

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

CIVIL ACTION NO. HBC 241 OF 2022

**BETWEEN** : **PUNJAS PRIVATE LIMITED**, a duly incorporated company having its registered office at 63 Vitogo Parade, Lautoka in the Republic of Fiji.  
**PLAINTIFF/ APPLICANT**

**AND** : **VIJAY VIKASH AJAY KUMAR** of Lot 35 Neelfield Street, Legalega, Nadi in the Republic of Fiji.  
**DEFENDANT/ RESPONDENT**

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

**APPEARANCES** : Ms. Ravai, for the Plaintiff.  
Defendant absent and no representation.( Ex-parte Application)

**DATE OF HEARING** : On 27<sup>th</sup> June 2023.

**DATE OF RULING** : On 3<sup>rd</sup> July 2023.

## **RULING**

[Leave to issue committal proceedings]

1. This is an application for leave to issue committal proceedings.
2. The Plaintiff-Applicant (the Applicant) by its ex parte Notice of Motion (Application) filed on 14<sup>th</sup> June 2023 in conjunction with a Statement and an Affidavit sworn by **Navin Prasad** (Chief Financial Officer of the Company) seeks leave to issue committal proceedings against the Defendant- Respondent (the Respondent), namely, **Vijay Vikash Ajay Kumar**, for violating the temporary injunctive orders made against him by this Court on 2<sup>nd</sup> September 2022, which was later amended on 16<sup>th</sup> September 2022.
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 for 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 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 this
- (2) An application for such leave muse 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. The background surrounding of this application is as follows:

A. On 2<sup>nd</sup> September 2022 the Applicant obtained an ex-parte temporary injunction order against the Respondent, which was subsequently amended on 16<sup>th</sup> September 2022 to the following effect and, reportedly, served on the Respondent.

**1.THAT** the Defendant is restrained from interfering with, disrupting or attempting to disrupt or procure or solicit anyone to undertake those things and/ or activities which are referable to the relationship ( contractual or otherwise) between the Plaintiff and;

- a. any enterprise customer of the Plaintiff in respect of whom the Defendant carried out work, had developed or was involved in developing a business relationship;
- b. any person or corporation whom the Defendant knows is an enterprise customer of the Plaintiff.

**2.THAT** the Defendant is restrained from engaging in conduct not limited to but including sharing and/or utilizing any of the Plaintiff's Confidential information , more particularly referred to in the Schedule in the Agreement made between the Plaintiff and the Defendant in a Deed of Confidentiality and

*Restrictions after Termination ( Management and Senior Employee) made 8th September , 2012 whilst in employ of 'Cute & Classy' (RCBS 201614391) and/ or any other employer or entity in which he may be employed or in a business relationship with from carrying out either directly or indirectly or along with any other person or persons as principal, partner , agent, director, shareholder, employee or otherwise in any business which competes or may compete with the business of the Plaintiff in relation to the business of manufacturing and distribution of foods, beverages and household cleaning and cosmetic products in Fiji and throughout the South-Pacific region.*

- B. The Respondent subsequently filed his Summons for Dissolution of injunction on 19<sup>th</sup> October 2022, which was supported inter-partes on 21<sup>st</sup> October 2022 and moved for not to extend or to dissolve the temporary injunction already issued. Having considered the submissions by the Counsel for both the parties, the Court extended the temporary injunction till next date, however, subject to furnishing of further security for damages by the Applicant, which was complied with accordingly.
- C. The temporary injunction in effect prohibited the Respondent from carrying on or operating any business activities directly or indirectly that would affect the Applicant's business and violate the conditions in the Deed of Confidentiality entered into between the Applicant and the Respondent.
- D. The Applicant applies for leave to issue committal proceedings against the Respondent to punish for contempt of court, allegedly, committed by the Respondent in respect of an order issued by this court.
- E. 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)).
- F. 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 Respondent, 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.
- G. Being satisfied of the contents of the averments in the Affidavit and the Statement filed with regard to the alleged violation of the Court order , and that the Applicant has complied with all the requirements envisaged in O 52, R 2 for an application for leave to issue committal proceedings, I would grant leave to the Applicant to apply for an order of committal of the Respondent for disobeying the order of this court made against the Respondent on 2<sup>nd</sup> September 2022, which was amended on 16<sup>th</sup> September 2022.

- H. 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 between the 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 (3<sup>rd</sup> July 2023) (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 must be served personally on the Respondent (O 52, R 3 (3)).

**ORDERS OF THE COURT.**

- A. Leave to apply for an order of committal is granted.
- B. This leave will expire after 14 days from today (3<sup>rd</sup> July 2023).
- C. 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.
- D. 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 Respondent.



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

At High Court Lautoka, on this 3<sup>rd</sup> day of July, 2023.

**SOLICITORS:**

For the Applicant:

**M/S Vijay Naidu & Associates, Barristers & Solicitors.**

For the Respondent:

**No appearance**