

IN THE EMPLOYMENT RELATIONS COURT AT SUVA
CENTRAL DIVISION
CIVIL JURISDICTION

ERCC Civil Action No: 4 of 2024

BETWEEN: **LABOUR OFFICER**

APPLICANT

AND: **SATEN KUMAR LOGISTICS PTE LIMITED**

RESPONDENT

For the Applicant : **Ms Doge. V**

For the Respondent : **Mr Tarai. I**

Date of Hearing : **10 July 2025**

Before : **Waqainabete-Levaci,S.L.T.T, Puisne Judge**

Date of Judgment : **28 November 2025**

J U D G E M E N T

*(APPLICATION FOR PENALTY FOR FAILURE TO COMPLY WITH COMPLIANCE
ORDERS AND APPLICATION FOR STRIKING OUT)*

PART A - BACKGROUND

1. There are two applications before this court.
2. On 24 February 2021 the Employment Relations Tribunal ('ERT') awarded the Applicant \$11,237.99 and post-judgement of 5% which was later sealed on 23 May 2022 and served on 24th May 2022.
3. The Applicant filed for a Compliance Order in the Employment Relations Tribunal which was granted on 25th July 2023.
4. The Plaintiff had filed a Notice of Motion on 25th March 2024 in the Employment Relations Court which was later amended and re-dated to 9th April 2025 seeking Penalties against the Employer Respondent for failing to comply with Compliance Orders by the ERT.
5. The Applicant seeks the following Orders of the court:
 - (i) That the Respondent comply with the Orders delivered on 24th February 2021 to pay the Employee a sum of \$11, 237.99 sealed on the 23rd of May 2022 and served on 24th May 2022 within 21 days;
 - (ii) That the Respondent comply with Compliance Orders sealed on 25th of July 2023, within 7 days;
 - (iii) That in default. The Respondent is to pay a penalty in a sum not exceeding \$10,000 or be sentenced to prison for a term not exceeding 3 months.
 - (iv) That Respondents property be sequestered.
6. The Respondent filed an Application for Striking out pursuant to Order 18 Rule (18) (1) (d) of the High Court Rules on the ground that the Notice of Motion on the grounds of abuse of process.
7. The Court had affixed the interlocutory application to be heard together with the substantive matter and determined in this Judgement.
8. The ERT is empowered under section 212 of the Employment Relations Act to order for Compliance against parties that fail to comply with court Orders or Directions.

9. The parties may apply to the Employment Relations Court (referred to as ERC) under section 221 (6) seeking the ERC to exercise its powers to penalize as well as grant orders for Writ of Sequestration.

PART B - STRIKING OUT APPLICATION

10. In their supporting Affidavit, the Respondent deposed that the Notice of Motion was defective because it breached Order 8 Rule (3) of the High Court Rules by failing to comply with the proper format of the form under Form 7.
11. Furthermore the Respondent deposed that the Application for sequestration of property required leave of the court pursuant to Order 46 (5) of the High Court Rule, which required a separate form.
12. In the Applicant's Affidavit responding to the Respondent's Affidavit that they had filed an amending Notice of Motion on 27 February 2025 correcting the alleged anomalies in the first Notice of Motion, which was accepted for filing by the Court.

Law and Analysis: Striking Out

13. Section 238 of the Employment Relations Act provides that the High Court Rules continue to apply where there are no appropriate procedural rules under the Employment Relations Act.
14. Order 46 (5) of the High Court Rules prescribes that any application for a Writ of Sequestration requires the leave of the Court. The Form applicable is Form 7.
15. Form 7 provides as follows:

Form 7

[Heading as in action]

Take notice that [pursuant to the leave of given on the day of
20] the court [or justice] will be moved on the day of
 20 , at o'clock, or so soon thereafter as counsel can be
heard, by [Mr of] counsel for the above-mentioned plaintiff [or defendant] that
and that the costs of the application be

Dated the day of 20

(signed)
Of [agent for

Of

Barrister and solicitor for the

To
Barrister and Solicitor for the

16. The amended Notice of Motion
17. Having considered the law, the court then turned its mind to the application before it.
18. The contention by the Respondent is that an application under section 221 (6) for sequester orders requires the leave of the court in accordance with Order 46 Rule (2) (b) and Rule (5) of the High Court Rules by way of Notice of Motion. Rule (5) requires a Notice of Motion be filed ex parte with a supporting Affidavit.
19. The amended Notice of Motion filed before the court in November 2024 is an Originating Motion and not a Notice of Motion.
20. As Counsel for Respondent correctly argued, an application for a Writ of Sequestration requires leave of the Court by Notice of Motion.
21. The Court considered and determined that the application was invalid and irregular as no leave was sort by the Applicants. Although section 221 of the Employment Relations Act regulates any defect in forms, Rule (5) of Order 46 of High Court Rules specifically requires that Leave of the Court be sort for sequestration.
22. The Court therefore finds that leave was not sort, the application seeking orders for sequestration cannot be granted.
23. However for the purposes of the other Orders sort, the Court is empowered to consider them without leave being sort as it had correctly begun by Originating Motion.
24. Order 18 Rule 18 (d) provides discretionary powers to the Court to strike out a matter for abuse of process. At paragraphs 18/19/17 and 18/19/18 of the Supreme Court Practice 1993 Vol. 1 it is stated as follows:-

“Abuse of Process of the Court” - Para. (1)(d) confers upon the Court in express terms powers which the Court has hitherto exercised under inherent jurisdiction where there appeared to be “an abuse of the process of the Court.” This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation (see **Castro v. Murray** (1875) 10 P.59, per Bowen L.J. p.63). See also “Inherent jurisdiction”, para.18/19/18.”

25. The Application is not a deliberate attempt to abuse the court processes and was bona fide and a genuine error on their part. The Court finds no merits to establish that there was an abuse of process just because of a failure on their part.
26. The other alternative orders can dealt with by the Court.

MERITS OF THE APPLICATION

27. For the purposes of the application for Penalty Orders, Section 221 (6) of the Employment Relations Act states:

(6) If a person fails to comply with a compliance order made under this section, or if the court, on an application under section 212 (6), is satisfied that a person has failed to comply with the compliance order under section 212, the Court may do one or more of the following things –

© that the person in default pays a penalty in a sum not exceeding \$10,000 or be sentenced to imprisonment for a term not exceeding 3 months; or
28. The Respondent has denied breaching the compliance orders on the basis that the Orders were served on the business name, which does not exist.
29. When judgement was entered, the Respondent did not object or challenge the parties names. It was only at this stage that they seek to challenge the parties names.
30. The court finds that the Committal Orders were entered into and correctly served the business given that the business at no given time had challenged the compliance orders.
31. The Court is satisfied that the Respondent had failed to comply with court orders and has found the Respondent guilty.

32. The Court will call upon the Respondent to submit mitigation prior to imposing penalties against the company.

COURT ORDERS

33. The Court Orders as follows:

(a) The Application for striking out is dismissed;

(b) The Respondent is found guilty of failing to comply with Compliance Orders by the Employment Relations Tribunal;

(c) The Respondent is required to submit their mitigation prior to imposing penalties;

(d) No Orders for Sequestration;

(e) That costs be awarded to the Applicant for \$700.



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Ms Senileba LTT Waqainabete-Levaci
Puisne Judge