

IN THE SUPREME COURT OF TONGA  
CIVIL JURISDICTION  
NUKU'ALOFA REGISTRY

*Stacy General*  
*Scan, email & upload*  
*File 206/08/21*

CV 39 of 2019

BETWEEN:

**RAE GILL**

Plaintiff

-and-

**[1] NESHA ROSIC**

**[2] MALA ISLAND RESORT COMPANY LIMITED**

Defendants

---

Plaintiff's ex parte application for leave to apply for an order of committal

## RULING

---

BEFORE: LORD CHIEF JUSTICE WHITTEN QC

To: Mr Pouvalu for the Plaintiff  
Mr Rosic for the Defendants

Date of application: 12 July 2021

Date of ruling: 2 August 2021

1. On 19 May 2021, the first defendant's application for security for costs was dismissed and he was ordered to pay the plaintiff's costs of and incidental to the application to be taxed in default of agreement.
2. On 22 June 2021, the Registrar of the Supreme Court issued a certificate of taxation in respect of the plaintiff's costs of the security for costs application in the sum of \$1,905.
3. On 25 June 2021, Mr Pouvalu wrote to Mr Rosic demanding payment of said cost within five days of the date of the letter, in default, the plaintiff would have no other choice but to take legal action to enforce the order for costs.
4. No payment (or, it would seem, on the material on this application, any response by Mr Rosic) having been received, on 15 July 2021, Mr Pouvalu filed an ex parte application (dated 12 July 2021) seeking leave for the plaintiff to apply for an order of committal against Mr Rosic on the grounds that he has disobeyed the order for payment of the taxed costs.
5. The application is made pursuant to Orders 29 and 38 of the Supreme Court Rules.
6. The application is supported by the affidavit of the plaintiff sworn 12 July 2021 in which she deposes, relevantly, to the above chronology.

05 AUG 2021  
*JH*

7. Order 29 rule 5(1) provides, relevantly, that where any person required by a judgment or order to do an act fails or refuses to do it *within the time specified by the court*, the judgment or order may be enforced by an order of committal under Order 38. In this case, the order for costs did not specify a time by which they were to be paid. Counsel for the Plaintiff did not request one at the time. Therefore, it cannot be said that Mr Rosic is in breach of that rule.
8. Subrules (2) and (3) provide to effect that if the Court is not satisfied that, here, Mr Rosic is aware of the taxed costs order, then the letter of demand ("notice") must include a statement that if he disobeys the order, then he "may be liable to committal or other execution to compel compliance with the terms of the order".
9. Mr Pouvalu's letter of demand (exhibit F to the plaintiff's affidavit) was addressed to Mr Rosic care of "Mala Island Resort, Mala Island". Mr Pouvalu has not filed a certificate of service in respect of the letter of demand. It is not clear therefore whether, and if so, by what means, that letter has been served on Mr Rosic. Accordingly, I cannot be satisfied, on the material before me, that Mr Rosic is aware of the taxed cost order and the demand for its payment. In that event, the aforesaid subrules required that Mr Pouvalu's letter of demand contain a statement that if Mr Rosic disobeys the order, he may be liable to committal or other execution to compel compliance with the order. It did not do so.
10. Further, sub rule (4) provides:

The Court shall not, in the absence of *special circumstances*, make a committal order to enforce a judgment in respect of a debt unless it is satisfied that the judgment debtor either has or has had since the date of the order or judgment the *means to pay the sum* in respect of which default has been made and has refused or neglected to pay the same.
11. The application does not contain any evidence that Mr Rosic has, or has had, since the date of the taxed costs order, the means to pay the sum ordered. No special circumstances have been demonstrated.
12. The application must therefore be dismissed.

NUKU'ALOFA  
2 August 2021



A handwritten signature in blue ink, appearing to read "M. H. Whitten".

M. H. Whitten QC  
LORD CHIEF JUSTICE