

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

**Civil Action No: Misc. Action 24 of 2009L**

**BETWEEN** : **SANGEETA DEVI** father's name Moti Lal of Kadrakulu,  
Sigatoka, Domestic Duties

**Plaintiff**

**AND** : **SALANIETA NAIRUBE** of Sanasana, Cuvu, Sigatoka,  
Domestic Duties

**1<sup>st</sup> Defendant**

**AND** : **ATIKINI NAYAGO** of Sanasana, Cuvu, Sigatoka,  
Unemployed

**2<sup>nd</sup> Defendant**

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**INTERLOCUTORY JUDGMENT**

**Of: Inoke J.**

**Counsel Appearing: Mr. Babu Singh for the Plaintiff**  
**Mr. Qoro on instructions from Mr. Vuataki for**  
**the Defendants**

**Solicitors: Messrs Samusamuvodre Sharma Law for the**  
**Plaintiff**  
**Vuataki Law for the Defendants**

**Date of Hearing: 28 August 2009**

**Date of Judgment: 28 August 2009**

**INTRODUCTION**

[1] This is an ex parte application by the Plaintiff for leave to issue committal proceedings against the Defendants pursuant to **Order 52 rule 2(2)** of the **High Court Rules 1988** (the **Rules**).

[2] The ex parte motion was filed on **21 August 2009** supported by an affidavit sworn by the Plaintiff Sangeeta Devi and a supplementary affidavit sworn by her brother, Dharmendra Lal.

[3] When the application was called Mr Qoro of Counsel entered an appearance for the Defendants. I took the view that he had no right to be heard because of **Order 52 rule 2(1)** so refused him leave to be heard.

### **THE BACKGROUND**

[4] The Plaintiff sued the Defendants in the **Sigatoka Magistrates Court** in Civil Action **33 Of 2009**. The Plaintiff and her brother occupy certain farm land at Sanasana in Sigatoka. On **5 August 2009** the Plaintiff obtained an order in that Court, in the absence of the Defendants, in the following terms:

- a) That the defendants, its agents or servants or employees be restrained or refrained from entering the property currently occupied by the plaintiff and her brother which is situated at Sanasana Subdivision Lot 8 in the Tikina of Cuvu, Sigatoka, until the substantive matter is heard and determined by this Honourable Court.*
- b) That the police officers to assist the plaintiff shall the defendants, its agents, servants or employees unlawfully or illegally enters the plaintiff premises and causes breach of peace or any type of nuisance.*
- c) That further the Plaintiff be entitled to harvest the fruits and vegetables on the land in issue and this order is grated under paragraph (e) by Notice of Motion dated the 30<sup>th</sup> day of June 2009.*

[5] The Order was served on the Defendants personally on the same day.

[6] According to Ms Devi and her brother, on 6 August 2009, despite the Court order, the Defendants forcefully entered their compound and loaded all their belongings in a truck and advised them and their family to vacate the property within half an hour. They also sought the help of the Sigatoka police but instead of getting their assistance they were growled and yelled at by the police officer in attendance. The Defendants and the police officer consider that the Court Order was wrong and null and void.

[7] The Defendants' solicitors filed on 7 August 2009 a Notice of Intention to appeal in the Magistrates Court. The Notice of Appeal which was filed in this Court on 7 August 2009 in Civil Appeal 33 of 2009 is returnable on 4 September 2009. The two main grounds of appeal were that the land was purported to be leased to the Plaintiff by a previous deceased lessee who had no authority to do so and that the prior consent of the Native Land Trust Board was not obtained

[8] However, a stay of the Magistrates Court Order has not been applied for or obtained.

[9] Ms Devi says in her affidavit that the Defendants have now moved into the farm and are now harvesting the produce that she and her brother had planted. She asks for an order for committal because the Defendants have no respect for the Court Order that was made in the Sigatoka Magistrates Court.

### **THE RULES**

[10] **Order 52 rule 1(2)(a)(ii)** allows this Court to punish for contempt committed in connection with proceedings in an inferior Court.

[11] **Order 52 rule 2(1)** provides that no application for an order for committal may be made unless leave to make such an application has been granted in accordance with this rule.

**THE GRANTING OF LEAVE TO COMMITT**

[12] Prima facie, there is a breach of the Magistrates Court Order by the Defendants. However, wrong a Court Order might seem to them they must no deliberately ignore it or at worst deliberately do that which has been forbidden by the Court. There is a proper process by law which is open and available to the Defendants and which they must follow.

[13] I was satisfied that there was a prima facie case of blatant disobedience of a Court Order which on its face has been validly issued out of the Magistrates Court in Sigatoka. I therefore grant leave for the Plaintiff to apply for an order for committal of the Defendants.

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**Sosefo Inoke**  
**Judge**