

**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. A. B. Swamy- For the Plaintiff.

: Mr. K. Patel – for the first named 1st Defendant

DATE OF HEARING

: 26th June 2023.

WRITTEN SUBMISSIONS

: Filed on 26th June 2023 by the Plaintiff.

: Filed on 26th September 2023 by the Defendant.

DATE OF JUDGMENT

: 29th September 2023.

J U D G M E N T

(On Committal charges)

A. Introduction:

1. This is an Application by way of Notice of Motion, filed by the Plaintiff/Applicant ('the Applicant') on 22nd February 2023, with the leave of this Court being obtained by my Ruling dated 21st February 2023, to issue Committal proceedings, for the committal of the first named Defendant-Respondent (the Respondent) namely, PRANITESH SINGH, for the alleged contempt of the Court by disobeying the orders delivered by the Magistrate Court of NADI.
2. It is on record and undisputed that there was another committal proceedings, being the Application No: HBM 18 of 2022, commenced by the same Applicant hereof against the Respondent, as averred in paragraph 31 of the Applicant's Affidavit in support, in relation to the same allegations levelled in these proceedings.

3. However, the said Application, which had proceeded ex-parte till the sentencing stage, had to be set aside by this Court on the Application of the Respondent, as it came to light that the Applicant/ Applicant's Counsel had not divulged about the High Court action bearing No- HBC 71 of 2019 between the same parties involving the same subject matter land , and particularly about the injunction order that had been obtained inter-parte before then Hon. Judge Mohamed Ajmeer on 24th July 2020 , allowing the Respondent to reside in the disputed property.
4. It is also on record, that on account of the said aborted committal proceedings, this Court had to impose a summarily assessed indemnity costs in a sum of \$ 1,200.00 on the Applicant, though the Counsel for the Respondent had urged for an indemnity cost at a higher scale.
5. For the sake of convenience and lucidity, let me reproduce and rely on certain facts contained in my committal Judgment dated 28th June 2022, and on some comments in my Ruling dated 11th October 2022 on indemnity costs, both in the former proceedings bearing No- HBM- 18 of 2022, which are relevant to these proceedings as well.

B. The Orders, allegedly , violated:

6. The Orders issued against the Respondent PRANITESH SINGH and alleged to have been violated by him, are **interim injunction orders** made by the learned Magistrate of NADI on 30th January 2019, sealed on 22nd February 2019 and, reportedly, served on him on 21st March 2019, which were subsequently made as **permanent orders** on 1st May 2019, sealed on 20th May 2019 and, reportedly, served on him on 23rd May 2019, in the Magistrates Court of NADI Civil Action bearing No-70 of 2018 filed by one BAGAT SINGH , the deceased husband of the Applicant hereof, against the Respondent and his Wife SONIA SINGH.
7. The deceased BAGAT SINGH, on 4th July 2018, had filed the above action in the Magistrate Court of NADI, against the Respondent and his Wife, by way of his Writ of Summons and Statement of claim, together with a Notice of Motion supported by Affidavit seeking injunction orders against the Respondent.
8. The Respondent had failed to appear and file his Affidavit in response to the Affidavit in support for interim injunction. Having heard the Notice of Motion, the learned Magistrate on 30th January 2019 made the interim Injunction orders (**Vide Exhibit "D"**) as follows ;
 - i. **THAT** the Court granted an interim injunction to restrain the Defendants by themselves, their servants or agents or otherwise from repeating or continuing the said nuisance or any nuisance of a like kind.
 - ii. **THAT** the Court granted an interim injunction to restrain the Defendants from entering the Agreement for lease Ref No. 6/10/7871 which is located at Sabato, Nadi.
 - iii. **THAT** the Court granted an interim injunction to restrain the Defendants to be within 100m of distance of the Plaintiff at all material time.

iv. *COSTS of this Application be in the cause.*

9. The above interim orders were sealed and, reportedly, as per exhibit "E", was served on the Respondent on 21st March 2019, and since there was no response, the Hon. Magistrate on 1st May 2019 made the above orders permanent (vide Exhibit "F") as follows;
- a. *The interim injunctive orders granted and sealed on 22.2.2019 are ordered permanent forthwith against the Defendants; and*
 - b. *The Defendants are ordered to pay the plaintiff costs summarily assessed \$ 750.00.*
10. Though the above permanent Order were also sealed and, reportedly, served on the Respondent on 23rd May 2019, he is alleged to have acted on several occasions and still acting in contempt of those Orders in the following manners, as averred and alleged in paragraphs 26 .1 to 8 of the Affidavit in support by the Applicant .
1. *Harassing the caretaker of the said property,*
 2. *Damaging the property by setting fire in the sugarcane farm,*
 3. *Removing and stealing the farm equipment from the property without my consent.*
 4. *Locking the gate which is meant to be used by my caretakers and after several attempts and involving Sabeto Police Officers, the keys have not been provided to the caretaker.*
 5. *Parking big trucks on the said property which cause an Interference.*
 6. *Keeping 4-5 vicious dogs causing issues of safety to the caretaker and his family members.*
 7. *Spraying harmful chemicals along the residence of the caretaker on the said property causing damages to the lawn;*
 8. *Making false complaints against our farm workers with the Sabeto Police Station.*
11. That on 17th April 2020, the Applicant's Solicitors had raised the issue with the Sabeto Police Station complaining of the said breaches (as per exhibit "O") and on 6th April 2021 her solicitors issued a notice as (per exhibit "P") demanding the Respondent to stop the harassing her employees in the farm, and to return all the farm equipment that the Respondent had, allegedly, removed from the property without her approval and consent.
12. That several complaints have been lodged with the Police with regard to the said breaches under Police report numbers 20/04/21; 61/11/20; 62/11/20; and 66/12/20 as per the exhibit "Q". It is further averred that the Respondent from January 2022 till to date, on several occasions , either by himself or by servants and agents, has been repeating or continuing the said nuisance by stopping the Plaintiff's employees from entering the land, doing the cultivation. It is also alleged that he breaches the orders by entering the laborer's house and getting 3-4 unknown people to reside in the said property without the authority or permission of her.
13. It is also on record that due to the failure of the Respondent to file his Statement of Defence at the Magistrate Court , the matter was fixed for formal proof hearing on 20th March 2019 ,and though the Respondent's Solicitors had filed Notice of Motion seeking

reliefs, inter alia, to have the formal proof hearing set for 20th March 2019 vacated, the learned Magistrate refused to allow the Application, however reserving his right to cross examine the Applicant's witnesses. But, the record shows the formal proof hearing being taken up in the absence of the Respondent and his Solicitors, the Magistrate on 1st May 2019, as per exhibit "H" has made the final orders that corresponds with the permanent injunction Orders.

14. At the hearing before me, the Respondent was duly represented and the Application was vehemently objected through his Affidavit in opposition sworn on 12th May 2023 and filed on 16th May 2023. Both the learned counsel, in addition to their oral submissions, have filed helpful written submissions as well.

C. Legal Frameworks:

15. Order 52, Rule 1 of the High Court Rules (HCR) provides that the High Court possesses the power to punish for contempt of court. That rule, so far as relevant, provides:

"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, or (emphasis mine)

(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."

D. Burden of Proof:

16. Any allegation of contempt of court has to be proved beyond reasonable doubt (see *Fiji Times Ltd v Attorney General of Fiji* [2017] FJSC 13; CBV0005.2015 (21 April 2017) and *Finau V Civil Aviation Authority of Fiji* [2018] FJHC 500; HBC 117.2017 (12 June 2018). *Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd* [2005] FJCA 46; ABU0011 & ABU0011A.2004L (22 April 2005); *Shalini v Basanti* [2003] FJHC; HPP0036j.1999s (27 August 2003).
17. The allegations of breach of an order obtained have to be wilful. The breach has to be wilful in the sense that it was deliberate and intentional: *Ali v Chaudhary* [2004] FJHC 189; HBC0061J.2001L (29 March 2004).
18. The Applicant hereof bears the duty on her to prove her case beyond reasonable doubt that the Respondent had willfully breached the orders obtained from the Magistrate's

Court of Nadi, namely the interim injunction order made on 30th January 2019, which was made permanent on 1st May 2019 and served on 23rd May 2019.

19. 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: **Barclays de Zoete Wedd Securities Ltd and Others v Nadir [1992] TLR 141; Dean v Dean [1987] FLR 517 CA; Vijay Kumar v Shiu Ram & Anor. (unreported) Suva High Court Action No. HBM0026.00S, 19 September 2001, Shameem J.**

E. The Issue Before this Court:

20. The Applicant is duty bound to establish and the Court must be satisfied that;
1. There was an order made by the Court (which in this case is by the Magistrate's Court).
 2. That order was clear and concise and inform the Respondent what was prohibited or not to be done.
 3. That the Respondent had knowledge of the Orders and despite having knowledge of the Orders he observed them in breach.
 4. That the breach is willful, deliberate and intentional.
 5. The Order was unambiguous still in force requiring to be adhered to.

F. The Evidence Relied upon.

21. The Applicant relies upon on her Affidavit evidence sworn on 17th January 2023 and the annexures thereto marked as "A" to "T", and her Affidavit in reply sworn on 8th June 2023, and filed with the annexure marked thereto as "A" , out of which annexures "B", "C", "D", "E" , "F", "H" & "I" demonstrate about the proceedings commenced by her deceased Husband BAGAT SINGH against the Respondent at the Magistrate's Court and the Orders granted therein as follows;
1. *Restraining the Respondent from repeating or continuing the nuisance or any like kind,*
 2. *Restraining him from entering her land in Agreement for Lease Ref No-6/10/7871 situated at Sabeto, Nadi, and*
 3. *Further injunction restraining him to be within 100m of the Plaintiff (the Applicant's Husband BAGAT SINGH).*
22. It is also shown that those interim injunction orders have, subsequently, been made permanent on 1st May 2019, with the formal proof judgment being entered simultaneously with an additional order to pay summarily assessed costs in a sum of \$750.00.
23. The Respondent on his part, along with his Affidavit in opposition, has annexed as "PS-1" "PS-2" and "PS-3", namely the Ruling on Injunction Application in the High Court action bearing No- HBC 71 of 2019 commenced by the Respondent on 26th March 2019, the sealed Order thereof , and my ruling dated 11th October 2022 made on the question for indemnity cost in relation to the former committal proceedings (aborted one) , contents of which are crucial in adjudicating the contempt charge in the present proceedings.

G. The Submissions:

24. Ms. Swami, learned counsel for the Applicant, has made oral submissions at the hearing to the effect that there was an order of the Magistrate's Court, and the order of the Court was clear and concise and it informed the Respondent what not to do. She added that despite the Respondent had the knowledge of the order, he breached the same and the breach is willful, deliberate and intentional non-compliance. Counsel argued further that the facts before the court clearly show that there has been actual breach of the order made, and as such committal order should be made against the Respondent.
25. In addition to the oral submissions, helpful written submissions also has been filed, along with 3 authorities relied on by her. In paragraphs 18 to 21 of her written submissions she took up a position that the Respondent, instead of appealing against the Nadi Magistrate Court Orders, instituted the High Court action HBC 71 of 2019 on 26th March 2019, moved to amend the Statement of Claim seeking orders allowing him to reside in the said property and finally during the hearing amended the relief sought.
26. She argued further, although the Respondent was allowed to reside in the property by the High Court Order, it did not alter, change, stay or in any way whatsoever impede the orders of Nadi Magistrate court, thus the Respondent cannot interfere with the Management and operation of the Farm by activities stated in paragraph 23 of the written submissions, which she claims to be acts of violation of Magistrate Court Orders.
27. Conversely, Counsel for the Respondent Mr. K. Patel, made forceful oral and written submissions referring to my observations in paragraphs 18, 19, 20 and 29 in my ruling dated 11th October 2022 pronounced on the question of Indemnity costs in relation to the former committal proceedings No- HBM 18 of 22. Those paragraphs are reproduced below for the sake of easy reference and clarity.

"18. As per the Ruling dated 24th July, 2020, in action No- HBC 71 of 2019 pronounced by Justice Mohamed Ajmeer, which was marked as "B" and annexed to the Supplementary Affidavit of Ms. Swami, it is clear that Ms. Swami, being the Counsel who appeared for BIJMA KUMARI, the Defendant thereof, and BIJMA KUMARI being the Executrix & Trustee of Late BAGATH SINGH, (the Plaintiff in the Magistrate's Court action) were well aware and/or should have been aware of the fact that the injunction Orders obtained from the Magistrate's Court by late BAGATH SINGH in Civil Action No.70 of 2018, was held in abeyance pending the determination of the action No-HBC 71 of 2019.

19. Had this been divulged to the Court by the Applicant hereof BIJMA KUMARI or by the Counsel at the stage of seeking for leave to commence committal proceedings or thereafter during the substantial proceedings, it would, undoubtedly, have created a different picture as to the actual current status of affairs and the Court would not have proceeded to make any inimical Order or Judgment against the Respondent.

20. The Applicant, BIJMA KUMARI, could very well have avoided theses unwarranted committal proceedings, for which she fully relied on the

injunction order, obtained by BAGATH SINGH, operation of which stood suspended by the aforesaid Ruling pronounced by Ajmeer -J in the HBC Action No.71 of 2019.

29. *In my view, until the propriety of the ex-parte injunction orders obtained by Late BAGATH SINGH from the Magistrate's Court of Nadi, on which the Contempt charges were based, is finally decided through the trial in the action bearing No.HBC-71 of 2019 by calling oral evidence, this Court is not in a position to decide whether the conduct of the Applicant and her Solicitors were reprehensible to warrant the Court's condemnation and an award of indemnity costs. The Counsel for the Applicant Mr. Rupesh Singh, has argued that the Orders made by the learned Magistrate are still valid".*

H. **Discussion:**

28. As far as issues 1, 2 and 3 referred to in paragraph 20 above are concerned, the facts that those injunctive Orders had been made by the Magistrate Court of Nadi, those Orders were duly served, he was informed about what was prohibited or not to be done and he had the knowledge of it, are not in dispute.
29. The pivotal questions to be decided are whether the **Magistrate Court's impugned injunction Orders were unambiguous, and still in force requiring to be strictly adhered to, by the Respondent, particularly, after injunctive orders were made by Mohamed Ajmeer -J (as he then was) on 24th July 2019 in the High Court Action No: HBC 71 of 2019 instituted by the Respondent against the Applicant hereof and the ITLTB?**
30. It is to be observed that one of the impugned injunctive order granted by the learned Magistrate, as per paragraph 2 thereof, was to restrain the Respondent from entering the Agreement for lease Ref No. 6/10/7871, (the Land), which is the subject matter not only in the Magistrate Court Proceedings, but also in the High Court action No-HBC 71 of 2019 between the same parties.
31. Another question that arises here is as to how the Applicant's Counsel , who had taken part at the inter-partes injunction hearing (not ex-parte as I had inadvertently stated in paragraph 29 of my former ruling) before Mohamed Ajmeer-j in the High Court action No: HBC 71 of 2019 and accepted the Ruling thereof dated 24th July 2020, by which the Respondent was allowed to reside in the property , can now be heard to say that the impugned injunctive order No.2 granted by the Magistrate prohibiting the Respondent to enter the land is still in operation?
32. What the learned Magistrate had exercised, in relation to the subject matter land and the parties hereof, was his limited Civil Jurisdiction, outcome of which, of course, can be subjected to an Appeal at the Civil High Court if needed. However, the actual position is that the High Court, being a higher forum, has now exercised its jurisdiction in relation to same subject matter, over the same issue between the same parties. Otherwise there can be two conflicting orders.

33. The argument advanced by the Counsel for the Applicant that the Orders of the learned Magistrate cannot be varied, set aside or changed, except by way of an Appeal will not hold water, when the High Court has exercised its jurisdiction on the same issue in relation to the same subject matter land and parties. The only way out for the Applicant was to take an Appeal against the interlocutory order dated 24th July 2020 pronounced by Mohamed Ajmeer-J, in the action No-HBC 71 of 2019, however with the leave being obtained.
34. Accordingly, I firmly stand by my Ruling dated 22nd October 2022 wherein I have observed, inter-alia, that when the High Court made the order allowing the Respondent to reside in the property in dispute, the Magistrate's impugned injunction order became redundant, inoperative and in abeyance. The relevant paragraphs of my said ruling are reproduced in paragraph 27 above, being correctly alluded to by the Counsel for the Respondent.
35. It is also to be observed that once the Respondent is allowed to occupy the Land in question as per the High Court ruling dated 24th July 2019, the Order 3 of the Magistrate requiring the Respondent to be 100 meters away from the original Plaintiff BAGAT SINGH also becomes ineffective, redundant or vague, which may raise a funny, but sensible, question whether the Respondent is supposed to move around with a measuring tape in hand.
36. Another pertinent aspect my attention was drawn to is the nature of the alleged nuisance and harassment pleaded in the paragraph 3 of the Statement of claim before the Magistrate Court, which reads as " harassing and being nuisance to the Plaintiff's tenants and the people around Plaintiff's property and plaintiff by threatening them and throwing rubbish on the properties and also stopping the Plaintiff from entering the properties".
37. The specific nuisances complained about as per the pleadings was throwing rubbish and stopping the Plaintiff from entering the property. But, the learned Magistrate in paragraph 10 of his formal proof judgment has categorically stated that there is insufficient evidence regarding the throwing of rubbish and the Plaintiff's witnesses had not testified to it, but for the nuisance created by the Defendants. I cannot figure out any types of other nuisance specifically pleaded in the Ex-parte Notice of motion, in the Affidavit in support, in the Statement of claim, or mentioned in the interim injunction order granted by the learned Magistrate.
38. None of the alleged acts of nuisances averred in paragraph 26 of the Applicant's Affidavit in support, forms part of the orders of the Magistrate Court, as violation or would be violation of the Court order. The action or omission that constitutes the offence of contempt of Court has to be specifically and clearly stated in the order sought to be obeyed by the person concerned. In the absence of such an order, no contempt charge can be commenced and continued with, in order to bring home a conviction.
39. When the Respondent was allowed to reside in the land in question by the Order of the High Court, his other activities in the land , particularly engaging in farming , cultivation

and other connected activities are also have to be recognized , unless those are specifically prohibited or curtailed by an order of Court. No such orders have been made by the High court in the said action number HBC 71 of 2019. Further, the learned Magistrate had not made injunction orders touching each and every acts complained of by the Applicant. Any such injunctive order should have been precise and unambiguous. It is not safer to proceed to convict a person and limit his/ her liberty on the alleged violation of orders, which are vague and/or not precise.

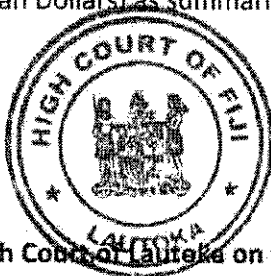
40. In view of the above, this Court stands convinced that no committal charges can be levelled against the Respondent in this matter. Granting of leave does not necessarily mean that the conviction is a must. However, in this case, I must confess that due to an oversight on my part at the leave stage, the fact that the High Court Order had prevailed over the Magistrate's Orders, had escaped my attention, for which I hereby register my regrets.

I. Costs: -

41. On behalf of the Respondent, Counsel has convinced this Court as to why an indemnity cost at a higher scale should be imposed on the Applicant. This has been discussed in detail in my ruling dated 22nd October, 2022 on the subject, which doesn't need repetition. Having considered all the circumstances, I decide to impose \$3,000.00 as summarily assessed costs to be paid by the Applicant in 28 days from the date of this judgment.

J. Final Orders:

42. For the reasons stated above, I make the following orders.
- a. The Application by the Plaintiff for the Committal of the first named 1st Defendant PRANITESH SINGH, fails.
 - b. The Notice of Motion filed by the Plaintiff on 22nd February 2023 for the Committal of, PRANITESH SINGH, is hereby dismissed.
 - c. The Plaintiff shall pay the first named 1st Defendant a sum of \$3,000.00 (Three Thousand Fijian Dollars) as summarily assessed costs within 28 days from the date of this Judgment.




A.M. Mohamed Mackie
Judge

At the High Court of Lauteka on this 29th day of September, 2023.

SOLICITORS:

For the Applicant: Messrs. Patel & Sharma - Barristers & Solicitors

For the Respondent: Messrs. Krishnil Patel Lawyers – Barristers & Solicitors.