

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

CIVIL ACTION NO. HPP 52 OF 2020

BETWEEN : SURUJ LAL aka SURAJ LAL of Dogavatu, Rakiraki, Retired.
PLAINTIFF

AND : ARVIND KUMAR and NILESHWAR PRASAD both of Dogavatu,
Rakiraki, Farmers.
1st DEFENDANT

AND : THE TRUSTEE OF THE ESTATE OF RAM JANAM late of
Rakiraki, Farmer.
2nd DEFENDANT

AND : DIRECTOR OF LANDS
3rd DEFENDANT

AND : REGISTRAR OF TITLES
4th DEFENDANT

APPEARANCES : Mr. Chandra. V. – for the Plaintiff.
: 1st Defendants absent and unrepresented.
: 3rd and 4th Defendants excused from this committal proceedings.

SENTENCING HEARING : Held on 5th December 2024.

SENTENCING : On 24th March 2025

JUDGMENT
(SENTENCING)

A. INTRODUCTION & BACKGROUND:

1. On the 28th November 2023, this Court convicted the first Defendants, namely, **ARVIND KUMAR** and **NILESHWAR PRASAD** for the offence of Contempt of Court. The court made the following orders;

- a. *The Plaintiff's Notice of Motion filed on 13th March, 2023 seeking for the Committal of the first Defendants succeeds;*
 - b. *The first Defendants, namely, **ARVIND KUMAR** and **NILESHWAR PRASAD**, by disobeying the Court orders finally made by this Court on 29th April 2022, have committed the offence of Contempt of Court, thus they are found guilty for the same.*
 - c. *Before this Court proceeds for convicting and imposing sentence, there will be a sentencing hearing,*
 - d. *The first Defendants are hereby put on notice that the due compliance of the Orders made by this Court, could be considered as mitigating factors.*
 - e. *Order on costs reserved.*
2. The matter being adjourned to mention 30th January 2024, as the 1st Defendants were neither present nor represented, the Court ordered the Plaintiff's Solicitors to file the Affidavit of service of above orders and the same was filed on 6th February 2024, confirming that the Orders on Committal was served on both the 1st Defendants on 31st January 2024.
 3. Accordingly, when the matter was mentioned on 27th March 2024, despite the report of service, the 1st Defendants were not present in Court or represented by their counsel. However, as the Plaintiff had died, the Court gave directions to the Plaintiff's Solicitors to move for substitution and adjourned the matter for 01st May 2024 and thereafter to 18th July 2024. In the meantime, Messrs. Niudamu Lawyers had on 18th July 2024 filed their Notice of Appointment for the 1st Defendants.
 4. As the matter was not mentioned on 18th July 2024, due to the non-sitting of this Court, when the matter was mentioned on 30th September 2024, as the Plaintiff had filed substitution papers, after hearing the Plaintiff's Counsel, the Court, having allowed the same, fixed the matter for sentencing hearing on 15th October 2024 and directed the orders to be sealed and served on the 1st Defendant's Solicitors.
 5. Accordingly, on 15th October 2024, when the 1st Defendants were represented, the sentencing hearing was fixed for 05th December 2024 and the Court informed the 1st Defendants' Counsel, that if the Defendants are to comply with the terms of settlement, they could do so before the hearing.
 6. However, when the matter came up for hearing on 5th December 2024, as the 1st Defendants were absent and unrepresented, the Court proceeded with the hearing, wherein the Plaintiff's Counsel made submissions on sentencing by citing some decided authorities on the subject. However, as the 1st Defendants were absent and unrepresented, the Court made direction to serve the Orders made on this day on the 1st Defendants' Solicitors, and this direction was complied by the Plaintiff's Solicitors. Accordingly, on 15th January 2025 Plaintiff's Solicitors filed the Affidavit of Service.
 7. Subsequently, when the matter was mentioned for sentencing on 27th February 2025 and on 05th March 2025, the 1st Defendants were still absent and unrepresented despite the orders had been duly served. Accordingly, this matter comes up for sentencing today.

B. CONSIDERATION:

8. This Court has already found the 1st Defendants guilty for the charges of contempt of Court by disobeying the consent Orders entered in to, which had been filed along with the Affidavit supporting the Notice of Motion filed on 22nd July 2021 before the learned Master (“the Master”).
9. The Master on 03rd November 2021 had granted the orders in terms thereof, except for the clause 3.6 therein, with the agreement of all the parties, including the 1st Defendants. However, when the matter came up before me on 29th April 2024, as the Defendants agreed to abide by the Terms of Settlement, including the disputed clause 3.6 thereof, the Court made the Orders made by the Master final, on which the Plaintiff’s Counsel withdrew his first Application for leave to commence ^t Committal proceedings. With this move, the substantive action also was accordingly terminated.
10. As the terms of settlement continued to be disobeyed by the 1st Defendants, the Plaintiff’s Counsel had to commence his 2nd Committal proceedings, upon which leave being granted, the hearing into the Notice of Motion thereof was disposed by way of written submissions. At the end, the Court found the 1st Defendants are guilty of contempt, by its judgment dated 28th November 2023.
11. The 1st Defendants, despite their consent given before the Master for the settlement, which was subsequently confirmed before this Court, now seem to have walked away from the same, not only causing immense hardships to the Plaintiff, but also committing the offence of contempt of Court.
12. The 1st Defendants, by personally appearing or through counsel, have not justified their conduct or expressed their remorse for their conduct for their breach of the Court Orders. There is no any mitigation factors adduced before this Court for consideration at this juncture. Careful perusal of the terms of Settlement shows that there was no any hard and fast term for the 1st Defendants to have evaded the compliance of it.

C. SENTENCE:

13. 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.***)
14. Learned Counsel for the Plaintiff has addressed this Court recommending the sentence to be meted out to the 1st Defendants, by alluding to two authorities, namely High Court Civil Action ***VCORP LIMITED v BASHIR KHAN -HBC 32 of 2011*** and ***HAZRA KHARTOON & ANOTHER v ABDUL AZIZ BEGG -HBC 42 of 2019*** pronounced by Hon. U. Ratuville-J and Hon. Javed Mansoor-J respectively.
15. In the Notice of Motion filed by the Plaintiff on 13th March 2023 pursuant to granting of leave, the Plaintiff has prayed for the following orders;
 1. *An Order for Committal for disobeying the Orders made on 29th April 2022.*
 2. *That both the first Defendants pay to the Plaintiff his costs of and incidental to this application on an indemnity basis.*

3. *That should the Committal Order is granted, both the first Defendants be ordered to ;*

- a) *Consent to their monies held in Millbrook Hills Law Partners trust account to be utilized to pay their share of outstanding ground rent;*
- b) *The balance of the ground rent (if any) to be paid by the first Defendants within 7 days.*
- c) *The first Defendants to pay their share of sub-division costs in to Millbrook Hills Law partners trust account within 30 days, the sum being \$3,000.00,*
as conditions of the suspension of the execution of the Committal Order.

4. *Any other orders this Honorable Court deems just and equitable.*

16. It appears that the Plaintiff's prime concern is neither a mandatory Committal Order nor an Order for fine, but having the Consent Orders implemented. However, the Court is of the view that in the event the 1st Defendants continue to disobey and contravene the Consent Orders, in the absence of an Order for Committal and/ or fine, the 1st Defendants will be at liberty to continue to disobey the Court Orders so made. This will not bring an end to the litigation.

17. In 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.

18. In order to ensure the rule of law, it is imperative that the authority of the Court is preserved and those who flaunt its orders are punished accordingly. When the terms of settlement was considered by the Master and subsequently by this Court, the 1st Defendant -contemnors in this case had always been represented by able counsel and probably have received correct legal advice. However, they have continued to flaunt the orders of this Court made with their consent.

19. The Plaintiff has not called for an immediate custodial sentence for them, but submitted that they should be made to abide by the terms of settlement, which became the orders of this Court. I find that the Orders sought in the Notice of Motion (vide paragraph 15 above) are in conformity with the terms of Settlement, which became a Court Order. The Court can impose the punishment and suspend it pending the compliance of the terms of settlement.

20. The litigation hereof is being protracted with no end to it as the 1st Defendant have deliberately disobeyed the consent judgment. 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 appropriate sanction. In this case the 1st Defendants have not complied with the orders made by the Court.

21. After considering the various factors above, I find that the most appropriate sanction is a fine and a term of committal in default, however subject to suspension of it pending the due compliance of the Court Orders. Before proceeding to do so, the Court has to formally convict them. The 1st Defendants have not made use of the opportunity to appear before the Court and avoid the conviction, though they were found guilty by this Court.

22. **Arvind Kumar and Nileshwar Prasad**, you have already been found guilty of contempt of Court and on such finding, today you are convicted for the offence of contempt and the following is the sanction.

D. FINE:

23. As alluded to by Hon. U. Ratuwili, in **VCORP LIMITED v BASHIR KHAN** (Supra) the Court has inherent jurisdiction to impose fines for contempt, having regard to its seriousness. **Neurom Ltd v Trans, H.C. Auckland CP 623/SW 01, 14/05/2002**. The Courts in Fiji have imposed fines of \$20,000, \$25,000 and \$50,000 for civil contempt as per the said authority. The 1st Defendants' offending was disobeying the Court Order made by consent.

24. In **Taylor Bros Limited v Taylors Group Limited**, the New Zealand Court of Appeal held that the Court can apportion the payment of fine to both the Crown and the plaintiff.

The jurisdiction regarding a fine must and does extend to ordering that part of it be paid to a complainant who has set the Court proceedings in motion..... Perhaps there is no fundamental objection in principle to accepting even that the Court could order the whole fine to be paid to the complainant. We think, however, that this would be to go too far. The contempt jurisdiction exists in the public interest as a sanction to ensure that Orders of the Court are complied with. An element of amends to the public institution should always be present in a fine.

25. The New Zealand High Court in 'Bloomfield v Slater' ordered that a portion of the fine imposed for contempt be paid to the complainant.

E. COSTS:

26. The plaintiff seeks costs on a Solicitor client basis.

27. In **National Australia Bank Limited v Juric (No-2)[15] Gillard J** observed at paragraphs (67) and (68) that where a contempt of Court is made out, the normal cause is to order the person in breach to pay costs on a Solicitor client basis.

28. Generally, the power under Order 52 to punish for disobedience of a lawful court order is based on the duty to guard against and prevent any attempt to interfere with the administration of justice (**Attorney-General v Times Newspapers Ltd [1991] 2 W.L.R 994 H.L.**).

29. The Court has power to commit a contemnor to prison. The court also has jurisdiction to impose fine or any other condition which are aimed at warranting the compliance of the Court Orders.

30. In this case, I have considered the contents of the submissions made by the Plaintiff's counsel. There is no evidence before this court that the 1st Defendants have any similar conviction. I am of the view that the mandatory custodial sentence is not warranted. Rather, an appropriate fine is warranted to reflect the Court's disapproval of the 1st Defendants' disobedience to Court Orders and the contempt. However, non-payment of any fine imposed, should warrant custodial sentence.

F. ORDERS:

1. On conviction so entered, both the 1st Defendants are fined \$ 5000.00 each totaling to \$10,000 (Ten Thousand Fijian Dollars).
2. In default of the payment, the 1st Defendants are to be committed to the prison for one (1) month. (Simple imprisonment).
3. However, the operation of above Orders (a) and (b) are hereby suspended on condition that the 1st Defendants, within one (1) month from the date of the service of these orders, duly comply with the Orders in terms of paragraphs 3 (a), (b) and (c) of the Notice of Motion dated 13th March 2023, which orders are also hereby granted.
4. In the event the 1st Defendants fail to comply with the above order (3), within one (1) month as stated above, the Orders (1) and (2) above will come into force forthwith , and the Plaintiff will be at liberty to have the Orders 3 (a), (b) and (c) in the Notice of motion executed.
5. In the event, the said fine of \$10,000.00 is recovered from the 1st Defendants, on account of their failure to comply with the Order 3 above, 60% of the fine shall be paid to the Plaintiff and the balance 40% shall go to the state revenue.
6. The 1st Defendants, in any event, shall pay the Plaintiff a sum of \$1,500.00 being the summarily assessed costs.
7. These Orders shall be sealed and served forthwith.

On this 24th day of March 2025 at the Civil High Court of Lautoka.



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

SOLICITORS:

MILLBROOK HILLS LAWYERS- Barristers & Solicitors for the Plaintiff.

NIUDAMU LAWYERS – Barristers & Solicitors for the 1st Defendants.

Hon. ATTORNEY GENERAL – For the 3rd and 4th Defendants.