

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Case No: HBC 59 of 2018

BETWEEN: **JOSAIA VOREQE BAINIMARAMA** of New Wing, Government Buildings, Suva, Prime Minister of the Republic of Fiji.

FIRST APPLICANT

A N D: **AIYAZ SAYED-KHAIYUM** of Suvavou House, Victoria Parade, Suva, Minister of Economy and Attorney- General of Fiji.

SECOND APPLICANT

A N D: **AMAN RAVINDRA – SINGH** of Tukani Street, Lautoka, Fiji, Barrister and Solicitor.

RESPONDENT

Appearance : Mr. Devanesh Sharma with Ms. Gul Fatima for the Applicants.
Respondent appeared in person

Hearing : Monday, 13th June, 2022 at 10.00am

Decision : Thursday, 28th July, 2022 at 9.00am

DECISION

(A). INTRODUCTION

[1]. Pursuant to leave granted on 12.10.2020, the applicants on 15.10.2020 filed notice of motion pursuant to Order 52, Rule 3(1) of the High Court Rules, 1988 seeking the grant of the following orders:-

- *That the applicants be granted an Order of committal against the respondent, Aman Ravindra-Singh.*
- *An Order that the respondent Aman Ravindra-Singh do pay the costs of and incidental to this application to be taxed if not agreed.*
- *And such further or other orders and directions as may be appropriate for this court to make.*

[2]. The grounds upon which the order of committal is sought are that; (in verbatim).

“For failure to obey a court order sealed on 28th July 2020 and served on 01st August 2020 whereby the respondent was ordered to publish an immediate apology and also pay a sum of \$120,000.00 as damages within 30 days from 28th July 2020”.

(B). BACKGROUND

- [3]. On 09.09.2020, the applicants sought leave under Order 52, Rule 2 to institute committal proceedings against the respondent. The application was made ex-parte.
- [4]. The application for leave was supported by an affidavit and a statement which sets out the grounds for committal.
- [5]. Leave was granted on 12.10.2020.
- [6]. As stated, a motion pursuant to Order 52, Rule 3(1) of the High Court Rules, 1988 was filed on 15.10.2020 where the hearing of the committal was set down for 25.10.2020 within the 14 day timeline.
- [7]. On 25.10.2020, the court extended the hearing date because personal service could not be effected on the respondent.
- [8]. The court allowed the applicants’ time to serve the respondent. Since the applicants could not serve the respondent, an application was made on 05.11.2020 to effect personal service through substituted service. This was allowed under Order 10, Rule 2 of the High Court Rules, 1988.
- [9]. On 09.11.2020, the court granted leave to serve the documents by way of substituted service.

- [10]. The service was effected by way of substituted service on 20.11.2020. The respondent did not enter an appearance on 01.12.2020. The court adjourned the committal hearings for 16.03.2021.
- [11]. On 16.03.2021, the respondent entered an appearance and raised a preliminary objection. On 01.04.2021, the court delivered the ruling and the court overruled the preliminary objection. The respondent did not enter an appearance on 01.04.2021 and 06.05.2021.
- [12]. The respondent again entered an appearance on 28.10.2021. The respondent sought 28 days to file Affidavit in Opposition. The court granted 28 days for the respondent to file Affidavit in Opposition to the committal application. The hearing was again adjourned for 18.01.2022. The respondent did not file affidavit in opposition to the committal application. The respondent again defaulted appearance on 18.01.2022 and the hearing was adjourned for 25.02.2022 and eventually to 13.06.2022.
- [13]. On 13.06.2022, the respondent took his plea. He pleaded not guilty to the alleged contempt. The respondent chose not to give oral evidence under oath explaining his position to the alleged contempt. Both parties made oral submissions. The respondent sought 14 days to file written submissions. The court granted 14 day time for the respondent to file written submissions. But he chose not to file written submissions.

(C). THE AFFIDAVITS FILED

- [14]. The evidence before me is all on affidavits:
- The affidavit of the second applicant sworn on 28.08.2020 and filed on 09.09.2020.
 - The supplementary affidavit of the second applicant sworn on 07.10.2021 and filed on 08.10.2021.
- [15]. I note with concern that the respondent chose not to file an opposition to the alleged contempt despite he was given 28days on 28.10.2021.

(D). **THE LAW**

- [16]. There is no statute law in Fiji dealing with contempt and it is the common law principles that have been applied in the cases that have dealt with the subject of contempt.
- [17]. There have been four instances in Fiji, where contempt was considered. They are:
- **Vijaya Paramanandan v A.G.**¹
 - **Chaudhry v AG.**²
 - **Re Application by the A.G of Fiji.**³
 - **Re Chaudhry.**⁴
- [18]. In Paramanandan, the material relied upon as constituting contempt was contained in a speech made at a political meeting and in a pamphlet distributed which were derogatory. The Supreme Court convicted the contemnor.
- [19]. In Chaudhary, the contemnor published a pamphlet which repeated suggestions that some Judges and Magistrates were corrupt. Mr. Chaudhary was subsequently convicted of Contempt of Court.
- [20]. In Re Application by the A.G OF Fiji, involved an instance where Fiji Times had published in their newspaper a letter sent to the editor by a person purporting to be from Queensland, Australia. Contempt proceedings were taken against Fiji Times, the publisher and the Editor and on their pleading guilty they were convicted and sentenced.
- [21]. In Re Chaudhry the respondent's Facebook posts were intended to convey that the Chief Justice and the entire Fijian Judiciary is corrupt, pliant, bias towards the Fijian Government. The respondent was convicted and sentenced.
- [22]. Order 52 of the High Court Rules 1988, as amended ('HCR') are relevant to the committal proceedings.

¹ [1972] 18 FLR 90

² [1999] FJHC 28.

³ [2009] Civil Action No. 124 of 2008 [Judgment – 22.01.2009].

⁴ [2019]FJHC 306

Committal

Committal for contempt of court (O.52, R1)

- (1) The power of the High Court to punish for contempt of court may be exercised by an order of committal.
- (2) The Order applies to contempt of court –
 - (a) Committed in connection with –
 - (i) Any proceedings before the court; or
 - (ii) Proceeding in an inferior court;
 - (iii) Committed otherwise than in connection with any proceedings
- (3) An Order of committal may be made by a single judge;
- (4)

[23]. Application for committal (O.52, R2)

- (1) No application for an order of committal against any person may be made unless leave to make such application has been granted in accordance with this rule.
- (2) An application for leave must be made ex parte to a judge in chambers and must be supported by;
 - (a) A statement setting out the name and description of the applicant;
 - (b) The name, description and address of the person sought to be committed; and
 - (c) The grounds on which the committal is sought and
 - (d) An affidavit to be filed before the application is made verifying the facts relied.
- (3) The applicant must give notice of the application for leave not later than preceding day to the Registry and must at the same time lodge at the Registry copies of the statement and affidavit.

[24]. **Application for order after leave to apply granted (O.52, R.3)**

The above Order 52 rule 3 provides for the application for the order for committal after leave to apply is granted. Sub rule 1 of Rule 3 requires the application for committal be by way of motion and all applications under Order 52 rule 3(3) must be served personally to the person sought for committal.

Order 52 rule 5(3) provides no grounds shall be relied upon at the hearing except on the grounds set out in the statement under rule 2.

[25]. The onus of proof in contempt of court proceedings is on the mover of the motion. The proof is to be established to the standard applying in the criminal courts namely proof beyond reasonable doubt.

See; * **Barclays de Zoete Wedd Securities Ltd and Others v Nadir**⁵

* **Dean v Dean**⁶

* **Vijay Kumar v Shiu Raj & Anor**⁷

* **Shalini v Basanti**⁸

* **Natural Waters of Viti Ltd v Crystal Clear Mineral Water**⁹

(i) Where, as here, the contempt alleged is of disobedience to a court order the accused contemnor must be shown to have willfully disobeyed the order, an unintentional act of disobedience is not enough (See, **Steiner Products Ltd & Anor v Willy Steiner Ltd (1966) 1 WLR 986, Ali v Chaudary (2004) FJHC 119**).

(ii) The Court of Appeal in '**Fairclough v Manchester Ship Canal Co. (1897) WN 7** said;

"In these cases, casual, or accidental and unintentional disobedience to an order of the court is not enough to justify either sequestration or committal; the court must be satisfied that a contempt of court has been committed in other words, that its order has been contumaciously disregarded."

(iii) The power is discretionary and it is to be exercised sparingly.

⁵ (1992) TLR 141

⁶ (1987) FLR 517

⁷ (Unreported) Suva High Court Action No. HBM 0026.005

⁸ (2003) FJHC 63

⁹ (2005) FJCA 46

- * Bokini v State¹⁰
- * Shamdasani v King Emperor¹¹

(E). **CONSIDERATION AND THE DETERMINATION**

[01]. The statement filed by the applicants on 09.09.2020 pursuant to Order 52, Rule 2(2) of the High Court Rules, 1988 sets out the grounds for committal as follows:

“For failure to obey a court order sealed on 28th July 2020 and served on 01st August 2020 whereby the respondent was ordered to publish an immediate apology and also pay a sum of \$120,000.00 as damages within 30 days from 28th July, 2020.”

[02]. On 30.07.2020, the Hon. Justice Seneviratne delivered Judgment in summons for assessment of damages filed by the applicants’ solicitors. The following orders were made in the judgment.

1. *The defendant is ordered to pay the plaintiffs \$120,000.00 as damages (\$60,000.00 to each plaintiff) within 30 days from the date of this judgment.*
2. *The defendant is ordered to render in writing a public retraction and apology to the plaintiffs in prominent print which is to be published on his Face Book page and in all local daily newspapers.*
3. *The defendant is ordered to remove the subject article from his Face Book page immediately.*
4. *The plaintiffs are entitled to 6% interest on the sum awarded from 07th March 2018 to the date of the judgment.*
5. *The defendant is also ordered to pay the plaintiffs \$8,000.00 as costs (summarily assessed) of this action within 30 days from the date of the judgment.*

¹⁰ (1999) FJCA 60

¹¹ (1945) AC 264

- [03]. On 30.07.2020, Suva High Court Registry sealed Orders delivered in his Lordship J Seneviratne's judgment and on 01.08.2020, applicants' solicitors bailiff served the respondent with the sealed orders. The affidavit of service of the bailiff is annexure marked "D" referred to in the affidavit of the second applicant sworn on 27.08.2020.
- [04]. To date, the respondent has not complied with the orders made in his Lordship's Judgment.
- [05]. As per Order (2) of His Lordship's Judgment, the respondent had been ordered to render in writing a public retraction and apology to the applicants in prominent print which is to be published on his Facebook page and in all local daily newspapers. To date no apology is published. To date no apology is offered.
- [06]. On 04.08.2020, i.e, **three days after being served with the sealed orders**, the respondent posted the following post on his Facebook referring to the second applicant, with laughing emoticon and with a thinking face emoticon.

"Please accept my apologies for wishing you a Happy New Year – I had no clue about Corona Virus and its negative impact on earth.

- [07]. It is reasonable to infer that the readers of the post are aware that there is a court order in place for respondent to render an apology. The respondent's Facebook post dated 04.08.2020 is calculated to ridicule the court and this post is adding insult to the injury already caused to the applicants.
- [08]. As noted earlier, the committal proceedings were served on the respondent on 20.11.2020. The respondent has continued to post the following on his Facebook and used the hashtags #violentvoreqe and #korruptkaiym when referring to the applicants (Reference is made to paragraphs (11) to (48) of the unchallenged affidavit evidence of the second applicant sworn on 07.10.2021).

11. *The following thirty-one (31) posts are annexed hereto and marked as follows:*

- | | | | |
|-------------|--|----------|-------------------|
| <i>i.</i> | <i>Post dated 13th October 2020</i> | <i>-</i> | <i>Annexure 2</i> |
| <i>ii.</i> | <i>Post dated 16th October 2020</i> | <i>-</i> | <i>Annexure 3</i> |
| <i>iii.</i> | <i>Post dated 21st October 2020</i> | <i>-</i> | <i>Annexure 4</i> |

iv.	<i>Post dated 1st November 2020</i>	-	<i>Annexure 5</i>
v.	<i>Post dated 25th November 2020</i>	-	<i>Annexure 6</i>
vi.	<i>Post dated 19th December 2020</i>	-	<i>Annexure 7</i>
vii.	<i>Post dated 21st December 2020</i>	-	<i>Annexure 8</i>
viii.	<i>Post dated 4th February 2021</i>	-	<i>Annexure 9</i>
ix.	<i>Post dated 5th February 2021</i>	-	<i>Annexure 10</i>
x.	<i>Post dated 6th February 2021</i>	-	<i>Annexure 11</i>
xi.	<i>Post dated 11th February 2021</i>	-	<i>Annexure 12</i>
xii.	<i>Post dated 15th February 2021</i>	-	<i>Annexure 13</i>
xiii.	<i>Post dated 20th February 2021</i>	-	<i>Annexure 14</i>
xiv.	<i>Post dated 3rd March 2021</i>	-	<i>Annexure 15</i>
xv.	<i>Post dated 20th April 2021</i>	-	<i>Annexure 16</i>
xvi.	<i>Post dated 6th May 2021</i>	-	<i>Annexure 17</i>
xvii.	<i>Post dated 26th May 2021</i>	-	<i>Annexure 18</i>
xviii.	<i>Post dated 4th June 2021</i>	-	<i>Annexure 19</i>
xix.	<i>Post dated 10th June 2021</i>	-	<i>Annexure 20</i>
xx.	<i>Post dated 12th June 2021</i>	-	<i>Annexure 21</i>
xxi.	<i>Post dated 14th June 2021</i>	-	<i>Annexure 22</i>
xxii.	<i>Post dated 4th July 2021</i>	-	<i>Annexure 23</i>
xxiii.	<i>Post dated 11th July 2021</i>	-	<i>Annexure 24</i>
xxiv.	<i>Post dated 30th July 2021</i>	-	<i>Annexure 25</i>
xxv.	<i>Post dated 5th August 2021</i>	-	<i>Annexure 26</i>
xxvi.	<i>Post dated 19th August 2021</i>	-	<i>Annexure 27</i>

- xxvii. Post dated 9th September 2021 - Annexure 28
- xxviii. Post dated 15th September 2021 - Annexure 29
- xxix. Post dated 16th September 2021 - Annexure 30
- xxx. Post dated 24th September 2021 - Annexure 31.

12. *The posts contain a barrage of serious and malicious allegations against the First Applicant and myself. To this day, not a single iota of evidence has been provided by the Respondent to prove his allegations.*
13. *In the post marked **Annexure 2**, the Respondent refers to Fiji's 50th anniversary of independence and alleges that the First Applicant and I, referred to as **#ViolentVoreqe** and **#KorruptKaiyum**, have led Fiji to bankruptcy and ruin. He refers to us as idiots and questions what we celebrated on 10th of October 2020, i.e., Fiji Day.*
14. *In the post marked **Annexure 3**, the Respondent refers to a decision made by Fiji Airways with respect to the employment of its workers and alleges that the First Applicant has lied. The Respondent states in his post **"U know u live in a dictatorship when PM lies to public — Fiji Airways workers were terminated by the board and not — #KorruptKaiyum"**.*
15. *In the post marked **Annexure 4**, the Respondent refers to the occasion on which the First Applicant was awarded Fiji's 50th Anniversary of Independence Commemorative Medal by his Excellency the President of Fiji for eminent achievement and merit of the highest degree to Civil Service, diplomacy and Government. The Respondent states in his post, **"In Fiji coup leaders are glorified and presented with medals. [...] Fiji PM #ViolentVoreqe below receives his medal from the President. Citation should have read:- For committing treason, sedition, murder, torture and other serious criminal offences"**.*
16. *In the post marked **Annexure 5**, the Respondent refers to the 11pm to 4am nation-wide curfew and states **"#KorruptKaiyum says curfew will not be lifted any time soon" This curfew provides security & protection to these corrupt few!"**.*

17. In the post marked **Annexure 6**, the Respondent refers to the nation-wide curfew and again refers to the Applicants as corrupt. He states in his post ***“Life in a Dictatorship: The national curfew allows the corrupt regime, #KorruptKaiyum & #ViolentVoreqe to sleep peacefully!”***
18. In the post marked **Annexure 7**, the Respondent refers to Tropical Cyclone Yasa and alleges that the First Applicant is providing empty words to victims of the natural disaster. He states in his post ***“#ViolentVoreqe: Victims of TC Yasa do not need your empty words — the victims need food and water now. #TalksCheap #CycloneReliefNow”***.
19. In the post marked **Annexure 8**, the Respondent again refers to Tropical Cyclone Yasa and includes a photograph of the First Applicant sitting in a briefing session with a Member of Parliament. In the post, the Respondent states, ***“[...] Look at the photo below - There are at least ten (10) bottles of bottled water in front of PM #ViolentVoreqe. Something is surely not right when the PM gets to enjoy so many bottles of water with his sidekick, This is happening while at the same time thousands of our people who are victims of Cyclone Yasa are thirsty and desperately waiting for food and water supplies”***.
20. The Respondent ends the post with a number of hashtags, some of which are as follows:
- ***#TalksCheap***
 - ***#StupidyHasNoLimit***
 - ***#idioticleadership***
 - ***#TheMostCorruptFijiGovernmentInOurHistory***
21. In the post marked **Annexure 9**, the Respondent states ***“The deportation of Professor Ahluwalia and his wife by #KorruptKaiyum and #ViolentVoreqe is equivalent to the act of Nazi’s and their Gestapo”***.
22. In the post marked **Annexure 10**, which the Respondent has titled ***“Regime Human Rights Violations - illegal Deportation”***, he states ***“The only reason Professor Pal Ahluwalia and his wife were illegal declared prohibited immigrants and deported from Fiji by #KorruptKaiyum and #ViolentVoreqe***

*was due to the Professor exposing massive financial abuse, financial mismanagement and corruption at the University of the South Pacific". The Respondent goes on to state "Understand one fact - the moment of speaks the truth in Fiji, you will be targeted and the dictators **#KorruptKaiyum** and **#ViolentVoreqe** will go to great lengths to silence you. Your silence is the fuel to everything that is wrong in Fiji. You silence is the oxygen for this **Korrupt & Brutal government"**.*

23. *In the post marked **Annexure 11**, the Respondent states that he would like to deport the Applicants. Again, he refers to us as **#KorruptKaiyum** and **#ViolentVoreqe**.*
24. *In the post marked **Annexure 12**, which the Respondent has titled "**Sad Day for the Criminal Justice System**", the Respondent refers to the amendments to the Criminal Procedure Act and makes a number of allegations against the Second Applicant. Some of these allegations read, "**Without proper consultation and without engaging real stakeholders, #KorruptKaiyum continues making irrational, incompetent and pathetic decisions which continues to expose his stupidity at the highest levels"**.*
25. *The Respondent also makes allegations regarding my experience as a barrister and alleges that "**#KorruptKaiyum has no clue about, what is involved and what is entailed in a High Court criminal trial in the presence of assessors"**.*
26. *In the post marked **Annexure 13**, the Respondent states "**This is Hilarious. #KorruptKaiyum walks around with 20 bodyguards and yet is scared of one Facebook post! **#CoupFreeFiji**". The Respondent published this post after a Facebook user was charged with one count of causing harm by posting electronic communication. In the said post, the Facebook user has allegedly called for my killing and has stated that I will be killed.***
27. *In the post marked **Annexure 14**, the Respondent states that "**#KorruptKaiyum & #ViolentVoreqe's biggest achievement - leading the most Korrupt government in Fiji's history! **#IAmAWitness"**.***
28. *In the post marked **Annexure 15**, the Respondent states "**Suddenly #KorruptKaiyum says "we have the capacity to pay for COVID- 19 vaccines" - THAT IS ONE BIG FAT LIE"**.*

29. In the post marked **Annexure 16**, the Respondent again uses the, hashtags **#ViolentVoreqe** and **#KorruptKaiyum** and states **“Just like that #ViolentVoreqe and #KorruptKaiyum’s bubble burst!”**.
30. In the post marked **Annexure 17**, the Respondent titles his post **“Fiji Government is Broke & Financially Crippled”** and states therein **“[...] Photo below moments after the agreement for direct budget “[...] Photo below moments after the agreement for direct budget, support was signed by the Australian High Commissioner and Fiji’s dictator and Minister for Everything including Minister for Mismanaging the Economy #KorruptKaiyum (Showing signs of temporary relief)”**. The Respondent also included the following it hashtags:
- “#CoupFreeFiji
#FijiGovernmentIsBroke
#FijiGovernmentIsFinanciallyCrippled
#FijiGovernmentStopTheTorture
#FijiGovernmentStopHumanRightsViolations
#FijiGovernment WhereIsTheMissionMillions
#MostCorruptFijiGovernmentInHistory”**
31. In the post marked **Annexure 18**, the Respondent states **“Fiji government failures continue under #KorruptKaiyum & Party - We cannot afford Covid19 vaccine so we wait for handouts!”**
32. In the post marked **Annexure 19**, the Respondent states **“I would like to see the two dictators #ViolentVoreqe & #KorruptKaiyum survive on \$50 each over 7 weeks! #OurPeopleAreHungry’**.
33. In the post marked **Annexure 20**, the Respondent states **“#KorruptKaiyum wiping rotten eggs from his face! Illegally deported Professor Ahluwalia again appointed USP VC. #TrustWinsOverEvil”**
34. In the post marked **Annexure 21**, the Respondent titles this post it **“Peoples Power”**and states therein **“[...] While Our People Continue to Starve During Lockdown #KorruptKaiyum & #ViolentVoreqe continue to pay \$38 Million per month for empty Fiji Airways planes parked at Nadi Airport”**. The Respondent also included the following hashtags:

***“#OurPeopleAreStarving
#RegimeLiesOnADailyBasis
#WhereAreFoodRations
#MillionsSpentOnEmptyPlanesWhilePeopleStarve
#LifeInDictatorship
#BrokeGovernmentOnlyCareForThemselves
#iamawitness”***

35. In the post marked **Annexure 22**, the Respondent again titles this post **“Peoples Power”** and repeats the content in his earlier post, i.e. [...] **While Our People Continue to Starve During Lockdown #KorruptKaiyum & #ViolentVoreqe continue to pay \$38 Million per month for empty Fiji Airways planes parked at Nadi Airport”**. The Respondent also adds the same hashtags as his earlier post:

***“#OurPeopleAreStarving
#RegimeLiesOnADailyBasis
#WhereAreFoodRations
#MillionsSpentOnEmptyPlanesWhilePeopleStarve
#LifeInDictatorship
#BrokeGovernmentOnlyCareForThemselves
#iamawitness”***

36. In the post marked **Annexure 23**, the Respondent states **“Calls for #IKorruptKaiyum to resign. I oppose that. I say let him continue to ruin Fiji. #CriminalsRunFiji #CoupFreeFiji”**.
37. In the post marked **Annexure 24**, the Respondent states **“This forced vaccination by #KorruptKaiyum & #ViolentVoreqe is unconstitutional & illegal - #SayNoToForcedVaccination’**. The Respondent has also in his capacity as a lawyer, represented certain parties and filed an application for leave to apply for Judicial Review in respect of the statutory provisions of the Health and Safety at Workplace (Amendment) Regulations of 2021.
38. In the post marked **Annexure 25**, the Respondent states **“While the nation is on its knees devastated by Covid19 - #KorruptKaiyum & #ViolentVoreqe focus on Land Bill No. 17. #CoupFreeFiji”**.

39. In the post marked **Annexure 26**, the Respondent states **“Question: What were you thinking by supporting CRIMINALS #KorruptKaiyum & #ViolentVorege to run Fiji’s government? #CriminalsRunFiji”**.
40. In the post marked **Annexure 27**, the Respondent titles this post **“Korrupt Khaiyum and his Mafia at Work”**. The post reads in part **“#KorruptKaiyum says he will not release money as grants to USP [...] and “My questions to #KorruptKhaiyum [...]”**. The Respondent ends this post with the following hashtags:
- “#CriminalsRunFiji
#FijiMafia
#CoupFreeFiji”**
41. In the post marked **Annexure 28**, the Respondent titles this post **“Terrorists Celebrate In Fiji”**. The post reads in part **“#ViolentVorege appears very confused on the day [Un-Constitutional Day] appointed to celebrate their terrorist achievements with #KorruptKaiyum”**. The Respondent ends this post with the following hashtags:
- “#CoupFreeFii
#TerroristsRunFiji
#CriminalsRunFiji
#FijiMafiaControlFiji
#IamA Witness**
42. In the post marked **Annexure 29**, the Respondent states **“Only in Dictatorship - Fiji Bureau of Statistics CEO terminated by: #KorruptKaiyum for exceeding scope of data collection - Seriously!”**
43. In the post marked **Annexure 30**, the Respondent states **“#KorruptKaiyum just added Chief Executive - Bureau of Statistics to his long list of self appointed titles. #LifeInADictatorship”**
44. In the post marked **Annexure 31**, the Respondent states **“Life in a Dictatorship U know you live in a dictatorship when all laws are made & passed by one man #KorruptKaiyum. #CoupFreeFiji!”**

45. *I believe that the above posts show a continued and deliberate defiance of his Lordship's Orders and the decision of the High Court of Fiji. The allegations made by the Respondent have caused further damage to our reputations not only in our Capacities as Prime Minister, Attorney General and Members of Parliament, but also in our personal capacities.*
46. *The Respondent is a Legal Practitioner, a practicing Barrister and Solicitor in the Fijian Courts. I believe that as a Legal Practitioner, the Respondent would know the consequences of blatantly breaching Court Orders and further, know the consequences of aggravating a matters by making further defamatory postings.*
47. *The initial defamatory article contained the words "**KorruptKaiyum**" and "**ViolentVoreqe**" and the Court has adjudicated on these terms as being defamatory toward the Applicants.*
48. *The Respondent's continued usage of these terms and further a baseless and serious allegations against the Applicants shows his complete and utter disregard of the Orders of the Court. Such conduct is malicious and contumelious. I also request the Court to note the inciteful language and all other hashtags used by the Respondent.*

[Emphasis added]

- [09]. The respondent did not file an affidavit in answer. The affidavit of the second applicant sworn on 07.10.2021 went unanswered. It is fair to say that the respondent should reply if indeed he had a reply. And in the circumstance of this case and in the absence of a reply and defence I hold the inference inescapable that what the applicant have said to be true. (See; **Jai Prakash Narayan v Savita Chandra**¹²).
- [10]. It is quite apparent to me from the unchallenged affidavit evidence of the applicants that the respondent **repeated and persisted** in positing posts on his Facebook referring to the applicants, after J. Senevirante's orders were served on him and after committal proceedings were served on him.
- [11]. The initial defamatory article contained the words "korruptkaiyum" and "violentvoreqe" and Justice Seneviratne has adjudicated on these terms as being defamatory towards the applicants. The respondent continued usage of these

¹² Civil Appeal No:- 37 of 1985, date of Judgment 08.11.1985

libellous terms on the Facebook posts despite being fully aware of the order of J. Seneviratne and contempt proceedings.

- [12]. The penal notice on the copy of the order served on the respondent clearly states that *“if you disobey the order, you will be liable for process of execution for the purpose of compelling you to obey the same”*. This satisfies me that the respondent was well aware of the consequence of the disobedience. The resulting position of this would be that it is no defence to say that the respondent did not intend to disobey the court order.
- [13]. Mens Rea (intention) is not an element of contempt of court charges. The supreme court in the **Fiji Times Ltd v A.G**¹³ said at para 47 that *“In any event, it is well established that under the common law mens rea is not an element of the offence of contempt of court and that is the position in Fiji.”*
- [14]. In the light of the respondent’s full awareness of the Justice Seneviratne’s order and contempt proceedings, I hold that the disobedience to the orders of the court was not casual, or accidental and unintentional.
- [15]. **In my judgment the respondent’s conduct is intentional and is a far cry from a piece of breath – taking insouciance. There is a deliberate failure to comply with the orders of the court. The evidence of the case demonstrated not only that he acted in wholesale disregard of his obligations under the orders of the court. His wholesale flagrant, repeated and persistent disregard of his obligations under the orders of the court, coupled with an awareness of the consequence can properly be regarded as ‘contumelious’ conduct. I think, he had, at the least, been reckless as to the consequences of his conduct and on general principles that was enough to establish that his disregard of his obligations under the orders of the court had been intentional and contumelious. Therefore, the consequences of contumely should follow.**
- [16]. The court has no doubt at all that the unchallenged Facebook posts subject to this proceedings show a continued and deliberate defiance of His Lordship’s orders and the decision of the High Court of Fiji.
- [17]. In the light of the respondent’s full awareness of the orders of J. Seneviratne and contempt proceedings, I hold that the disobedience to the order of the court was **not** casual, or accidental and unintentional.
- [18]. The respondent is a legal practitioner, a practicing Barrister and a Solicitor in the Fijian Courts. As a legal practitioner, the respondent would know the consequences

¹³ 2017 FJHC 13 at para 47

of blatantly breaching court orders and further, know the consequences of aggravating matters by making further defamatory postings.

[19]. Facebook posts are easily accessible to any member of public including people in Fiji who has Facebook accounts.

[20]. This is what I found on the unchallenged affidavit evidence ; any ordinary reader who read the Facebook posts of the respondent would deduce from that they were intended to convey that the applicants are corrupt. As Justice Seneviratne held this is libellous. The allegations made by the respondent against the applicants in the Facebook posts are calculated to cause damage to the applicants' personal integrity, professional reputation, honour, courage, loyalty and the core attribute of their personality and is calculated to bring the court and the judge into contempt, or to lower its authority and there is a real risk of undermining public confidence in the administration of justice. The inferences arise from the Facebook post tend to detract from the authority and influence of judicial determinations and posts calculated to impair the confidence of the people in the courts' judgments because the posts aims at lowering the authority of the court as a whole or that of its Judges and excites misgivings as to the integrity, propriety and impartiality brought to the exercise of the Judicial Office. **Faced with such defiance, I would be failing in my duty if I do not uphold the authority of the court.**

[21]. Fiji is a democratic state constitutionally based on the rule of law. In order to enable the judiciary to discharge its primary duty to maintain a fair and effective administration of justice, it follows that the judiciary must as an integral part of its constitutional function have the power and the duty to enforce its orders and to protect the administration of justice against contempt which are calculated to undermine it.

[22]. It is permissible to take into account that on a small Island such as Fiji the Administration of Justice is more vulnerable. The need for the offence of scandalizing the court on a small Island is greater. See;

- **Feldman, Civil Liberties & Human Rights in England & Wales**¹⁴
- **Barendt, Freedom of speech**¹⁵

[23]. The respondent (an officer of the court) repeated and continued posting Facebook posts on his Facebook after he was being served with the sealed order of J. Seneviratne and after he was being served with the committal proceedings. The

¹⁴ [1993] pp 746 - 747

¹⁵ [1985] pp.218 - 219

respondent on his Facebook posts used the hashtags “violentvoreqe” and “korruptkaiym” after being fully aware that J. Seneviratne in his judgment has held that the words “violentvoreqe” and “korruptkaiym” are libellous. The conduct of the respondent constitute contempt scandalizing the court.

- [24]. If permitted and repeated, the activities of the respondent (an officer of the court) will have a tendency to lower the authority of the court and weaken the spirit of obedience to the law.
- [25]. It is necessary for the purpose of maintaining public confidence in the administration of law that there shall be some certain and immediate method of repressing libellous imputations upon the applicants and defiant words upon the courts of justice which, if continued, are likely to impair their authority.
- [26]. Of course I do not deny for a moment that courts should be the subject of free criticism. All I am saying is that it is equally important that the dignity and authority of the courts should be maintained. It is the reconciliation of these two principles that involves the difficulty.
- [27]. I think that, if a repetition of the kind of libellous imputations and defiant words made in the present case by an officer of the court are allowed, public confidence in the court would in the end be undermined. Respect for the rule of law is an essential element of our civil society and that necessitates obedience to the orders of the court.
- [28]. In **Re Arundhat Roy**¹⁶ the Supreme Court of India held:

“... any criticism of the judicial institution couched in language that apparently appears to be more criticism, but ultimately results in undermining the dignity of the courts cannot be permitted when found having crossed the limits and has to be punished.”

- [29]. In my view, the respondent’s Facebook posts clearly risk undermining public’s confidence in the administration of Justice. This is a serious contempt that is intolerable and has crossed the limits. My decision in this contempt proceedings should justify both in terms of enforcing respect for the orders of the court, and therefore for the rule of law and also, as a last resort, to coerce the respondent into complying with court orders. It is the duty of the court to protect the public against every attempt to overawe or intimidate the court by insult or defamation or to **deter**

¹⁶ [2022] 3 SCC 343 at 352

actual and prospective litigants from complete reliance upon the courts administration of justice¹⁷.

[30]. The application will be listed on a date to be fixed for mitigation and the penalty to be imposed must reflect:

- [1]. **Denunciation** (to drive home the point that such behavior is unacceptable)
- [2]. **Specific deterrence** (to prevent a recurrence of such behavior)
- [3]. **General deterrence** (to signal to others that such behavior will be dealt with severity)


CONCLUSION

[01]. I am satisfied beyond reasonable doubt that the respondent is in contempt of the court's orders sealed on 28.07.2020.

[02]. The respondent is found guilty of contempt of court. I convict the respondent for contempt of court.

[03]. I invite counsel's submissions on sentence.




28/07/2022
Jude Nanayakkara
JUDGE

High Court - Suva
Thursday, 28th July 2022

¹⁷ In Re Sarbadhicary (1906) 23 TLR 180 at 182

R v Gray [1900] 2 Q.B 36 at 40 and Rv Editor of the New Statesman; Ex parte Director of Public Prosecutions [1928] 44 TLR 301