

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

CIVIL ACTION NO. HBM 04 OF 2023

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 a.k.a BIJMA KUMARI SINGH a.k.a BIJAM KUMARI** of 5 Oliver Street, Bexley, North NSW 207, Australia as **Executrix and Trustee of the Estate of BHAGAT SINGH.**
PLAINTIFF

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

APPEARANCES : Ms. Arthi B. Swamy -for the Plaintiff-Applicant
No appearance for the Defendant- Respondents

DATE OF HEARING : 13th February, 2023.

DATE OF RULING : 21st February, 2023.

RULING

[Leave to issue committal proceedings]

1. This is an application seeking leave to issue committal proceedings.
2. The Plaintiff , namely, **BIJMA KUMARI a.k.a BIJMA KUMARI SINGH a.k.a BIJAM KUMARI**, By her ex- parte Application filed on 1st February, 2023, together with an Affidavit sworn by her on 17th January, 2023, seeks leave to issue committal proceedings against the 1st named Defendant **PRANITESH SINGH**, for Contempt of Court for not complying with the Court Orders dated 1st May 2019 and entered on 20th May 2019 by the Magistrate's Court of NADI against Defendants, which are stated in paragraphs 1:1, 1:2 and 2:1 to 2:3 of the Application.
3. The application is made pursuant to Order 52, Rules 1 & 2 of the High Court Rules 1988 ('HCR') and under the inherent jurisdiction of the court. The relevant rules provide:

"Committal for contempt of court (O 52, R 1)

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;*

(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.*

Application for order of committal (O 52, R 2)

2.-(1) *No application for an order of committal against any person maybe made unless leave to make such an application has been granted in accordance with this Rule.*

(2) *An application for such leave must be made ex parte to a Judge in chambers, and must be supported by a statement setting out the name and description of the Applicant, the name, description and address of the person sought to be committed and the grounds on which his or her committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.*

(3) *The Applicant must give notice of the application for leave not later than the preceding day to the Registry and must at the same time lodge at the Registry copies of the statement and affidavit."*

4. It is alleged that the 1st named Defendant, without making an application before the Magistrate to have the said Orders set aside or making an Appeal to have the Magistrate's Court Orders set aside, on 26th March, 2020 instituted the High Court Civil Action number HBC 71 of 2019, as intended Administrator for all the Estate of the beneficiaries, and thereafter on 28th November, 2019 filed an Amended Statement of Claim, when the question was raised on the locus to file action as intended Administrator.
5. However, after hearing the summons for amendment inter-partes, the High Court on 26th July, 2020 allowed the 1st named Defendant to reside in the property in dispute. It is stated further, that the 1st named Defendant had sought certain Orders seeking the

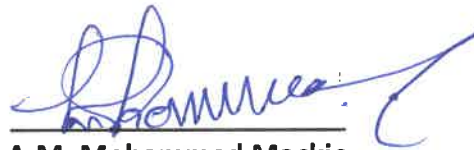
stay of Magistrate's Court Order through Ex-parte Summons in the High Court Action and the Counsel for the defendant during the argument had the Orders amended allowing the 1st named Defendant to reside therein.

6. It is stated Further, that the Order by High Court made on 24th July, 2020, only allowed the 1st named Defendant to reside in the property, however, did not alter, change, stay it or in any way whatsoever impede the Orders of Nadi Magistrate's Court, by which the 1st named Defendant is restrained from interfering with the Management and the operation of the Farm.
7. It is alleged that the 1st named Defendant, being aware of the Order made by the Magistrate Court, is said to be repeating or continuing with the violation and, without the knowledge of the Plaintiff removing farm equipment from the said land and causing issues to the tenants of the Plaintiff. Despite the Orders the interim order and final Order were served on 21st March, 2018 and 23rd May, 2019 respectively, the Defendant is alleged to be in breach of those Orders.
8. If a Court Order is observed in breach or violated, the party affected by it can move the Court to deal with such party acting in contempt.
9. An order of committal cannot be made unless leave to make such an application has been granted. The application for leave to issue committal proceedings may be made ex parte to a judge in Chambers (see O 52, R 2 (2)).
10. The Applicant has filed an affidavit verifying the facts relied on. The application is supported by a statement setting out the name and description of the Applicant, the description and address of the first named Defendant, the person sought to be committed and the grounds upon which the committal is sought as required by the HCR, O 52, R 2 (2). The Applicant has complied with the HCR, O 52, R 2.
11. Being satisfied that the Applicant has complied with all the requirements envisaged in O 52, R 2 for an application for leave to issue committal proceedings, relying on the facts alluded above, I hereby grant leave to the Plaintiff to apply for an order of committal of the first named Respondent for disobeying the order of the Magistrate's Court of NADI, which was made permanent against him.
12. Since leave has been granted to apply for an order of committal, the application for the order must be made by motion and there must be 8 clear days of gap between the date of service of the notice of motion and the day for the hearing (O 52, R 3 (1)). This leave will expire after 14 days from today (21st February, 2023) vide - O 52, R 3 (2). The notice of motion, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 2 must be served personally on the Respondent (O 52, R 3 (3)).

13. The Result:

- i. Leave to apply for an order of committal is granted.
- ii. This leave will expire after 14 days from today (21st February, 2023).
- iii. The application for the order of committal must be made by motion giving 8 clear days between the service of the notice of motion and the hearing date.
- iv. The notice of motion, with a copy of the statement and affidavit in support of the application for leave, must be served personally on the 1st named Defendant.




A.M. Mohammed Mackie
Judge

At High Court Lautoka this 21st day of February, 2023.

SOLICITORS:

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

For the Respondent: No appearance