

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

**CIVIL ACTION NO. HBA 04 OF 2013**

**BETWEEN** : **ESTATE OF ISIMELI RADRODRO** of Lot 45, V.M. Pillay Road,  
Lautoka.

**APPELLANT**

**AND** : **LAUTOKA CITY COUNCIL** of Lautoka.

**RESPONDENT**

## **R U L I N G**

### **INTRODUCTION**

[1]. Before me is an appeal against a decision of the Lautoka Magistrates Court of 30 May 2012. In that decision, the Learned Magistrate had dismissed an appeal of the ruling of the Small Claims Tribunal dated 12 August 2011.

### **GROUND OF APPEAL**

[2]. The grounds of appeal before me are as follows:

1. The decision was biased.
2. The matters of material facts of my argument was not viewed neither was it mentioned in the ruling which is the interest rate charged by the respondent is more than the 11 percent as outlaid by the bylaws and the Learned Magistrate did not consider it to be material matter which makes the Respondents claims excessive.
3. That I was a voluntary payer but I was compelled to pay an extra \$5.00 by the Small Claims Tribunal even though I was paying \$5.00 per week and the Learned Magistrate did not view this material matter.
4. The rightful owner of the land is a widow and is under the Social Welfare program, by the name of Penina Yavasuasua.
5. I was disallowed to pay the current balance while paying the arrears although the bylaws does not have it that I can't and the Learned Magistrate did not view this material matter.
6. The ruling is dated 30.5.2013 and it was handed to me on the 4<sup>th</sup> of February 2013.

### **BRIEF FACTS BEFORE SCT**

[3]. The appellant's representative Mr. Paula Malo Radrodro, on 08 August 2012, after mediation, made an undertaking that he will pay the sum of \$10 per week. The SCT then made an Order accordingly. The Orders of the Tribunal were:

1. That as per arrangement made by Paula Radrodro son of Respondent with the Claimant; Lautoka City Council I make this order.

2. That Paula Radrodro to pay the Claimant, Lautoka City Council the total sum of \$2428.52 (two thousand four hundred and twenty eight dollars and fifty two cents) being unpaid rates up to year 2012 to be paid on weekly payment of \$10.00 (ten) commencing August 17<sup>th</sup>, 2012 and continue payment until fully paid.
3. That all payments to be made to Lautoka City Council on production of this Order.
4. That the Claimant to serve a copy of this Order to the Respondent within seven (7) days from date hereof.

[4]. Mr. Radrodro then appealed to the Magistrates Court. His grounds of Appeal at the Magistrates Court were that the decision of the Tribunal was biased and that the Orders were not within the jurisdiction of the Referee.

### **SUBMISSIONS BEFORE THE MAGISTRATE**

[5]. The records show that Mr. Radrodro did make the following written submissions before the Learned Magistrate.

1. The Madam of the Court had exceeded her Jurisdiction and was also biased by making an order to compel me to pay the amount of \$10.00 a week when:-
  - (a) I am not the owner of the estate.
  - (b) I am a voluntary contributor.
  - (c) I had been paying voluntarily \$5.00 per week before I was summoned to Court by the respondent and compelled to agree to the making of an order to pay \$10.00 a week on the arrears of Isimeli Radrodro the owner of the estate.
  - (d) The Madam of the Court had been biased in her Jurisdiction in that while making the order for me to pay \$10.00 per week, she did not give me the privilege to pay the current rate when the bylaws has it that the money collected should first pay off the arrears but it does not say that the second account of the current balance should and cannot be paid also.
  - (e) The money for payment in question belongs to me and not the owner of the estate and I have every right to do so as I so please with it and if I so wish to pay the current balance while paying off the arrears than what law is there to stop me and if the defendant refuse to except the payment of the current balance than it would be upon their own shoulders.
  - (f) Isimeli Radrodro died in 1983 and the next rightful owner of the land is Penina Yavasuasua who is under the Social Welfare program receiving only food voucher per month and if the payment is not done, than the respondent would liquidate the property and thus breach the rights of Penina Yavasuasua in rights to life because the property has the shelter that houses Penina Yavasuasua who needs the shelter for survival which shelter is the basic need of life.
2. The Madam of the Court was biased in her ruling in that she allowed the submission of the respondent to proceed when the interest rate 11 percent and the defendants' claim is more than 11 percent.  
I therefore conclude that the Madam of the Court was not only biased in her ruling but also she had exceeded her jurisdiction and I humbly implore your honorable court to allow the appeal to proceed.

## DECISION OF MAGISTRATES COURT

[6]. In his ruling, the Learned Magistrate first noted the grounds of appeal.

The learned Magistrate then stated as follows:

1. The section 33(1) sets out the grounds on which an appeal against an order made by the Small Claim Tribunal can be made. Accordingly, the grounds are that;
  - (a) The proceedings were conducted by the referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings: or
  - (b) The Tribunal exceeded its jurisdiction.
2. In this case, it appears that the Appellant has said that the Tribunal has exceeded its jurisdiction. However, it is very clear that the amount claimed and the amount awarded is only \$2428.52. In his submissions the Appellant/Respondent did not tender any other substantial ground or materials to show that the Tribunal has exceed its jurisdiction. Therefore, the Appellant/respondent has failed to precede his appeal on that ground.
3. It is very important to find out whether the proceedings at the Small Claim Tribunal were conducted in an unfair manner. According to the copy of the record both, the Appellant and the Respondent were present at the hearing in Small Claim Tribunal.
4. In the submissions, the Appellant has reiterated the facts of the case. Appellant has not stated as to how the proceedings were conducted at the SCT in an unfair manner. At this stage, the Court has no jurisdiction to consider the merits of the case or to consider evidence regarding the claim. It should be noted that there is no material whatsoever in the Appellant's written submissions, which suggests that the proceedings of the Tribunal were conducted in an unfair manner.
5. I have perused the Tribunal record. I am satisfied the manner in which the proceedings in the Tribunal is conducted. Nothing suggests that any prejudice is caused to the Appellant by the way the proceedings were conducted.
6. This Court is not required to go in to the merits of the claim in an appeal under the SCT Decree. All what is required is to see whether the Appellant can satisfy the court regarding any of the grounds set out in Section 33(1).
7. In the absence of such material to support the Appellant's grounds of appeal, I decide that the Appellant has failed to show that the proceedings were conducted by the Referee in a manner which was unfair to the Appellant and prejudicially affected the result of the proceedings.

## THE LAW

- [7]. The Small Claims Tribunal was established under the Small Claims Tribunal Decree 1991 to deal with small claims and provide relief to claimants by a process that is prompt and inexpensive (see Sheet Metal & Plumbing (Fiji) Ltd v Deo [1999] FJHC 25; [1999] 45 FLR 80 (14 April 1999)).

[8]. As Mr. Justice Fatiaki noted in the above case, sections 24 to 29 of the Decree highlight the informal, non-adversarial nature of the proceedings before the Small Claims Tribunal and militates against a general appeal on the merits or for errors of law.

[9]. In that regard, the observations of the learned Magistrate are quite correct.

At this stage, the Court has no jurisdiction to consider the merits of the case or to consider evidence regarding the claim.

[10]. Fatiaki J would further observe as follows in **Sheet Metal**:

The non-legalistic nature of a Tribunal proceeding is further exemplified by the requirement in Section 15(4) of the Decree that: 'The Tribunal shall determine the dispute according to the substantial merits and justice of the case and in doing so ... shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.'

[11]. In addition to the above, Fatiaki J observes that the Tribunal exercises what is in effect "**an equity and good conscience jurisdiction**" and that under section 17, any order of the Tribunal 'shall be final and binding on all parties to the proceedings ... and except as provided in section 33, no appeal shall lie in respect thereof'.

[12]. Section 33 of the Small Claims Tribunal Decree 1991 states:

*Appeals*

**33.**-(1) 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 result of the proceedings; or
- (b) the Tribunal exceeded its jurisdiction.

[13]. The above section provides a right of appeal limited to two grounds, namely: (a) the proceedings were conducted by the referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings; or (b) the Tribunal exceeded its jurisdiction.

[14]. Again, the learned Magistrate cannot be faulted in this regard as he was conscious on the limits on the scope of his inquiry on appeal.

This Court is not required to go in to the merits of the claim in an appeal under the SCT Decree. All that is required is to see whether the Appellant can satisfy the court regarding any of the grounds set out in Section 33(1).

[15]. In this case, at the SCT, the parties had settled. The Appellant in fact had given an undertaking to settle the claim on certain terms. That is what the records say.

[16]. Section 15(6) states as follows:

*Functions of other jurisdictions*

**15.-(1)** The primary function of a Tribunal is to attempt to bring the parties to a dispute to an agreed settlement.

(2) If it appears to the Tribunal to be impossible to reach a settlement under subsection (1) within a reasonable time, the Tribunal shall proceed to determine the dispute.

(3) If an agreed settlement is reached, the Tribunal may make one or more of the orders which it is empowered to make under section 16 or under any other Law, and shall not, where giving effect to the agreement of the parties, be bound by the monetary restriction provided for by subsections 16(3) and (4).

(4) The Tribunal shall determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to actual forms or technicalities.

(5) Without limiting the generality of subsection (4), a Tribunal may, in respect of an agreement or document which directly or indirectly bears upon the dispute between the parties, disregard any provision therein which excludes or limits,

(a) conditions, warranties, or undertakings; or

(b) any right, duty, liability, or remedy which would arise or accrue in the circumstance of the dispute; if there were no dispute; if there were no such exclusion or limitation.

(6) To give effect to its determination of the dispute or in granting relief in respect of any claim, which is not disputed, the Tribunal shall make one or more of the orders which it is empowered to make under section 16 or under any other law.

[17]. Section 16 states as follows:

*Order of Tribunal*

**16.-(1)** A Tribunal may, as regards any claim within its jurisdiction, make one or more of the following orders and may include therein such stipulations and conditions (whether as to the time for, or mode of, compliance or otherwise) as it thinks fit:

(a) the Tribunal may order a party to the proceedings to pay money to any other party;

(b) .....

(c) .....

(d) .....

(e) if it appears to the Tribunal that an agreement between the parties, or any term thereof, is harsh or unconscionable, or that any power conferred by an agreement between them has been exercised in a harsh or unconscionable manner, the Tribunal may make an order varying the agreement, or setting it aside (either wholly or in part);

(f) if it appears to the Tribunal that an agreement between the parties has been induced by fraud, misrepresentation, or mistake, or that any writing purporting to express the agreement between the parties does not accord with their true agreement, the Tribunal may make an order varying or setting aside the agreement, or the writing (either wholly or in part);

## COMMENTS

- [18]. To reiterate, the SCT records show that the appellant had agreed to settle the debt of the estate of his late father to the Lautoka City Council at the rate of \$10 per week. The appellant was not (and still is not) the personal representative of his father's estate. I gather from his submissions before me that he did all that because his mother, is elderly and lives on social welfare benefits. Although this is not clear to me, I gather that his mother is the personal representative of the estate. The mother did sit in Court before me during the hearing of the appeal.
- [19]. The estate was the respondent in proceedings filed at the Small Claims Tribunal. The appellant was not named as respondent. If, supposing, the appellant had been named as respondent by the Lautoka City Council and, had he raised the fact then that he was (and still is) not the personal representative of the estate, the SCT would have had to consider whether or not the Appellant had been improperly joined as a party. And under section 20(2) of the Decree, the Tribunal could have struck out the name of the Appellant from the proceedings on the ground that he was improperly joined as a respondent or the Tribunal could have kept him as co-respondent with the estate under section 19 on the ground that he is a person who has sufficient connection to the case.
- [20]. However, the scenario in this case is different. The Lautoka City Council had correctly named the estate as the respondent. There is no other respondent. The appellant, Paula Malo Radrodoro however appeared on first call for the estate. The records show as follows:

Claim Number : 1876/12  
Claimant : Lautoka City Council  
Respondent : Estate of Isimeli Radrodoro  
Amount Claimed: \$2454.52

### **Minutes of August, 2012**

Summons served.

As per request from Respondent's son claim adjourned to August 08<sup>th</sup>, 2012 at 9.00am.

### **08<sup>th</sup> August, 2012**

Claimant – Present

Respondent – Son of Isimeli Radrodoro – Paula Malo Radrodoro.

**Mediation** – The respondent had undertaken to pay but only \$5.00 or \$3.00 per week and sometimes \$10.00. Claimant had produced a statement of payment which indicated that the Representative wanted to pay the debt.

Claimant wanted to retain \$10.00 and will pay more if can but at the moment will maintain \$10.00 weekly. Tribunal advised him that it will take four years and by that time; years 2013, 2014, 2015 and 2016 rates will be also due.

Adjourned to 13<sup>th</sup> August, 2012 at 9.00am.

**13<sup>th</sup> August, 2012 at 9.00am**

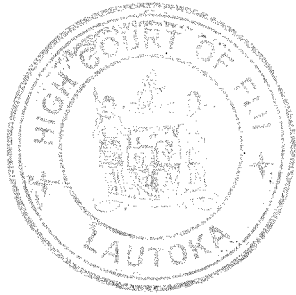
Mrs. Kamoe of Lautoka City Council gave an arrangement made by the Representative.

- [21]. From the records, it is obvious that the Appellant had volunteered himself to pay the remaining balance of the estate's debt to the Council. From the records, it appears to me too that the Tribunal as well as the LCC were both aware that the appellant was not the personal representative of the estate.
- [22]. The question now arises as to whether or not he is legally bound by the terms of settlement that he committed himself into considering that he was never the personal representative of the estate.
- [23]. In my view, section 15(4) of the Decree is relevant:
- 15.-(4) The Tribunal shall determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to actual forms or technicalities.
- [24]. Strictly, if the claim had been filed in the Magistrates Court or in the High Court, both courts would have accepted only as valid a settlement entered into by the personal representative of the estate. In that regard, I would agree with the submissions of the Appellant.
- [25]. However, section 15(4) of the Decree empowers the Tribunal to determine disputes according to the substantial merits and justice of the case with regards to the law but without being bound to strict legal rights or obligations or to actual forms of technicalities.
- [26]. In my view, it was perfectly within the jurisdiction of the Tribunal to have accepted a Terms of Settlement in this case executed by the appellant who, although not the personal representative of his father's estate, was appearing and making a personal undertaking to pay out of his own pocket (not from estate funds) monies towards settling the small debt of his father's estate.
- [27]. The appellant is now raising a query about the interest rate on appeal before me but there is no indication in the records that it was ever raised

before the SCT or before the learned Magistrate. The records do not say that the amount that the appellant agreed to pay per week towards settlement of the debt included an interest component.

[28]. The SCT did make an Order accordingly. There is nothing in the records to suggest that the Tribunal did conduct the proceedings in an unfair manner either. The matter was settled by the appellant. The Orders of the Tribunal are also compliant with her jurisdiction under sections 15 and 16 of the Small Claims Decree (supra).

[29]. Accordingly, I dismiss the appeal. No Order as to Costs.



A handwritten signature in black ink, appearing to be "Anare Tuilevuka". The signature is written over a horizontal dotted line.

.....  
Anare Tuilevuka  
**JUDGE**  
04 December 2014