

IN THE HIGH COURT OF FIJI AT LAUTOKA
EXERCISING CIVIL JURISDICTION

CIVIL ACTION NO. HBC 62 of 2020

BETWEEN : **SHAUN ROSEN** of Lot-2, Vunabaka, Malolo Island, FIJI.

PLAINTIFF/ APPLICANT

AND : **VUNABAKA BAY FIJI LTD**, a Limited Liability Company incorporated in New Zealand and Registered as a Foreign Company in FIJI.

FIRST DEFENDANT/ RESPONDENT

AND : **VUNABAKA BODY CORPORATE (Fiji) LIMITED**, a Company Limited by Guarantee and not having share capital.

SECOND DEFENDANT/ RESPONDENT

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCE : Mr. Chang K. for the Plaintiff- Applicant.

Defendant - Respondents absent and no representation. (Ex-parte Application)

DATE OF HEARING : On 09th day of July 2025.

DATE OF RULING : On 23rd day of July 2025.

R U L I N G

[Leave to issue committal proceedings]

1. This is an application for leave to issue committal proceedings.
2. The Plaintiff-Applicant (the Applicant) hereof by his ex-parte Notice of Motion (Application) filed on 29th June 2025 in conjunction with a Statement and an Affidavit in support sworn by the said Plaintiff **SHAUN ROSEN** (Registered owner of lot 2) seeks, *inter alia*, leave to issue committal proceedings against the Directors of the Second Defendant-Respondent (the Respondent), VUNABAKA BODY CORPORATE (FIJI) LIMITED on account of contempt of this Court by breach of the Orders made by the this Court on 6th November 2020 to the effect **THAT:**

"2. An injunction to restrain the defendants, their servants and/or agents from preventing and/or interfering with Mr. Rosen to complete the building at Lot 2 being part of Lot 1 on SO 5817 known as Vunabaka (part of) containing an area of 2736m² comprised in Native Lease No. 28602 (part of).

3. *An injunction to restrain the defendants, their servants and/or agents from restricting Mr. Rosen from the quiet enjoyment of his property at Lot 2 being part of*

Lot 1 on SO 5817 known as Vunabaka (part of) containing an area of 2736m2 comprised in Native Lease No. 28602 (part of).

3. The application is made pursuant to Order 52, Rules 1 & 2 of the High Court Rules 1988 ('HCR') and under the inherent jurisdiction of the court. The relevant rules provide:

"Committal for contempt of court (O 52, R 1)

- 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;*
- (b) *Committed otherwise than in connection with any proceedings.*
- (3) *An order for 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 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.*

"Application for order of Committal (O.52, r.2)

2. (1) *No application for an order of committal against any person maybe made unless leave to make such an application has been granted in accordance this*
- (2) *An application for such leave muse must be made ex parte to a Judge in chambers, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his or her committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.*
- (3) *The applicant must give notice of the application for leave not later than the preceding day to the Registry and must at the same time lodge at the Registry copies of the statement and affidavit.*

4. The background surrounding of this application is as follows:

5. Pursuant to an Application made before the then Hon. Judge Mohamed Ajmeer -J (as he then was) by way of Plaintiff's summons filed on 13 March 2020, and after hearing the matter inter-parte , the following interim injunction Orders as prayed for were granted on 6th November 2020 in favor of the Plaintiff against the both the Defendants in this action.

1. *An injunction against the defendants, their servants and/or agents to restore the temporary power, restore the water connection and restore the gas connection to Lot 2 being part of Lot 1 on SO 5817 known as Vunabaka (part of) containing an area of*

2736m2 comprised in Native Lease No. 28602 (part of) to until further order of this Court or final determination of this matter.

2. An injunction to restrain the defendants, their servants and/or agents from preventing and/or interfering with Mr. Rosen to complete the building at Lot 2 being part of Lot 1 on SO 5817 known as Vunabaka (part of) containing an area of 2736m2 comprised in Native Lease No. 28602 (part of).

3. An injunction to restrain the defendants, their servants and/or agents from restricting Mr. Rosen from the quiet enjoyment of his property at Lot 2 being part of Lot 1 on SO 5817 known as Vunabaka (part of) containing an area of 2736m2 comprised in Native Lease No. 28602 (part of).

4. An injunction to restrain the defendants, their servants and/or agents from entering the land and premises described in Lot 2 being part of Lot 1 on SO 5817 known as Vunabaka (part of) containing an area of 2736m2 comprised in Native Lease No. 28602 until further order of this Court or final determination of this matter.

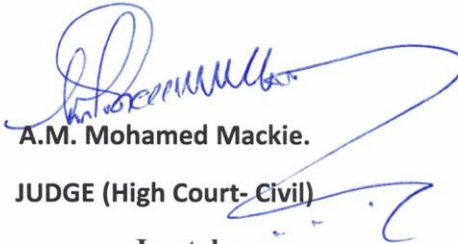
6. The orders so made were served on both the Defendant- Respondents on 25th November 2020 at R. Patel Lawyers, No-77, Ratu Cakobau Road, Suva, Fiji. The orders 2 and 3 above are only material to the application in hand.
7. The Plaintiff complains that since the granting of the said injunction Orders, he has continued to face challenges created by the Defendants, in relation to above (2) two orders.
8. From paragraph 17 onwards of his Affidavit in support, the Plaintiff has described the alleged breaches committed by the Defendants. I have carefully perused the contents of the averments in the Affidavit in support and those of the annexures thereto and thereby stand satisfied that the Plaintiff is entitled to move for committal and have the leave of this Court to commence proceedings for committal of the Directors of the 2nd Defendant Respondent.
9. The Plaintiff applies for leave to issue committal proceedings against the Directors of the 2nd Defendant- Respondent to punish for contempt of court committed in respect of the above interim injunction Orders number 2 and 3 issued by this court.
10. An order of committal cannot be ordered unless leave to make such an Application has been granted as stated above. The Application for leave to issue committal proceedings may be made ex parte to a judge in Chambers (see O 52, R 2 (2)).
11. The Plaintiff - Applicant has filed an Affidavit verifying the facts relied on. The Application is supported by a statement setting out the name and description of the Applicant, the description and address of the Defendant- Respondents, the person sought to be committed and the grounds upon which the committal is sought as required by the HCR, O 52, R 2 (2). The applicant has complied with the HCR, O 52, and R 2.

- 12.** Being satisfied of the contents of the averments in the affidavit and the statement filed with regard to the alleged violation of the Court order , and that the Applicant has complied with all the requirements envisaged in O 52, R 2 for an application for leave to issue committal proceedings, I would grant leave to the Plaintiff- Applicant to apply for an order of committal of the Directors of the 2nd Defendant- Respondent for the alleged breach of the order of this court made against the 2nd Defendant- Respondents by Mohamed Ajmeer-J (As he then was) on 6th November 2020.
- 13.** Since leave is being granted to apply for an order of committal, the Application for the order must be made by motion and there must be 8 clear days between the service of the notice of motion and the day for the hearing (O 52, R 3 (1)). This leave will expire after 14 days from today (23rd July 2025 (O 52, R 3 (2)). The notice of motion, accompanied by a copy of the statement and affidavit in support of the Application for leave must be served personally on the Directors of the 2nd Defendant-Respondent (O 52, R 3 (3)).

Orders of the Court.

- A. Leave to apply for an order of committal is granted.
- B. This leave will expire after 14 days from today (23rd July 2025).
- C. The Application for the order of committal must be made by a motion giving at least 8 clear day's gap between the date of service of the notice of motion and the hearing date.
- D. The notice of motion with a copy of the statement and Affidavit in support of the application for leave must be served personally on the Directors of the 2nd Defendant-Respondent.

DATED ON THIS 23rd DAY OF JULY 2025 AT LAUTOKA.


A.M. Mohamed Mackie.
 JUDGE (High Court- Civil)
Lautoka.



SOLICITORS:

For the Applicant: Messrs. Howards Lawyers

For the Defendant-Respondent: No appearance (Ex-parte)