

IN THE HIGH COURT OF FIJI

AT LABASA

CIVIL JURISDICTION

CIVIL APPEAL NO. HBA 02 OF 2017

BETWEEN: **AIYUB KHAN & TAITUSI YABAKI**

Appellants

AND: **JOELI K, TURAGA N, TAGILALA V, WINGA V,
JOPE V, NAI T, TIKI S, DYRI M, TEVITA, URAIA L,
CAMA V, TAIKIKO N, LAI V, JONE V, JITOKO T,
TUNIDAU, KOLINIO S AND SIMELI S**

Respondents

CORAM: **The Hon. Mr. Justice David Alfred**

COUNSEL: **Mr. H. Robinson for the Appellants**

Date of Hearing: **8 August, 2018**

Date of Judgment: **10 August, 2018**

JUDGMENT

1. The Appellants are appealing against the Judgment of the Resident Magistrate given on 23 June 2017 affirming the decision of the Small Claims Tribunal made on the 11th day of October 2016.
2. In their Notice and Grounds of Appeal they state the grounds are as follows:

- (1) The Magistrate erred in holding that there were no rights of appeal on merits when the Tribunal's decision (decision), did not consider the substantial merits of the action.
 - (2) The Magistrate erred in affirming the decision based on inferences and not on any substantial merit.
 - (3) The Magistrate in affirming the Tribunal's decision based on its inferences failed to consider the unfair manner in which those inferences were made in respect of the Appellants.
 - (4) The Magistrate erred in Law in failing to correctly interpret and apply the SCT Decree in determining the Appeal in that the decision was the result of unfairness in the procedures in the hearing.
 - (5) The Magistrate failed to correctly apply the decision in *Sheet Metal Plumbing (Fiji) Ltd v Deo* (Sheet Metal).
3. At the hearing Mr Robinson submitted there was only 1 ground of appeal viz; the proceedings were unfair and prejudicial.
 4. He then referred to the decision in the Sheet Metal case, and then concluded by stating he objected to the inferences of the Referee.
 5. The Respondents were not represented nor did any of them appear in this Court.
 6. At the conclusion of the arguments I said I would take time for consideration. Having done so I now deliver my judgment.
 7. I start with the decision of the Referee who had the opportunity of hearing the parties and drawing his own conclusion as to their veracity and the weight he ought to give to their evidence in the interests of justice.

8. The Referee stated in para 7.0 of his decision that in conclusion an order was made against the Respondents (present Appellants) based on his inferences that the claimants (present Respondents) were unfairly treated with the present Appellants taking the bigger portion of what they sweated for.
9. The question is could the Referee have made these inferences based on what he heard from both sides. I must turn now to the Small Claims Tribunal Decree 1991. Section 15 (4) states the Tribunal shall determine the dispute according to the substantial merits and justice of the case and shall have regard to the law but not bound to give effect to strict legal rights or technicalities. Section 33 (1) states any party may appeal against the order of the Tribunal 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”.
10. I turn now to the decision of Fatiaki J in *Sheet Metal and Plumbing (Fiji) Limited and Uday Narayan Deo* [1991] FJHC 26 delivered at Suva on 14 April 1999. Having perused the Reasons for the Decision of his Lordship I opine that they do indeed support the judgment of the Magistrate here in dismissing the appeal against the decision. The judge said a cursory examination of the provisions of ss 24 to 29 serve to 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. I adopt and apply his Lordship’s reasoning in this Appeal.
11. The Appellants have not provided any grounds on which I can justifiably upset the Magistrate’s Judgment. It bears reminding that the Referee arrived at his decision after hearing both sides. In no way is it possible for the Appellants to contend that there was any prejudice to them in the hearing or any unfairness on the part of the primary judge, the Referee. It is not the function of this Court which is twice removed from the Tribunal if I may say so, to second guess the Referee.
12. In the result the Appellants have failed and the Appeal has to be dismissed with no order as to costs here, and I shall hereby affirm the judgment of the Magistrate dated 23 June 2017.

Delivered at Labasa this 10th day of August 2018.



DAVID ALFRED
JUDGE
HIGH COURT OF FIJI