

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. **HBC 327 of 2022**

IN THE MATTER of an application under
Order 169 of the Land Transfer Act Cap 131
for an Order for vacant possession.

BETWEEN : **RATU APENISA TUKUTUKUNICAGI RAVUWAME VOTADROKA** of
Davuilevu, Administration Clerk.

PLAINTIFF

AND : **JOSAIA BUAKULA VOTADROKA** of Lot 37, Derrick Street Raiwaqa, Suva,
Taxi Driver.

DEFENDANT

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Rokodrau V. for the Plaintiff**

Mr Josaia B Votadroka - In person - [Unrepresented]

DATE OF DECISION: **19th June, 2025**

DECISION

(Contempt)

A. Introduction

1. The Applicant [Original Plaintiff] filed an inter-partes Summons coupled with an affidavit in Support and sought for the following orders:
 - (1) That the Applicant be granted leave to file Contempt of Court Proceedings against the Respondent.
 - (2) A declaration that the letter of complaint to the Chief Registrar dated 27 November 2024 by the Respondents against Redwood Law Consultant is a proof that the Respondent continues to reside at the Housing Authority Lease No. 102708 being Lot 37 on DP 2710.
 - (3) A declaration that the letter to Chief Registrar by the Respondent is a clear indication that the Respondents has continue to neglect and refused to obey an Order made by the Court.
 - (4) A Declaration that the orders made by Justice Sharma on 18 January 2024, were not complied with by the Respondent.
 - (5) A declaration that the Orders made by Justice Sharma on 16 October 2024, were not complied with by the Respondent.
 - (6) A declaration that the Writ of Possession filed on 30 October 2024 has not been complied with by the Respondent.
 - (7) That the Respondent be ordered to pay a fine of \$10,000.00 to the Court for disobeying the Court's orders.
 - (8) And any other Order this Honorable Court deems just and expedient.
2. The Respondent [Original Defendant] filed an Affidavit in Opposition and denied that he was in Contempt of the orders granted by this Court on 18th January 2024.

B. Background Facts.

3. The Applicant [Plaintiff] commenced proceeds by Originating Summons on 18th November 2022 and sought for an Order for Vacant Possession against the Defendant, Josaia Buakula Votadroka from the demised premises know to be Housing Authority Lease No. 102708 being Lot 37 on DP No. 2710.
4. The application was heard with written submission on 13th October 2023 and Judgment delivered o 18th January 2024.
5. Following order were granted against the Defendant:

- (i) The Defendant, Josaia Buakula Votadroka is hereby ordered to deliver and give vacant possession of the demised property known as Housing Authority Lease No. 102708 being Lot 37 on DP No. 2710 of which the Plaintiff is the registered proprietor.
 - (ii) The Execution is suspended until the 15th February 2024 at 4 pm.
 - (iii) The Defendant to pay the Plaintiff a summarily assessed costs of \$500 within 14 days timeframe hereof.
6. Subsequently, leave to issue the Writ of Possession was filed and consequently an order granted on 16th October 2024.
7. The Defendant continues to be in occupation of the said premises on the Housing Authority Lease No. 102708 being Lot 37 on DP No. 2710, and is refusing to deliver up vacant possession to the Plaintiff.
8. Hence, an application before Court seeking for Contempt proceedings against the Defendant accordingly.

C. The Legal Framework

9. **Order 52 rule 1 of the High Court Rules, 1988** provides that the High Court possesses the power to punish for Contempt of Court. That rule, so far as relevant, provides:
 - "(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 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. Procedural Requirements

10. The procedural requirements are laid down by the High Court Rules, Order 52.

11. As Committal application against any person cannot be made unless leave to make such an application has been granted in accordance with the High Court Rules, Order 52, Rule 2(1). The Applicant has duly obtained leave to file Contempt proceedings against the Defendant.
12. After leave has been granted, the Applicant for the order of Committal has to be made by notice of motion and, unless the Court granting leave has otherwise directed, there must be at least 8 clear days between the service of the notice of motion and the day named therein for the hearing [High Court Rules, Order 52, Rule 3(1)]. The Applicant with this case had complied with the requirement.
13. The allegation of breach of an Order obtained have to be willful. The breach has to be willful in the sense that it was deliberate and intentional. Case of **Ali v Chaudhary** [2004] FJHC 189; HBC 00611.2011 (29th March 2004).
14. The Applicant bears the duty of proving his lose beyond reasonable doubt that the Defendant herein, Josaia Buakula Votadroka had willfully breached the orders obtained on 18th January 2024.
15. In Ali (supra), His Lordship Gates J (as he then was) sets out the General considerations of an allegation of Contempt of Court on the following terms:

Jurisdiction and a power to punish persons for contempt of court in accordance with the law is bestowed on the superior courts including the High Court by Section 124 of the Constitution 1997 [previously Section 121 Constitution 1990].

16. 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: 'Case of **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.
17. In the current case, the Contempt alleged is of disobedience to a Court Order of 18th January 2024. The accused contemnor must be shown to have willfully disobeyed the Order. An unintentional act of disobedience is not enough: **Steiner Products Ltd & Anor v Willy Steiner Ltd** [1966] 1 WLR 986 where Stamp J found breach of a consent order to have been wilful. His lordship cited with approval observations of the Court of Appeal in **Fairclough v Manchester Ship Canal Co** [1897] WN 7, CA which 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."

E. Analysis and Determination

18. It cannot be disputed by the Defendant that either he was unaware and did not understand the effect of the orders made against him by this Court on 18th July 2024. He should have known that he was required to carry out and comply with these orders in particular 'deliver and give vacant possession of the demised property known as Housing Authority Lease No. 102708 being Lot 37 on DP No. 2710 of which the Plaintiff of which he was the proprietor of.
19. The Defendant has denied to be in continued occupation of the said Plaintiffs' property. However, the evidence in Court of the Plaintiff/Applicant has remained unchallenged.
20. It is no defence to say that the Defendant did not intend to disobey the Court order of 18 January 2024.
21. I note from paragraph 12 and 13 of the Plaintiff's/ Applicants' affidavit in Support that it confirms when the Defendant wrote a complaint letter to the Chief Registrar dated 27th November 2024, he uses the address residing at Lot 37 of Derrick Street, Raiwaqa, the subject premises of this proceedings.
22. Further, at paragraph 14, the Plaintiff (Applicant) deposes that 'he was advised by the staff from Redwood Law that they cannot go back to the said property as other occupants on the property have threatened them and they cannot enter the property.
23. A person who disobeys a Court Order obtained in civil proceedings is said to have committed a civil **Contempt** of Court as is demised as a **Contemnor**.
24. I reiterate that High Court Rules, Order 52 empowers the Court to punish for Contempt of Court committed in connection with any proceedings before the Court or proceedings in an inferior Court by an order of committal.
25. The purpose of civil Contempt is prosecuted as a matter between parties to the proceedings and is permissible to enforce with an order of the Court for the benefit of the party who obtained the order in his favour.
26. The enforcement of orders serves the public interest for promoting respect for the Rule of Law. [Re s (A child) (contact dispute: committal) [2004] EWCA Civ 1790, [2005] 1 FLR 512].
27. Further, the penalty imposed is not only a punishment for the Contemnor but also to have a deterrent effect on the members of the community and to enforce the principle that orders made by the Court are adhered and coupled with: **Merchant Finance & Investment Company Limited v Jale Osisaya Baba** [2006] HBC 255/05L.

28. It must be borne in mind that *mens rea* (intention) is not an element of Contempt of Court charge.

F. In Conclusion

29. I reiterate that the evidence of the Plaintiff/Applicant rather went unchallenged in terms of the Court Orders for Vacant Possession made against the Defendant of which he was unaware of and that he had failed to adhere to and comply with the same, rather continues to occupy the premises/ property of the Plaintiff when he was ordered to hand over the vacant possession to the Plaintiff by 15th February 2024 at 4pm.

30. I am satisfied that the Plaintiff has discharged her duty of proving the charge beyond reasonable doubt and has established that the Defendant continues to be in continuous occupation of the Plaintiff's premises which tentamounts to Contempt of the Court order of 18th January 2024.

31. I, therefore, find that the Defendant/ Respondent is guilty of contempt of the Court charges as alleged against him accordingly.

G. Costs

32. The application was heard on leave, and subsequent affidavits and submission were filed hereafter. I also note that the Defendant/Respondent filed his affidavit in Opposition and written submission.

33. However, in all circumstances of the proceedings it would only be appropriate, just and fair and reasonable to order for costs against the Defendant/Respondent summarily assessed costs of \$1,000 to be paid within 21 days timeframe.

H. Outcome

(i) The Defendant/Respondent is found guilty of Contempt of Court charges against him.

(ii) The sentence on him will be pronounced after hearing his mitigation.

(iii) The Defendant/ Respondent is at liberty to seek legal advise and representation on mitigation sentence.

(iv) The copy of this Judgment to be served onto the Defendant/Respondent.

- (v) Defendant/Respondent to pay the Plaintiff/Applicant summarily assessed costs of \$1,000 within 21 days timeframe.

- (vi) Sentencing on the Defendant/Respondent is adjourned to 26th June 2025 at 9.30am.

Dated at **SUVA** this **19th** day of **June** ,2025




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VISHWA DATT SHARMA
PUISNE JUDGE

CC: Redwood Law, Suva

Josaia Votadroka, Suva