

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

CIVIL CASE NO. HBC 186 OF 2017

BETWEEN : **SHAREEN LATA HANS**, of Lot 17, The Links, Denarau, Nadi.
Plaintiff

AND : **MAHENDRA DEO**, of Flat No. 4, Lot 22, 66 Paul Sloan St, Bay View Heights, Suva, Civil Engineer.
Defendant

Counsel : Mr. A. K. Narayan (Junior) for the Defendant - Applicant – o/i M/s. A. K. Lawyers - Barristers & Solicitors.

: Mr. J. Sharma with Mr. Roopesh Singh for the Plaintiff -Respondent o/i M/s. Patel & Sharma Lawyers – Barristers & Solicitors-at the hearing, **on 27th of April 2018.**

: Mr. S. K. Ram with Mr. N. Padarath for the Plaintiff-Respondent o/i M/s. Samuel K. Ram – Barristers & Solicitors - at the hearing **on 21st May 2018.**

Dates of Hearing : 27th April 2018 & 21st May 2018.

Date of Judgment : 24th August, 2018.

Judgment by : Mr. Justice A. Mohamed Mackie

J U D G M E N T

(On the Application by the Defendant - Applicant for Committal of the Plaintiff- Respondent)

A. Introduction:

1. Before me are two applications, under the above styled action, the first one being the committal proceedings initiated by the Defendant- Applicant (the Applicant) on 28th February 2018 against the Plaintiff- Respondent (the Respondent), who are estranged Husband and Wife, respectively, nevertheless, still remain as the shareholders of an entity called '**Pacific West Builders Limited**' (the Company) though, the degree of

shareholding between them is in dispute, which is the main bone of contention that has led the parties to number of lawsuits before this Court.

2. The 2nd Application is by the Respondent by her summons dated 1st May 2018 supported by her affidavit dated 30 April 2018, wherein this court has been called upon to set aside certain temporary orders made by this court on 28th February 2018 by varying the ex-parte Orders that had been granted by the learned Master (the Master) on 31st August 2017 against the Applicant, after considering an Application (summons) filed by Respondent along with her originating summons both dated and filed 31st August 2017.
3. The aforesaid temporary orders were, in fact, made by this court after granting leave for the Applicant to file committal proceedings against the Respondent as aforesaid, propriety of which is also under heavy attack by the learned counsel for the Respondent.
4. For the time being, I do not intend to scrutinize the propriety of the said temporary orders or to make any decision on it through this judgment as this judgment concerns only the committal charge. However, for the sake of clarity and easy reference I shall, once and for all, give below the fairly lengthy background history, which would reveal the circumstances that seem to have initially led the Respondent to file her originating & ex-parte summonses on 31st August 2017 and for the Applicant to initiate committal proceedings by moving for leave and additional orders, as prayed for in his Ex-parte application filed on 27th February 2018 which was supported before me on 28th February 2018.

B. The Background to the original claim

5. The background facts, which are in common to both the applications, can be narrated as follows.

Initial ex-parte orders moved for by the Plaintiff- Respondent:

6. The Respondent (Wife), by her originating summons filed on 31st August 2017, and by the even dated **ex-parte summons**, among other things, prayed for the following orders from the Master of this Court.
 - a. *THAT the Plaintiff shall be permitted to execute all payment vouches notes and memorandums authorizing **just payments** for and on behalf of Pacific West Builders. (Emphasis mine)*
 - b. *THAT the Plaintiff be permitted to make and execute cheques and make payments as required **for the operation** of Pacific West Builders Limited. (emphasis mine)*

- c. *THAT the Plaintiff shall be at liberty to provide and instruct Australia New Zealand Banking Corporation of Fiji, other commercial Banks, the suppliers, contractors and all statutory entities in all matters in relation to Pacific West Builders Limited.*
- d. *THAT the Defendant be restrained from acting in any manner adverse to the interest of Pacific West Builders Limited.*

The Reasons for moving the above orders:

- 7. The reasons adduced by the Respondent in justifying the above orders in her favor, among other things, were that the Defendant- Applicant had acted in a manner contrary to the interest of the Company as;
 - a. *“The Defendant has instructed the bankers of the Pacific West Builders Limited to cancel all issued cheques resulting in no cheques being made and payments being made to the true creditors of Pacific West Builders Limited.*
 - b. *The Defendant has refused to pay out overdue and declared dividends to the Plaintiff.*
 - c. *The Defendant has worked off sites of Pacific West Builders Limited thereby causing disrepute to Pacific West Builders Limited and causing a possible breach of contract with Mobil Oil Australia PTY LTD – Fiji Branch (collectively referred to as the defendants actions)”*

Ex-parte orders made by the Master on 31st August 2017 in Plaintiff’s favor:

- 8. The Master on 31st August 2017, having heard the ex-parte summons, instantly granted the orders as prayed for in paragraphs (a), (b) & (c) of the prayers thereto. This ex-parte summons was supported by an affidavit sworn by the Respondent, SHAREEN LATA HANS. The order (d) underlined bellow was not on the Application of the Respondent. The Master’s impugned orders read as follows.
 - a. *“That the Plaintiff is permitted to execute all payment vouchers, notes and memorandums authorizing just payments for and on behalf of the Pacific West Builders. (emphasis mine)*
 - b. *That the Plaintiff is permitted to make and execute cheques and make payments as required for the operation of Pacific West Builders Limited. (emphasis mine)*
 - c. *That the Plaintiff is at liberty to provide and instruct Australia New Zealand Banking Corporation of Fiji , other Commercial Banks , the Suppliers, Contractors and all Statutory entities in all matters in relation to Pacific West Builders Limited” (The emphasis mine)*

- d. That the Plaintiff to file an affidavit fortnightly verifying all the cheques and payments she makes from the Company account with the registry of the Lautoka High court.

Inter-parte Orders made by Master on 18th Jan. 2018 in Applicant's Favor

9. Thereafter, the matter being mentioned before the Master on 14th September 2017, 09th October 2017 and 18th October 2017, when it finally came up before him on 18th January 2018, upon hearing the learned counsel for both the parties, the Master made following orders enabling the Applicant to have access to banking information of the company and fixed the matter for hearing on 19th March 2018. The orders made in favor of the Applicant were;
1. *THAT the Defendant (Mr. Mahendra Deo) should have liberty to have access to all the information relating to the banking of the company.*
 2. *THAT the Plaintiff (Ms. Shareen Lata Hans) and the respective bankers to facilitate the Defendant (Mr. Mahendra Deo).*
 3. *THAT the matter is adjourned to 19th march 2018 for hearing together with the other connected matter Civil Winding up HBE 11 of 2017.*
10. Being able to ascertain the banking information of the Company, by use of the orders 1 and 2 in paragraph 9 above and otherwise, and having discovered about various alleged breaches of orders granted by the Master on 31st August 2017, the Applicant on 27th February 2018, filed before this court an ex-parte Application moving for leave to issue Committal Proceedings under Order 52 of the High court rules 1988, supported by a statement and his affidavit verifying the statement justifying the committal of the Respondent on the alleged breaches described in paragraph 11 below.
11. Apart from obtaining leave to commence committal proceedings, the learned Counsel for the Applicant also moved for the variation of the ex-parte orders made by the Master on 31st August 2017, in order to avoid further breaches of the above orders (a),(b) & (c) stated in paragraph 8 above. The Applicant adduced the following grounds as breaches in support of his leave Application for committal and variation of Master's orders. Paragraphs 3, 4, 5 and 6 of the statement of the Applicant containing the grounds relied upon by him are reproduced below.

Grounds relied upon by the Applicant to obtain Leave for Committal and to Vary Master's Orders

3. *THAT the grounds upon which the said leave is sought are that the Respondent/Plaintiff having obtained and/or being aware of the Court orders dated and entered on 31st August, 2017 has defied and breached the said Court orders on days thereafter by carrying out the following acts:*

- i. *Authorizing and instructing Australia and New Zealand Banking Group Limited (“ANZ”) to break the term deposits of Pacific West Builders Limited (“the company”) in the sums of FJ\$900,000.00 and FJ\$600,000.00 which was accruing interest income.*
 - ii. *Making various payments for the company’s credit cards which have been used for personal expenses and which has been occurring since the date of the orders and ongoing.*
 - iii. *Making a payment to Milan Deo (being a biological child of the parties) in the sum of FJ\$9,000.00 on 22nd January, 2018.*
 - iv. *Making a payment to Sabrina Deo (being a biological child of the parties) in the sum of FJ\$9,000.00 on 22nd January, 2018.*
 - v. *Making a payment to Milan Deo (being a biological child of the parties) in the sum of FJ\$8,000.00 on 26th October, 2017.*
 - vi. *Making a payment to Sabrina Deo (being a biological child of the parties) in the sum of FJ\$8,000.00 on 26th October, 2017.*
 - vii. *Increasing director’s fees/salary to \$3,815.38 per week without consultation and applying such increment to only the Plaintiff/Respondent herself and otherwise stopping completely and later paying significantly reduced director’s fees/salaries to the Defendant/Applicant.*
 - viii. *Paying a sum of FJ\$5,000.00 to the housemaid (one ‘Sangeeta Devi’) when such payment was unwarranted, exorbitant and otherwise excessive given the said housemaid is on a fixed weekly wage.*
 - ix. *Purchasing a vehicle from abroad on 15th January, 2018 (a 2017 Holden HSV Maloo R8) for which payment was made in the sum of FJ\$146,952.30 (on 18th January, 2018).*
 - x. *Purchasing a vehicle (a 2017 Toyota Prado) registered number JJ 185 on 22nd January, 2018 at a value of roughly FJ\$170,000.00.*
 - xi. *Cancelling the Applicant/Respondent’s access and use of the company’s fuel and service cards (specifically the ‘On the Go’ Mobil Fuel card and ‘Carpenters’ card).*
 - xii. *Instructing, authorizing and utilizing the company’s equipment and vehicle for use at an unaffiliated/unrelated work site.*
 - xiii. *Refusing to allow the Applicant/Defendant access to the main company email address (being pwbl@connect.com.fj).*
 - xiv. *Instructing, authorizing and/or cancelling the Applicant/Defendant’s access to the company’s internet banking facility provided by ANZ bank.*
4. *THAT the Respondent/Plaintiff having obtained and being fully aware of the orders breached the said Court orders.*
 5. *THAT the breaches described above in (ii), (vii), (xii), (xiii) and (xiv) are continuing and is causing loss, inconvenience and disturbances to the Defendant/Applicant.*
 6. *THAT the Defendant/Applicant prays that this Honorable Court do exercise its inherent jurisdiction and that conferred upon it by order 52 of the High Court Rules 1988.*

Orders Sought by the Applicant in his favor on 28th February 2018 on the above grounds:

12. On the alleged breaches, the learned Counsel for the Applicant, by the Ex-parte summons (Application) supported before me on 28th February 2018, in addition to seeking leave for committal proceedings, moved for further orders as follows, which had the effect of varying Master's ex-parte orders granted on 31st August 2017.
- a. *The Respondent/Plaintiff be restrained from issuing any further payments for personal use (whether for herself or any other person) from company (Pacific West Builders Limited) funds.*
 - b. *The Respondent/Plaintiff be restrained from being a sole signatory to the company's bank/credit/chequing accounts and that the relevant financial institution, being Australia and New Zealand Banking Group Limited, be ordered to reinstate the Applicant/Defendant as a co-signatory to the said accounts.*
 - c. *That the relevant financial institution, Australia and New Zealand Banking Group Limited, be directed to cancel all company associated credit cards immediately and be restrained from issuing any other credit card facilities under the company accounts.*
 - d. *That the Respondent/Plaintiff be ordered to reinstate the Applicant/Defendant to his former position as an engineer of the company upon service of these orders.*
 - e. *That the Respondent/Plaintiff be ordered to compensate the Applicant/Defendant for all directors fees, salaries and/or wages that were not paid or otherwise paid in short and that such directors fees, salaries and/or wages be of an equal sum to that being received by the Respondent/Plaintiff.*
 - f. *That the relevant financial institution, Australia and New Zealand Banking Group Limited, be ordered to allow immediate internet banking access to the Applicant/Defendant without any restriction whatsoever.*
 - g. *That the Respondent/Plaintiff be restrained from instructing, authorizing and/or using any company equipment (including vehicles and supplies) for any other purpose than for official company projects.*
 - h. *That the Respondent/Plaintiff be ordered to allow immediate access to the company email address being pwbl@connect.com.fj and/or otherwise to ensure the Applicant/Defendant is copied to all company correspondences whether by email, facsimile and/or post.*
 - i. *The Respondent/Plaintiff be ordered to reimburse the company from her personal funds for the full purchase price (including all associated costs, such as import duties, excise duty and fiscal duty (if applicable) for the purchase of the two vehicles (2017 Holden HSV Maloo and 2017 Toyota Prado registered JJ 185) or alternatively to reimburse the Applicant/Defendant (from her personal funds) for half the cost of all vehicles purchased (including all associated costs, such as import duties, excise duty and fiscal duty (if applicable)).*
 - j. *The Respondent/Plaintiff be ordered to reimburse the company the sum of FJ\$5,000.00 from her personal funds for the unauthorized/unjustified payment of wages paid to Sangeeta Devi.*
 - k. *The Respondent/Plaintiff be restrained from making any further 'cash' cheques from the company accounts.*

- l. *The Respondent/Plaintiff be directed to reinvest the previous term deposits of FJ\$900,000.00 and FJ\$600,000.00 in an interest bearing term deposit account with ANZ bank at the prevailing rates.*
- m. *The Respondent/Plaintiff be directed to allow unrestricted and uninterrupted access to the Applicant/Defendant to all company properties, vehicles, work sites, project sites and be included in all company decisions of whatsoever nature.*
- n. *The Respondent/Plaintiff be restrained from committing any further breaches of the orders granted by the Court on 31st August, 2017 and these orders and to desist from any further activities which will interfere with the Applicant/Defendant's rights as a director, shareholder and employee of the company.*
- o. *The Applicant/Defendant may be at liberty to call upon the Police to render their assistance in serving and enforcing these orders.*

Orders Granted by this Court on 28th February 2018 in favor of the Applicant

13. In addition to granting of leave for committal proceedings as aforesaid, having considered the subsequent Application made by the Applicant's learned counsel for variation of Master's Orders, this court acting under the inherent jurisdiction and in the interest of justice, made the following orders varying the Master's orders made on 31st August 2017 in order to preserve the status-quo, **however, subject to the final order to be made by the Master, after the hearing pending before him** or till it is varied, amended or vacated by this Court on application being made to that effect by the parties. My orders that varied the Master's orders are as follows;

1. *An order in terms of paragraph (b) of the ex-parte application made today, as follows:*

"That the Respondent/Plaintiff be restrained from being a sole signatory to the company's bank/credit/cheques accounts and that the relevant financial institution, being Australia and New Zealand Banking Group Limited, be ordered to reinstate the Applicant/Defendant as a co-signatory to the said accounts".

2. *An order in terms of (more correctly in place of) paragraph (c) of the ex-parte application as follows:*

"That the relevant financial institution, Australia and New Zealand Banking Group Limited, is directed to suspend the operation of the credit cards in the name of the company and not to issue any new credit cards in the name of the company (Pacific West Builders Ltd)".

3. *An order in terms of Paragraph (d) as follows:*

"That the Respondent/Plaintiff is ordered to allow the Defendant/Applicant to have unrestricted access to the company premises to attend to signing of cheques and making any company related payments".

4. *An order in place of paragraph (f) as follows:*

“That the Respondent/Plaintiff be restrained from making any payments for and on behalf of the company or any other payment through the internet banking facility. If any payment by internet is warranted it shall be with the consent and concurrence of the Defendant/Applicant.”
5. *An order in terms of paragraph (g) of the ex-parte application made today as follows:*

“That the Respondent/Plaintiff be restrained from instructing, authorizing and/or using any company equipment (including vehicles and supplies) for any other purpose than for official company projects.”
6. *An order in place of Paragraph (h) as follows:*

“That the Respondent/Plaintiff is ordered to allow the Defendant/Applicant access to email address being pwbl@connect.com.fj”
7. *An order in place of Paragraph (m) as follows:*

“That the Plaintiff/Respondent shall grant uninterrupted access for the Defendant to the company premises for the purpose of complying with the order (b) above.”
8. *An order in terms of paragraph (n) of the ex-parte application as follows:*

“That the Respondent/Plaintiff be restrained from committing any further breaches of the orders granted by the Court on 31st August, 2017 and these orders and to desist from any further activities which will interfere with the Applicant/Defendant’s rights as a director, shareholder and employee of the company”.
9. *“The above orders shall be sealed and served on the Plaintiff and her Solicitors as well forthwith.*
10. *The above orders shall be in force until the Learned Master makes appropriate orders after the hearings before him or varied or amended by this Court on the application made to that effect.*
11. *The Defendant/Applicant shall not misuse any of the orders hereby granted.” (all underlining mine)*
14. The Respondent filed her affidavit dated 09th March 2018 in reply to the Applicant’s affidavit and in support of her application to discharge the additional orders made by me, for which the Applicant filed his affidavit in response dated 03rd April 2018.
15. In addition to the above, the Respondent also filed an interlocutory summons on 1st May 2018, supported by her affidavit dated 30 April 2018 with exhibit 1 to 25 moving for the vacation or stay of the orders made by me on 28th February 2018. The

Applicant filed his affidavit in response dated 16th May 2018, with the annexures MD-1 to MD-4, for which the Respondent filed her reply affidavit dated 19th May 2018, with annexures SLH-1 to SLH-03.

16. As the learned counsel for both the parties have opted to address the court on the question of setting aside of my additional orders dated 28th February 2018 at a further hearing, I shall not proceed to decide on it and confine this judgment only to the question of committal. In addition to lengthy oral submissions, the learned counsel for both the parties have filed enlightening written submissions, for which I am much grateful to them. In order to avoid verbosity, I shall not repeat the whole submissions made, instead, the relevant parts, as and when necessary, will be quoted or referred to in this judgment.

C. The Legal Framework

17. Order 52, Rule 1 of the HCR spells out the power of the court to punish for contempt of court charges. That rule provides:
1. *“(1) The power of the High Court to punish for contempt of court may be exercised by an order of committal.*
 - (2) This order applies to contempt of court –*
 - (a) Committed in connection with-*
 - (i) any proceedings before the Court; or*
 - (ii) ...;*
 - (b) Committed otherwise than in connection with any proceedings.*
 - (3) An order of committal may be made by a single Judge.*
 - (4) Where by virtue of any enactment the High Court has power to punish or take steps for the punishment of any person charged with having done anything in relation to a court, tribunal or person which would, if it had been done in relation to the High Court, have been a contempt of that Court, an order of committal may be made by a single Judge.”*

Service of the Committal Application

18. An application for an order of committal must be served personally on the person sought to be committed (HCR, O 52, R 3 (3)).
19. The Applicant's application, together with all the documents being filed on 1st March 2018, upon leave being granted, was personally served on the Respondent on 2nd March 2018, pursuant to Order 52 Rule 3 of the High Court Rules 1988 ('HCR'). There was no dispute over the service of the application or on the other procedural requirements to be followed under the rules. I am satisfied that, in this case, all the

service and other procedural requirements as laid down in HCR, O52, R2 & 3 have been duly followed and fulfilled.

20. The Respondent has been called upon to answer the charge of Contempt of Court, alleged to have been committed by her, by violating the orders made by the Master on 31st August 2017 (orders in para 8 above) through acting in the manner stated in the grounds adduced by the Applicant as shown in paragraph 11 above. The Respondent is all out to defend her on this contempt charges and it is stated that she is not guilty. Her learned counsel Mr. S. k. Ram argued that the Respondent has good reasons to have the additional orders made by this court lifted and took up the position that once the committal charge is negated, the additional orders made by this court too should extinct.

D. Burden of proof

21. As far as the burden of proof is concerned, in order to bring home a conviction, the allegation of contempt of court has to be proved beyond reasonable doubt. As the proceeding in the instant application revolves around the charges of contempt of court, for which penal sections are attracted, this court from the outset presumed that the Respondent is innocent and not guilty of the charge. It is in that backdrop this court had the hearing and perused the evidence in affidavits and documents annexed thereto.

E. The evidence:

22. I have before me, the Applicant's affidavit dated 27th February 2018, the Respondent's affidavit dated 09th March 2018, filed in reply to the Applicant's affidavit and in support of her application to set aside the orders made by me and Applicant's affidavit in response thereto dated 03rd April 2018.

In addition to the above, an affidavit dated 01st May 2018, sworn by the Respondent and filed with her motion together with exhibits marked 1 to 25, moving, *inter-alia*, for the vacation of the orders made by me on 28th February 2018, the Applicant's affidavit in response thereto dated 16th May 2018 filed with the annexures MD-1 to MD-4 and Respondent's affidavit in reply thereto dated 19th May 2018, with annexures SLH-1 to SLH-03, are before me and I have carefully examined the contents thereof.

F. The Submissions:

By the Respondent's counsel

23. For the time being, I will consider only the submissions that revolve around the committal charge, as my exercise now is limited to it. In the initial submissions, Mr. J. Sharma, then learned counsel for the Respondent, highlighted the relevant key principles laid down in number of decided authorities that govern the issue of committal, which state as follows.
- a. “To establish any contempt, the order made by the court and alleged to have been breached has to be clear, concise and unambiguous. *DK and MR (3) HBM 65 of 2008.*
 - b. The order should define what is precisely prohibited. A person should not be put at risk for contempt for an unambiguous order of the court which is not defined in a concise manner. *Philip Jagadishwar Singh V Uma Kiran Fiji Court of Appeal ABU 0018U.2001.*
 - c. The onus remains with the Applicant to show that there was a willful breach of the orders by the Respondent and the Court will require proof that on a standard of beyond reasonable doubt that there has been a willful disobedience. *Kamalesh Kumar V Dinesh Kumar & Ors HBC 245 of 2008*
 - d. The order alleged to have been breached or not complied with has to be specific, failing which contempt cannot be found or leave ought not to be granted. *Dorsami Naidu & Ors v Sadasivan Naicker & Ors Civil Action HBM 14 of 2016.*
 - e. The order alleged to have been breached, has to be clear and concise. *P.A. Thomas Co. & Ors. V Mould & Ors.[1968] 1 All ER 963.*
 - f. The power to punish for contempt must be exercised sparingly and that too in the discretion of the court. Further the order that is said to be breached has to be specifically breached by the Respondent and that too willfully and deliberately.”

Making further submissions, the learned counsel for the Respondent, referring to the statement of the Applicant and the impugned orders made by the Master, took up a stern position that;

- g. The Respondent is not guilty of deliberate and intentional non-compliance and in fact has prima facie complied with the orders of this court.
- h. There is no actual breach of any particular orders of the Master, which specifically restrained the Respondent from taking action that she had taken. There is no actual breach and the incidences of the alleged breaches ought to form part of the order.

- i. There is no direct order which prohibits the Plaintiff/ Respondent from taking such action and the Applicant, who is disgruntled by the order of the Master, being unsuccessful in his attempt to have it set aside on the ex-parte basis , is now bringing a contempt charge, and;
- j. The allegations contained in the statement do not amount to a breach to give rise to an order for contempt. As the jurisdiction has to be exercised very sparingly and only in clear and concise matters, the allegations in the statement fall short of establishing contempt.
- k. In further submissions filed on 28th May 2018, soon after the 2nd date of hearing, the learned counsel for the Respondent has dealt with each and every alleged breach. Rests of the contents in both written submissions of the Respondent are on the question of additional orders, which do not warrant consideration for the time being.

Submissions by the Applicant's Counsel

- a. Having dedicated the first half part of the written submissions on the introduction, briefing the facts and in justifying the additional orders obtained by the Applicant , in the rest of the submissions, the learned counsel for the Applicant takes up a stern position that the Respondent has blatantly violated the orders made by the Master , by acting in the manner alleged in the statement of the Applicant and thereby she has committed the offence of contempt.
- b. The learned counsel for the Applicant also bases his submissions mainly on the often recited case of *DK and MR (3) HBM 65 of 2008*, where the relevant principles that govern the offence of contempt of Court were laid in no uncertain terms. Further, learned counsel has drawn my attention to the decisions in *Abbas Ali v Choudhry & others Civil Action No. HBC 0061 of 2001* and *Rewa Co-operative Diary Company Limited v Eagle Ridge Investment Fiji Limited HBC 188 of 2004* , where His Lordship Justice A. Gates, as his lordship then was, and His lordship Pathik –J, have respectively discussed the above principles.
- c. In order to demonstrate the issues of Mens-Rea, deliberateness, knowledge and/ or Respondent's intention to breach or defy the orders made by the Master, the learned counsel for the Applicant drew my attention to the averments in paragraphs 46 and 49 of Respondent's affidavit dated 31st August 2017 filed seeking the impugned orders in her favor, which according to the learned counsel, clearly shows the basis on which the impugned Orders were obtained.
- d. Commenting on the alleged individual breaches, learned counsel states that those breaches have already been admitted by the Respondent in her affidavit and she

does not deny or otherwise fails to respond to the various allegations made against her.

- e. Replying to the position taken up by the Respondent's senior counsel at the hearing on 27th April 2018, to the effect that the orders were 'enabling orders' and not 'restrictive orders, learned counsel for the Applicant argued by saying that the such a position is misconceived as the Orders are clear and specific.
- f. Learned counsel for the Applicant argued further, that if a payment is not "just" or "in the interest of the company" or the payment is not "for the operation" of the company, then it would follow that any payment that does not fall into these categories, is in breach of these orders.

G. The Analysis and Findings:

- 24. This court is mindful that it ought to be cautious not to make any findings or comments on matters those are yet to be decided in the substantial action or in the connected cases before the Master or any other judge or forum. My exercise herein is limited only to decide whether the alleged acts on the part of the Respondent could constitute the offence of contempt of Court? In other words, whether the Respondent has challenged the authority of court by acting in contrary to or violation of the ex-parte orders made by the Master on 31st August 2017 and thereby committed the offence of contempt as alleged in the grounds adduced in the statement of the Applicant.
- 25. In paragraphs 46 and 49 of the affidavit dated 31st August 2017 filed in support of the Respondent's ex-parte summons to obtain the orders she, purportedly, needed, the Respondent deposed as follows;

*"46. **THAT** as an interim relief I believe in the interest of the company, the parties, the creditors, the company employees and statutory bodies payments due to them ought to be made on the dates that they fall due, majority of it is today, therefore I am seeking that I be allowed to execute all cheques to pay creditors, for wages to employees, making payments to clear statutory debts and all other relevant expenses of the company until the matter is finally decided"*

*"49. **THAT** I further undertake that no monies will be paid out where such payment is not required for the benefit and advancement of the company "(emphasis mine)*

- 26. It was alluding to the contents of the above paragraphs, which were in his submissions termed and referred as 'undertakings' of the Respondent, the learned counsel for the Applicant alerted the court that when the court considers the submissions of both the counsel on the alleged breaches, it is pertinent to bear those undertakings in mind as

they go to the issue of mens-rea, deliberateness, knowledge and/or the Respondent's intention to defy the orders granted on 31st August 2017.

27. On careful scrutiny of the orders (a), (b), (c) and (d) prayed for by the Respondent in her ex-parte Application and granted by the Master on 31st August 2017, except for the order (d), it appears to me that it is based on the above undertaking in the said paragraphs 46 & 49 and the other averments in her affidavit, the very orders in (a), (b) & (c) have been carefully worded by the Respondent's counsel, providing her the liberty, not only to do anything or spend on whatever she really needed for the operation of the company, but also to do anything or to spend on whatever she wanted, purporting to be needed for the operation of the company. This observation is, however, without prejudice to the Respondent's stance before the Master and his final decision in the substantial matter.
28. The impugned orders (a), (b) & (c) are only instant orders moved for purely on the ex-parte affidavit evidence and granted as prayed for. However, the learned Master, in his wisdom, made the additional order (d) above requiring the Respondent to file a fortnightly affidavit, presumably, in order to ensure the propriety and transparency of the Respondent's dealings and the expenses.
29. The specific wordings, which are highlighted in the aforesaid averments in paragraph 46, 49 of Respondent's affidavit and those wordings in the impugned orders, though *prima- facie* appeared to be restrictive or injunctive in its nature, when closely and objectively scrutinized, it suggests that these orders are liberal orders providing the Respondent unrestricted freedom to do not only what she needed for the operation of the company, but also to do and spend on whatever she wanted as well, particularly, relating to the funds of the company. The impugned Orders, to my understanding, as Respondent's counsel Mr. Sharma urged during the 1st day of hearing, permitted the Respondent to do anything for the operation of the company and it did not inhibit or restrict her from doing any specific act.
30. I, totally agree with the Applicant's learned counsel's argument that the Respondent was very well aware as to what she should and should not have done in terms of the ex-parte orders she obtained, in the light of the undertaking given by her in her supporting affidavit. But, unfortunately, I find that the impugned orders were clouded with apparent ambiguity instead of clarity and they did not specifically direct the Respondent to do or desist from doing a particular act. They appear to be only permissive orders, which allowed the Respondent to do whatever she needed and/or wanted in her capacity as a share -holder during the time material to her Application.
31. Once again I must emphasize that I am not, in an endeavor to decide the propriety of the alleged acts and/or the expenses the Respondent did and/ or made the company to

incur. It is also not my duty to engage in examining whether the alleged acts and/or expenses fall into the category of “**just**” expenses “**needed**” for the “**operation of the company**” or into the category of “**wanted**” by the Respondent. It goes without saying that the words “needs” and “wants” are different in meanings and used in different context. Deciding the question whether a particular action or expenditure is “needed” or “wanted” is a task before the Master at the substantial matter. The sole task before me now is to ascertain whether there was specific and clear order by the Master directing the Respondent to do or desist from doing something and if the answer is affirmative to the above question, whether the Respondent has in fact violated it.

32. For the sake of clarity, easy perusal, on the expense of repetition, I shall reproduce bellow the Orders prayed for by the Respondent and granted by the Master on 31st August 2017.
- a. *“That the Plaintiff is permitted to execute all payment vouchers, notes and memorandums authorizing just payments for and on behalf of the Pacific West Builders”.* (emphasis mine)
 - b. *That the Plaintiff is permitted to make and execute cheques and make payments as required for the operation of Pacific West Builders Limited.* (Emphasis mine).
 - c. *That the Plaintiff is at liberty to provide and instruct Australia New Zealand Banking Corporation of Fiji , other Commercial Banks , the Suppliers, Contractors and all Statutory entities in all matters in relation to Pacific West Builders Limited”* (Emphasis mine).
 - d. *That the Plaintiff to file an affidavit fortnightly verifying all the cheques and payments she makes from the Company account with the registry of the Lautoka High court.* (This order was not in fact moved by the Respondent- Plaintiff but given by the Master ,presumably, as a safety measure)
33. Though, the affidavits in compliance with the above order (d) have, admittedly, been filed by the Respondent till this date, the question whether all the alleged expenses in the statement of the Applicant have been duly averred therein or not has not been raised at the hearing. However, this court need not be concerned about it as it is a matter left for the Master to inquire into and decide.
34. It is to be observed that the following important questions arise, when the impugned orders (a), (b) & (c) above are carefully scrutinized. They are as to;
1. Who will decide the payments allowed to be executed by the Respondent in terms of order (a) above are “**just**” payments or not? And how it is decided?

2. Who will decide the payments allowed to be made in terms of order (b) above are “**required for the operation**” of the Pacific West Builders or not? And how it is decided?

35. In addition to the ambiguity fossilized in the orders (a) and (b) above, I am of the view that the very wordings to the effect “*in all matters in relation to Pacific West Builders Limited*” in the order (c) above, provided unrestricted liberty for the Respondent to do whatever she wanted as well in the affairs of the company without consulting the Applicant or even obtaining clarification from the Court.(emphasis mine).

36. Due to the above uncertain characteristics found in the impugned orders , it is my considered view , that this court cannot arrive at a safe finding that the alleged act or expenses done by the Respondent would certainly constitute an offence of contempt warranting this court to try the Respondent for committal as per the Applicant’s Application.

37. The final outcome of a committal proceedings need not necessarily be a conviction, just because it is alleged that a particular order has been violated or observed in breach, unless the court is satisfied that it had specifically ordered the person charged with to do an act or desist from doing act and the prosecution have it proved beyond reasonable doubt that the Respondent has blatantly violated it and the alleged breach or violation has challenged or undermined the authority of the court that made the order.

38. The claim that the alleged violation has affected the rights or interest of the Applicant does not automatically give birth to a contempt proceeding. The alleged acts complained of by the Applicant in this case may be detrimental for him as far as the rights of the Applicant in the affairs of the company are concerned, for which he may have remedies at the end of the substantial matter. But, for certain, this court cannot lend its hand in the name of committal proceedings, unless it is satisfied there was a specific order to be complied with and it was blatantly violated.

39. The ex-parte orders dated 31st August 2017 made by the Master are, by and large, few permissive orders. On the face of it, these orders appear to have been prayed for and granted in the interest of the company. However, the real motive of the Respondent in obtaining such orders is yet to be established at the hearing before the Master.

40. If the Respondent has made use of these orders to achieve her own ends, as alleged by the Applicant, he is at liberty to demonstrate it before the Master and have the redress. This court should not encroach into the domain of Master’s jurisdiction. I must emphasize that the committal proceeding is not a panacea for the predicament that has allegedly befallen on the company or the Applicant.

41. The Applicant could have immediately gone before the Master, in order to avert unfavorable consequences, if any, caused by the order dated 31st August 2017, by moving to have them varied, clarified or vacated. However, this observation is without prejudice to the option the Applicant exercised to have the above orders varied by this court at the time of obtaining the leave for committal, of which the legality and/or propriety will be decided by this court after further hearing on it.
42. The first 3 orders moved for in the summons and obtained are neither directive nor prohibitive orders. They are merely permissive orders, which seem to have given the Respondent, the authority to perform any activity warranted for the operation of the company with no clear restrictions or limits.
43. The Applicant, having found that the above orders have restricted him in company affairs and almost ousted him therefrom, leaving no room for further harm and without resorting to other remedies, chose the committal proceedings and obtained the leave for same together with other orders by this court, varying Master's orders, propriety of which will be subjected to scrutiny by this court at the next hearing.
44. The question whether the payments are just or needed for the operation of the company has to be decided by the Master at the final hearing scheduled before him. The propriety of the action performed and the expenditures made by the Respondent with the impugned orders in hand will be decided by the Master and if they are found to be exceeding the authority given, the Master will decide what the justice demands.

Individual Breaches Complained by the Applicant

45. Though, I am of the view that the reasons stated above are more than sufficient to negate the charge of contempt, for the sake of completeness, I shall briefly deal with the alleged individual acts committed by the Respondent, which were viewed and interpreted by the Applicant as violation of court orders.
 - a. The ground No (i) in paragraph 10 above was a prime ground relied upon by the Applicant for committal, which alleged about the breaking of two term deposits amounting to \$15, 00,000.00. The Respondent admitted this and averred that the said sum of Money has been brought into the current account of the company to meet the anticipated expenses of number of projects. This act is seems to be covered by the order (c) of the Master, which has given wide liberty to the Respondent. Learned counsel for the Applicant did not seriously dispute this at the hearing and has not addressed this issue in his written submissions as well.
 - b. The grounds No (ii) is on payments to credit card of the Company, which is said to have included personal expenses of not only the Respondent, but also that of

the Applicant. The grounds (iii), (IV), (V), and (VI) are said to be on payments made to the biological children of both the parties, who are said to be studying in Australia. I observe that the impugned order has not specifically prohibited the Respondent from making such payments. The Respondent has taken up the position that these expenses are also for the operation of the family business. However, the propriety of these payments can still be questioned at the relevant hearing before the Master.

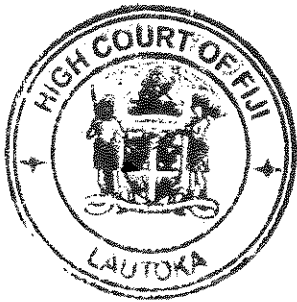
- c. The grounds (vii) is on increasing the Director's Salary for the Respondent and reducing same to the Applicant, while ground (viii) is on payment of \$ 5,000.00 to the Domestic Servant. These expenses are also not specifically prohibited or restricted by the ex-parte orders. However, the Respondent may be called upon to explain about it at the hearing before the Master.
- d. Grounds (ix) and (x) are on the expenditure incurred on purchasing two new luxury vehicles, one to be used in Fiji, while other one to be used in Australia. This seems to have caused serious concern for the Applicant, particularly raising question as to whether this falls under the category of just **expenses** and incurred **for the operation of the company**. These vehicles are said to be registered in company's name. The ex-parte orders are vague and do not clearly recognize these transactions as violation of court order to warrant committal proceedings.
- e. Ground (xi) is on cancellation of fuel cards, which too does not constitute contempt for the reasons stated above.
- f. The grounds (xii), (xiii) & (xiv) being withdrawn by the counsel for the Applicant, the orders (5) and (6) made on the above grounds have been already vacated.

H. Conclusions:


- 46. In the light of the authorities stated above, which set out the clear principles for committal, and for the reasons adumbrated above, this court stands fully convinced that no committal charges can be levelled against the Respondent on the grounds alleged by the Applicant and these grounds, in my view, do not constitute the offence of contempt of court. Hence, the contempt charge against the Respondent should necessarily fail.

I. Final Orders

1. The Application preferred by the Applicant for the committal of the Respondent is hereby dismissed.
2. The Respondent stands acquitted of contempt charges hereof.
3. There shall be a further hearing on the Application of the Plaintiff – Respondent filed on 1st May 2018 for discharge of the orders made by this court on 28th February 2018.
4. The above hearing will be held on a date convenient to both the learned Counsel for the parties and the court.
5. The Respondent shall be entitled for a summarily assessed cost of \$2,000.00 (Two thousand Fijian Dollars) payable by the Applicant in relation to committal proceedings.



**At Lautoka
24th August, 2018**


A.M.Mohammed Mackie
Judge