

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. 540 of 2007**

**BETWEEN** : **DIANA GIESBRECHT** of Qrts 252 Barker Place, Muanikau, Suva in  
the Republic of Fiji, Domestic Duties.

***Plaintiff***

**AND** : **ROWENA GRACE CROSS** (*also known as Grace Bamlett; also  
known as Rowena Grace Raven Creek*) and **DOUGLAS BAMLETT**  
both of Ocean Pacific Road, Wainadoi, Navua in the Republic of Fiji  
and both now permanently residing in the United States of  
America.

***Defendants***

**APPEARANCE** : **Mr A Rayawa** of **Rayawa Law** for the **Plaintiff**  
**Mr I Fa of Fa & Co.** for the **Defendants**

**DATE OF JUDGMENT** : **28 October 2014**

**INTERLOCUTORY JUDGMENT**

1. The Notice of Motion for committal was filed by the Plaintiff on 10 September 2012 against the 1<sup>st</sup> named and second name Defendants; pursuant to Order 52 of the High Court Rules 1988 on the grounds stated in the Affidavit of the Plaintiff.

2. The Master of the High Court had delivered an Order on 6 October 2011 in favour of the Plaintiff and the Defendants appealed against the said Order to this court and this court made the following Orders on 17 July 2012:

*“(a) The cost of \$1500 ordered by the Master should be paid by the Defendants/Appellants to the Plaintiff/Respondent within 7 days of delivery of the Judgment failing which committal proceedings to be commenced pursuant to Order 52 Rule 1 of the High Court Rules.*

*“(b) It is also ordered to pay summarily assessed cost of \$2000 to the Plaintiff/Respondent within 7 days of the delivery of this order by the Defendants/Appellants.”*

3. In support of the Notice of Motion filed on 10 September 2012, the Plaintiff filed an Affidavit dated 10 September 2012 and stated *inter-alia*:

- 3.1 The Defendants are aware of the court order dated 17 July 2012, although they presently live in the United States of America since they have filed Summons and Affidavits seeking Leave to Appeal and Stay against the said Order dated 17 July 2012.

- 3.2 The said Summons and Affidavit for Stay was marked as “B” and annexed to the Affidavit.

4. When this matter was taken up for hearing on 9 September 2014, the Defendant’s counsel Mr I Fa admitted that the Defendants have not paid the cost as alleged by the Plaintiff and requested one month’s time to pay the cost ordered. However, the counsel for the Plaintiff Mr Rayawa objected to grant of one month’s time to pay the cost ordered on 12 July 2012 and moved to take up the matter for hearing. Mr Rayawa referred to the Affidavit filed by the Plaintiff and submitted that the Affidavit verify the gravity of the offence, and sought the order for committal.

5. Mr Fa counsel for the Defendants in reply submitted that his clients should not be committed to prison as the first choice. The counsel stated that there were number of interim applications in this case where cost being ordered against the Plaintiff was to be

paid as costs in cause. He further stated there is a property which is the subject matter of this case. He also stated Rules are made to carriage of the justice and the court is at liberty to vary the orders and the present application should be dismissed. No personal service was affected in this case.

6. The Order 52 Rule 1 states:

*“1 – (1) The Power of the High Court to punish for contempt of court may be exercised by an order for committal:*

*(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.*

*2. An order of committal may be made by a single judge.*

*3. Whereby virtue of any enactment the High Court has power to punish or take steps for the punishment for any person charged with having done anything in relation to a court; have been in contempt of that court; an order for committal may be made a judge.”*

7. In this matter as alleged by the Plaintiff the Defendants have not complied with the Orders made by this court, which was admitted by the Defendants’ counsel and he submitted the Defendants shall pay the costs within one month. I am taking the following matters too into consideration:

- (1) The both Defendants are living in United States and even they are now agreeable to abide by the Court Order which I consider as mitigatory circumstances.
- (2) The learned counsel didn’t make submissions on the issue of the appeal for Stay. The inference this court can make is that the Defendants delayed to abide by the Court Order expecting the outcome of the application for stay.

- (3) On the other hand, the Plaintiff's position was to punish the Defendants by committing them to the prison even after agreeing to pay the costs by the Defendants at a latter stage.
8. In my view, the Defendants' undertaking to pay the costs should be taken into consideration before committal to prison and I conclude the Defendants' intentions are clear to abide by the Court Order. As such I make the following varied Orders.
- (a) Unless the Defendants pay the sum of \$3,500.00 (costs) before 30 November 2014, the Defendants are imposed of a fine of \$2,500.00;**
- (b) It is further ordered if the payment of the said sum of \$3,500.00 is defaulted and if the fine of \$2,500.00 is not paid by the Defendants, both Defendants are committed to prison for one month;**
- (c) The costs of this matter is cost in cause.**

Delivered at Suva this 28<sup>th</sup> Day of October 2014.



A handwritten signature in black ink, appearing to read "C. Kotigalage", written over a horizontal line.

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C. Kotigalage  
JUDGE