

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBA Appeal No. 28 of 2015

BETWEEN : SANJAY SINGH VERMA

Appellant

AND : SANJAY RAJENDRA PRASAD

Respondent

Coram : The Hon Mr Justice David Alfred

Counsel : Mr T Sharma for the Appellant.
The Respondent in person with Prasad Sharma as his McKenzie friend.

Date of Hearing : 21 July 2016

Date of Judgment : 2 December 2016

JUDGMENT

1. This is the Plaintiff's Appeal against the Ruling of the Resident Magistrate, Nausori delivered on 9 June 2015 whereby she dismissed the Plaintiff's application for reinstatement with costs of \$250.00. From that Ruling (Ruling) the Plaintiff now Appellant is appealing to this Court.
2. The Grounds of Appeal are as follows:
 - (1) The learned Magistrate erred in fact when she ruled that the Appellant's Counsel's late appearance was tantamount to a non-appearance.
 - (2) The application to reinstate the matter was made after the necessary instructions were received from the Appellant after his release from prison.

- (3) The Magistrate erred in law and fact when she found the Appellant guilty of default, delay and prejudice amounting to an abuse of process of court.
 - (4) The Magistrate erred in law when she failed to consider the Defendant/Respondent wanted to file a counter-claim against the Plaintiff/Appellant and hence was consenting to the reinstatement.
 - (5) The Magistrate erred in law in not recusing herself from hearing the reinstatement application because she was previously employed by the solicitors firm of which the Appellant was a client and she had been handling the Appellant's file.
3. At the hearing before me, the Appellant's Counsel submitted that he was absent on the mention date as he was engaged in the Nasinu Magistrates Court. He appeared before the Magistrate in the Nausori Court later but she did not accept his explanation. The matter was struck out without the substantive claim being heard on the merits. There will be no prejudice since the Respondent can be compensated in costs.
 4. The Respondent in his oral submission said he had a written submission (which he provided to the Court) and wanted the Appeal to be dismissed with costs.
 5. After hearing oral arguments, I informed I would take time for consideration. In doing so I have perused the Respondent's written submission and also the Ruling.
 6. The Magistrate, it appears did not accept the Appellant's Counsel's reason for his non-appearance before her. She also held it against him for having taken 1 year and two months to file the application for reinstatement.
 7. I note the Magistrate had struck out the matter on a day when it was fixed only for mention to fix a new hearing date. I also note the Respondent has nowhere contended he would suffer prejudice if the matter were to be reinstated.

8. I am therefore of opinion, it would be just and proper for the Court to allow this appeal. However, the Respondent has to be and shall be compensated in costs.
9. I therefore allow this Appeal, set aside the Ruling and order the Appellant to pay the Respondent costs which I summarily assess at \$750.00. I further order that these costs are to be paid on or before 9 December 2016.
10. I finally order that thereafter this matter be called for mention before a different Resident Magistrate in the Nausori Magistrates Court at 9 am on 12 December 2016.

Delivered at Suva this 2nd day of December 2016.



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David Alfred
JUDGE
High court of Fiji