

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 245 of 2020

Tacirua Transport Company Pte Limited

Plaintiff

v.

Nausori Town Council

Defendant

Counsel: Ms P. Narayan for the plaintiff
Ms N. Racule for the defendant

Date of hearing: 10th February, 2021

Date of Judgment: 25th April, 2022

Judgment

1. The plaintiff, in its originating summons seeks a declaration that the proceedings instituted by the defendant against the plaintiff's Managing Director in Case no: CF 45 of 2019 or any other proceedings in Nausori Magistrate's Court was deemed to be dismissed when the plaintiff made payment on 6 September, 2019, within the 30 days set out in Fixed Penalty Notice No 08592, (FPN) issued on 29 August, 2019; and, a declaration that the conviction recorded in that case or any other proceedings is deemed to be unlawful, as the defendant received payment within 30 days of the issue of the FPN.

2. The supporting affidavit states that on 27 August, 2019, a FPN in a sum of \$40.00 was issued to the Managing Director of the plaintiff in terms of the Litter Act. The penalty was to be paid within 30 days. On 6 September, 2019, the plaintiff paid the fine. On 24 January, 2020, the plaintiff was informed that there was an Order against the plaintiff for an unpaid fine. The plaintiff informed the defendant that the fine was paid. A copy of the receipt was sent. Despite the payment, the defendant issued a committal warrant. On 29 July, 2020, the matter proceeded for submission to cancel the warrant. The plaintiff states that the case should not have proceeded after payment was made.
3. The affidavit in opposition filed on behalf of the defendant states that its Legal Department, after the seven days ended on 4th September, 2019, checked the system on 5th September, 2019. The Dept was not informed of the payment. The judgment on the committal warrant was given on the original matter in which this action arose. As such a freeze on this judgment should be imposed to stop execution. The plaintiff must apply for stay of proceedings in the High Court.

The determination

4. At the hearing, Ms Racule, counsel for the defendant submitted that section 22(5) of the Litter Act required the FPN to be placed before Court within 7 days of the notice. The defendant proceeded to file action, as it was not aware that the plaintiff paid the fine on 6 September, 2019.
5. Ms Narayan, counsel for the plaintiff submitted that the proceedings were initiated in the Magistrates' Court prior to the 30 days stipulated in the FPN.
6. The plaintiff states that it informed the defendant by email that the fine was paid. The defendant states that it was not informed.
7. I note that section 23(2) of the Litter Act provides that if a fine is paid within 30 days, the proceedings shall be deemed to have been dismissed.

8. In my judgment, the plaintiff must seek its relief in the Magistrate's Court, as the Hon Chief Justice already advised the plaintiff's solicitor, in response to her letter to move Court to cancel the committal warrant.

9. **Orders**

- a. The plaintiff's summons is declined.
- b. I make no order as to costs.



A.L.B. Brito-Mutunayagam

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Judge
25th April, 2023