

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBM No. 173 of 2019

IN THE MATTER of Issuance
of Writ of Ne Exeat Civitate in
the Magistrates Court at Suva
in Civil Action No. 141 of 2019.

BETWEEN: KARTIK KAUSHIV LAL of Nakasi, Businessman

APPLICANT

AND: JOHN JITENDRA PRATAP of Lot 9 Sawau Road, Bayview Heights, Suva, Businessman.

RESPONDENT

BEFORE: Hon. Mr Justice Vishwa Datt Sharma

COUNSELS: Nand A. - for the Applicant (Defendant)
In Person - Respondent (Plaintiff)

Date of Decision: 19th June, 2020 @ 9.30 am

DECISION

*[Notice of Originating Motion seeking Orders for Setting Aside and Jurisdiction
to grant Orders in terms of Writ Ne Exeat Civitate]*

INTRODUCTION

- [1] The Applicant (Defendant) filed the Notice of Originating Motion and sought for the following orders:
- (a) The order of Magistrates Court of 19th August 2019 in Civil Action No. 141 of 2019 be set aside as being a nullity;
 - (b) The Applicant, Kartik Kaushiv Lal be completely discharged and free to leave the country whenever he likes;
 - (c) The Respondent be ordered to pay costs of this proceeding on an indemnity basis;
 - (d) That the Magistrates Court does not possess the powers to grant Orders of *Writ Ne Exeat Civitate*;
 - (e) Such further or other reliefs as the Court deem just.
- [2] On the grounds:
- (a) That the Orders of *Writ Ne Exeat Civitate* were made contrary to the principle enunciated in the Case of *Devi v Rizwan* [2009] FJHC 100 by the Resident Magistrate;
 - (b) That the Magistrates Court was without jurisdiction to issue an *Writ Ne Exeat Civitate* against the Applicant;
 - (c) That the Debt on which *Writ Ne Exeat Civitate* was sought is a common law debt and not a debt imposed by law;
 - (d) The Order was made contrary to Section 21 of the Fiji 2013 Constitution.
- [3] The Applicant (Defendant) relied on the Affidavit deposed by the Applicant, Kartik Lal.

BACKGROUND TO CASE

- [4] In the Magistrates Court, the Plaintiff (Respondent) commenced proceedings via a Writ of Summons on 18th July 2019 and claimed a sum of \$17,982.25 together with interests and costs for breach of agreement.
- [5] The Plaintiff (Respondent) also filed an Interlocutory Ex-Parte Motion seeking for various orders including an order for *Writ Ne Exeat Civitate* which was subsequently allegedly granted by the Magistrates Court on 19th August 2019.
- [6] Aggrieved by the Decision of the Learned Resident Magistrate, the Defendant (Applicant) filed the current Notice of Originating Motion and sought for the orders as set out therein and at paragraph 1 of my Ruling hereinabove.
- [7] However, I had personally called for and perused the Magistrates' Court Civil file case number 141 of 2019.
- [8] Upon perusal, I find that the Defendant (Applicant) filed an application on 4th October 2019 seeking to set aside the Default Judgment entered by the Plaintiff (Respondent) on 19th August 2019.

[9] On 12th of December 2019, the Learned Chief Magistrate whilst delivering his Ruling stated that "firstly there is the issues related to the Writ Ne Exeat Civitate that was never granted by this Court and which was wrongly sealed by Counsel. Her explanation is that she misheard the Court's orders on the day in question. This then led to the Registry sealing an Order that was not granted leading to the Defendant being stopped and deplaned at the airport. This Order has subsequently been rescinded by the Magistrate previously in carriage of this matter. This has then led to the current stage of the proceedings".

Hence, the Learned Chief Magistrate proceeded to set aside the Default Judgment entered against the Defendant (Applicant) on 19th of August 2019. He made further directives in the matter and the action to take the normal cause of action.

[10] Above being the case in particular taking into consideration the Learned Chief Magistrate's Ruling that the Orders of 19th of August 2019 in Civil Action No. 141 of 2019 has been set aside and the issue related to the Writ Ne Exeat Civitate was never granted by the Magistrates' Court and wrongly sealed by the Magistrates' Court; therefore this Court cannot make a finding that the Magistrates' Court does not possess the powers to grant Orders of Writ Ne Exeat Civitate since no order in respect of Writ Ne Exeat Civitate was made by the Magistrates' Court.

[11] In conclusion, the Notice of Originating Motion filed by the Applicant (Defendant) seeking various Orders made by the Court on 19th August 2019 in Civil Action No. 141 of 2019 is accordingly refused.

[12] Although the matter proceeded to hearing it is only appropriate that this Court in light of the Orders sought by the Applicant (Defendant) does not make any Order for costs. Each party to bear their own costs.

ORDERS

- i. Orders sought by the Applicant (Defendant) on the Notice of Originating Motion is declined.
- ii. Each party to bear their own costs.

DATED AT SUVA THIS 19TH DAY OF JUNE, 2020



VISHWA DATT SHARMA
JUDGE
SUVA

cc: Kohli & Singh, Suva
John Jitendra Pratap, Suva