IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)

OA 1/08

IN THE MATTER	of the Property Law Act 1952
AND	
IN THE MATTER	of **AREMANGO SEC 7A1A2** Ngatangiia
BETWEEN	**TAAKOKA ISLAND VILLAS LIMITED**
	Applicant
AND	**R T TUPANGAIA**
	Respondent

Counsel: Mr Morley for Applicant
Mr Vakalalabure for Respondent (including Mr Moore for the purposes of this application)
Judgment: 18 March 2009 (NZT)

JUDGMENT OF WESTON J (CONTEMPT OF COURT)

Introduction

[1] By application dated 1 May 2008 the applicant sought a number of orders including an interim injunction in relation to the mining of sand from the relevant land. The land is defined in the Order set out in [3] below.

[2] At a hearing before me in Rarotonga on 2 October 2008 counsel for the respondents (Mr Vakalalabure) consented to the making of an interim injunction in terms of the application. I then made such an Order, directing the applicants to prepare and file an Order which I would approve before sealing. As I explain in more detail below, the formal Order was made at the time I declared it. I believe there was no doubt in the mind of all counsel present that that was the case. Mr Vakalalabure has not tried to argue otherwise.

[3] The formal Order was filed and then approved for sealing. The Order was sealed in the following terms:

> *"(a) That an Injunction is hereby ordered Restraining Ruta Tupangaia and/or any other landowner and/or their agents, including, without limitation, Travis Moore, from excavating, quarrying, mining or digging on, in or under the land at Aremango Section 7A1A2, Ngatangiia and/or removing any sand, soil, earth or other material from the said land until further orders of the Court.*
>
> *(b) Costs reserved."*

[4] On 4 November 2008 the applicants moved the Court for Orders that:

[a] each of Mrs Tupangaia (the respondent) and Mr Moore (Mrs Tupangaia's agent) be fined $20,000 for beaching the aforesaid Order;

[b] each of Mrs Tupangaia and Mr Moore pay indemnity costs.

[5] There is no doubt that sand-mining continued after the making of the Order (which occurred at the latest by 2pm on 2 October 2008) and continued until approximately 9pm that evening. The application referred to in [4] above relates specifically to this activity. It is common ground that the sand-mining occurred under the direction and control of Mr Moore. In essence, Mr Moore pleads ignorance of the Court Order, accepting that:

- he was in control of the sand-mining;
- the mining did continue after the Order was made by the Court.

Procedural history

[6] I now set out more detail in relation to the interim injunction application and how it has been dealt with by the Court.

[7] The interim injunction application was listed before me at 1pm on 2 October 2008. On that occasion, Mr Vakalalabure did not attend at the listed time. He was telephoned by court staff and subsequently arrived at the Court. He then explained that he thought the matter was to be determined at the next week of the sitting.

[8] There has been considerable material put before me as to what occurred in the period leading up to the hearing on 2 October 2008. It now seems there is a reasonable consensus and this accords with my own recollection of events. It appears that, initially, the Registry proposed various outstanding

matters on this file would be brought before the Court on or about 8 October 2008. However, by Thursday 25 September, it was decided the various outstanding matters would be determined by the Court at 1pm on 2 October. A notice to that effect was circulated. Mr Vakalalabure accepts his office received that notice. He says it was a mistake within his office that he was not made personally aware of the hearing date.

[9] A number of matters were dealt with at the hearing on 2 October 2008 (once Mr Vakalalabure had arrived). When I raised the issue of the interim injunction, expecting to hear argument on it, Mr Vakalalabure immediately advised that he had instructions to consent to the Order as moved. Accordingly, I made the Order at that point as I have already noted.

[10] In a memorandum dated 29 October 2008 the applicant advised the Court (see paragraph 11) that the Order had been breached. Counsel was then taking further instructions but foreshadowed an application in relation to the breaches.

[11] In a memorandum dated 4 November 2008 Mr Vakalalabure responded to the applicant's memorandum and said at paragraph 3.1: *"Your Honour, counsel for the Objector* [that is, Mr Vakalalabure] *has raised this issue with Mr Moore (Rarotonga agent of the Objector) and he has assured counsel that he stopped all activities on 3rd October 2008, after the hearing and before he received the Order on the 4th October 2008. There have been no further activities since then."*

[12] That memorandum coincided with the contempt application brought by the applicant mentioned at [4]. Mr Morley filed a memorandum in support of the application saying that further inquiries still needed to be made and that affidavits in support would be filed.

[13] These various matters were considered by me in Chambers in Rarotonga on 4 November 2008. Mr Morley attended by telephone. In my Minute issued on that date I made various directions for the filing of affidavits in support and response. In paragraph 5 of that Minute I said: *"Mr Moore appears to have breached the injunction. The question of his knowledge of the Order and when he learnt of the injunction order is likely to be highly relevant. He should ensure that his affidavit addresses this. He is hereby put on notice that the Court may draw adverse inferences against him if matters are not fully detailed and explained."*

[14] The applicant subsequently filed three affidavits in support of the contempt application. I will discuss the evidence shortly.

[15] On 5 December 2008 the applicant filed a further memorandum setting out its submissions as to the law of contempt. I deal with the law shortly.

[16] Mr Vakalalabure's submissions on the law were set out in a memorandum dated 23 January 2009. Mr Moore's affidavit was sworn 15 January 2009 and, as with the applicant's affidavits, I discuss it shortly.

[17] There was a further telephone conference on 5 February 2009 in which I made various directions. I issued a Minute, paragraph 3 of which is in the following terms:

> *"3 During the course of the telephone conference today I raised three matters with Mr Vakalalabure that arise out of paragraphs 27 and 29 of Mr Moore's affidavit. The issues were:*
>
> *(a) I do not believe I ever directed that the hearing proceed on 6 October. I accept it is possible that at some preliminary stage the Court may have tentatively allocated the telephone conference for the week commencing 6 October;*
>
> *(b) consequently, I believe Mr Moore is incorrect where he says that the matter was called before me on less than two hours notice. I accept that Mr Vakalalabure was telephoned at approximately 1pm on 2 October, and asked where he was, but that is a different matter. Each of Mr Morley (by telephone) and Mr Morley's instructing solicitor was available at 1pm;*
>
> *(c) Mr Vakalalabure advised the Court that he was instructed to consent to the injunction and the injunction was, accordingly, ordered at that time. It was Mr Vakalalabure's duty to ensure that, first, he had those instructions and, secondly, he advised his client (or Mr Moore or both) that the injunction had been made."*

[18] In paragraph 4 of that memorandum I adjourned the application to a further telephone conference on 13 February 2009 so that Mr Vakalalabure could address me on those topics.

[19] There was then a further telephone conference on 13 February 2009. Paragraphs 2-4 of my Minute are in the following terms:

> *"2 During the course of the telephone conference I questioned Mr Vakalalabure in relation to those matters set out in paragraph 3 of my earlier Minute. I note the following:*

(a) *Mr Vakalalabure accepts that his office received the final Court timetable and that he made a mistake in not noting the hearing set for 2 October 2008;*

(b) *following the hearing on 2 October, in which he accepts that an interim injunction was made by consent, Mr Vakalalabure says he tried to contact Mr Moore but was unsuccessful. He did not contact Mr Moore until the next day (when he coincidentally saw him at Court);*

(c) *Mr Vakalalabure says that Mr Moore has two mobile phones and one landline. He says he called all of these. I asked whether there was a voice-message system. Mr Vakalalabure confirmed there was. He said he had not left a message.*

3 *I put it to Mr Vakalalabure that the above raised significant issues about his role as counsel and whether he had acted properly to notify his client that the Interim Injunction had been made. I asked him whether there were any other matters he wished to address me in relation to that proposition. He said there were none.*

4 *I put it to Mr Vakalalabure that an inference could be drawn from the affidavits filed, thus far, which depose to the fact that sand-mining continued late into the evening on 2 October 2008, to the effect that Mr Moore knew the matter was before the Court and that an Order had or would be made. Mr Vakalalabure accepted that such an inference could be drawn but repeated that, to his knowledge, Mr Moore was not advised of the Order until the following day. He said there was no other matter he wished to draw to the Court's attention on that aspect."*

[20] In paragraphs 5 and 6 of the same memorandum I recorded what was then a new development. It seemed that further sand-mining had occurred. I directed that Mr Moore swear and file a further affidavit by 19 February 2009. Two affidavits have been filed and were served on 18 February 2009 and these are discussed below.

[21] The applicant filed a short memorandum of counsel commenting upon those affidavits on 2 March 2009. This memorandum, in turn, spurred Mr Vakalalabure into action and he responded by memorandum dated 5 March 2009. I have read both memoranda but gained no particular assistance from either.

[22] Mr Morley has recently filed a further memorandum indicating that sand-mining may have occurred in the period 18-27 February 2009. I return to this at the conclusion of my Judgment.

Contempt – submissions on the law

[23] Mr Morley set out detailed submissions in his memorandum dated 5 December 2008. I set out the following paragraphs from that memorandum which appear to be directly in point:

> *"4 In the Cook Islands criminal contempt is an offence punishable by a fine or imprisonment and is dealt with by sections 36 to 40 of the Judicature Act 1980-81.*
>
> *5 In contrast, civil contempt of Court, refusing or neglecting to do an act required by a judgment order of the Court, or disobeying a judgment or order requiring a person to abstain from doing a specific act, will be dealt with under the inherent jurisdiction of the Court.*
>
> *9 In the recent case of Ferrier Hodgson v Siemer (16/3/06, Potter J, HC Auckland, CIV-2005-404-1808), Potter J set out the law in relation to the elements of contempt of Court common to all cases:*
>
> > *"[16] In Attorney-General v Times Newspapers Limited [...], Lord Reid stated that the law of contempt is:*
> >
> > *...founded entirely on public policy, it is not there to protect the private rights of parties to a litigation or prosecution. It is there to prevent interference with the administration of justice...*
> >
> > *[17] The contempt jurisdiction exists in the public as a sanction to ensure that orders of the Court are complied with.*
> >
> > *[18] In Duff v Communicado Ltd [...] Blanchard J stated there were certain things which are common to all applications for contempt:*
> >
> > *(a) The onus of proving a contempt is on the plaintiff;*
> >
> > *(b) ...contempt must be proved beyond reasonable doubt before...criminal sanctions...will be imposed;*
> >
> > *(c) But where the plaintiff has proved, on the balance of probabilities, that the defendant has intentionally breached the terms of the injunction an order for payment of the plaintiff's costs on a solicitor and client basis will be appropriate.*
> >
> > *(d) It is unnecessary to prove an intention to interfere with the administration of justice."*

10 *The law governing contempt of Court for breach of an injunction is stated in Halsbury in these terms:*

> *"The terms of an injunction must be strictly observed. Where an injunction is mandatory in its terms, it is the duty of the party bound by the injunction to discover the proper means of obeying the order.*
>
> *The court will only punish as contempt a breach of injunction if satisfied that the terms of the injunction are clear and unambiguous, that the defendant has proper notice of the terms, and that breach of the injunction has been proved beyond reasonable doubt." (para 472)*

15 *Thus, the Court may in the case of civil contempt, impose a fine (Laws of New Zealand, Contempt, para 6 and 101, Attorney General v Taylor, supra at 147-149 and Malavez v Knox [1977] 1 NZLR 463).*

21 *For there to be a civil contempt there must be knowledge of the judgment or order, including knowledge of its material terms but where a party knew that an order has been made against them, but have not seen it, its effect having been communicated to him by his solicitor, it was held that he must take the consequences and that carelessness in failing to make himself acquainted with the terms of the order was as gross a contempt as disobedience (Halsbury, para 548 n3 and re Witten (an infant) (1887) 4 TLR 36 at 37).*

22 *In Cook v Doyle [1946] NZLR 398 the plaintiff obtained an injunction restraining the defendant from obstructing a stream, the order being served on the solicitors on the record. Fair J held that it was sufficient to show that notice of the order had reached the defendant:*

> *"Where a plaintiff has obtained a prohibitory injunction against a defendant, it is not necessary to prove personal service upon the latter of the order imposing the prohibition to enable the plaintiff to issue an attachment order against the defendant. It is sufficient to prove that notice of the order reached the defendant.""*

[24] Mr Vakalalabure responded to these submissions comparatively briefly in a memorandum dated 23 January 2009. I set out those paragraphs that appear to be directly relevant.

> *"3.4 In the Cook Islands contempt is dealt with in sections 36 to 41 of the Judicature Act. The statute covers both criminal and civil contempt and is defined in section 36(a) which is the relevant definition:*
>
> > *"36 Contempt of Court is defined – Every person is guilty of contempt of Court who –*

> *(a) Disobeys any judgment or order of the Court, or of any Judge thereof, or of any Justice otherwise than by making default in the payment of a sum of money (other than a penalty) payable under such judgment, or order; or..."*

3.8 Section 41 provides that the power of the Court to punish for contempt is not limited to sections 36 to 40, where the contempt is one where those provisions are not applicable, Section 41 provides:

> *"41 General power to commit for contempt – Nothing in sections 36 to 40 of his Act shall limit or affect any power or authority to punish any person for contempt in any case to which these sections do not apply."*

3.9 The intention of Parliament clearly is to deal with all contempt under any legislation in the Cook Islands under the provisions of sections 36 to 40. However, this does not limit the power of the Court to punish for contempt where those sections do not apply.

4.0 Therefore in order for contempt to be dealt with under the inherent powers of the Court, it has to be determined that the particular case does not fall within sections 36 to 40 of the Judicature Act. Otherwise all cases of contempt in the Cook Islands must be dealt with under the provisions in the Judicature Act 1980-81."

Contempt – conclusions as to the law

[25] It seems to me that sections 36-41, Judicature Act, apply to a civil contempt of this sort addressed here. In so concluding I reject Mr Morley's submission that these sections are limited to criminal contempt. Nevertheless:

[a] this conclusion is against the general run of the common law jurisdictions which do maintain a distinction between civil and criminal contempts;

[b] there is much to be said for the New Zealand legislation which makes such a distinction.

[26] It is, of course, for this Court to apply the law. For all that, I believe it is appropriate that I record my reservations as to whether the inherent power of the Court to punish for civil contempt is not unduly circumscribed by these provisions in the Judicature Act. I will ensure that a copy of this Judgment is passed to the Chief Justice for his consideration as to whether it is appropriate to refer this matter to the Law Commission.

[27] I proceed on the basis that the four conclusions of Blanchard J in *Duff v Communicado Limited* set out the core threshold that must be established by an applicant. That is:

[a] the applicant must prove the contempt;

[b] contempt must be proved beyond reasonable doubt before criminal sanctions such as a fine will be imposed;

[c] if the contempt is proved to the level of a balance of probabilities it may still be appropriate to order costs on a solicitor/client basis;

[d] the applicant need not prove an intention to interfere with the course of justice.

[28] The punishment for contempt is a fine not exceeding $100 or the imprisonment for any term not exceeding six months. In the present case, the applicant has sought fines of $20,000 for each of Mrs Tupangaia and Mr Moore. Imprisonment has not been sought.

[29] Section 38 refers to the *"offence"* of contempt. On one view of it, this might refer to a criminal contempt only. While the language so suggests, I doubt that was the legislative intention. Reading section 38 in the context of sections 36-41 generally, I believe it was intended to apply to any contempt falling within section 36 (civil or criminal). Section 38(a) provides that contempt is to be punished in the ordinary course of the Court's criminal jurisdiction. What does that mean? I was not addressed on section 38 by counsel. While there was no argument that the procedure adopted by the applicant (an application filed in the civil proceeding) was inappropriate, I need to address whether the application should have been brought in terms of the criminal procedure. I do not believe that such a narrow reading of the legislation is required. This section refers to the *"criminal jurisdiction"* of the Court but does not dictate that the criminal procedure must be followed. Rather, and reflecting the *sui generis* nature of the contempt jurisdiction, I believe it simply requires that contempt must be proved beyond reasonable doubt before criminal sanctions can be imposed.

[30] I am satisfied that the respondent in any contempt application must know the terms of the injunction and that those terms must be clear and unambiguous. There is no doubt, in the present case, that the terms of the injunction were

clear and unambiguous. This is not disputed. The only real issue is whether the respondent (that is, Mr Moore) knew of the terms of the injunction or is to be treated as if he knew.

[31] I am satisfied that an applicant need not in all cases prove personal service of the sealed Order upon a respondent before the Court will find there has been a contempt: *Cook v Doyle* [1946] NZLR 398, 400.

[32] Obviously, in most cases, actual knowledge of the terms of the Order must be shown before a defendant will be found in contempt but I am satisfied there are limited cases where the knowledge of the duly authorised solicitor may provide a sufficient basis for an adverse finding. I have been referred to a number of authorities by Mr Morley but none of them is directly in point. Accordingly, I approach this issue from first principles. My reasoning on this topic can be found at [48] below.

[33] The question of costs does not appear to be addressed by sections 36-40, Judicature Act, and I do not believe I am in any way restricted by those provisions in fixing costs in the Court's inherent jurisdiction. In some instances solicitor/client costs may be appropriate. However, as I understand it, there are no special rules that apply to costs in the case of civil contempt.

Factual findings

[34] As already noted, it is accepted that contractors, under the control of Mr Moore, continued to mine sand from the relevant property after the Order was made by 2pm on Thursday 2 October 2008. There is uncontested evidence that it continued until approximately 9pm on the evening of 2 October 2008.

[35] I am satisfied that Mr Vakalalabure had instructions to consent to the Interim Injunction Order. That Order was properly made, at the latest, by 2pm on 2 October 2008. Equally, I accept that the sealed Order was not received by Mr Moore at least until 6 October (although he was told at some stage on 3 October that the Order had been made).

[36] There is no evidence that Mrs Tupangaia had any direct role in these matters. I find that Mr Moore was in control of the relevant events and I proceed on the basis that the Court's concern is with his actions. There is

nothing to suggest that the relevant contractors had any role in the mining on 20 October 2008 other than acting, as they saw it, in accordance with Mr Moore's lawful directions.

[37] The question, then, is to examine what Mr Moore did or did not know. In order to address this, I now set out a short summary of the evidence given on behalf of the applicants. I then turn to consider Mr Moore's two affidavits.

[38] Affidavits filed by Christopher Reynolds and Tere Moana Mato depose that the excavation continued until approximately 9pm on the evening of 2 October 2008. They gave evidence that the usual pattern, before this, had been for the work to finish somewhere between 4 and 5pm. John McElhinney gave evidence that some days after 2 October 2008 he spoke with Mr Moore and asked why Mr Moore proceeded with the excavation knowing that an injunction was made. Mr McElhinney said that Mr Moore answered *"I had not been formally served with a sealed order"*.

[39] Mr Moore set out his position in an affidavit sworn 15 January 2009. He deposed that in the week of 29 September 2008 he had given instructions to the contractor to mine the sand. He said that on a day uncertain he told the contractor to finish at a certain point which he pointed out to the contractor. He said that he asked the operator to work late to finish the job before the week ended (I observe that 2 October 2008 was a Thursday and not a Friday). I have not received any affidavit from the contractors in relation to this topic.

[40] At paragraph 6 Mr Moore deposed that there was no intention to carry on excavating into the week that the injunction was to be heard (Mr Moore said he thought this was the week commencing 6 October 2008). He says that the work ended at the point the excavation reached that part of the land identified by him to the contractor. It seems fairly clear that Mr Moore was working to extract as much of the sand as possible before the inevitable injunction was made.

[41] Mr Moore then responded to the evidence of Mr McElhinney. He said this discussion occurred on 15 October 2008. He denies making any mention of service of the sealed Order as Mr McElhinney has deposed.

[42] At paragraphs 26-31 Mr Moore directly addressed the issue of his knowledge of the interim injunction:

[a] in paragraph 29 Mr Moore deposed that as at 2 October 2008 neither he nor Mr Vakalalabure had resolved what would be done about the injunction. That is directly inconsistent with Mr Vakalalabure's advice to the Court that he was authorised to consent to the interim injunction application. At the hearing on 13 February 2009 Mr Vakalalabure made it clear that his advice to the Court (that he was authorised to consent to the injunction) was correct. Mr Moore has subsequently clarified his position as I discuss shortly;

[b] in paragraph 30 Mr Moore deposed that he did not learn about the injunction until he met Mr Vakalalabure at the Department of Justice counter the next day. He then said the sealed Order was emailed to him on Monday 6 October 2008.

[43] In paragraph 32 of his affidavit Mr Moore deposed: *"I point out to this Court that there was an immediate "confession" on my part to a prima facie breach of the Order once I was aware of the inadvertent breach. It might be suggested that as Mr Tupangaia's agent I had a duty to keep a closer watch on proceedings, knowing that Justice Weston was sitting in Rarotonga and had the discretion to call the matter at the Court's pleasure. I admit that I did not keep that close of a watch. I unreservedly apologise to this Court for my inadvertent breach of the Order. There certainly has been no further breach and indeed as indicated above backfilling of the Land has commenced."*

[44] Mr Moore concluded his affidavit by attacking Mr McElhinney. Frankly, this part of Mr Moore's affidavit is misconceived. It is a foolish litigant who, seeking to explain a prima facie breach, seeks to impugn the actions of others. Towards the end of his affidavit, Mr Moore deposed: *"Since being notified of the injunction I have complied with it fully. As indicated above I have already begun to backfill the excavations to industry and NES Standards. There is no damage to the land and upon backfilling being completed will be suitable for any activity that it was suitable for prior to excavation."*

[45] As it now turns out, some three weeks after the swearing of this affidavit, further excavation work took place. Mr Morley learnt of this when he received an email from Mr Vakalalabure on Friday 6 February 2009. That email said (errors as in original): *"I have just been informed by my client's a minute ago that the company that use to mine the sand on the taakoka lease*

had mistakenly dung out 2 truck loads this morning. They had been trying to contact me after they received information but I was in Court the whole morning. I have advised them to get in touch with the company and get them to return the sand and fill up the hole they had dug." (sic)

[46] Mr Moore's affidavit dated 18 February 2009 explains what happened. He says that on 5 February 2009, while passing the relevant land in his car, he noticed that excavation work was underway. He intervened and instructed the operator to replace the two loads of sand that he had removed. He then instructed Mr Vakalalabure to send the email discussed above.

[47] Mr Moore then went on, in paragraphs 11 and 12, to complain about Mr Morley's memorandum dated 12 February 2009. It was said that part of this had been wholly misleading because Mr Morley had said that no explanation had been provided for the second instance of sand-mining in breach of the Order. It was said to be wholly misleading because Mr Vakalalabure's email had said that the company had mistakenly dug out the two truckloads of sand. I believe Mr Moore is making too much of the point. It is true that the email provided an explanation of sorts but, in all the circumstances, I believe more was required. The email contained no information from Mr Rennie along the lines now set out in his affidavit (see below). It seems unlikely that Mr Rennie's explanation would have been forthcoming unless the Court had ordered that further affidavits be filed explaining what had occurred.

[48] In paragraphs 14-19 of his second affidavit Mr Moore elaborated upon his earlier evidence. He made it clear that Mr Vakalalabure had authority to consent to the injunction. He put it on the basis that Mr Vakalalabure had authority to make a final decision on the point and that he, Mr Moore, had effectively left the decision to Mr Vakalalabure. In this way, I assume, Mr Moore intended to leave open the suggestion that he could not be expected to know that an injunction would be granted. Frankly, I think that is sophistry. Reading Mr Moore's affidavits as a whole, it seems fairly clear that he knew an injunction was inevitable but he would continue to mine sand in the meantime. He then clothed Mr Vakalalabure with authority to consent to an injunction. In these circumstances, he can hardly complain if that occurred and the Court then proceeds on the basis he had knowledge of the very Order to which he had authorised his solicitor to consent. Otherwise, counsel could consent to an injunction and then take no steps to

notify the client, or the client could avoid such communications. It would be a most unjust outcome if, in those circumstances, the client could avoid the consequences of counsel's actions in consenting to the injunction. In such circumstances, counsel has an obligation to notify the client immediately and, equally, the client has an obligation to seek out the solicitor and find out what has happened.

[49] Mr Rennie's affidavit explained how an employee, by error, mined sand from the relevant land. I have some reservations about the evidence given in paragraph 6. I do not believe I can resolve those concerns on the papers. Initially, and when directing that these affidavits be filed, it seemed it would be possible to deal with the second episode of sand-mining at the same as the first. As events have transpired, that has not proved to be the case. And, moreover, it now appears that further sand-mining has occurred. I believe the second and third instances of sand-mining should be the subject of a specific application and evidence which will need to be tested by cross examination. I appreciate that will put the parties to greater expense but that seems unavoidable. At this stage, though, there is no further application and it is up to the applicant as to whether it wishes to bring a further application in relation to those episodes.

The Court's conclusions

[50] I am satisfied, beyond reasonable doubt, that Mr Moore is in contempt of court in relation to the sand-mining that occurred on 2 October 2008 after the injunction was made and I so find. This is on the basis:

[a] an Order was made in clear terms no later than 2pm, 2 October 2008;

[b] the Order was made by consent and I am satisfied that Mr Vakalalabure was authorised to give that consent;

[c] irrespective of whether Mr Vakalalabure then told Mr Moore what had happened, I find that Mr Moore had sufficient notice of the Order when it was made.

[51] As noted in [49] above the further instances of sand-mining are not resolved in this Judgment. If the applicant is minded to do so, it should bring a further application for contempt in relation to such activity. That application, should

it be brought, is not necessarily to be regarded as coming before me. Allocation of the Judge will be a matter to be decided by the Chief Justice.

[52] What is the appropriate penalty for the contempt that occurred on 2 October 2008? I am satisfied that it should be a fine. The statutory maximum is $100 which, in my opinion, is a very low sum and in no way is intended to be a maximum representing the most serious of contempts. If I had jurisdiction to do so, I would fine Mr Moore in a sum greater than $100. However, as a result of the limitation arising from the statutory maximum I now fine Mr Moore $100. That fine is to be paid within 28 days of this judgment into the High Court which shall, thereafter, disburse the same to the applicant by its solicitors.

[53] I have set out my preliminary conclusions in relation to the law of costs as it applies in a contempt case. I have not received specific submissions in relation to costs. The applicant is to file its memorandum within 14 days of this Judgment. Mr Moore, by counsel, is to file his response 14 days thereafter. In each case, copies of the memoranda are to be served and emailed copies made available to opposing counsel.

[54] Because this decision relates to the administration of justice, I direct that copies of this Judgment be sent by Court Registry staff to the media.

Dated 18 March 2009 (New Zealand time)