

IN THE HIGH COURT OF FIJI AT LABASA

CIVIL JURISDICTION

High Court Civil Action No. HBC 32 of 2011

Consolidated with HBC 22 of 2012

IN THE MATTER of COMMITTAL PROCEEDINGS under Order 52 of the High Court Rules 1988 against the Respondent **BASHIR KHAN** of 15 Jaduram Street, Labasa, Businessman for Contempt of Court Orders dated 11th day of May 2017 in High Court Civil Action No. HBC 32 of 2011 and 22 of 2012 and Supreme Court Civil Action No. CBV 22 of 2019 and CBV 11 of 2020

BETWEEN: **VCORP LIMITED** formerly known as **CENTERPOINT HOTEL MANAGEMENT LIMITED** a company dully incorporated in Fiji and having its registered office at 9 Damanu Street, Labasa.

APPLICANT/DEFENDANT

AND: **BASHIR KHAN** of 15 Jaduram Street, Labasa, President of the Plaintiff and Businessman

RESPONDENT/PLAINTIFF

For the Applicant: Mr. Sen

For the Respondent: Mr. Ali

Date of Hearing: 14 February 2024

Date of Ruling: 21 March 2024

COMMITTAL SENTENCE

1. On the 14th February 2024, this Court convicted the Respondent Bashir Khan of contempt and the matter was adjourned for mitigation and sentencing recommendations.

2. The Respondent filed the following submissions in mitigation.

Mitigation

3. There is no specific law in Fiji setting out the maximum sentence that could be handed down for contempt of Court therefore Common law will be of assistance and in the UK the maximum sanction for contempt of court is two years imprisonment. Lesser punishment can be imposed. (Finau vs Civil Aviation Authority of Fiji & others Civil Action No. HBC 11 of 2017.)
4. The Respondent refers to the case of State vs Fiji Times Ltd, ex parte Attorney General (2013) FJHC 59; HBC 343 of 2011 (20th February 2013) and distinguishes the facts of the same from this case. In that case, the Respondent was convicted of scandalising the Court or the judge while in this case, he was not convicted of any such offence but rather he has not complied with the Court's orders, and this should be considered as less severe in nature.
5. Counsel submits that those two categories of contempt encompass behavior that either diminish the dignity and authority of the Court or disrupt the orderly conduct of legal proceedings. The former is often referred to as "scandalising a Court or judge" as described by Lord Hardwicke LC.
6. The Respondent has been convicted of contempt of court order in a civil matter thus the gravity of the offence cannot be compared to that of a criminal case.
7. The Respondent is willing and able to pay the costs and damages awarded. He has no previous convictions.
8. There is no threat to the public of any kind or nature as he is a person of good character and is well known in the community.
9. The Respondent is remorseful for his actions and further states that he has not obstructed the Applicant in any manner since the judgment was delivered. He has

attempted to make payments however the Registry has refused to accept his payments due to these committal proceedings

10. He is 75 years old and has a medical condition.
11. He is the President of his company and is well known in Labasa with a good reputation amongst the people.
12. He has attempted to make payments however he has been stopped from doing so due to these committal proceedings. He contends that at the time he had not been served yet.
13. He has no previous convictions in the last 75 years and he has invested in Labasa and provided employment to many people.
14. In addition he also submitted correspondence from the Minister for Lands and Mineral Resources dated 7th March 2024 to the Minister for iTaukei, Heritage & Arts regarding Lots 1 and 2 on M2605, Labasa Jaycees Park, the land subject to these proceedings.
15. The Respondent therefore submits that the Court must consider the proportionality of the sentence in relation to the wrongdoing. Counsel submits that an appropriate penalty would be a fine and costs – a non-custodial sentence.

Sentencing Recommendations

16. In his sentencing recommendations, counsel canvases the history of these proceedings and highlights the actions of the Respondent to ensure that the Applicant does not have any access to his lands and is denied the opportunity to develop the same.
17. The Applicant acknowledges that the Respondent has expressed his remorse however he is skeptical of his remorse because of his continuing conduct in obstructing access to and developing of the Applicant's land.

18. The Applicant cites the case of Attorney General vs Rajendra Chaudhary Civil Action No. HBC 313 of 2018 where the High Court conducted a survey of decided committal cases which may be relevant to the sanction in this case.
19. The Applicant submits that it is imperative that the authority of the High Court is preserved and those who flaunt its orders are punished accordingly.
20. The contemnor in this case has always been represented by able counsel and has received correct legal advice however he has continued to flaunt the orders of the various Courts of the land.
21. He is a wealthy person who has sought to evade the consequences of his actions by throwing money at the same.
22. The Applicant urges the Court to ensure that the likes of Bashir Khan are not allowed to undermine the public's confidence in the judiciary and its authority.
23. The actions of Bashir Khan have been calculated and deliberate therefore an appropriate sanction should be meted out to him.
24. The Applicant will not call for an immediate custodial sentence for him but submits that he should be fined \$100, 000 and be ordered to pay the outstanding sum of \$34, 000, being the balance of the award of the High Court ultimately confirmed by the Supreme Court. In addition the Applicant seeks costs of these proceedings on solicitor client indemnity basis in the sum of \$15, 000.
25. In default the Applicant submits that he be sentenced to a term of 3 years imprisonment.

Analysis

26. The Respondent Bashir Khan has been convicted by this Court of contempt through his wilful refusal to comply with the Court's orders to grant the Applicant peaceful occupation of his land. He has also been convicted of contempt by his failure to pay the balance of costs awarded by the High Court and the Supreme Court as well.

27. He has offered his plea in mitigation and acknowledged his mistake and submitted his remorse and willingness to comply with the Court's orders.
28. In this case these proceedings have been protracted as the Respondent has exercised his right of appeal right up to the apex Court in this jurisdiction, which is of course his right.
29. Notwithstanding the ruling of the Supreme Court he has attempted to relitigate these issues in the High Court in Labasa and through his mitigation, he has again tendered a letter from the Ministry of Lands to the Ministry of iTaukei Affairs, neither of whom is a party to these proceedings. This in my view aggravates the contempt and will count against him.
30. The jurisprudence is clear that the Court has wide powers in issuing sanctions for contempt through the levying of fines, terms of imprisonment and other sanction appropriate to each case.
31. In this case the Respondent has offered to fully comply with the orders and to clear the outstanding awards that he owes. He submits his health as a factor against a custodial sentence.
32. The Applicant has asked for a fine of \$100, 000 without any breakdown of the amount.
33. After considering the various factors above I find that the most appropriate sanction is a fine and a term of committal in default.

Bashir Khan you have been convicted of contempt and this is the sanction: -

- 1. You are fined \$10, 000 and you are given 14 days to pay the same in default 30 days committal to prison.**
- 2. You will pay to the Applicant the sum of \$34, 000 being the balance owing of the awards already ordered against you by the High Court and the Supreme Court – 14 days to do so.**
- 3. You will pay the Applicant's costs of these committal proceedings, summarily assessed at \$2500 – said sum to be paid to them in 14 days.**

4. The whole sum of \$46, 500 is to be paid in 14 days and I issue a committal order against you suspended for 14 days.

30 days to appeal

