

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 171 of 2018

BETWEEN : **SAREN PATEL** of Ucuwai, Nadi, Fiji, Businesswoman.

PLAINTIFF

AND : **SAUD MINAM** Chief Executive Officer of Fiji Development Bank of 360
Victoria Parade, Suva, Fiji

RESPONDENT

Counsel

Plaintiff : Ms Takali. J

Date of ex parte Hearing: 28.11.2022

Date of Ruling 28.11.2022 (3pm)

Ruling – (Reasons for refusal to grant leave to issue)

1. Plaintiff filed an ex parte application seeking leave for contempt of court against CEO (the Respondent) of the Defendant company.
2. In terms of Order 52 rule 2 of the High Court Rules 1988, no application for committal against any person can be made ‘unless leave to make such an application has been granted’.
3. So it is mandatory for the Plaintiff to describe in the statement how the Respondent become liable for committal and also substantiate the facts with an affidavit.
4. Plaintiff had not explained how CEO had committed contempt against the court in the statement or affidavit in support.

5. Plaintiff's application for contempt is based on the orders granted and failure to hand over some items ordered by the court.
6. When the court ordered the items to be handed over it was based on the evidence before the court. The burden of proof of a fact in civil action is on the balance of probability.
7. So when an order is made by the court there is no certainty that a fact existed with certainty. The court decided on the available evidence.
8. So there is a probability that in reality that fact may not be in existence. By the same token, existence of a fact in reality may not be the same as proof of that fact in court.
9. So it is mandatory for the party seeking contempt to explain how the contempt committed by the Respondent.
10. First, Plaintiff must state in the statement and also verify that the items ordered by the court existed at the time of the service of the orders to the Respondent and the Respondent had the opportunity to comply with the orders and had not done so. If not leave cannot be granted.
11. Order 52 rule 2 of High Court Rules 1988 states;
 - "2.-(1) No application for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.
 - (2) An application for such leave must be made ex parte to a judge in chambers, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the **grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.**
 - (3) The applicant must give notice of the application for leave not later than the preceding day to the Registry and must at the same time lodge at the Registry copies of the statement and affidavit."
12. CEO of the Defendant was not a party to this proceedings. There was no explanation as to how committal proceedings could proceed against CEO is sought, too.
13. There was no verification or explanation as to how CEO of the Defendant had committed contempt in the affidavit filed by the Plaintiff as required by above mentioned provision.

14. “Least possible power adequate to the end proposed”¹ is a standard used in USA regarding contempt of court proceedings and this was found wanting in many instances. This shows that even that standard was not adequate. So the discretion of the court at the time of seeking leave should be exercised with caution. This is specially so when the alleged contemnor is not a party to the action as in this case, case nature of alleged contempt.

15. Accordingly application seeking leave to issue contempt proceedings against CEO of the Defendant is refused.

FINAL ORDERS

- a. Leave to issue contempt refused.
- b. No cost.

Dated at Suva this 27th day of October, 2022.



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Justice Deepthi Amaratunga
High Court, Suva

¹ See *Shillitani v. United States*, 384 U.S. 364, 371 (1966); *In re Michael*, 326 U.S. 224, 227 (1945); and *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 61, 69 (1821).