

IN THE HIGH COURT OF FIJI AT SUVA
APPELLATE JURISDICTION

Civil Appeal No. 10 of 2020

Navua Magistrate's Court Case No. 11 of 2019

BETWEEN

WISALE TABUYA of Lot 8 Salaaba Road, Stage 1 Hooker's Subdivision,
Waila Nausori, Solicitor.

PLAINTIFF - APPELLANT

AND

JOSATEKI NAVULUMATUA KOROI of Lot 2 FEA Road,
Waidradra, Navua, Unemployed.

DEFENDANT - RESPONDENT

Counsel : Appellant in person
Respondent in person

Date of Hearing : 21st October 2020

Date of Judgment : 18th November 2020

JUDGMENT

- [1] The appellant instituted these proceedings in the Magistrate's Court of Navua against the respondent seeking the following reliefs:
- i. Payment of the sum of \$10,740.00 (TEN THOUSAND SEVEN HUNDRED AND FORTY DOLLARS ONLY) within 7 (SEVEN) days. In default, contempt proceedings to be issued against the defendant.
 - ii. 5% interest from the date the invoice was due.
 - iii. Costs.
- [2] The learned Magistrate dismissed the plaintiff's claim and he appealed to this court on the following grounds:
1. The learned Resident Magistrate erred in his finding of fact when he failed to consider the Detailed Invoice No. 001 dated 15.02.2017 contained in pages 12 – 14 of the Appellant's/Plaintiff's 'Bundle of Documents' filed on 1 October, 2019. This detailed Invoice No. 001 was tendered as exhibit No. 2.
 2. The learned Resident Magistrate erred in law when he misdirected himself and failed to read and apply the Rules under Order 38 – Recovery of Costs by Legal Practitioners of the Magistrates Court Rules 1945 in conjunction with Sections 77, 79 and 80 of the Legal Practitioners Act 2009.
 3. The learned Resident Magistrate erred in law when he failed to be guided by the principle *stare decisis et non quieta movere* by disregarding and not applying the Fiji High Court Precedents (*ratio decidendis*) with regard to the subject matter.
- [3] At the hearing of the appeal the appellant and the respondent made submissions. The appellant's submission is that the learned Magistrate failed to follow the principles laid down in previous decisions. There is no rule of law that the court must always cite previous decisions in its judgments. If the statute is clear and not interpretation is required the court does not have to rely on previous decisions.
- [4] The appellant relies on the decision of this court in **Maivusaroko v Vakaloloma & Associates [2016] FJHC 522; HBC308.2015 (8 June 2016)**. In that case the plaintiff

sought to recover the money transferred to the account of the legal practitioner. Section 78(2) of the Legal Practitioners Act 2009 provides that when there is no agreement between the legal practitioner and the client as to the amount of legal fees payable, the legal practitioner is entitled to deduct not more than 10% of the amount credited to his account.

[5] Section 78 has no application to this matter for the reason that whatever the money recovered by the respondent has been paid directly to him and not to the solicitor's account.

[6] The appellant has also cited the decision of the learned Master in **Mishra Prakash & Associates v Lautoka General Transport Ltd [2008] FJHC 367; HBC136.2007 (19 December 2008)** before the learned Magistrate. The issue in that matter was whether a summary judgment on a contested bill of costs of a Practitioner could be granted. The court finally dismissed the claim.

[7] I do not see any relevance of the above decision to the matter before the learned Magistrate.

[8] There had been no written agreement between the appellant and the respondent on the legal fees payable by the respondent for the services rendered by the appellant. The learned Magistrate states in his judgment that both parties agreed that there was an oral agreement between them but there was no agreement as to the amount payable by the respondent to the appellant for the services rendered.

[9] Section 79(1) of the Legal Practitioners Act 2009 provides:

Every practitioner shall be entitled to sue for and recover the practitioner's cost pursuant to any agreement made in accordance with the provisions of this part, or in the absence of such agreement in accordance with schedules of fees established by regulations pursuant to this part, together with any proper disbursements, in respect of services rendered whether as a legal practitioner.

Section 77(1) of the Legal Practitioners Act 2009 provides:

A practitioner may make a written agreement with that practitioner's client in relation to the amount and manner of payment for the whole or any part or parts of any past or future services fees, charges or disbursements in respect of

business done or to be done by such practitioner, either by a gross sum or otherwise howsoever.

[10] When the above two provisions are read together it is not difficult to understand that the agreement is referred to in section 79(1) should be in writing. In the instant matter the appellant relies on an oral agreement the terms and conditions of which were not agreed upon. The appellant's evidence before the Magistrate's Court was that the defendant agreed to pay him after the case is finalised. He has stated further that they agreed for an equitable sum. Such an agreement, even if the appellant is able to establish its existence, cannot be enforced under the provisions of the Legal Practitioner's Act 2009.

[11] The learned Magistrate is therefore, correct holding that the agreement which is alleged to have been entered into between the parties is not enforceable in law.

[12] For the reasons set out above I see no merit in the appellant's appeal.

ORDERS

1. The appeal of the appellant is dismissed.
2. Parties to bear their own costs of their appeal.



18th November 2020

A handwritten signature in blue ink, appearing to read "Lyone Seneviratne".

Lyone Seneviratne

JUDGE