

**IN THE HIGH COURT OF FIJI AT SUVA**

**APPELLATE JURISDICTION**

Civil Appeal No. 21 of 2012  
Magistrates Court Civil Appeal Case No. 52 of 2010

**BETWEEN :**        **QUALITY ELECTRICAL & REFRIDGERATION SERVICES**

**APPELLANT**

**AND :**        **ENGINEERING & INDUSTRIAL SUPPLIES LTD**

**RESPONDENT**

**COUNSELS :**        **Appellant in person represented by L. Sagar Director  
Mr Lajendra M for the Respondent**

**DATE OF JUDGMENT:**    **8<sup>th</sup> August 2013**

**JUDGMENT**

1. This is an appeal from the decision of the Magistrate Court at Suva delivered on 21<sup>st</sup> March 2012.

Grounds of Appeal:

- (a) ***THAT** the defendant's clerk who attended the case resigned and did not provide proper feedbacks to the office, therefore, no such evidence was given to the referee in the Small Claims;*

- (b) **THAT** the defendant holds responsibilities of the invoices which has been signed and therefore, they are liable to pay for the signed invoices only;
- (c) **THAT** the defendant already paid \$900 (Nine Hundred Dollars) to the respondent, which was not accounted for;
- (d) **THAT** all parts and labour costs for repair to the Hiabcrane hired from respondent was paid by the defendant as per attached invoice;
- (e) **THAT** the monies has been paid to the Respondent for hire of Hiabcrane as per the Cheque # 1205 and the payment voucher attached;
- (f) **THAT** proper evidence and the documents was given in the submission filed at Magistrates courts civil registry in Suva;
- (g) **THAT** the defendant is liable to pay for the following invoices, which had been claimed, and the rest of the invoices was not received by the defendant and has no authorization on it.

2. The Learned Magistrate delivered his judgment dismissing the appeal filed against the decision of the Small Claims Tribunal. The Learned Magistrate had made order dismissing the appeal.

2.1 The Learned Magistrate had drawn his attention and considered the 2 Grounds of Appeal in pursuant to Section 33(1) of the Small Claims Tribunal Decree 1991 which states:

*“any party to proceedings before a Tribunal may appeal against an order made by the Tribunal under Section 15(6) or Section 31(2) on the grounds that –*

*(a) The proceedings were conducted by the Referee in a manner which was unfair to the Appellant and prejudicially affected the results of the proceedings; or*

*(b) The Tribunal exceeds its jurisdiction”.*

It is evident that the Appellants right of appeal is restricted to the above two grounds.

- 2.2 The Learned Magistrate in his findings stated that the Appellant had failed to satisfy the above two grounds. He further concluded that the Appellant’s position that the Tribunal had failed to satisfy the court on the Grounds of Appeal enumerated in the Section 33(1). It was also stated in the Judgment that the Learned Magistrate was satisfied with the report of the Referee that the Appellant was given sufficient hearing and opportunity to produce his evidence in the proceedings.
3. Apart from the findings of the Magistrate on the Grounds of Appeal to this court by the Appellant elaborate the facts of the case and evidence led before the Tribunal which were considered by the Tribunal before making its decision. Such grounds do not satisfy this court to make an order in favour of the Appellant.
4. At the hearing, Appellant appeared in person and submitted that this court to take into consideration the \$900 being paid. However, this court exercise only appellate jurisdiction and it’s not a fact finding mission and already the matter was heard before the Tribunal.

5. The counsel appeared for the Respondent submitted that the Grounds of Appeal were not in compliance with Section 33(1) of the Small Claims Tribunal Decree and I agree with the submission for the reasons set out in the paragraphs hereinafter.
6. The Appellant company was represented by a clerk of the company, the hearing at the Tribunal was adjourned twice to go through accounts and the Tribunal had taken the accounts into consideration before making the decision as such the Appellant cannot claim that the proceedings at the Tribunal was unfair.
7. I quote the following statement made by Fatiaki J. in the case of *Sheet Metal and Plumbing (Fiji) Ltd v. Uday Narayan Deo* [1999] FJHC 25 [1999] 45 FLR 80:

*“.....Indeed Grounds of Appeal if I may say so, directly relates to the merits of the appeal against the decision of the Small Claims Tribunal and not to the Learned Magistrate’s decision.....In such an appeal, it is trite that an appellate court will not lightly interfere with the exercise of a judicial discretion and should only do so where it is satisfied that the Magistrate has erred in principle by giving weight to something ought not to have taken into account or failed to give weight to something which he had taken into account or was plainly wrong in its decision” (emphasis mine).*

Fatiaki J. cited Griffith L.J. in *Eagil Trust v. Piggot-Brown* [1985] 3 All E.R. 119 at page 121:

*“.....there is a heavy burden on an appellant to demonstrate to this court that the (Magistrate) has either failed to apply well settled principles or, alternatively, that his discretion can be attached on what are colloquially known as ‘Wednesbury Grounds’.*

In the present case, the Learned Magistrate had applied the principles with regard to procedure to be followed under Section 33. The Legislature confined the ambit of right of appeal to two grounds and the Magistrate had not made error on law and he had applied the principles correctly.

7.1 Fatiaki J. in the case of *Sheet Metal Plumbing (Fiji) Limited v. Uday Narayan Deo* cited the observations of Thorp J. in *N.Z. Insurance N.Z. Ltd v. Auckland District Court* [1993] N.Z. L.R. 453 (similar right granted in the Disputes Tribunals Act 1988 (New Zealand) in identical terms to ground (a) in sections 33 (refer para 2.1) of this Judgment.

Thorp J. stated (page 458):

*“The essential matter (in the words used) .....is its specification of the basis for appeal against referee’s determination as being the conduct of proceedings in a manner that was unfair to the appellant and prejudicially affected the result of the proceedings. This formulation is both specific and unusual. On its ordinary grammatical construction it provides only a limited right of appeal; and requires any intending appellant to direct the (court) to some unfairness in the form, and not simply the result of the tribunal hearing. ....read on (its) own, and on the basis of (its) ordinary grammatical meaning, (the section) would not leave any careful interpreter in much doubt that the right of appeal (it) created was a special type of appeal, limited to cases of procedural unfairness (and does not extend to the corrections of errors of law)”.*

7.2 The Learned Magistrate whilst making his decision in this case found that there had been no procedural unfairness and he was satisfied with procedure adopted by the referee; which I agree.

Fatiaki J. in the same case cited Greig J. in case of *Hertz New Zealand Ltd v. Disputes Tribunal* (1994) SPRNZ:

*“.....there is no appeal on the merits even if there is a clear and fundamental error of law in the conclusion of the Tribunal”.*

8. In the present case, the Grounds of Appeal are merely facts already considered by the referee and does not carry any merits to consider by this court.
9. I am satisfied, the Grounds of Appeal do not warrant an appeal from the Magistrates Order delivered on 21<sup>st</sup> March 2012.

Accordingly, the following **Orders** are made:

(a) *Appeal dismissed;*

(b) *The Appellant is ordered to pay summarily assessed costs of \$500 to the Respondent.*

**Delivered at Suva this 8<sup>th</sup> Day of August 2013.**

.....  
**C. Kotigalage**  
**JUDGE**