

In the High Court of Fiji
At Labasa
Civil Jurisdiction
Civil Action No. HBE 03 of 2021
In the matter of Waiqele Sawmills Pte Limited

Abdul Aziz Begg

Feroz Begg

Faiaz Begg

Applicants

v

Ahmad Begg

First respondent

Maqsum Begg

Second respondent

Hazra Khatoon

Third respondent

Counsel: Mr A. Kohli for the applicants
Mr Susil Sharma for the first respondent

Date of hearing: 18th October, 2022

Date of Ruling: 8th February, 2023

Ruling

1. On 10th August, 2022, Court had granted leave to issue committal proceedings against the respondents for breach of Orders made by Amaratunga J on 20th June, 2022, in this action.

2. The applicants in their notice of motion seek an order that the first second and third respondents be committed to prison for contempt in failing to obey Orders of Amaratunga J.
3. The first applicant, Abdul Aziz Begg, in his affidavit in support states that as a result of the respondents failing to obey the Orders, they are unable to appoint a Director from their family. The first respondent, Ahmad Begg continues to run the company as his family business. They are unable to fully participate in the company's affairs as they have only one Director, while Ahmad Begg's family has 2 Directors. The respondents continue to oppress him.
4. The applicants seek an order that the first, second and third respondents be committed to prison for contempt as they have failed to obey the following Orders of Justice Amaratunga of 20th June, 2022, in that :
 1. . *the Respondent have failed to direct the Company Secretary to call on extraordinary meeting to appoint a suitable person for the retired director, Abdul Aziz Begg in terms of the Articles of Association.*
 2. . *the Respondents are trying to block the appointment of a Director who is a family member of the retired Director or his nominee.*

The determination

3. The relevant Orders of Amaratunga J read as follows :
 - f) Company Secretary is directed to call an extraordinary meeting for the appointment of a director. All parties are directed to appoint a suitable person for the retired director (Aziz) in terms of the Articles of Association. As it is a family company priority should be given to family members of the retired Director or his nominees, provided such nominee is otherwise not disqualified.*
 - g) Respondents are restrained from blocking appointment of a Director in terms of (f) above.(emphasis added)*
4. The first contempt alleged is the failure of the Company Secretary to call an extraordinary meeting to appoint a Director in place of the first applicant, the retired Director. The second, that the respondents are trying to block the appointment of a Director.

5. At the hearing, Mr Kohli, counsel for the applicants submitted that the first applicant retired on the condition that the third applicant, his son be appointed, but the Company is solely run by the first respondent, Ahmed Begg. There is no Company Secretary as such. The respondents do not want the third applicant, Faiaz Begg to be appointed as a Director in place of his father.
6. The riposte of Mr Sharma , counsel for the first respondent was that that there is no contempt committed by the respondents, as the first applicant is the Company Secretary. He was required to call a meeting, but he did not. There is no Order of Court stating that the appointment of the first applicant as Company Secretary is unlawful. The applicants are shifting the blame on the first respondent. Mr Sharma disputed that one person runs the Company.
7. Mr Kohli in reply said that in Labasa High Court Civil Action No 3 of 21, the first respondent challenged the appointment of the third applicant in place of the first applicant. He referred to the first respondent's affidavit filed in that case which states that the lodgment of 30 November, 2020 is unlawful and void as "*the appointment of Faiaz Begg as a Director is in breach of the Clause 5 of the Consent Orders, Companies Act and Articles of Association...the Plaintiffs decided to institute Labasa HC proceedings No. 66 of 2020 challenging the validity and legality of the appointment of Faiaz Begg as a Director*".
8. The material fact is that the documents from the Registrar of Companies provides that the first applicant, Aziz Begg is the Company Secretary with effect from 30th November,2020. There is no Order of Court provided to me stating that the appointment of the first applicant as Company Secretary is unlawful.
9. In my judgment, the applicants have not established that that it was within the power of the respondents to call a meeting nor that the respondents tried to block the appointment of a Director who is a family member of the retired Director.

10. Gates J (as he then was) in *Ali v Chaudhary*, [2004] FJHC 189; HBC0061J.2001L (29 March 2004) said:

The onus of proof in such proceedings is on the mover of the motion. Proof is to be established to that standard applying in the criminal courts, namely proof beyond reasonable doubt

Where, as here, the contempt alleged is of disobedience to a court order the Accused contemnor must be shown to have wilfully disobeyed the order. An unintentional act of disobedience is not enough: Steiner Products Ltd & Anor v Willy Steiner Ltd [1966] 1 WLR 986 ... His lordship cited with approval observations of the Court of Appeal in Fairclough v Manchester Ship Canal Co [1897] WN 7, CA which had said:

In these cases, casual, or accidental and unintentional disobedience to an order of the court is not enough to justify either sequestration or committal; the court must be satisfied that a contempt of court has been committed in other words, that its order has been contumaciously disregarded."(emphasis added)

11. Mr Justice Williams in *Olu-Williams v Olu-Williams*, [2018] EWHC 2464 (Fam) (21 September, 2018) summarized the principles of the law of contempt as follows:

- a) *The contempt which has to be established lies in the disobedience to the order*
- b) *To have penal consequences, an order needs to be clear on its face as to precisely what it means and precisely what it prohibits or requires to be done. The person or persons affected must know with complete precision what it is that they are required to do or abstain from doing. It is not possible to imply terms into an injunction. The first task for the judge hearing an application for committal for alleged breach of a mandatory (positive) order is to identify, by reference to the express language of the order, precisely what it is that the order required the defendant to do. That is a question of construction and, thus, a question of law.*
- c) *Committal proceedings are essentially criminal in nature, ..*
- d) *The burden of proof lies at all times on the applicant. The presumption of innocence applies (Article 6(2) ECHR)*
- e) *Contempt of court involves a contumelious that is to say a deliberate, disobedience to the order. If it be the case that the accused cannot comply with order then he is not in contempt of court. It is not enough to suspect recalcitrance. It is for the applicant to establish that it was within the power of the defendant to do what the order required. It is not for the defendant to establish that it was not within his power to do it. That burden remains on the applicant throughout but it does not require the applicant to adduce evidence of a particular means of compliance which was available to the accused provided the applicant can satisfy the judge so that he is sure that compliance was possible.*

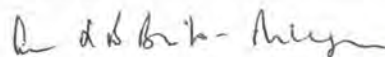
- f) **Contempt of court must be proved to the criminal standard: that is to say, so that the judge is sure. The judge must determine whether he is sure that the defendant has not done what he was required to do and, if he has not, whether it was within his power to do it. Could he do it? Was he able to do it? These are questions of fact.**
It is necessary that there be a clear finding to the criminal standard of proof of what it is that the alleged contemnor has done that he should not have done, or in this case what it is that he has failed to do when he had the ability to do it. The judge must determine whether the defendant has done what he was required to do and, if he has not, whether it was within his power to do it. (emphasis added)

12. In my judgment, the applicants have not established beyond doubt that the respondents have breached Orders of Amaratunga J.

13. The notice of motion for contempt fails.

14. **Orders**

- a. The notice of motion for contempt is declined.
- b. The applicants shall pay the respondents costs summarily assessed in a sum of \$750.00 within 15 days of this Ruling.



A.L.B. Brito-Mutunayagam

JUDGE

8th February, 2023

