

IN THE HIGH COURT OF FIJI
AT SUVA

SCT Appeal No. 18 of 2018

Appeal No. HBA 20 of 2018

BETWEEN : DIGITAL POST & PRINT LTD

APPELLANT

AND : ACTION PRINT SERVICES

RESPONDENT

CORAM : The Hon. Mr. Justice David Alfred

COUNSEL : Mr. S. Valenitabua for the Appellant
Mr. A. Nand for the Respondent

Date of Hearing : 8 February 2019

Date of Judgment : 11 February 2019

JUDGMENT

1. This is the Appellant's Appeal against the judgment of the Resident Magistrate (RM) on 25 September 2018 dismissing an appeal against the Small Claims Tribunal (SCT) Ruling dated 21 February 2018 wherein the Referee held the Appellant liable and ordered it to pay a sum of \$5,000.
2. The grounds of Appeal were 4 in number but at the outset of the hearing before me, Mr Valenitabua informed that there was no issue regarding the jurisdiction of the SCT and that only the issue of unfairness was before me.
3. Mr Nand raised a preliminary objection. He said the Appellant had filed the grounds of appeal out of time in breach of the Magistrates' Court Rules (Rules Order XXXVII rule 3-(1)). He said the judgment was delivered on 25 September 2018 while the grounds were filed on 15 November 2018 and served on the Respondent on 21 November 2018.
4. Mr Valenitabua said it was fatal to the Appellant's case that the grounds were not served on the Respondent on 15 November 2018. He accepted it was not served in accordance with the Rules. However he went on to submit on his sole ground of appeal. He said the unfairness was that the special damages were not proved by documents, invoices and receipts in the SCT, which he submitted were never provided to the SCT. He concluded by saying the grounds were received by the Magistrates' Court registry on 25 October 2018.
5. Mr Nand then submitted. He said the documents were supplied to the SCT. He said the fact that a solicitor was liable does not entitle him to an extension of time.
6. Mr. Valenitabua in his reply said he agreed (with Mr Nand) that this matter had been heard by 3 different Referees in the SCT. He asked the Court to interpret 0.37 r. 3(4) to hold that there was no sanction if the grounds was not served in time as the Rules did not require service within one month of the Magistrate's decision. He concluded by asking the Court not to send the matter back to the SCT for a re-hearing as this was the 3rd appeal.
7. At the conclusion of the arguments, I said I would take time for consideration. Having done so, I shall now deliver my decision.

8. I start by considering the preliminary objection. I note 0.37 r. 3-(1) of the Rules reads: "The Appellant shall within one month from the date of the decision appealed from, including the day of such date, file in the court below the grounds of his appeal, and shall cause a copy of such grounds of appeal to be served on the respondent."
9. I then turn to the chronology of what I call the events which according to my perusal of the Court file is as follows:
 - (1) Stamped date of receipt in the Magistrates' Court registry (registry) "25 OCT 2018".
 - (2) Stamped date of filing in the registry: "15 NOV 2018."
 - (3) Stamped Fees Paid: date written is 15/11/18.
10. Since there can be no filing of a document in the registry without the payment of the requisite filing fee, it is axiomatic that the grounds were filed on 15 November 2018.
11. But the matter does not end there. I note the grounds were not served on 25 October nor 15 November 2018 but only on 21 November 2018 (as acknowledged by the Respondent's solicitors' stamp).
12. I accept and apply my brother Brito - Mutunayagan J's decision in: *Simon Seru v Credit Corporation (Fiji) Limited* [2016] HBC No 29 of 2015S at para [4], that the grounds of appeal must both be filed and also served on the respondent within one month of the decision appealed from.
13. In the event irrespective of whether the grounds were filed on 25 October or 15 November it was only served on 21 November 2018 and consequently as it were not served within one month of the judgment, the appeal was time-barred and has therefore to be dismissed with costs. This is because there was no application to the court below nor to this court to extend the time.
14. Nevertheless, for the sake of completeness, I shall consider the sole ground of appeal i.e the alleged unfairness and prejudice, which Mr Valenitabua contends, stems from the Respondent's alleged failure to prove its special damages. This contention is clearly dispelled by the Magistrate in his judgment where in para 13 he states the Respondent presented its case with documentary evidence as recorded in the original SCT record, and in para 15 that the referee considered all the evidence and found the appellant liable to settle the claim.

15. Consequently, in the face of 2 concurrent findings of fact by the magistrates' court and the SCT, this Court cannot overturn the decision below, especially when no evidence has been presented here why the RM's decision should be reversed.
16. Consequently the appeal even if properly before me (which it was not) would have been dismissed.
17. At the end of the day the Appellant has had his day in Court, in fact his third day. There were no merits in his appeal which I have found was not served in time.
18. In the result, I shall dismiss the Appeal, affirm the Resident Magistrate's judgment and order the Appellant to pay the Respondent the costs of this appeal summarily assessed at \$450.

Delivered at Suva this 11th day of February 2019.



A handwritten signature in black ink, appearing to read "David Alfred", written over a dotted line.

David Alfred
JUDGE
High Court of Fiji