

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA, FIJI

Civil Action No. HBC 107 of 2015

BETWEEN : **MOBILE CRANE HIRE SERVICES LIMITED** a
limited liability company having its registered
office at Sautamata Street, Lautoka

PLAINTIFF

A N D : **MICHEL GOEPFRET** of Wallis and Futuna and
residing at Lot 32 Aeroplance, Nasoso, Nadi

DEFENDANT

Counsel : Mr W Pillay for plaintiff
No appearance for the defendant

Date of Hearing : 3 July 2015

Date of Ruling : 3 July 2015

R U L I N G

1. This is an ex-parte application seeking an injunctive order to stop the defendant leaving the country. Plaintiff alleges that the Defendant is planning to leave the country by 4.30 pm today.
2. The application is supported by an affidavit sworn by Suresh Bhai Patel, the Managing Director of the plaintiff Company.

3. The application is made pursuant to Order 29, rule 2 of the High Court Rules 1988 ('HCR'). That rule provides as follows:

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made ex parte on affidavit but, except as aforesaid, such application must be made by motion or summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.
4. The plaintiff claims approximately \$200,000.00 against the defendant for goods sold and delivered to the defendant in Wallis and Futuna, a French Island in the South Pacific.
5. Under para 6 of the affidavit in support the plaintiff states that, since 2013 the defendant has failed and/or wilfully neglected to pay the plaintiff Company for the items listed in paragraph 5 (Tires, Filters, Battery and Oil). The total debt due and owing to the plaintiff Company to-date is more than FJD\$200,000.00. Further, under para 8 of the affidavit states that on 25 June 2015 the defendant admitted the debt to the plaintiff Company at Namaka Police Station when questioning by Constable Sami.
6. The plaintiff states in para 9 of its affidavit that they have received information that the defendant is destined to leave the country at 4pm this afternoon 3rd July 2015.
7. Since the plaintiff states that the defendant is planning to leave the country by 4pm this afternoon the 3rd July 2015, the case is one of urgency. The applicant in these proceedings is the plaintiff. The case

is one of urgency. As such, the plaintiff may apply *ex parte* on affidavit even before the issue of the writ or originating summons by which the cause or matter is to be begun. However, counsel for the plaintiff submits that the plaintiff has filed statement of claim and writ of summons against the defendant.

8. Plaintiff states that he has filed a statement of claim and writ of summons to against the Defendant. The Plaintiff claims a sum of about \$200,000.00 against the defendant for goods sold and delivered.
9. Counsel for the plaintiff raised argument that since they have filed statement of claim and writ of summons they are entitled to seek an order to stop the defendant leaving the country.
10. The plaintiff seeks stop departure order against the defendant at the commencement of the proceedings. At this stage, it is to be noted, there is no execution proceedings against the defendant.
11. In the circumstance **section 9 (1) (c) of the 2013 Constitution** applies to these proceedings. S.9 (1) (c) of the Constitution provides that:

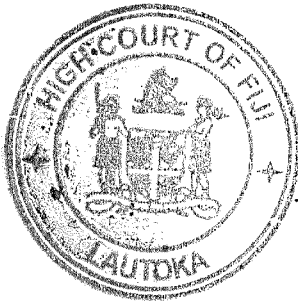
‘9.-(1) A person must not be deprived of personal liberty except-

*For the purpose of executing an **order made to secure the fulfilment of an obligation imposed on the person by law** (Emphasis provided);’*

12. Under s.9 (1) (c) of the Constitution a person may be deprived of his or her personal liberty for the purpose of executing an order made

to secure the fulfilment of an obligation imposed on the person by law.

13. At the stage there is no order made to secure the fulfilment of an obligation imposed on the defendant by the law.
14. In my opinion, filing of writ of summons against the defendant will not give right to the plaintiff to deprive the defendant of his personal liberty.
15. I therefore, for the foregoing reasons, refuse to issue departure prohibition order against the defendant.



M H Mohamed Ajmeer

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JUDGE

At Lautoka

3.7.15