

IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA, FIJI

CIVIL APPEAL NO: 9/14

BETWEEN : **SHARVEEN CHAND** of Vutuni, Ba, Fiji

APPELLANT
(ORIGINAL PLAINTIFF)

A N D : **AVINESH SHARMA** trading as **AVINESH PLUMBING SERVICES** Wailailai, Ba, Fiji

RESPONDENT
(ORIGINAL DEFENDANT)

Appearances : Mr. S K Ram for appellant
Mr. N S Khan for respondent

Date of Hearing : 08 July 2016

Date of Judgment : 08 November 2016

JUDGMENT

INTRODUCTION

01. This is a timely appeal from a decision of the Magistrate's Court of Fiji sitting at Ba. By his decision the Learned Magistrate struck out the appellant's claim on the ground that the claim for general damages had not been limited to the jurisdiction of the Magistrate's Court.
02. At the appeal hearing, the parties made oral submissions and they also tendered their written submissions. After hearing the appeal, the court reserved the judgment.

BACKGROUND

03. The appellant (Sharveen Chand), the plaintiff in the court below files a writ of summons in the Magistrate's Court claiming compensation for personal injuries suffered at the workplace during the course of the employment with the defendant. The appellant claims general and exemplary damages with interest. However, he did not limit these claims to the jurisdiction of the Magistrate's Court, which is \$50,000.00 or less. The respondent (Avinesh Sharma), the defendant in the court below takes a jurisdictional point that the claim filed in the court below exceeded its monetary jurisdiction. The Learned Magistrate upholds the point raised by the respondent and strikes out the claim for want of jurisdiction. The appellant appeals to this court.

THE JUDGMENT OF THE COURT BELOW

04. In order to align the claim, the appellant filed a Notice of Motion after the respondent had filed his statement of defence and sought leave to amend the claim. The amendments sought by the appellant are as follows:

1. *That the plaintiff be granted leave to amend its Statement of Claim to add a prayer being prayer (e) to say that 'The Plaintiff limits its claim to the Jurisdiction of this Honourable Court'.*
2. *Alternatively, that this action be transferred to the High Court for directions to be heard in the High Court.*
3. *Costs.*

05. By his order dated 9 May 2014, the learned Magistrate struck out the claim in its entirety with \$150.00 as to costs. He did so pursuant to Order 30A Rule 2 of the Magistrate's Court Rules (MCR).

06. When giving its reasons for the decision in the matter the court below made the following findings:

“5. Indeed, just a cursory glance over the prayers in the Statement of Claim

07. In his order, he also states (at para 9) that:

‘In the circumstances, I do not intend to “swim against the current” rather leave the swimming in the much stronger currents of the Appellate Ocean and concur with the pronouncement of His Lordship and find this court has no jurisdiction to preside over the matter.’

08. The learned Magistrate has relied on the High Court decision in ***Astur v Dame t-a Dame Consultancy*** [2013] FJHC 409: Civil Appeal 15.2012 (15 August 2013).

THE GROUNDS OF APPEAL

09. On appeal before me, the appellant is raising the following grounds of appeal:

1. *The learned Magistrate erred in law in holding that in order to be within the jurisdiction of the Magistrate’s Court the plaintiff had to specifically plead in the claim or the prayers that his claim was limited to its jurisdiction when:*

1.1 *There was no such requirement in the Magistrate’s Court Act or Rules;*

- 1.2 *By commencing the proceedings in the Magistrate's Court the Plaintiff had limited himself to the jurisdiction of the court.*
- 1.3 *The issue of jurisdiction is matter of law and not fact and the plaintiff was only required to plead material facts.*
2. *The learned Magistrate erred in law by Striking out the Claim without considering the substantive matter and evidence and doing so he denied the plaintiff natural justice and constitutional right to have his matter determined by a Court of Law.*
3. *The learned Magistrate erred in law in his interpretation of the Order 30A Rule 2 of the Magistrates Court Rules.*
4. *The learned Magistrate erred in law and in fact by not considering the Notice of Motion and Affidavit in Support filed on the 4th December 2013 which would have allowed the Plaintiff his right to be heard.*
5. *The learned Magistrate erred in law and in fact in ordering costs against the Appellant.*
6. *Such further Grounds of Appeal as may be added upon receipt of the record of the Court.*

THE ISSUE AT APPEAL

10. The appeal concentrated on the question of the correct procedure to be embraced by the Magistrate's court when an unspecified claim is filed without limiting the claim to the jurisdiction of the Magistrate's court.

THE LAW APPLICABLE

11. The jurisdiction of the Magistrate's to hear and determine civil cases derives from s.16 (1) (a) of the Magistrate's Court Act (MCA), which so far as relevant provides:

"16. -(1) Without prejudice to the jurisdiction of a magistrate under this Act or other written law, a resident magistrate shall have and exercise jurisdiction in the following civil causes-

(a) in all personal suits arising out of any accident in which any vehicle is involved if the amount, value or damages claimed, whether as a balance claimed or otherwise, is not more than \$50,000;.."

THE SUBMISSIONS

Appellant's submission

12. The appellant's forceful submission appears at paragraph 50-52 of his written submission. For convenience, I would reproduce those paragraphs:

*"50. What has led to this unjust law is the unfortunate combination of the two decisions in 1960's. **Imam Din v Muna Lal** (supra) says that a claim can be made to an unspecified amount because the amount claimed must show the claim to be within the jurisdiction of the Magistrate's Court. **Ram Khelawan v Budh Ram** (supra) says if a claim exceeds the jurisdiction of the Magistrate's court, the only option a magistrate has is to strike it out. The Magistrate does not have powers to amend or transfer of the matter.*

*51. The fundamental feature of **Ram Khelawan v Budh Ram** (Supra) that has not been considered by subsequent decisions is that the Honourable Hammet, J., went through the task of determining whether the claim was in excess of jurisdiction before deciding to strike it out. For reasons unknown, this assessment of whether the claim actually exceeded the jurisdiction of the court is no longer done and it is assumed that unless it is to be limited to the jurisdiction, it exceeds the jurisdiction. Such assumption cannot be made.*

52. We submit that the requirement to plead in the Magistrates Court that a claim is limited to jurisdiction is not good law and that his Honourable court rectifies the error made in the interpretation of the legislation and the two case laws of the 1960s.”

Respondent's submission

13. In contrast, the respondent's submission was that the discretion exercised by the learned Magistrate was neither “wrong” nor “unjust” because of a serious procedural or other irregularity in the proceedings in the lower court. He also submits that the appellant failed ‘to comply with the mandatory requirement of the law, which has been there for time immemorial.’ He further submits that since the law on the grounds of appeal has been decided quite clearly and there is a wave of authorities on those issues, the appeal ought to be dismissed with costs in the highest scale.

THE DECISION

14. The appeal is pursuant to the striking out the action issued in the Magistrate's Court on the ground that the quantum of general damages was not limited to the jurisdiction of the Magistrate's Court.
15. The appeal raises an important issue that whether the learned Magistrate was correct in striking out the unspecified claim filed by the appellant when it was not limited to the jurisdiction of the Magistrate's Court.

Ground 1:

16. Is there a provision of the law or rule that the unspecified claim for damages filed in the Magistrate's Court is to be struck out for want of

jurisdiction unless it carries the words “ limited to the jurisdiction of the Magistrate’s Court (or similar).”

17. The appellant filed his claim in the Magistrate’s Court claiming amongst other things unspecified general damages. The learned Magistrate has struck out the appellant’s claim on the basis that the claim exceeded the monetary jurisdiction of the Magistrate’s Court.
18. It seems that the learned Magistrate had foreseen that the general damages sought by the appellant without quantifying the same exceeded the jurisdiction of the Magistrate’s Court.
19. The Magistrate’s Court is vested with the jurisdiction to hear and determine any civil cases where the claim is not more than \$50,000.00 (see MCA s.16-(1) (a) (i)).
20. Obviously, the learned Magistrate, as I did when sitting in the Magistrate’s Court, might have felt that he is bound by the High Court decisions particularly by *Autur v Dame t-a Dame Consultancy* (above) where the High Court held:

“It is well established that the amount claimed and interest forms part of the monetary jurisdiction of the Magistrate and Magistrate Courts have no jurisdiction to deal with the matter where there is a failure by the parties to limit the amount of claim (liquidated or unliquidated) plus interest within the jurisdiction of the Magistrate Court.

Iman Din v Manual Lal Civil Appeal No. 4 of 1996

Govind Holdings Ltd v Kalia Nand Civil Appeal No. HBA 005 of 1998

Mishra Prakash & Assoc. V Credit Corporation (Fiji) Ltd
[2005] FJHC 603; HBA 7

*It is obvious that where the Magistrates Court does not have jurisdiction to deal with the matter before the Court it had no powers to amend the Claim to bring it within its jurisdiction [or to transfer the case]. **Ram Khelawan v Budh Ram** (1967) 13 FLR 196 [at 197].*

21. Both parties cited cases that deal with the issue.
22. Hammett J in **Imam Din v Muna Lal** Civil Appeal No. 4 of 1966 (16 September 1966) held that:

“In the Magistrate’s Court a litigant is not entitled to claim general damages to an unspecific amount. He must state the amount of his claim in order that it may be seen to be within the Jurisdiction of the court and in order that the appropriate Court for which is based on the amount of the claim can be assessed and paid”.

There has been no attempt to limit the amount of interest claimed to within the jurisdiction of the Magistrate’s Court.

In its defence the Appellant draws a distinction between an error that is void and one that is voidable in relation to the claim being expressed at large. Its omission in stating a specific amount is voidable until such time as the limit of \$15,000.00 is exceeded. The flaw in that argument is the inability of the Magistrate’s Court to attend claims before it. Lacking the capacity to exercise such powers. Open claims must necessarily be assumed to exceed jurisdiction. The ground of appeal must fail as does the second ground which is framed in like terms.”

23. In **Ram Khelawan v Budh Ram** [13 FLR 196], this is a decision by the then Supreme Court (equal to the current High Court) where Justice Hammett held that:

“Once a summons has been issued in the Magistrates Court of the first class in excess of the jurisdiction which is given to the court by the legislature it appears to be that the only order that may be made when the matter is being dealt with by the Magistrate is for him to strike out the cause for want of jurisdiction. The Magistrate does not appear to have any powers either to amend the claim or to transfer the case. It can therefore only decline to entertain the suit on the ground that it is in respect of a matter that is beyond the jurisdiction which has been granted to the Magistrate or to the Court by the Legislature.”

“In this case it is clear that by his original claim the Plaintiff-Respondent sought to enforce a contract for the sale of land for the sum of L1,200; in addition he claimed substantial damages. It is not disputed that the total of the value of the property and the damages originally sued for was far in excess of L400. It was thus in excess of the jurisdiction of a Magistrate empowered to hold a court of the first class. The counsel for the plaintiff-respondent conceded this when he applied for leave to amend his statement of claim by reducing his claim to a total of L400.” [Emphasis added]

24. The respondent relies on the two cases cited above.
25. None of these cases is binding on me. They are in fact persuasive as they are decided by the parallel court. Unfortunately, there has been no binding authority on the crisp issue raised in this appeal by the appellant.
26. In ***Govind Holdings Limited v Kalia Nand*** (High Court Lautoka, Civil Appeal No. HBA 0015 of 1981L; Madraiwiwi, J.; 17 March 2000), it was argued that until an assessment is made, at best, the claim is voidable rather than void. At page 4, Madraiwiwi, J., said:

“In its defence the applicant draws a distinction between an error that is void and one that is voidable in relation to the claim being expressed at large. Its omission in stating a specific amount is voidable until such time as a limit of \$15,000 is exceeded. The flaw in the argument is the inability of the Magistrates Court to amend claims before it. Lacking the

capacity to exercise such powers, **open claims must necessarily be assumed to exceed jurisdiction.** (Emphasis added)

27. At this stage, I need to point out that the Magistrate's Court has the power to amend claims pursuant to Order XIV of the Magistrates Court Rules, which provides:-

" 1. The Court may, at any stage of the proceedings, either of its own motion or on the application of either party, order any proceedings to be amended, whether the defect or error be that of the party applying to amend or not; and all such amendments as may be necessary or proper for the purpose of eliminating all statements which may tend to prejudice, embarrass or delay the fair trial of the suit, and for the purpose of determining, in the existing suit, the real question or questions in controversy between the parties, shall be so made. Every such order shall be made upon such terms as to costs or otherwise as shall seem just".

28. It is seen that in all cases cited above unspecified claims filed in the Magistrate's Court without limiting to the monetary jurisdiction of the Court were struck out for want of jurisdiction on the assumption that the claims exceeded the ordinary jurisdiction of the court.

ACCESS TO JUSTICE ISSUE

29. The appellant also submits that the learned Magistrate's order made striking out the claim without considering the substantive matter and evidence infringes his constitutional right to have his matter determined by a Court of Law.
30. Without citing any provision of the law or rules, counsel appearing for the respondent submits that the appellant had failed to comply with the mandatory requirement of the law that an unspecified claim must carry the word '*limited to the jurisdiction of the court*', which has been there for time immemorial.

31. It is noteworthy that there is no legal requirement that demands that any unspecified claim filed in the Magistrate's Court shall accompany the words '*limited to the jurisdiction of the court*'. There is no such provision either in the MCA or in the MCR or in any other law. The requirement that the claim ought to be limited to the jurisdiction of the Magistrate's Court when filing any unspecified claim has been developed by the case authorities. I would, therefore, hold that there is no requirement in the Magistrate's Court Act or Rules that an unspecified claim has to be limited to the jurisdiction of the Magistrate's Court.

ACCESS TO JUSTICE

32. The Appellant has a constitutional right to access to court and tribunals. Section 15(2) of the 2013 Constitution provides:-

"Every party to a civil dispute has the right to have the matter determined by a court of law or if appropriate, by an independent and impartial tribunal."

33. The appellant's claim has been struck out and dismissed on the technicality without considering the merits of his claim.

34. Counsel for the appellant submits that although, the law permits that in certain circumstances a civil claim can be struck out without being determined on the merits, the basis on which the appellant's claim was struck out is not permitted by legislation or rules of court.

35. It is important that the constitutional right to access to justice should not be denied lightly and the court should not allow the technicality to stand in the way to access to justice.

36. I am in agreement with the appellant's submission that his claim was struck out on the ground that is not permitted by legislation or rules of court.
37. With due respect to the judges who made the decisions, I would tend to deviate from the earlier decisions that an unspecified claim filed in the Magistrate's Court should be dismissed on the assumption that the claim exceeded the monetary jurisdiction of the court. In my opinion, the Magistrate's Court could hear and determine such a claim on the basis that the claimant has limited his or her claim to the jurisdiction of the court by filing the claim in the Magistrate's Court. In the absence of the words 'limited to the jurisdiction of the court', if one could assume that the unspecified claim exceeding the jurisdiction of the court it could also be assumed that the claimant has himself or herself limited the claim to the jurisdiction of the court by filing it in the Magistrate' Court. It would be against the interest of justice and the right to access to justice to strike out an unspecified claim on the premature assumption that such claim would exceed the jurisdiction of the court.

CONCLUSION

38. There is no legislative requirement that an unspecified claim filed in the Magistrate's Court must carry the words 'limited to the jurisdiction of the court. It is founded by the case authorities. The respondent's argument that the appellant had failed to comply with the mandatory requirement of the law by not limiting his unspecified claim to the jurisdiction of the Magistrate's Court is to me unfounded. There is no such requirement in law or rules.

39. I am more inclined to agree with the appellant who submits that a combination of these two cases (Imam Din and Ram Khelawan) lead to the unfortunate interpretation that a claim is “assumed” to have exceeded jurisdiction if a claimant does not plead that he or she is limiting the claim to the jurisdiction and that several cases have been struck out based on these decisions and many cases have not been heard on the merits.
40. I am of the opinion that it would be tantamount to depriving a claimant of his right to access to justice if the claim is dismissed on the assumption, at the time that the claim was lodged, that the quantum would exceed the monetary jurisdiction set by the Magistrate’s Court Act in respect of the jurisdiction of the Magistrate’s Courts.
41. The proper procedure to be adopted by the Magistrate’s Court when a claim, especially an unspecified claim is filed in the Magistrate’s Court without pleading that the claim is limited to the jurisdiction of the court, might be to proceed with the claim on the basis that the claim is limited to the jurisdiction of the Magistrate’s Court and to determine it on the merits and grant relief subject to monetary jurisdiction of the court or to allow the claim to be amended to bring the claim within the jurisdiction of the court. Under Order XIV of the MCR, the Magistrate has the power to order, at any stage of the proceedings, any proceedings to be amended.
42. The learned Magistrate, in this case, could have allowed the appellant to amend his pleadings to bring the claim within the jurisdiction of the court or he could have proceeded with the claim without amendment on the foresight that he has limited his claim to the jurisdiction of the court as a result of filing the same in the Magistrate’s Court.

43. For all these reasons I would allow the appeal and set aside the learned Magistrate's order of 9 May 2014 that struck out the appellant's claim for want of jurisdiction. The learned Magistrate might hear the matter as it is filed or allow the claim to be amended if such application is made and hear and determine the claim on its merits. The case is to be transmitted back to the Magistrate's Court for hearing and determination. In all the circumstances, I would make no order as to costs.
44. The appellant submits that despite the several grounds of appeal, if the interpretation of law as submitted by the appellant is accepted then the other grounds of appeal need not be determined. I have determined the main issue in favour of the appellant. Therefore, there is no necessity to determine the other grounds of appeal.

Final Outcome

1. Appeal allowed.
2. Magistrate's order set aside.
3. The Registry is to send the case back to Magistrate's Court, Ba for hearing and determination.
4. No order as to costs.

M H Mohamed Ajmeer
8/11/16

M H Mohamed Ajmeer

JUDGE

At Lautoka

8th of November 2016

