

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

HIGH COURT CIVIL APPEAL NO: 2 OF 2016

Magistrate Court Civil Appeal No. 25 of 2015

SCT Claim No. 205/15

LAURENCE ACHAL

APPELLANT

(Original Respondent)

vs

RONIL AVINESH CHAND

RESPONDENT

(Original Claimant)

Appellant : In person
Respondent : In person
Date of Hearing : 23.6.2016
Date of Judgment : 12.8.2016

J U D G M E N T

INTRODUCTION

01. This is an appeal, with leave to appeal out of time being obtained, against the judgment of the Magistrate sitting at Lautoka delivered on 10 February 2016. By his judgment the Learned Magistrate confirmed an order delivered by the Small Claims Tribunal ("SCT") in SCT Claim No. 205/15.

02. At the hearing of the appeal both parties made their respective oral submissions. They opted not to file written submissions though explained to them that they could file written submissions if they intend to do so.

BACKGROUND

03. The Respondent, Ronil Avinesh Chand, lodged a claim against the appellant, Laurence Achal, in SCT at Lautoka under SCT Claim No. 590/13 for \$5000.00 being the value of the furniture he left in the appellant's shop, which the respondent had been renting.
04. The appellant made a counterclaim against the respondent for \$4,129.91 being rent arrears for 4 months. The appellant's counterclaim was registered under SCT Claim No. 622/13.
05. Both matters were settled by SCT. The respondent's claim was set off against the counterclaim made by the appellant. The Learned Referee accordingly ordered the appellant to pay the balance sum (\$5,000.00 (claim) - \$4,129.91 (counterclaim) of \$934.59, which includes cost of \$64.50. The appellant paid the balance to the Respondent as ordered.
06. Thereafter, in February 2015 the respondent filed another application against the appellant under Small Claim Tribunal Claim No. 205/15 claiming further sum of \$4,958.00 in respect of the same matter. The appellant resisted the claim on the ground that the claim is for the same matter, which was adjudicated upon between the parties in the previous actions. However, the Learned Referee proceeded with the hearing and ordered the appellant to pay a sum of \$2,479.00 to the respondent. The appellant appealed the award to the Magistrate Court. The Magistrate Court dismissed the appeal. The appellant appeals to this court.

GROUND OF APPEAL

07. The appellant relies on the following grounds of appeal:-

- “1. Constitutional right denied when ruling was delivered without a hearing.*
- 2. The Learned Magistrate is refusing to accept the facts of the case in delivering a ruling.*
- 3. No reasonable reason given by the Learned Magistrate and no analysis done to arrive at the ruling.”*

THE LAW

08. Section 33(1) of the Small Claim Tribunal Decree 1991 (“SCTD”) is relevant to this appeal.

That section provides:

- “(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.”*

THE ISSUE AT APPEAL

09. The appeal concentrated on the question of the jurisdiction of the Small Claim Tribunal. Especially, whether the Learned Referee exceeded his jurisdiction when entertaining a second claim when the claimant had made a claim for \$5,000.00 in his previous claim in respect of the same matter against the same respondent.

THE SUBMISSIONS

Appellant

10. The Appellant’s primary submission was that the Referee has exceeded his jurisdiction when accepting the second claim made by the Respondent after adjudicating upon the respondent’s previous

claim for \$5,000.00 in respect of the same matter. He also submits that the Respondent in his subsequent application claimed a sum of \$4,958.00. However, the Learned Referee awarded \$2,479.00 against me (appellant). The appeal to the Magistrate Court against the award was dismissed by the Learned Magistrate.

Respondent

11. The Respondent submits that the appellant threw his (respondent) furniture out for the public to pick. He further submits that he did not claim all his claims in one action because he did not know that he needs to claim everything in one action. He also submits that the Learned Referee decided the matter after hearing evidence given by both parties. He says that he admits that he received insurance claim of \$6,707.62.

THE DECISION

12. The Appellant appeals the award made by the Learned Referee of the Small Claim Tribunal against him in application No. 205/15 brought by the Respondent.
13. The appeal was argued on the sole additional ground raised at the appeal hearing that the Learned Referee exceeded his jurisdiction in entertaining the subsequent claims made by the Respondent in the Small Claim Tribunal. It appears that the appellant has abandoned the grounds of appeal raised in the notice of grounds of appeal.
14. Initially, the Respondent made an application No. 590 in the Small Claim Tribunal and claimed \$5,000.00 against the appellant for the furniture that were left in the Appellant's premises when the Respondent vacated the premises after terminating the rent agreement he had with the Appellant.

15. The Appellant filed his counterclaim under application No. 622/13 against the Respondent for \$4,129.91 being arrears of rent payable by the Respondent. The Learned Referee following a hearing ordered to set off the respondent's claim against the counterclaim made by the Appellant and ordered the appellant to pay the balance sum of \$934.59 to the Respondent, which the appellant paid. Thus, both the claims were settled.
16. The Respondent did not stop there. He filed another claim in Application No. 205/15 against the Appellant claiming a further sum of \$4,958.00 for the same matter. This application has emerged two years after the previous application. The Appellant resisted this claim. However, the Learned Referee held against the Appellant and ordered him to pay a sum of \$2,479.00. Being aggrieved with the award, the Appellant made a timely appeal to the Magistrate court. The Learned Magistrate after calling for written submissions dismissed the Appellant's appeal by his judgment delivered on 10 February 2016. The Learned Magistrate in his judgment stated that (at paras 13 & 14 of his Judgment):-

"I find that the Referee has conducted the proceedings in manner that was procedurally fair to both parties and he did not exceed his jurisdiction. The appeal is refused the Respondent is at liberty to enforce his judgment"

17. The Learned Magistrate correctly identified the relevant law and the case authority when deciding the appeal. He then applied the law to the appeal. The facts as identified by the Learned Magistrate are that:-

"In this case the claim is for \$4,958.00 and it is within the monetary jurisdiction of the Tribunal. The claim is relation to the shop fitting and furniture's which the Appellant did not return after the shop that was rented

by the Respondent at 19 Yasawa Street caught fire on 8th February, 2013. These items were not damaged by the fire. The Appellant had filed a counter-claim of non-payment of rent but this had been fully settled at the Small Claim Tribunal. The Tribunal had considered the value of the property and deducted 50% due to wear and tear and the amount to be paid to the Respondent is \$2,479.00”

18. However, the Learned Magistrate appears to have failed to appreciate the facts that the Respondent’s subsequent or second claim to the Small Claim Tribunal was in respect of furniture and fittings as was in the previous claim.
19. The Respondent had obtained \$6,707.62 as Insurance Claim for goods destroyed or damaged by fire. It is to be noted that the Respondent had insured the goods for \$15,000.00 and received substantive sum from Insurance Company.
20. It is doubtless that the Respondent’s subsequent claim was for furniture and fittings. His first claim of \$5,000.00 was also for the furniture and fittings he left at the appellant’s premises when vacating the rented premises.
21. Interestingly, at the High Court Appeal hearing the Respondent admitted that the second claim was also for the furniture and fittings. He stated that:

“I did not claim all my claims in one action. I didn’t know that I need to claim everything in one action.”
22. Additionally, the respondent makes it clear in his original claim to the Small Claim Tribunal by saying that, I would like to claim \$5,000.00

and my counter and furniture and fittings'. (see page 71 of the copy record).

23. A Small Claim Tribunal has jurisdiction to hear and determine any claim, if the claim is \$5,000.00 or less (see section 8 of the SCTD as amended).
24. It would be abuse of the process of the court to split the claim if it exceeded the jurisdiction of the Small Claim Tribunal with the view to make the claim within the ordinary monetary jurisdiction of the Small Claim Tribunal.
25. In this case the Respondent brought a subsequent claim for \$4,958.00 against appellant having made a claim previously for \$5,000.00 and got it adjudicated upon between the same parties in respect of the same matter namely furniture and fittings.
26. In essence, the Respondent's claims in combination exceeds the jurisdiction of the Small Claim Tribunal (First Claim - \$5,000.00 & second claim \$4,958.00 = \$9,958.00).
27. I am of opinion that the Learned Referee as well as the Learned Magistrate erred in law and in fact in determining a claim, which apparently exceeded in combination the monetary jurisdiction of the Small Claim Tribunal. The Learned Referee exceeded his jurisdiction by entertaining a subsequent claim made against the appellant in respect of the same matter which was determined by the Small Claim Tribunal in the previous action between the same parties.
28. No party to a Small Claim Tribunal claim is entitled to split a claim that exceeds the jurisdiction of the Small Claim Tribunal in order to bring the claim within the jurisdiction as between the same parties. And a Small Claim Tribunal might not accept a

splitted claim especially when it exceeds its jurisdiction in combination where the splitted claims are made in respect of the same party and in respect of the same matter.

CONCLUSION

29. For all these reasons, I set aside the Learned Magistrate’s judgment of 10 February 2016 delivered affirming the decision of the Learned Referee dated 17 April 2015. The Learned Magistrate might have struck out the Small Claim Tribunal Action No.205/15 on the ground that the learned Referee has exceeded his jurisdiction, which he failed to do so. I therefore, exercising my appellate jurisdiction, set aside the award made against the appellant in Small Claim Tribunal Action No. 205/15 and delivered on 10 February 2016. I would struck out the subsequent claim brought by the Respondent against the appellant in respect of the same matter as it exceeded the jurisdiction of the Small Claim Tribunal. I would order the Respondent to pay a sum of \$500.00 which I summarily assessed.

The Final Result of the Appeal

1. Appeal allowed.
2. Magistrate’s judgment set aside.
3. Respondent’s SCT Application No. 205/15 struck out.
4. Respondent will pay \$500.00 to the appellant as costs of the appeal.

M H Mohamed Ajmeer
.....12/8/16

M H Mohamed Ajmeer

JUDGE

At Lautoka

12 August 2016

