

**IN THE MAGISTRATE'S COURT OF FIJI AT SUVA**  
**CIVIL DIVISION**

**Civil Action (JDS ) No. 119 of 2021**  
**SCT Claim No: 546 of 2021**

**BETWEEN: 1. SANJAY SINGH VERMA 2. BABITA KUMAR**  
**VERMA** of 31 Doun Place , Ragg Avenue.  
**CLAIMANTS / JUDGEMENT CREDITORS**

**AND: VILITATI SEMO RATU, t/a Vilitati Constructions Tuirara**  
**Subdivision.**  
**RESPONDENT / JUDGEMENT DEBTOR**

For Judgement Creditor: 1<sup>st</sup> Judgement Creditor in person  
For Judgement Debtor: In person.

**RULING ON MEANS TEST**

**Introduction.**

- 1) Judgement Debtor Summons (JDS) was issued to the above-named Judgement Debtor for \$ 4,985.00 on 16-04-2021. That was to enforce the order dated 25-03-2021 made by the Small Claims Tribunal (SCT), Suva in STC Claim No. 546 of 2021.
- 2) JDS was served on the JD and an affidavit of service was filed. Due to nonappearance of the JD, a Bench Warrant was issued against him. Subsequently, he appeared in court, and he was directed to sign a bail bond. The matter then fixed for means test.
- 3) Means Test was preceded before me on 29-09-2023. JD gave evidence under oath.

**Evidence**

- 4) JD stated that he is a student at Bible College and studying for a Diploma in theological Studies. He doesn't have any income as a student. His tuition fees is sponsored. He is supported by his mother, a retired banker and his younger brother who is an IT Technician. JD is a single parent, living with his three children in his mother's place. His monthly expenses roughly about \$300.00, including their bills, for food and travelling expenses. Those expenses are covered by the donations he received from his brother and mother. In answering to the question that how he is going to pay the JDS amount, the JD stated that: "I don't have any plan as to how I going to pay, but I believe that God is going to provide something somehow"

- 5) JD was cross examined by 1<sup>st</sup> Judgement Creditor (JC) above named. Therein JD stated that he used to be a carpenter and a contractor. He attends school 05 days a week and he spend the weekend with his family. He agreed that he could look for private jobs during the spare two days and pay towards the debt. Answering a question from court, JD stated that he is studying and is not earning any money, but he could pay \$ 10.00 a week towards the debt. JC proposed that JD could pay \$50.00 per week but JD stated that he is unable to pay that amount. JC suggested that the JD could work during the weekends and erns about \$70 to \$80 and pay towards the debt owing from 2019, the JD stated that during the weekends he is attending to his school assignments.

### **Analysis and Findings**

- 6) I have observed the demeanor of the JD giving evidence in court. I assumed that he tried to evade from paying back the debt he acknowledged. He has not submitted any document to the court to ascertain his earning capacity or to prove his expenses. Which makes it very difficult to the court to assess the means of the JD. But when his evidence consider *in toto*, it is the view of this court that the JD's evidence is not realistic, and it is un-probable.
- 7) The SCT ordered JD to pay \$300.00 a month. But according to the JC's proposal of \$50.00 per week, the JD has to pay less than that. I find that is a reasonable suggestion. The JC is willing to pay \$10.00 a week but being a Carpenter by profession and working independently during his spare times , JD would be able to ern the balance money.
- 8) Considering the above evidence on the balance of probabilities I hold that the JD has the ability to pay \$50.00 per week to the JC and I make the following order:

### **Orders of the Court**

- a) Comital Warrant issued against the JD for a period of Four (04) weeks, but it is now suspended upon the JD fulfilling following conditions:
- b) 1) JD to pay the debt in \$50 .00 instalments per week to JC until the JDS sum and cost incidental thereto, are paid in full.  
2) JD to pay all instalments to the Civil Registry of this court.  
3) JD to make the 1<sup>st</sup> such instalment payment on 17-11-2023 and thereafter every Friday of the week.
- c) In the event that the JD is in default of one or more of the above-mentioned instalment payments, JC may activate and execute the Comital Warrant for the full JDS amount.

At Suva, on this 17<sup>th</sup> day of October 2023.



  
**Lakshitha Jayawardhana**  
Resident Magistrate