



## DECISION

### INTRODUCTION

1. The Applicant in this Judicial Review proceedings had filed the present application for contempt of court proceedings based on the alleged breaches of the orders made by the court. The said orders were made by Calanchini J (as his lordship then was) in this case on 2<sup>nd</sup> July, 2010 restraining all dealings in the lands in issue, until final determination of this matter as well as High Court Civil Action No 212 of 2009. The counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents objected to this application for the contempt on the basis that no contempt proceedings could be instituted against the 'state' in terms of Order 77 rule 11 of the High Court Rules of 1988. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are Director of Lands and Registrar of Titles.

### ANALYSIS

2. The objections of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were based on the interpretation of Order 77 rule 11 of the High Court Rules of 1988. It reads as follows  

*'11(1) Nothing in Orders 45 to 52 shall apply in respect of any order against the state' (emphasis added)*
3. It is admitted fact that the orders sought in the summons for contempt were made in pursuant to Order 52 of the High Court Rules of 1988, hence it should apply the above provision (i.e Order 77 rule 11).
4. In the light of the said provision no contempt proceedings could be instituted in terms of the Order 52 of the High Court Rules of 1988 ' in respect of any order against the state'. So no order for contempt could be made against the 'state' hence no proceeding could be instituted against 'state' for contempt.
5. In the consideration of applicability of Order 52 of the High Court Rules of 1988 to the Director of Lands (1<sup>st</sup> Respondent) and the Registrar of Titles (2<sup>nd</sup> Respondent) the interpretation of the phrase 'order against the state' is important.



6. The Order 77 rule 1(2) defines the terms of the said provision and the word 'order against the state' is defined in the following manner

*'...means any order (including an order for costs) made in any civil proceedings by or against the State or in connection with any arbitration to which the State is a party, in favour of any person against the State or against a government department or against an officer of the State as such' (emphasis added)*

7. So the 'order against the state' was interpreted in the 'exclusive' manner as the words 'means' was used to define, hence no other meaning could be attributed. So any order of the court made in any civil proceedings against the state will constitute an 'order against the state'. So in order to apply the said definition interpretation of the phrase 'civil proceedings' is needed. This phrase is again defined in the Order 77 rule 1(2) of the High Court Rules of 1988.

8. The words 'civil proceedings' is defined in the Order 77 rule 1 (2) in the following manner

*'(2) In this Order-  
"civil proceedings by the state", "civil proceedings against the State" and  
"civil proceedings by or against the state" have the same respective  
meanings as in Part II of the Crown (now State)<sup>1</sup> Proceedings Act, and do  
not include any of the proceedings specified in section 18(3) of that  
Act' (emphasis added)*

9. So there is exclusion of specific personnel in the Section 18(3) of State Proceedings Act (Cap 24) and in order to understand the above interpretation Section 18(3) of the State Proceedings Act (Cap 24) needs to be considered and it states as follows

*"18(3) Notwithstanding anything in the preceding provisions of this section, the provisions of this Part shall not have effect with respect to any of the following proceedings, that is to say:-*

- (a) proceedings brought by the Attorney-General on the relation of some other person;*

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<sup>1</sup> In terms of Section 69 of the Interpretation Act (Cap 7) 69. In this Act and in all other written law, whether enacted or made before or after the commencement of this Act, references to the Sovereign reigning at the time of the enactment or making of the written law or to the Crown, shall, unless a contrary intention appears, be construed as references to the Sovereign for the time being.

- (b) *proceedings by or against the Public Trustee;*
- (c) *proceedings under the law relating to charitable trusts by or against the Attorney-General;*
- (d) *proceedings by or against the Registrar of Titles.*  
(emphasis added)

10. So, it is manifest that no contempt proceedings could be instituted against the Director of the Lands who is the 1<sup>st</sup> Respondent. The Applicant at the outset of this hearing admitted this self evident fact. By the same token it is also indisputable that the proceedings against the Registrar of Title (2<sup>nd</sup> Respondent) could be proceeded as this position is expressly excluded in the Section 18(3) of the State Proceedings Act (Cap 24).
11. The counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted two decisions of the High Court and both these cases relate to the interpretation of the word 'state' in relation to Land Transport Authority and Western Drainage Board. In my mind the provisions contained in the Section 18(3) of State Proceedings Act (Cap 24) is unmistakable and there is no need to consider any case law. The said cases interpreted the word 'state' in relation to Land Transport Authority and Western Division Drainage Board (*Widya Wati Vs Western Division Drainage Board* et al (unreported) High Court Lautoka Civil Action HBC 332 of 2001L decided on 18<sup>th</sup> August, 2009) and *Ravind Millan Lal et al Vs Land Transport Authority and ANZ Bank* (unreported) (decided on 31<sup>st</sup> July, 2009 High Court Lautoka Civil Action No HBC 213 of 1994). They are two statutory bodies.
12. There is express exclusion of Registrar of Titles from general exclusion of 'state' in the 18(3) of State Proceedings Act (Cap 24) and, there is no need to search elsewhere to consider whether the said office is subject to the contempt proceedings under Order 52 of the High Court Rules of 1988. In the cases that were submitted by the counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the respective statutory bodies had no express exclusion and court needed interpretation of them in the context of relevant provisions of law, but in this case the definitions given in Order 77 rule 1(2) and the Section 18(3) of State Proceedings Act (Cap 24) are specific and the 2<sup>nd</sup> Respondent is expressly excluded from the blanket immunity offered to 'state' from contempt under Order 52 of the High Court Rules.



## CONCLUSION

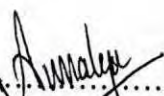
13. No contempt proceedings could continue against the Director of Lands (1<sup>st</sup> Respondent) but the proceedings can be continued against the Registrar of Titles who is the 2<sup>nd</sup> Respondent. The preliminary objection against the 1<sup>st</sup> Respondent is sustained while the same is rejected against the 2<sup>nd</sup> Respondent in terms of the express provisions contained in the Section 18(3) of State Proceedings Act (Cap 24)

## FINAL ORDERS

- a. The contempt proceedings against the 1<sup>st</sup> Respondent is discontinued and accordingly struck off only against the 1<sup>st</sup> Respondent.
- b. Cost of this application is cost in the cause.

Dated at Suva this 24<sup>th</sup> day of May, 2016



  
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**Justice Deepthi Amaratunga**  
**High Court, Suva**