

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

**CIVIL ACTION NO. HBC 50 OF 2021.**

**BETWEEN** : **BLUE VIEWS LLC** a limited liability corporation incorporated in USA and registered as a foreign company in Fiji.

**PLAINTIFF**

**AND** : **VUNABAKA BAY FIJI LIMITED** a limited liability company incorporated in New Zealand and registered as a foreign company in Fiji.

**1<sup>ST</sup> DEFENDANT**

**AND** : **VUNABAKA BODY CORPORATE (FIJI) LIMITED** a company limited by guarantee and not having share capital.

**2<sup>ND</sup> DEFENDANT**

**BEFORE** : Hon. Mr. Justice Mohamed Mackie

**APPEARANCES** : Ms. Tabuadua. S.

**DATE OF HEARING** : 12<sup>th</sup> June 2023

**DATE OF RULING** : 28<sup>th</sup> June, 2023

**RULING**

[On leave to issue committal proceedings]

1. This is an ex-parte application preferred by the Plaintiff-Applicant-Company ("the Plaintiff") seeking for leave to issue committal proceedings.
2. By the said application filed on 6<sup>th</sup> June 2023 together with the statement and supporting affidavit sworn by its Director, namely, Andrew Hugh Griffiths ("AHG"), the Plaintiff applies for , *inter-alia*, following orders.
  1. *An order granting leave to issue committal proceedings against the first Defendants, namely, VUNABAKA BAY FIJI LIMITED, the Second Defendant, namely, VUNABAKA BODY CORPORATE FIJI Limited, Mr. Michael Anthony Lucas, Mr. Christian Andrew Buritscher, as Directors of both the First and the Second Defendant Companies and against Mr. RASNIL KALYAN as the servant of both the First and Second Defendant Companies for, allegedly, violating the orders made by the Court of Appeal on 18<sup>th</sup> April 2023.*

2. ***That*** personal service of the committal proceedings on the First Defendant be substituted by way of service on the First Defendant's Nadi Office at Unit 16, Retail & Commercial Centre, Port Denarau.
  3. ***That*** personal service of the committal proceedings on Michael Anthony Lucas also known as Michael Lucas and Christian Andrew burtscher be dispensed with pursuant to Order 52 Rule 4 of the High Court Rules 1988 and substituted by way of service on the Second Defendant's registered office at Unit 16, retail & Commercial Centre, Port Denarau and by electronic mail to michael@vunabaka.com and caburtscher@gmail.com.
3. This application is filed pursuant to Order 52 Rule 2, 3(3-4), 4 and Order 65 Rule 4 of the High Court Rules of Fiji, 1988 and the inherent jurisdiction of the Court.
  4. The plaintiff intends to rely on its (the Applicant's) Statement (pursuant to Order 52 Rule 2(2)) and the Affidavit in Support sworn by Andrew Hugh Griffiths, and filed hereof.

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

*(1). No application for an order of committal against any person may be 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.*

*[04] An application for leave to apply for an order of committal could be made ex parte to a Judge in Chambers (HCR, O 52, R 2).*

5. The Plaintiff alleges that the First and the Second Defendant/Respondent Companies ("The Defendants"), its Directors, and their servant and/ or agents had violated the interim injunction Order issued by the Court of Appeal on 18<sup>th</sup> April 2023.
6. Out of the 8 orders made by the Court of Appeal on 18<sup>th</sup> April 2023, the orders that the Plaintiff alleges to have been violated / disobeyed by the Defendants, for the Plaintiff to seek for leave to file committal proceedings, are only orders 1,2 and 3 reproduced as follows;
  1. ***THAT*** the Respondent/ Original Defendants, their Servants and/ or agents are restrained from disconnecting power, the water connection and the Gas connection to the residence known as Lot 3 being Lot 1 on SO 6756 known as Vunabaka (part of) containing an area of 2836m<sup>2</sup> comprised in iTaukei Sublease No. 851717 for a period of 28 days from 18<sup>th</sup> April 2023;

2. ***THAT*** the Respondents/ Original Defendants, their servants and/ or agents are restrained from restricting the quiet enjoyment of the residence known as Lot 3 being Lot 1 on SO 6756 known as Vunabaka (part of) containing an area of 2836m2 comprised in iTaukei Sublease 851717 for a period of 28 days from 18<sup>th</sup> April 2023;
3. ***THAT*** the Respondents/ Original Defendants , their servants and/ or agents are restrained from entering the land and premises known as Lot 3 being Lot 1 on SO 6756 known as Vunabaka (part of) containing an area of 2836m2 comprised in iTaukei Sublease 851717 for a period of 28 days from 18<sup>th</sup> April 2023;
7. Before proceeding to grant leave for the commencement of a committal proceedings, the Court must be satisfied, with no ambiguity, that the person against whom the committal is to be sought, has committed an act which was restrained by a restrictive injunction order of the Court issued against him, while the alleged anticipated act was imminent or likely or yet to be committed or performed by him. If the act complained of has already been committed, the injunction order issued in that respect will have no force.
8. In the matter in hand, by the said orders, the Defendants were restrained from, 1. Disconnecting the utility services (Power, Water & Gas), 2. Restricting the quiet enjoyment of lot, 3 by the Plaintiff, 3. Entering the said lot 3 occupied by the Plaintiff.
9. Likewise, a person against whom an order was made requiring him to do certain positive act, which is known as mandatory injunctive order, also can be charged for contempt of Court if he had willfully failed to do or perform the act required by the order issued against him. There was no such a positive order made against the Defendants in this case requiring them to reconnect the utility services.
10. In the absence of any clear violation/ disobedience of a restrictive or mandatory injunction order issued, the Court will not be inclined to grant leave to commence proceedings for committal.
11. When the contents of paragraph 5 of the Applicant's Statement, Paragraphs 16 and 17 of the Affidavit in Support for Committal and particularly those of the annexures marked as "AG1", "AG2", "AG4" and "AG5" are carefully scrutinized, it becomes crystal clear that at the time of making the Application for injunction before the Court of Appeal and when the said orders were granted by the Court of Appeal on 18<sup>th</sup> April 2023, there was no power supply to the said lot 3 as it had already been, admittedly, disconnected soon after an Order was made by this Court on 14<sup>th</sup> March 2023 dissolving the ex-parte injunction that had already been granted and the dismissing the Plaintiff's Application for injunctive orders .
12. What the paragraph 16 and 17 of the affidavit in supports averse is the disconnection of the power Supply done on 9<sup>th</sup> May 2023, which had been reconnected either by the Defendants to facilitate the meter reading as they claim or by the Plaintiff (AHG) by

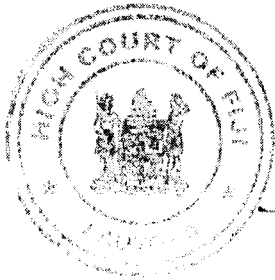
employing a Servicemen as he has admitted in paragraph 6 of his Affidavit filed in the Court of Appeal in support of his application for payments of funds.

13. It is an admitted fact that when the Court of Appeal made the said injunction orders on 18<sup>th</sup> April 2023, there was no power supply to the Lot 3 in dispute and this is further substantiated through the annexures marked "AG4", which includes an Affidavit sworn by "AHG" on 26<sup>th</sup> May 2023, various e-mail correspondences and letters. The annexure marked as "AG 5", which is a Police Complaint by AHG made on 9<sup>th</sup> May 2023, is about the disconnection of power on the same day evening at around 3.40 pm.
14. It is also to be observed that in page 2 of the said Police Complaint Mr. AHG has clearly admitted that the disconnection of the power had taken Place 2 days after the Ruling was given by this Court on 14<sup>th</sup> March 2023, which was around one month prior to the injunction orders were issued by the Court of Appeal on 18<sup>th</sup> April 2023. Thus, it is clear that there was no power supply to Lot 3 when the Court of Appeal made the said injunctive orders restraining the Defendants from disconnecting it.
15. Correspondences between the Solicitors for both the parties show that after the Court of Appeal made the injunction orders, there was an arrangement for the relevant servants/ agents of the Defendants to go into Lot 3 for the purpose of reading the power meter, for which the Defendants claim the restoration of the Power was needed and accordingly the power was restored for that limited purpose and disconnected subsequently. This seems to be the disconnection that the Plaintiff's Director AHG is complaining of for the purpose of bringing committal charges.
16. The Plaintiff's Solicitors, admittedly, neither included a prayer to their Application for injunction before the Court of Appeal nor made a subsequent Application before that Court for the **reconnection** of the Power supply, which stood disconnected soon after the Ruling was made by this Court on 14<sup>th</sup> March 2023 and prior to the injunction orders by the Court of Appeal on 18<sup>th</sup> April 2023 were issued.
17. Thus, according to the facts and the circumstances that transpired, this Court is not inclined to act on the allegation made by the Plaintiff. In my view, the entry of the Meter Reader or an agent of the Defendants upon the Plaintiff's Lot 3 to restore the Power supply for the limited purpose of reading the meter and for the subsequent disconnection of it will not constitute an offence of the violation of Court of Appeal order made on 18<sup>th</sup> April 2023, in order to justify the leave to file committal proceedings.
18. The Plaintiff has not convinced this Court that the Defendants have violated any Order made by the Court of Appeal on 18<sup>th</sup> April 2023. In short, there should have been live Power supply connected to the Lot 3 when the Court of Appeal ordered the Defendants to refrain from disconnecting it.
19. I should add that there is no sound basis for the leave to be granted for the Plaintiff to bring committal proceedings against the Defendants. The application seeking for leave

must accordingly be dismissed. Since the leave for committal is refused, no necessity would arise to consider the orders for substituted service.

20. I make the following orders;

- a. Leave to issue committal proceedings against the Defendants refused.
- b. The ex-parte application preferred by the plaintiff on 6<sup>th</sup> June 2023, seeking leave for committal proceedings, is hereby dismissed.
- c. No order as to costs.



A handwritten signature in black ink, appearing to read "A.M. Mohamed Mackie", written over a horizontal line.

**A.M. Mohamed Mackie**  
Judge.

**At High Court Lautoka, on this 28<sup>th</sup> day of June, 2023.**

**SOLICITORS:**

**For the Plaintiff:**

**Messrs. Lowing Lawyers – Barristers & Solicitors.**

**For the Defendants:**

**Messrs. R. Patel Lawyers- Barristers & Solicitors.**