

IN THE FAMILY DIVISION OF THE HIGH COURT OF FIJI AT SUVA
ORIGINAL JURISDICTION

ACTION NUMBER:	FAMILY APPEAL NO. 5 OF 2022 MAGISTRATE'S COURT FILE NO. 19/SUV/0417
BETWEEN:	RAGHBIR APPELLANT
AND:	PALVI RESPONDENT
APPEARANCES:	Appellant in Person Ms Aradhna. A. Singh (Kohli & Singh Suva) for Respondent.
DATE OF HEARING:	Thursday 13 July 2023
DATE OF RULING	Monday 21 August 2023
CORAM:	Hon. Mr. Justice Chaitanya Lakshman
CATEGORY:	All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarity to any persons is purely coincidental.

RULING – CONTEMPT

A. Introduction

1. The Appellant had filed a Notice of Appeal on 8th April 2022. It was listed to be called on 24th May 2022. On 24th May 2022, Justice Wati directed that the Form 26 be redated by the Registry and served on the Respondent either by the Corrections or assistance to be provided by the Sherriff in serving the Respondent. The matter was next listed for 31st May 2022. On 31st May 2022, the Appellant was present, while the Respondent did not appear. The Matter was then adjourned to 24th June 2022. On 24th June 2022 when the matter was called the Appellant appeared in Court. The Respondent did not. According to the Court 'Pink' File Note and the minute sheet the Court did not sit that day. It is noted that the Respondent was served the documents on 2nd June 2022. The Respondent's name was called 3 times. The matter was then adjourned to 20th July 2022.
2. On 20th July 2022, the Appellant appeared in Court, while the Respondent did not. Justice Wati noted as follows "*I have an appeal before me by the husband challenging the issuance of the order of the Magistrate Court to dissolve the marriage. Since the wife had picked up the conditional order released to her by mistake which should not have been released. I had caused a letter dated 31.03.2022 to be issued to Registrar BDM and the wife too (see contents) not to act on the orders unless the appeal is determined. I had also required the wife to return the certificates to the Court which she has failed to do this committing contempt of court. I shall now require her to attend court and be dealt with why I should not deal with her for contempt. I issue a stop departure order against her from leaving the country and a summons to show cause to be issued to show why, she should not be dealt with for contempt. SCO to issue a Stop departure and the summons.*" The matter was adjourned to 17th August 2022.

B. The Summons to Show Cause, the Allegations and the Plea

3. On 17th August 2022 the Appellant appeared. The Respondent did not. The Court noted that the Respondent did not appear in court despite the summons to show cause. A bench warrant was issued. Matter was next set for 13th September 2022. On 29th August 2022 the Respondent appeared in Court at 2.15pm on a bench warrant. Justice Wati put the Respondent on notice that she was to answer to charges for contempt of Court. The **first** being the refusal to return the court papers, conditional and final orders and the **second** to report to court on the summons to

show cause. She was advised about right to counsel and her plea. The Respondent was bailed (with conditions).

4. On 13th September 2022 both parties were in court. The Respondent appeared with a Lawyer (Ms S. Sen). The Court gave the Respondent time to get legal advice. The matter was then adjourned to 2nd December 2022 for plea. On 2nd December 2022. The Respondent appeared with a lawyer (Ms Naco) and the plea for the 2 counts of contempt were taken. The court minutes reflect as follows: “*Contempt plea. Sworn on Holy Ramayan in English. **Count 1.** Failure to return conditional and final order papers. Understand charge. **Plea** – Not Guilty. **Count 2.** Deliberately failed to attend Court on summons to show cause. Understand charge, **Plea-** Not Guilty.”*

C. The Law

5. Section 196 (1) of the Family Law Act 2003 provides that “*a court which has jurisdiction under this Act may punish persons for contempt in the face of the court when exercising that jurisdiction or for wilful disobedience of any order made by the court in the exercise of jurisdiction under this Act.*” It is further noted that according to **Arlidge, Eady and Smith on Contempt, 3rd Edition (2005)** “[r]esort to the summary process of contempt can normally only be justified if it is necessary to protect the administration of justice, either as to particular proceedings or to the judicial process more generally. A judge may be called upon to act, in effect, as witness, prosecutor, judge and jury, and may even perhaps appear in the role of victim.”
6. Lord Denning in **Morris v. Crown Office [1970] 2 Q.B. 114 at 122B – C** described the need for the summary jurisdiction in this context:

“The phrase ‘contempt in the face of the court’ has quaint old-fashioned ring about it; but the importance of it is this: of all places where law and order must be maintained, it is here in these courts. The course of justice must not be deflected or interfered with. Those who strike at the very foundations of our society. To maintain law and order, the judges have, and must have, power at once to deal with those who offend against it. It is great power – a power instantly to imprison a person without trial-but it is necessary power.”

Stephenson L.J in **Balogh v. St. Albans Crown Court [1975] Q.B. 73 at 89**, in reference to the concept “*in the face of the court*” regarded it as extending widely enough to cover all contempt’s relating to proceedings actually proceeding or imminent.

7. The standard of proof in contempt matters is provided **In Re Bramblevale Ltd [1970] 1 Ch. 128**, where Lord Denning M.R said:

“A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt.”

D. Discussion

8. At the hearing of the 2 counts of contempt the Respondent gave sworn evidence. No other witnesses were called. She accepted that she had collected the certificates of dissolution of marriage. She also accepted that she was served the “summons” to surrender the certificates. The Respondent was served a copy of a letter (dated 31st May 2022) which was addressed to the Registrar General. Through this letter the Respondent was asked to “*return the original certificate of dissolution of marriage without making copies until final determination of the appeal and be present in Family High Court on 24.06.2022 at 10am*”. The Respondent signed an acknowledgement that she received the letter on 2nd June 2022 at 1515 hours.
9. The **Summons to Show Cause (“STSC”)** issued to the Respondent was served on her by Mr. Malakai Seru of the Family Court Registry on 28th July 2022. The Respondent acknowledged receiving the summons in the Form 21. The Respondent was to appear in Court on 17th August 2022 at 9.15am. The Respondent informed this Court that she submitted a sick sheet through her workmates to the Registry. While the sick sheet was not tendered in Court at the trial. This Court from one of the Court files notes that it contains a sick sheet of the Respondent. It is from Om’s Medical Centre. It is dated 15th August 2022. The sick sheet states that the Respondent is fit to resume duty on 18th August 2022.
10. If the Respondent is to be believed then on or after 18th August 2022 the onus was on her to make her way to Court. She already had relevant notification of the court proceedings. No explanation was given to Court on the Respondents behalf on 17th August 2022 of her absence. The

Respondent could have instructed a lawyer to appear for her. She had previously engaged lawyers. She is familiar with the Court process and procedures. Later she should have made her way to Court following her recovery. A bench warrant was issued and executed against the Respondent. She appeared in Court on 29th August 2022. This is 12 days from the date when she was due before the Court on the STSC. Until this time she disregarded the Court issued summons to appear for the contempt of Court. This Court further finds that the Respondent completely disregarded the orders and directions of the Court.

11. The letter which was issued to the Respondent upon the directions of Justice Wati sought the Respondent appear in Court on 24th June 2022. The Respondent did not appear in Court on that date. The Respondent had ample notifications from the Court. She chose to disregard the notice. The Respondents attitude toward the Court and her numerous non-appearances over the number of adjournments cannot be ignored. This Court notes that the Respondent is a Police Officer. Police Officers are appropriately trained. She has participated in Court proceedings previously. She is expected to understand the Court procedures and etiquette. It is incumbent upon the Respondent to ensure that the orderly administration of justice is maintained. Though the Respondent is not appearing in her professional capacity, she is better placed than many other citizens about court attendance and respect for the orders of the Court.
12. The reason advanced by the Respondent for not returning the documents is that she misplaced them. The Respondent tendered in Court a report from Totogo Police Station dated 30th August 2022. It is Report No. 1267/08/22. The contents of the report are that the Respondent “*reported the loss of her dissolution of marriage certificate sometimes on the 23/06/22 at Suva City.*” On 2nd June 2022 at 3.15pm the Respondent had received letter from the Family Court Registry to return the original certificate of dissolution of marriage without making copies. From 2nd June 2022 the Respondent was to return the original certificate of dissolution of marriage. From the Police Report it seems that sometimes in August 2022 she reported the loss of the Certificates on 23rd June 2022 at Suva City.
13. The Respondent in her evidence in Court said that she misplaced the documents. She maintained that she told the police that she did not lose it. In spite of the loss or it being misplaced the Respondent had notification from the Court to return the document on 2nd June 2022. She had a lot of

time to return the documents to the Family Court Registry. She had time from 2nd June 2022 to 22 June 2022, a day before she misplaced/lost the document. This Court finds that the Respondent blatantly disregarded the Court directives, requests and the timelines. These cannot be ignored. Respect for the Court must be maintained. The actions of the Respondent showed disrespect for the Court. Disrespect is contempt.

E. Conclusion

14. Having noted all the evidence this Court finds that the Respondent has not purged the two counts of the contempt that the Court set out against her. This Court finds the Respondent guilty of the two counts of contempt. This Court will hear her mitigation before proceeding to sentencing.

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Chaitanya Lakshman

Acting Puisne Judge