Manager ("***GM***") of the resort.
6. The GM got very disturbed when he heard this but since work needed completion he asked Basant to call the workshop and ask for assistance from the workshop to complete the project. There was some paint available at the workshop at the resort which was acquired and used. The project was completed.

7. When the GM learnt about the shortage of paints, he had some strong words with the management including the School Manager Mr. Atunaisa Finau ("*Atu*"). Atu was very disturbed as he felt that he and the villagers were being blamed for stealing paints. In his evidence Atu said that the GM had "*told him off*".
8. It is Basant's version that he had spoken to the School Head Teacher and the Manager about the issue as they had the keys to the room where the materials for the project were kept including the paint but both of them said to Basant that they did not have any knowledge about it.
9. On 4 July 2014, Atu brought some fresh water mussels and wanted to give it to Basant. The reason why he wanted to do this varies between Basant and Atu. According to Basant, Atu wanted to thank him for completing the project for the school. However Atu says that he did this so that Basant could assist his cousin get work as an attaché at the Engineering Department of the resort. Atu's cousin Orisi David Moalanaicula ("*Orisi*") was studying engineering at the time. The reason for the fresh water mussels does not impact on the claim as there was no issue that arose from that aspect.
10. The Manager Atu therefore went to Basant's home with his cousin Orisi to drop the fresh water mussels. He was advised by Basant to drop the mussels at his home. At Basant's place, Atu noticed some new paint buckets stored at the back of Basant's home. Atu believed that the buckets looked similar to the ones which contained paints and was used for completion of the school project. The buckets had Outrigger written on it with black ink. Atu said that there were numbers written on the paint buckets and he saw 7 of those buckets.
11. Atu then asked his cousin Orisi to take pictures of the paint buckets. Orisi took the pictures. Atu then reported the matter to Mr. Kini Sarai who asked him to send the pictures on a particular email number. Mr. Kini Sarai was the Activities Manager of the resort at the time of the incident. Atu said he emailed the pictures to Mr. Kini Sarai.
12. The information was subsequently relayed to the GM who then called Basant in the same afternoon. They both met and spoke to each other. It is in dispute whether the GM mentioned

the issue about the paint being seen at his place. Basant says that the GM only asked him if there was any update on the missing paint to which he responded that he did not have any updates.

13. The GM says that he asked Basant whether he had any paint at his place and Basant denied it. It is the GMs version that he told Basant that some of the villagers had identified missing paint at his place and Basant said that it was old paint and the GM then asked Basant to give him the receipts of the old paint he purchased from the Hardware. He never received any receipts.
14. The next day, on 5 July 2014, 3 senior persons from the resort went to Basant's home to check for the missing paint. Basant had no idea that the resort persons had come to his house to question him about the missing paints. He was, as usual, ready to be picked up by the resort staff to play golf at Natadola.
15. Basant used to play golf with the executive team of the resort on most Saturdays. When the resort persons arrived at Basant's residence they noticed that the buckets had been swapped and there were old buckets kept in the place instead. New photos were taken of the old paint buckets and the way in which it was placed. From there it was suspected that Basant had stolen the paint.
16. In the same afternoon of the visit by the Resort personnel, Basant was given a Notice of Disciplinary Action ("*NDA*") dated 5 July 2014 which was unsigned and undated. Basant had refused to accept receipt of acknowledgment of the NDA. The contents of the NDA reads:

"Outline of the Reason for the Disciplinary Action (please...):

It was brought to the General Managers attention that Mr. Basant Kumar Chief Engineer at the Outrigger on the Lagoon, Fiji was suspected of stealing company property/assets (paints) from the resort. It was noted that 6 paints (10 Litre buckets of white paint was found stored on the side of his house at his family residence at Korotogo Back Road on Friday the 04th of July, 2014. Photos were taken of the bucket of paints on Friday the 04th of July, 2014 which was forwarded to the resorts Executives Managers. Mr. Basant Kumar was than visited on the

morning of the 05th of July, 2014 by Mr. Russell Blaike (Resort Manager), Mr. Lindsey Palmer (Executive Assistant Manager) & Leone Rokovada (Security Manager) under the direction of Mr. Peter Hopgood (General Manager) to verify the suspected stolen items. Upon arrival at the residence and inspection of the items with Mr. Kumar, it was noted that the buckets of paint has been swapped from the ones that were last seen on Friday on the 04th of July, 2014. As per Fridays photo it is evident that the bucket of paints were new compared to the old ones that has been placed there on the morning of Saturday the 05th of July, 2014. Upon verbal discussion with Mr. Kumar he claimed that the paint was bought for his personal use and that it did not belong to the resort despite the bucket clearly having Outrigger written on it. Mr. Kumar mentioned that he will need to look up the receipts of purchase for our perusal. Mr. Hopgood has directed that an immediate investigation be carried out.

Rule Number

Policy Statement

11

Theft or unauthorized removal of Outrigger Hotel's property or the property of others.

49

Dishonesty to hotel guest, fellow employees, supervisor or manager.

Comments:

Mr. Basant Kumar you have been suspected of stealing company items from the resort and clearly these actions is deemed serious in nature. The resort does not tolerate such behavior of any staff who clearly disregards the Resorts policy and procedures and failure to comply will result in instant dismissal from the resort. Due to the seriousness of the suspected offence of what is believed to be of Outrigger property that was located at your residence, management of the resort has reached a decision to suspend you effective immediately pending further investigations. During your suspension from work you will not be permitted to enter the resort premises and you will be required to hand in all company keys and any other items in your possession that belongs to the resort. You will also be required to make yourself available during the course of the investigation and you are also required to present the company with relevant documentation of the purchase of the paint as agreed this morning”.

17. After the visit by the resort persons, the alleged theft was reported to the police. Basant was taken in for questioning. Basant's house was searched by the police under a search warrant on 7 July 2014. Nothing was found in the search.

18. Basant was then issued with a termination letter and another NDA dated 11 July 2014 through which he was summarily dismissed. It is important that I outline the contents of both the documents.

19. The termination letter reads:

"We herewith advise that your employment with the Outrigger on the Lagoon – Fiji will be terminated with effect from 11 July 2014.

As per the Resort's employee handbook and disciplinary guideline you have failed to abide by set rules and regulations which have been clearly stated in the issued disciplinary letter attached.

In consideration of the seriousness of the offence, management will not tolerate such behavior if and when committed by an employee and is left with no other alternative, but to terminate your services.

In order for finance to process your final pay, you required to return all Resort Property on your last working day..."

20. The NDA which accompanied the termination letter precisely outlines the conflict and the reasons for the termination. It reads:

"Outline the Reason for the Disciplinary Action (...)

Mr. Basant Kumar Chief Engineer at Outrigger on the Lagoon, Fiji was suspected of stealing company property/assets (paint) from the resort. Photos of 6 x 10 Litre buckets of white paint was taken by Conua District School's Manager and forwarded to Etuate Liwaiono (F & B

Manager) on the afternoon of Friday 4th July 2014. The School Manager had informed Kini Sarai (Activities Manager) on his findings from Basant's residence. These photos were then shown to Lindsey Palmer on the same afternoon which was also referred. GM immediately questioned Mr. Basant Kumar if he had any knowledge of any paints that belonged to the Resort at his residence and Mr. Kumar responded that he did not, so then GM notified Basant that Security Manager will be visiting and inspecting his premises. On the morning of the 05th July 2014 Security Manager was also accompanied by Mr. Russell Blaike (Resort Manager) and Mr. Lindsey Palmer (Executive Assistant Manager) under the direction of Mr. Peter Hopgood (General Manager) to verify the paints as per the photos taken by Conua School Manager. Upon arrival at the residence and inspection of the items with Mr. Kumar, it was noted that the buckets of paint were completely different to the images supplied on the 4th of July. On the same morning as per verbal discussions with Mr. Kumar he claimed that the paint was bought for his personal use and that it did not belong to the resort despite the paint bucket clearly having Outrigger written on it and this is also evident in the photos. Mr. Kumar was then requested by Executive Management to provide proof of evidence of these claimed personal purchases which till date has not been provided. The case was then forwarded to Sigatoka Tourist Police Unit on Monday the 07/07/2014 and Mr. Basant was investigated by Constable Muselama Sadria PC 3091. Outrigger Management has been officially advised by the Fiji police force that Mr. Basant Kumar Report Number 3923/14, Sigatoka Crime Register No: 244/14 has been charged for theft and has been bailed to appear at Sigatoka Magistrate's court on 23/07/2014.

Comments:

Sigatoka Police Unit after carrying out investigations pressed charges against Mr. Basant Kumar effective on Tuesday 8th July 2014 and also advised the Resort that Mr. Basant Kumar is required to appear in court on 23rd July 2014 for hearing. Basant as part of the Executive Committee team you are fully aware of the rules and regulations of the Resort and that any Resort assets must have proper clearance and approval prior to possession. In this incident your actions showed that you used your power to exercise corrupt practices in possessing these Resort items. This merely shows that you had no respect of your direct report and crossed all ethical limits. The Management does not tolerate these behavior or practices and has always

stood its ground in terminating any employee involved in such activities, therefore a decision has been reached to terminate your employment contract effective immediately. You are also not permitted to enter the Resort at any time without the General Manager or in his absence Resort Manager's authorization. You are also not permitted to exercise any deals or communicate on behalf of Outrigger on the Lagoon, Fiji".

21. The evidence shows that Basant was bailed out by the police to appear in court on 23 July 2014. However, he was never formally charged by the police. It is very concerning how the police bailed him out without even charging him.
22. There is uncontroverted evidence that Basant went to Sigatoka Court on 23 July 2014 and that the prosecution advised the Court that they did not have sufficient evidence to proceed with the matter and requested more time to investigate. The Court granted the state 3 months to do so. There was no progress made in the criminal matter and Basant was kept in the dark about what was happening to his criminal case.
23. He eventually became very tired of waiting for his criminal matter to be finalized. He therefore contacted the Director of Public Prosecutions Office by writing to them and asking for the progress in his case. His letter dated 5 November 2015 which forms part of the evidence reads as follows:

"On 6/7/2014 I was arrested and charged for theft on a fabricated complaint made by the Outrigger Hotel.

On the 23 July 2014 I appeared before the magistrate where the state admitted that they did not have sufficient evidence to proceed with the matter and requested more time to investigate. The magistrate granted a further 3 months.

It is now nearly one and a half years later and this matter has not proceeded. In the interim my employment has been terminated and I have been left in an extremely stressful position. I am unable to continue with my life as normal because of the bail conditions and the possibility of being charged for an offence I did not commit. I am entitled to a speedy trial and complete

freedom of movement, with the length of time this has taken the courts and police are violating my civil right and liberties.

I respectfully request that this matter proceed to trial or a Nolle Prosequi be issued so I can continue with my life”.

24. He received a response to his letter. The response was dated 9 November 2015 indicating that there was no charges pending against him. The letter which forms part of the evidence reads:

“ ...

Please be advised that the ODPP does not have the abovementioned matter in our carriage.

In addition to that, be advised that upon enquiries we have concluded that there is presently no matter before the Court pertaining to the above and therefore the DPP has no powers to either issue a Nolle Prosequi nor proceed to trial”.

25. After receiving the letter from the office of the Director of Public Prosecutions, Basant proceeded to request the Labour Office in Sigatoka to proceed with his employment grievance claim which he had 2 days after his termination being on 14 July 2014 which was not proceeded with by the Labour Office in Sigatoka. The reasons for not proceeding with the same is clearly outlined by Labour Office in its letter dated 1 April 2016 which reads as follows:

“This is to confirm for the Labour Tribunal as per your request that:

2.1 *This case was referred to the Sigatoka Labour Officer by yourself for mediation and wages claim on the 14 July 2014.*

2.2 *Through investigation of the wages claim it was noted that the case was under criminal investigation due to allegations by your employer.*

- 2.3 *Your mediation case was placed on hold by our office for the finalization of the police complaint. Your employer emphasized once the police report was clear they would allow your matter to continue.*
- 2.4 *The Police case has been completed and you have been cleared of all allegations but it took more than 6 months, therefore you have to make a formal application to the Labour Tribunal to have your matter continued.*
- 2.5 *For any clarification please do not hesitate to contact the undersigned”.*
26. When Basant was cleared off all the allegations and he tried to pursue with his grievance, he was informed by the Labour Office that since his claim has gone beyond 6 months, he needs to make an application to the Employment Relations Tribunal to continue with his case. Basant followed that advise and sought extension of time from the ERT which was granted however when Basant realized that his claim at the tribunal would be restricted to \$40,000, he withdrew the same and filed his claim in the Employment Relations Court.
27. Although this is not an appeal arising from the Labour Officer’s decision to hold the claim for unlawful and unfair dismissal, I feel that my remarks on the conduct of the Labour Office is warranted.
28. Firstly, there is no reason and basis for the Labour Office to refuse to process a claim because criminal proceedings are pending. Secondly, it appears that the Labour Office in Sigatoka was playing in the hands of the employer. The letter by the Labour Office clearly states that once Basant is cleared of the allegations then only will the employer allow the case to proceed. The Labour Office seems to lack independence in this case. Why should the employer be allowed to hold the process filed by an employee? Why was the employer allowed to intervene in the independence of the due process and the process of access to justice to an employee? Why did the Labour Office choose to hold the matter at the insistence of the employer?
29. I am dismayed at the actions of the employer and the Labour Officer both for their stance and lack of fairness and independence. To continue with my concerns, why did the Labour Office

ask Basant to make an application in the tribunal for extension of time as there was lapse of 6 months from the time of the dismissal? There was already a pending claim which was put on hold and the delay was by the employer and the Labour Office to process Basant's claim. Why should he be burdened to make an application for extension of time? Further, there is no requirement in this case for a claim to be filed in 6 months as stated by the Labour Officer. The nature of the claim by Basant is not caught by any short time limitation imposed by the ERA.

30. All this has now taken almost 8 years for Basant to finally find an answer to his claim. In an employment context, he says that he felt let down in not being able to find a solution to his claim. He is understandably dismayed.

Issues

31. The following issues arise in this matter:

1. *Whether the Plaintiff was unlawfully terminated from his employment? If yes then what are the appropriate remedies that the Plaintiff is entitled to?*
2. *Whether the Plaintiff was unfairly terminated from his employment? If yes then what is the compensation that should be paid to the plaintiff for suffering humiliation, loss of dignity and injury to his feelings.*
3. *Is the plaintiff entitled to a sum of \$3,890 being the replacement cost of his tools which he says belonged to him and kept by the Resort?*

32. The two heads of claim, unlawful and unfair dismissal, have different factual considerations. In order to determine whether the plaintiff was lawfully terminated from his employment, I need to examine whether the reasons provided for his dismissal is established and justified by the employer. It is also required that the procedure for dismissing the employee be examined. The ERA outlines the proper procedure on how summary dismissals should be carried out.

33. When it comes to the question of whether the dismissal was fair or not, I need to examine whether the resort had conducted itself in a manner which caused the plaintiff any humiliation,

loss of dignity or injury to his feelings. If the plaintiff undergoes these feelings as a result of the dismissal, then this will not constitute dismissal. It has to be the bad, improper, unfair, unexpected and unnecessary conduct of the defendant in carrying out the dismissal that will constitute unfair dismissal.

34. I will now examine the plaintiff's claim in reference to the issues.

Evidence/Law/Analysis

A. Was the Plaintiff Unlawfully Dismissed?

35. I will first examine whether the termination of the plaintiff was lawful. The first aspect that I will look at is the reasons for the termination. The reasons given by the employer was theft. Did the plaintiff steal 6 x 10 litre paints which was to be used by Outrigger to complete a community project, specifically to paint Conua District School? The onus to establish that Basant had stolen the paint is on the employer. It is for the employer to establish that there was gross misconduct that led to the termination of the employment.

36. I will come to the allegation of Basant stealing the paint in a short while. Before that, it is very important that the employer establishes that the paint which was sent to Conua District School for community project was in fact stolen. I must not overlook that this was quiet a big project. Painting the school would require a lot of paint. The resort must establish that certain number of buckets were purchased and/or taken to the school from where some buckets got stolen.

37. The evidence in this case is that paint was taken from Outrigger to the School. There is also evidence that any property that leaves the resort must have a property pass. The security at the main gate will check for the pass and ensure that only the items listed in the pass are being removed from the hotel otherwise there is always danger of employees removing items from the resort.

38. No one in this trial gave any evidence on how many buckets of paint were purchased by the resort. There was no evidence of the exact number of buckets of paint that left the resort and was kept in the school for the completion of the project. No one ever gave any evidence of the number of buckets of paints used for painting the school. There was no evidence as to any

inventory particularly on whether all the buckets of paints had been used and what could not be accounted for. No one counted the empty buckets and tallied it with the number of buckets brought in the school.

39. One must not ignore the fact that there were a number of people who were working on this project and there is no evidence that the empty paint buckets were kept and tallied in the end. If that is the case then how does the resort say that 6 buckets of paint was stolen? Where did that number come from?
40. Even the plaintiff as the Chief Engineer did not have any inventory on the number of buckets of paints used. The only evidence was that the project could not be completed as there was shortage of paint. How the shortage came about is not established in the evidence and I am not satisfied that there was shortage because someone stole the paint.
41. The foreman Mr. Log Nadan is the one who informed Basant that there was shortage of paint. He said in his evidence that he never said that paint was stolen. Basant in his evidence said that he told the GM that they were experiencing shortage of paint and that the paint should have finished the project. No one at that time could make any concrete assessment of whether the paint was stolen or that there was simply shortage of paint. Even at the trial no one could establish that paint was stolen.
42. If the paint was stolen then there should be evidence of that. It is also possible that the shortage came about as a result of the paint being used properly or improperly. Having made my findings that I am not satisfied that the resort had established that 6 buckets of paint were stolen, it is consequent that the resort is not able to establish that Basant had stolen the paint. However, I will still deal with the allegations against Basant.
43. The entire basis for suspecting that Basant has stolen the paint was the photographs taken by Atu on 4 July 2014 and subsequently by the resort on 5 July 2014. I must first address the issue of admissibility of the photographs. It was made clear to all parties that the issue of admissibility will be ruled upon properly in the main substantive judgment. The photographs were therefore conditionally tendered in evidence.

44. The first basis on which the photographs are sought to be excluded from the evidence is s. 12 and s. 15 (12) of the Constitution of Fiji. The sections read:

“12 (1) Every person has the right to be secure against unreasonable search of his or her person or property and against unreasonable seizure of his or her property.

(2) Search or seizure is not permissible otherwise than under the authority of the law.”

“15 (12) In any proceedings, evidence obtained in a manner that infringes any right in this Chapter, or any other law, must be excluded unless the interests of justice require it to be admitted”.

45. There were 8 photographs which were sought to be tendered in Court. The evidence of the employer was that the first 3 pictures were taken by Atu on 4 July 2014 and that the remaining 5 pictures were taken by the resort persons when they were at Basant’s property on 5 July 2014.

46. I will first deal with the pictures taken by Atu on 4 July 2014. There is uncontroverted evidence that Atu was sent on the property by Basant to leave the fresh water mussels. Atu did not have any permission to gape inside the property of Basant. He did not have any permission to do anything else but to leave the fresh water mussels and leave. His authority to enter and stay on the premises of Basant was only for a particular purpose. There was no other authority to look inside his house and to take pictures.

47. Atu’s evidence is that he was suspected of stealing as well. To vindicate himself, Atu proceeded to take pictures of paint buckets inside Basant’s property. Atu had no idea what the paint buckets contained. He also knows that the empty buckets from the school are with the villagers as well. He however selectively chose to implicate Basant and went ahead to make an issue about the paint buckets at Basant’s place.

48. If there was any suspicion of stealing, the matter ought to have been reported to the police by Atu or the employer. The criminal procedure laws ought to be followed to conduct the search and to obtain the evidence. Atu's act of taking pictures of the paint buckets was not authorized by the owners of the property. The evidence that is sought to be tendered is obtained unconstitutionally and ought to be excluded.
49. The second set of pictures that sought to be tendered in evidence was that taken by the resort personnel on 5 July 2014. There were 5 pictures taken by the resort personnel. I have not been shown any legal provisions which allows the employer to enter an employee's house unannounced to carry search of the property of the employee. If that is the way an employer expects to operate, it will interfere with the employee's right to personal privacy. The employee has the right to respect for his private and family life. S. 24 of the Constitution of Fiji establishes that right.
50. There is clear evidence that Basant did not know that the resort personnel had come to his house to search the property. Basant was of the view that they had come to pick him up to play golf the same morning as that was the usual practice. Basant would be picked up to play golf with the senior executives of the resort including the GM, Mr. Russell Blaike and Mr. Lindsey Palmer.
51. If Basant did not know that the employer had come to his property to conduct search of his house for the missing, there is no way in which he could have given the employer prior and clear permission to search his property as claimed by the employer.
52. I accept the evidence of Basant that when he learnt that the employer was blaming him for having stolen the same, he was shocked, he did not know what to do, his mouth dried and he could not think properly. In that state Basant could not have given any express or clear permission without any pressure to enter his property to search the same.
53. The employer said in its evidence that Basant had led the way to the back of his house and also invited the employer to search the tenanted property. Basant denies that he was in the right state of his mind to object to any actions of the employer. That is understandable. No employee

will want his home to be searched by an employer in the manner that happened to Basant. If an employer suddenly arrives on the property and starts making allegations, an employee cannot be expected to be in the right state of mind to give any clear permission to search the house.

54. The correct procedure for the employer was to report the matter to the police and let the police do its work of obtaining a search warrant and to search the property. The employer cannot perform the functions of the police and invade the personal privacy of the employee without a warrant. Any evidence that was obtained against Basant by the employer was through unconstitutional and illegal means and I exclude the same from being admitted in evidence. If that is not stopped by the courts then all the employers will be encouraged to act unconstitutionally and the concept of good faith and the right to privacy and family life will be destroyed.
55. The next basis on which the photographs were sought to be excluded hinges on the issue of authenticity of the photographs. The original photographs were never produced to the Court nor were the devices which were used to take the photographs, that is, the phones used by the persons taking the photos. Even the photos which were first taken on 4 July 2014 and emailed to Mr. Kini Sarai, the Activities Manager of the Resort were not produced in Court.
56. The photos which were tendered in were printed in an A4 size papers. The photos were colored. In this day and era, there are so many changes that can be done and made to electronic pictures. Photos can be brightened, dulled, its appearances changed and different versions can be created. Given those disadvantages, I was asked by the plaintiff's counsel to rule on the issue of admissibility of the photographs.
57. I have already found that the pictures were obtained by improper and unconstitutional means. It is therefore not necessary to go any further into the question of the authenticity of the same. The issue will only arise if I had ruled that I will admit the pictures in evidence. The issue of authenticity is more to assess the probative value of the evidence than to decide the question of admissibility.

58. Having ruled that the photographic evidence was unconstitutionally and illegally obtained by the school manager and the employer, I will consequently have to exclude all evidence given by the employer and its witnesses on what they saw on Basant's property. Those who saw anything had no right to be on his property to make their own assumptions about the theft. This will leave the employer with no evidentiary basis to establish misconduct by stealing to justify the termination. Notwithstanding that I will for the benefit of the employer scrutinize the evidence.
59. Basant was terminated from his employment because he had new paint buckets at his place. It is not refuted that those paint buckets had Outrigger printed on it with ink. Together with the new paint buckets, Basant also had old paint buckets at his place. That also had Outrigger written on it. It is not disputed by the resort that it sold empty paint buckets to various people although the GM tried to deny this and claim to have no knowledge of this. The resort's other witnesses, including Linsley Palmer agreed that the resort did sell the buckets.
60. In that case, anyone could buy the empty buckets including Basant. No one could refute that Basant could and would have bought empty paint buckets. Other employees have even purchased the buckets. There is no restriction on the employees buying it. The 6 x 10 litre buckets do not sell for any exorbitant price. The evidence was that it sold for \$1 each.
61. Further, there are so many empty paint buckets that the people in the Sigatoka community have. Some have those buckets without paying for it as the evidence was that the paint buckets used for painting the school was left at the school and the villagers have it without paying for it.
62. Basant gave evidence that he purchased so many paint buckets at different times. The defendant did not contradict his evidence that he did not purchase the empty paint buckets. All it is saying now is where are his receipt for purchasing those buckets? They are not asking for receipts from anyone else who has new paint buckets at their places. In any event, Basant is not even required to give evidence of purchasing the paint buckets as the resorts case is not about stealing the empty paint buckets or having the empty paint buckets at his home. Its case

is about stealing the buckets full of paint. No one gave any evidence which establishes that there was paint in the buckets that belonged to the resort. I will deal with this in detail later.

63. In regards the empty buckets, Basant says that his receipts for purchasing the same were in his office drawer and he could not provide those receipts to the employer as he was told in the afternoon of 5 July 2014 that he is not supposed to come to the resort. There is clear evidence that when Basant was visited by the employers team on 4 July 2014, he was given the 1st NDA which clearly required him to keep away from the resort and not to come to the workplace. He could not have retrieved the receipts from his drawer at all.
64. Basant also says that he had told the employer about the receipts in the draw and that was not investigated. That was denied by the employer. The employer says that if Basant had made the statement about the receipts in his office drawer then he ought to have written that comment in the provision provided in the NDA which requires the employee to put his comment in the document. Basant had refused to acknowledge receipt of the notice on the basis that he had not committed any wrong against the employer. Given his view at the time (whether right or wrong), he could not have written his comments in the NDA. That does not establish any guilt on his part in regards stealing the paint.
65. The policy in the resort is that if any item is removed from the resort then the persons removing the items have to show a property pass to the security at the resort's check point. If that is the case then Basant is correct in saying that he purchased the empty paint buckets. If he did not, then how was he able to remove it from the resort? He was cleared to remove those empty buckets from the resorts whether it is new buckets or old buckets. The evidence of the employer is that not only Basant had new paint buckets at his home, but he had old paint buckets as well with Outrigger written on it. This means that Basant had been buying paint buckets and removing the same from the resort.
66. Further, the employer failed to produce its books which shows sale of empty paint buckets when it admits that it sells it. There will be a receipt book which will show who purchased the buckets and which period the purchases were made. That detail would have assisted the employer conclusively in at least establishing whether Basant had purchased the empty paint

buckets. It is surprising that the employer did not carry out its due diligence in making the finding of theft and rushed to terminate the employee.

67. Further, the paints buckets which were used for painting the school was given to the committee free of charge. It was not even sold to the villagers. The buckets were circulating in the community and not even being purchased. This was made very clear by the school manager Atu. Why was not any other member of the community accused of stealing the paint when all of them had new empty paint buckets at their place? They could not provide any evidence of purchasing the empty paint buckets too.
68. This shows that Atu was clearly trying to protect the villagers. He went to the extent of looking around Basant's property when he was only supposed to leave the fresh water mussels. He could have left the same in his compound in front of the house. Why did he make an extra effort to go behind the house and check for the buckets? Atu said in his evidence that since Basant's front porch was clean, he did not want to leave the mussels on the clean floor. I find this explanation hilarious. Atu could have well left the mussels beside the house. He did not because he wanted to find a person to blame. His conduct is very concerning to me.
69. Atu said that he was surprised that Basant had new paint buckets at his place and he suspected him of stealing the same from the school. He initially said in his evidence that those buckets were sealed and that is why he was suspicious but when he was shown in cross-examination that the pictures show that the seal of the buckets were broken then Atu said that he realized at that time of being cross-examined that those were unsealed buckets.
70. Atu further said that 7 buckets of paint were missing from the School. This is contrary to the employer's claim that 6 buckets were missing. Atu was asked in cross-examination to show where the 7 buckets were in the pictures, he said that it only shows 4 new buckets. How does this establish stealing of 6 buckets of paint? Basant's version of the evidence is more credible than Atu's. I repeat that Atu was looking to escape the blame for having stolen the paint when he was in charge of the items left at the school. The paint went missing under his custody and authority. Instead of answering the management about how the paint went missing, he was looking for a target and he found Basant.

71. There was clear evidence that neither Atu and his cousin nor the resort personnel ever opened the paint buckets and saw what was inside it. The evidence from the resort was that the suspicion of theft grew when the team from the resort visited Basant in the morning on 5 July 2014, they saw that the buckets had been swapped. They all said that they saw old paint buckets instead of the new ones. None of the witnesses from the resort testified that the new paint buckets went missing from Basant's home. The issue then arises is why did not any one check inside the new paint buckets? If the new paint buckets were missing from the scene then the employer could have asked the police to search Basant's house and see if he had hidden the new paint buckets and if it was not at his home altogether, to question him where it has gone.
72. In absence of any evidence from the employer I find that Basant always had new paint buckets at his home and that the contents of the paint buckets were not paint. If it had paint inside it, it would have been discovered by the resort persons and/or the police. The police searched Basant's house with some resort staff. No paint belonging to Outrigger was found at his place. There was paint found at his place but it did not belong to the resort as testified by the resort's witnesses. The police did not seize any items from Basant's home.
73. Further, Basant did not know that the resort personnel will come to his home on 5 July 2014 to check on the paint. Of course he was asked by the GM in the afternoon of 4 July 2014 about the missing paint and whether there were any updates. I find on the evidence that Basant did not know until the morning of 5 July 2014 when the resort personnel visited his home that he was being accused of stealing the paint. If he knew that was the case, he will not be eagerly waiting to be picked for golf on 5 July 2014.
74. The evidence of Mr. Lindsey Palmer from the resort was that they were to pick Basant on July 2014 to play golf with the executive team of the resort and that Basant was waiting to be picked for that. If that is the case then it does not support the evidence of the GM that he questioned Basant on the afternoon of 4 July 2014 on the missing paints being found at his place.
75. Further, if Basant was not told about the missing paint at his home, how would he then swap the buckets in anticipation that those new buckets would become an issue for him? There was clear evidence that he was not told about the pictures taken by Atu. I find that if there were any

movements of the old and the new buckets, it is because of water being used from those buckets. There were so many buckets at Basant's place and some of it were used to store water.

76. There is no evidence of any sealed buckets at Basant's place. All the buckets he had at his place were unsealed buckets and the resort's witnesses have accepted this as well. If the buckets had paints inside it which were stolen from the school then those would be sealed buckets and not unsealed buckets.
77. I also find that if Basant had stolen the paint, he would have attempted to erase the outrigger mark from the buckets. He left all the marks as it is. Even the old buckets show Outrigger written on it.
78. Further, there was clear evidence from the plaintiff Basant and the resort's witnesses that before the project started, all the paints were removed from the resort and taken to the school and kept in a designated place to complete the project.
79. There is conflicting evidence whether the room in which the paints were kept was locked or not but what is clear is that Basant would go to the school with his team and return with his team. He did not gain access to the school before or after his team arrived.
80. There is no evidence of anyone seeing him at the school or going to the school at any particular time to remove the items from the school. If he loaded the buckets of paint in the truck that was used to transport the workers to and from the school site, there will definitely be people who will witness that Basant had removed the paints from the school. There is no evidence that Basant had access to the premises alone or that he had removed the paints from the school.
81. The missing paints were 6 x 10 liter buckets. These would be heavy and Basant will not be able to remove these 6 buckets within seconds or minutes. It will take him time to enter the designated place where the items were kept and physically remove it to his vehicles without being seen at the place. I find it surprising that in absence of any such evidence to this effect or any investigation to this effect, the presence of the empty paint buckets at his place will cause the employer to accuse a worker who otherwise gave his best to the Resort in terms of his loyalty and effort.

82. I find that there was no evidence of stealing established on the balance of probability and I find that the reasons to terminate Basant was frivolous and unlawful.

83. I now turn to the issue of procedural compliance in terminating the worker. Before I outline the requirements of the ERA, I must say that when an employer suspects gross misconduct on the part of an employee and is speculating summary dismissal, it is not obliged to provide to the worker an audience to be heard.

84. The employer may undertake that exercise as part of its investigation to determine whether there is gross misconduct but it is not mandatory as there may be other ways in which an employer is able to arrive at a finding of misconduct. It can base the termination on its own findings without resorting to asking the employee to provide his explanation and defence. If the employee is dismissed and he is not satisfied with the employer's finding, he or she is at liberty to challenge that by filing a claim against the employer. It is at this stage where the employer will have to establish the cause on the evidence available to it. That is the evidence that the employee is entitled to challenge and that is the time when the employee will be heard on his or her position.

85. Pursuant to the ERA, when an employee is summarily dismissed from the employment, the employer must:

1. *Provide the worker with reasons in writing for the summary dismissal at the time he or she is dismissed: s. 33 (2) and 114 of the ERA.*
2. *Pay to the worker on dismissal the wages and benefits due up to the time of the worker's dismissal: s. 34 of the ERA.*
3. *Provide a certificate to the worker stating the nature of employment and period of service: s. 30(6) of the ERA.*

86. Basant's complaint is that the NDA outlines certain provisions of the Human Resources Policy which he had allegedly breached and that those provisions of the Policy does not correspond

to the allegations of theft. The explanation of the employer is that the NDA makes reference to the amended policy.

87. I find that although the provisions which Basant is alleged to have breached does not correspond to the right provision in the HR Policy, the NDA and the termination letter does not become defective. There is an obvious error in referring to the right sections of the policy that is alleged to have been breached. Nevertheless the NDA very clearly states the reasons for the termination to be theft of 6 x 10 liter paints by Basant.
88. Basant at all times knew from the allegations in the NDA that the issue relating to his employment was theft. The error in referring to the right sections in the policy did not confuse him on the nature of the allegations. I find that the NDA meets the requirement of s. 33 (2) of the ERA in that written reasons of the summary dismissal was provided to Basant at the time of the dismissal.
89. The next aspect is about payment of all wages and benefits due. The plaintiff does not make any issue about this. I therefore do not find any breach of this provision.
90. On the issue of certificate of service, there is clear evidence that the employer has not till date provided a certificate of service to the employee. It has overlooked its obligations under the ERA. The HR section of the resort should be aware of the legal requirements and in absence of compliance the termination is procedurally unfair.
91. I do not accept the employer's argument that the employee should be responsible for this as well since he failed to ask for a certificate of service. The law casts an obligation on the employer to provide a certificate of service to the employee. It should have been given to the employee on termination. The employer cannot escape liability by blaming the employee. The employee was precluded by the resort from entering the premises. He was also bailed out on the condition that he should not interfere with any witnesses. If he tried to contact anyone in the resort he could be creating problems for himself. It was advisable that Basant did not contact anyone during the time he was under investigation.

92. The termination of Basant was both substantially and procedurally unlawful. The employer is liable for having carried out the unlawful termination. I will now turn to the issue of unfair dismissal.

B. Was the Plaintiff Unfairly Dismissed

93. There are several basis on which Basant says that his termination was unfair. The first is the unlawful and illegal search of his property by the employer and the invasion of his private and family life. There was breach of Basant's constitutional rights.

94. I do not find that it was proper for the Resort to have gone to Basant's place and ask and confront him on the issue of stolen paint. He had his family with him. He provided for his family. He was highly respected at work and by his family. To be accused of stealing paints and have superior staff search his premises unannounced in front of his family members would be very shocking, humiliating, degrading and disturbing. Basant underwent all that. He testified to that effect. He testified how he was so humiliated and felt like committing suicide. Basant's family will no doubt have been disturbed and antagonized. There was evidence that Basant's wife shouted at the resort personnel for carrying out the search at his place.

95. If the resort was not happy after seeing the pictures they received from Atu and suspected theft on the part of the employee, they could have asked Basant for an explanation at work. If they wanted to search his premises, they could have engaged the police. They could have carried out the same task in a legal way by involving the police. It is very humiliating if the employer starts barging in employee's homes and conducts raid or searches or questions an employee in the presence of their family members. They have no legal mandate to do so.

96. A family setting is quite different from an employment setting. At home a person is expected to be relaxed and have all his family members together. To all of a sudden have your employer come in your house and cause tension about stealing items will leave any employee devastated. Basant too was very devastated. I find that the employer's this conduct in carrying out the unlawful search and investigation of the issue of the missing paint as unfair, unnecessary and unwarranted.

97. The second basis for claiming unfair dismissal is that the resort humiliated him by advertising in the papers twice that he was no longer employed. Basant says that his photos were also published in the papers. In cross – examination, he was asked whether the advertisements stated that he was a thief or disloyal to Outrigger and Basant responded that it did not have any such statements however, he was defamed when the factual statements were published. Basant said that it is his view that people perceived him as a thief.
98. I do not find that Outrigger had conducted itself in bad faith and in a manner that is not expected to promote harmony and maintain the dignity whilst ending the employment relationship when it advertised in the newspapers that Basant was no longer in employment with the resort.
99. Basant in his capacity as the Chief Engineer had authority to decide on the items to be purchased for his Department and to negotiate with the dealers or providers. Therefore, the resort had to inform all the dealers that Basant no longer had any authority on its behalf to carry out any further dealings. This was necessary to protect the resort from any liability incurred by Basant on its behalf. The motive of the advertisement was for protection of the resorts financial position and not to humiliate or degrade the employee. Such a practice is common to avoid liability on the employer.
100. The next assertion was that the employer had told the employees in a meeting on Monday 7 July 2014 that Basant had stolen from the resort. Basant says that he was defamed. According to Basant some staff from the resort told him that.
101. Basant’s evidence cannot establish that there in fact was a meeting in which he was accused of stealing. The employer is expected to inform some staff that Basant will no longer work for the resort and that some other people are to work in his place or take over his work. The aspect that the employment relationship between Basant and the resort had ended could not be kept secret. There is no malice in informing the employees that Basant is no longer employed. I will find it unnecessary and unfair if the employer starts relishing the termination in its meetings and gatherings and makes it a subject for the employees to gossip and enjoy.

102. Mr. Log Nadan gave evidence that in a meeting on Monday, the GM and the Assistant Engineer told the Engineering Department Staff that Basant had stolen and has been terminated. The reference to Monday would be 7 July 2014. There is uncontroverted evidence that the GM had flown out of the country by this stage and there is no possibility that he conducted a meeting and said what is alleged by Mr. Log Nadan. Mr. Log Nadan is not honest in his reflection of what happened on Monday 7 July 2014. I have doubts on Mr. Nadan's credibility as he is not an independent witness. He is a former employee of the resort and was terminated himself for stealing. He did not challenge the dismissal in court.
103. Mr. Log Nadan also mentioned that the Assistant Engineer had also said the same thing in the meeting. I do not find Mr. Log Nadan's evidence credible. He has totally concocted the evidence regarding the GM making those statements in a meeting. I therefore cannot accept the version of Mr. Log Nadan.
104. I must say that it is understandable that there would be talks about this issue in the hotel amongst the staff. The employer cannot stop this kind of gossip and rumours. What needs to be established is that the employer promoted and encouraged such discussions. I am not shown a meeting was conducted to defame Basant or in which there was a deliberate attempt to defame Basant.
105. The other aspect of humiliation was when Basant says that the resort had placed security outside his home. That is denied by the Resort. Basant said in cross – examination that it is his opinion that there was security outside his house as he saw staff outside his home from time to time. Basant's wife gave evidence that it was their feeling that there were people who were employed by the resort, going past their house in a truck and watching them. One Shalendra Dutt gave evidence on behalf of Basant. He said that on the afternoon of 5 July 2014 he noticed some security officers around Basant's house. They were marching up and down. They would also hide and look who is coming and going. He said that he did not notice any trucks.
106. There are different versions given by Basant, his wife and Shalendra Dutt. I am not convinced that the resort had placed security outside Basant's house. Basant is not able to identify any staff by their names whom he saw outside his home. He was working at the resort

and if he identified the staff, he should have been able to give more particulars of the staff he saw outside his home.

107. Further, his wife said that she saw the resort's employees going past their house in a truck and watching their house. She felt they were watching her. If there were staff in a truck, they could be going somewhere for other purpose. It does not necessarily mean that they were sent by the employer to watch her house.
108. The witness Shalendra Dutt said that he saw security marching up and down and hiding and looking as to who was coming and going from Basant's home. This is totally different from what Basant and his wife said in their evidence. I do not see a reason why the resort would do this when it had taken a very formidable approach of going to Basant's residence and looking or searching for the missing paints with the photographs they had at hand. They had also reported the matter to the police and expected Basant's place to be searched.
109. Even if I accept that there were people or staff or security on the road, they did not preclude or hinder Basant or his family from continuing their daily chores and work. They did not say anything or cause any impediment. How could there be humiliation, loss of dignity and injury to the feelings in that situation was not sufficiently explained and established in the evidence.
110. I find that the termination was unfair on the basis that the employer had not treated the employee in a dignified way when it carried out a search at his property and when it invaded the private and family life of the employee.
111. There are also allegations of bad conduct on the part of the police during the search of his property and when he was taken in for questioning. These are matters that are beyond the control of the employer and I do not think that the employer is answerable for the conduct of the police.
112. The employer had suspicion that paint had been stolen and they had reported the matter to the police. Although the whole basis to suspect and put Basant through such a process was erroneous in the first place, I do not find that the employer had any control over police actions after it reported the matter to the police. The employer would have ensured that Basant was

charged if it had control over the actions of the police. The employer was informed by the Director or Prosecutions Office that there was insufficient evidence to proceed. This in itself shows that the employer could not control the way in which police did its work.

113. I find that Basant was both unlawfully and unfairly terminated from his employment. I now need to determine the appropriate remedy under s. 230 of the ERA that should be given to Basant.

C. Remedies

114. I will first of all consider whether reinstatement is an appropriate remedy in this case. It is now 8 years since Basant has been terminated. The employer had moved on by hiring a new Chief Engineer. Basant also now has his own business. He works for his own Company. Further to that, since there was an allegation of stealing, there is unpleasantness in the working relationship. Putting Basant back in that relationship is not workable. I find that the suitable remedy is compensation for wages lost as a result of the grievance.

115. I will consider what the plaintiff has lost in the form of wages and how much of it should be compensated. The plaintiff's FNPF statement was tendered in evidence. It shows that he was able to get full time employment at Epic International Limited in September 2015. His FNPF contribution started from \$280.00 per month and goes up till \$622 per month. The contribution varies from month to month from which it is difficult to work out the salary of the plaintiff at Epic International.

116. The plaintiff should have given me his pay slip to establish what his annual wages were. He did not. All I can say is that if I use the figure of \$500 monthly FNPF contribution then the plaintiff would be on a monthly wages of over \$3,000 bearing in mind that the FNPF contribution includes the employer's contribution as well. If I use a figure of \$3000 per month salary at Epic International then Basant would not be even earning half of what he earned at the resort.

117. There is also evidence that the plaintiff registered a company in the name of Coastal Builders on 28 November 2014. He and his wife are the shareholders in the business. This business was initially registered as a sole trading business on 1 February 2011 then converted to a limited liability company on 28 November 2014.
118. Although Basant did not give us any evidence on when the company started operations, his FNNP statements show that he started earning from this Company after he left work at Epic International. He started earning from his Company since April 2017. The FNNP statement also shows that he stopped working for Epic International since March 2017. This supports his evidence that he joined Epic International to learn work to be able to operate his own Company. The purpose of working at Epic International was to up skill himself.
119. I therefore accept Basant's evidence that he did not work for his own company until after he left work at Epic International. He did not derive any income from this company until he started working for his own company. I am however unable to arrive at any finding on the income he earned in the form of profits from his company. He agreed in his evidence that the FNNP statement does not show the profits earned by shareholders. As a shareholder, Basant is also entitled to profits from his company. He was expected to provide the financial statements of this Company.
120. Basant was also paid by Crow's Nest for 3 to 4 months for his pocket expenses. This was before he started worked at Epic International. In absence of any FNNP contribution by Crow's Nest I accept that the plaintiff did not earn any stable income from Crow's Nest. He was not permanently employed but earned some money at hand for his pocket expenses. I accept his evidence that he needed to divert his attention to something else other than what had happened and demoralized him. In that way he could promote his mental health.
121. It was not easy for Basant to recover from his termination and find work immediately. He was struggling to resolve his criminal case. He was only cleared in November 2015 of all criminal charges. He presumed that he was going to be prosecuted as he was on bail. The potential of a criminal proceeding was hanging over his head all the time. It will not be easy for anyone to find work with allegations of stealing.

122. Basant had the strength to earn some pocket money and find full time employment after 13 months of agony. He found full time employment even before being cleared of the criminal complaint and even before he was exonerated from the criminal charges. This was possible because his friend owns Epic International and he was able to get work there. Had it not been for his owner friend at Epic International, he would be unemployed for a longer time.
123. I find that he did his best in the circumstances and did not fail to mitigate his loss. I note that he was not on an equivalent pay at Epic International but he still managed to find work. He will not be able to recover his losses completely if I give him 13 months of salary (period of unemployment). The losses that he will be recover will be partial.
124. I do not overlook the fact the employer refused to take any part in the mediation leading to his case being stalled at the Labour Office. If the employer had fairly participated in his employment grievance case, he would have had an answer earlier than this. It is not fair if the full 13 months wages is not given to Basant. He is entitled to that and he should recover that as lost wages.
125. If Basant was allowed to work, he would have earned money in his FNPf account as well. He should be compensated for that. I find that the current rate of 6% employer's contribution on the 13 months wages should be properly awarded to him as compensation.
126. I reiterate that this will not compensate him fully. To that end it is only fair that he be paid interest on the compensation that he is to be awarded. I consider it appropriate that he be awarded 3 % interest for 4 years. I pick the term 4 years because he managed to get a decision from the Tribunal for extension of time in September 2018 when he could file his claim for unlawful and unfair dismissal. I have said before that that application was unnecessary. If the employer had not acted carelessly in failing to enter into a mediation when Basant had filed a claim, there would not be so much delay in having his claim finalized. It is the employer who has to should the responsibility of the delay and pay interest.

127. In addition to that Basant is entitled to damages for humiliation, loss of dignity and injury to his feelings. His constitutional right was impeded by the employer. He was humiliated in front of his family when he was searched and questioned on 5 July 2014 by the Resort personnel. Basant was an employee of a dignified stature. He was treated like a criminal in front of his family. It is not difficult to understand his feelings of humiliation and embarrassment. I find that Basant is entitled to \$25,000 damages for humiliation, loss of dignity and injury to his feelings.

128. I am not prepared to grant 10% bonus on the salary as there is no express contractual arrangement for that. As for other benefits in the resort that Basant would have received, that to my mind cannot be cashed as he would have had to pay to use the benefits such as dining at half costs.

129. I now turn to the issue of the tools for which Basant claims monies to be paid. There is evidence that Basant used to take his tools to the resort as some of the tools were returned after his termination. However, Basant should have some evidence of what tools were taken in the resort. I do not accept that he can just take in the tools he wants without getting permission or authorization from the security. This is because when he removes the tools, he will need a property pass. How can he get a property pass when he cannot establish with the resort what he brought in in the first place? Otherwise any staff will remove items from the resort and claim to have brought it to the resort.

130. I am not convinced that the tools are left behind in the resort. If it is then Basant is at liberty to make a complaint to the police and have the matter investigated. There is insufficient evidence for me to order return of the tools or compensate for the same. To add to that, there is no proper valuation of the tools left at the resort. Basant has given a lump sum figure for the costs of all the tools left behind which I am reluctant to accept as true value.

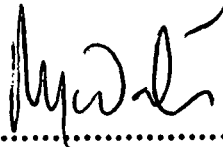
131. I now turn to the aspect of costs. This trial took days to finish. There were more than 10 witnesses in this case. Basant had to spend money and prepare his case to be able to vindicate his rights in court. He is entitled to costs of the proceedings.

Final Orders

132. In the final analysis I find that Basant was unlawfully and unfairly terminated from the Resort. I grant him the following remedies:

1. ***13 months wages being part of the wages lost as a result of the grievance together with 6% FNPF Contribution by the employer on 13 months wages. On this collective amount the employer is to pay 3 % interest for 4 years.***
2. ***\$25,000 damages for humiliation, loss of dignity and injury to the feelings.***
3. ***\$6,500 costs of the proceedings.***

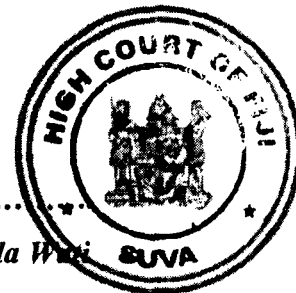
133. I order that the above sums be paid within 21 days.



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Hon. Madam Justice Anjala Wani

Judge

8. 09.2022



To:

1. ***Mr. E. Craig for the Plaintiff.***
2. ***Parshotam Lawyers for the Defendant.***
3. ***File: ERCC 09 of 2019.***