

**IN THE HIGH COURT OF FIJI  
(WESTERN DIVISION) AT LAUTOKA  
CIVIL JURISDICTION**

**CIVIL ACTION NO. HBA 16 OF 2020.**

**BETWEEN** : **DHIRENDRA DINESH NAND** of Nacaci, Ba  
**APPELLANT (ORIGINAL PLAINTIFF)**

**AND** : **SARA ISMAIL** of Lovu, Lautoka  
**RESPONDENT (ORIGINAL DEFENDANT)**

**BEFORE** : Hon. Mr. Justice Mohamed Mackie

**APPEARANCES** : Mr. D. Patel for the Appellant  
Ms. R. Charan for the Respondent

**DATE OF DECISION** : 23<sup>rd</sup> November, 2022

**JUDGMENT**

**A. INTRODUCTION:**

1. This is an appeal arising out of the ruling dated 04<sup>th</sup> June, 2019 pronounced by the Magistrate's Court of Ba, to strike out the plaintiff - appellant's (the appellant's) statement of claim, in the action No-MBC 067 of 2013, in the exercise of its Civil jurisdiction, pursuant to a preliminary objection raised on behalf of the defendant-respondent (the respondent) with regard to the limitation on the monetary jurisdiction of that Court.
2. At the hearing of the appeal before me on 24<sup>th</sup> August, 2022, learned counsel for both the parties made the oral submissions. Counsel for the appellant also relied on the written submissions that had already been filed on 20<sup>th</sup> October, 2021, while the Counsel for the respondent was left at liberty to file and serve his written submissions in 7 days for the appellant's counsel to file and serve the reply, if any, in 7 days thereafter. But I find no written submission has been filed on behalf of the respondent as per the direction or till the dawn of this day.

**B. BACKGROUND:**

3. The appellant on 22<sup>nd</sup> November, 2013 filed his statement of claim (SOC) before the Magistrate's Court of Ba, against the respondent, seeking for the rescission of a contract entered between him and the respondent and for the recovery \$25,000.00 paid as a deposit under the contract or in lieu of rescission of the contract, for the recovery of the deposit of \$25,000.00 together with a further sum of \$3,087.06 as special damages, damages for the tort of fraudulent misrepresentation and breach of contract, inclusive of costs.

4. The respondent by his statement of defence filed on 5<sup>th</sup> March, 2014, having admitted the entering into the contract and the receipt of the advance in a sum of \$25,000.00, denied the majority of the averments in the SOC, and took up a position that the appellant's claim is beyond the monetary jurisdiction of the Court. He also made a counter claim for the recovery of damages in a sum of \$7,832.00.
5. The appellant filed his Reply to Statement of Defence and Defence to counter claim on 30<sup>th</sup> July, 2014. The respondent filed his Reply to Defence to Counter Claim on 01<sup>st</sup> August, 2014.
6. Accordingly, after several adjournment in a period of 5 years, when the matter had come up for hearing on 2<sup>nd</sup> October, 2018, since the counsel for the respondent raised a preliminary objection as aforesaid, the learned Magistrate, after hearing counsel for both the parties and entertaining written submission, by his impugned ruling dated 04<sup>th</sup> June, 2019, struck out the appellant's SOC on the alleged failure of the appellant to limit his claim to fall within the monetary jurisdiction of the Magistrate's Court.
7. As a result, the appellant's longstanding action came to an end **without** his substantial claim being adjudicated. It is against this ruling the appellant is before this Court by filing his belated Notice of Appeal and Grounds of Appeal, by obtaining leave to do so.

C. **GROUND OF APPEAL:**

8. The appellant relied on the followings as his grounds of appeal;
  1. The learned Magistrate erred in law in holding that in order to be within the jurisdiction of the Magistrates Court the plaintiff had to specifically plead in the claim or in the prayer that his claim was limited to its jurisdiction when :-
    - a. There was no such requirement in the Magistrates Court Act or Rules;
    - b. By commencing the proceedings in the Magistrate's Court, the Plaintiff had limited himself to the jurisdiction of the Court;
    - c. The issue of jurisdiction is a matter of law and not fact and the Plaintiff was only required to plead material facts.
  2. The learned Magistrate erred in law and fact in not considering the decision and reasoning in **Chand V Sharma [2016] FJHC 1022; Civil appeal 9 / 2014 (8 November 2016)**, which is a binding authority of the High Court and is similar to the case before the learned Magistrate.

D. **THE ISSUE AT APPEAL:**

9. The only question that begs adjudication by this court is as to what is the correct procedure that should be adopted by a Magistrate, when an unspecified claim is filed before his/ her

Court seeking relief, without expressly limiting the claim to be within the monetary jurisdiction of Magistrate's Court.

**E. THE LAW APPLICABLE:**

10. The jurisdiction of the Magistrate's to hear and determine civil cases derives from s.16 of the Magistrate's Court Act (MCA), which so far as relevant provides:

"16. (1) without prejudice to the jurisdiction of a magistrate under this Act or other written law, a resident magistrate shall have and exercise jurisdiction in the following civil causes-

*(b) if the value of the property or the debt , amount or damage claimed whether as a balance or otherwise, is not more than \$50,000.00.*

**F. THE SUBMISSIONS:**

**Appellant's submission**

11. The appellant's forceful submissions covering both the grounds of appeal are found in paragraphs 18 to 47 of his written submissions.
12. In summary, it is submitted on behalf of the appellant;

**That** there are no provisions in the Magistrate's Court Act (MCA), Magistrate's Court Rules (MCR) and / or in any written law that requires a plaintiff to specifically plead in the statement of claim that his/her claim is limited to the jurisdiction of the Magistrate's court or that an open claim must be assumed to exceed the monetary jurisdiction of the Magistrate's Court.

**That** by filing a claim in the Magistrate's Court the plaintiff has limited his claim to the jurisdiction of Magistrate's court.

**That** the Magistrate erred in law and in fact by not considering the reasoning and decision of *Chand V Sharma [ 2016] FJHC 1022 ; Civil Appeal 9/2014 (8<sup>th</sup> November,2014)* when it was a binding authority of the High court , and it was similar in its facts and issues to the matter being dealt with by the learned Magistrate.

13. Accordingly, Counsel for the appellant forcefully argued that the Magistrate does not have power to strike out the action in the manner done in this matter.

**Respondent's submission**

14. Learned counsel for the respondent made short oral submission, while undertaking to file his detailed written submissions within 7 days. But, I don't find any written submissions filed so far.

Counsel argued that since the appellant had sought remedies, apart from rescission of contract, for the repayment of the advance deposit of \$25,000.00, together with special damages in a sum of \$ 3087.06 both of which come to \$28,087.06, and for further unspecified/ unlimited damages for fraudulent misrepresentation and breach of contract, without a specific statement in the SOC that he limits his claim to the jurisdiction of the Magistrate's Court, the total amount of his claim will exceed the monetary jurisdiction of the Magistrate's Court. Thus, the Counsel argued the appellant's claim could not have been filed and proceeded with. Counsel drew my attention to section 16 of the Magistrate's Court Act.

Counsel for the respondent also argued that such a statement limiting the claim to \$50,000.00 can be embodied only in the statement of claim and in the statement of defence, as the case may be, and **not** in the reply to the defence as the appellant hereof has done.

#### **G. THE DECISION.**

15. The appeal is arising out of the ruling made by the learned Magistrate, by which the action of the appellant was struck out on the purported ground that the appellant has not limited his claim to the jurisdiction of the Magistrate's Court. (Vide paragraph 14 of the impugned judgment).
16. The appeal raises an important issue as to whether the learned Magistrate was correct in striking out the claim filed by the appellant, on the ground that there was no such a specific averment in the SOC limiting the claim to fall within the jurisdiction of the Magistrate's Court.
17. The learned Magistrate seems to have heavily relied on these authorities cited here when arrived at the impugned ruling in this matter, namely; ***Govind Holdings Limited v Kalia Nand [Civil Appeal No. HBA 0015 of 1981]***, and ***Ram Khelawan v. Budh Ram [13 Fiji Law Report page 196]*** by stating that these decisions have never been over turned and are with respect binding on this Honorable Court.
18. Magistrate has also seems to have relied on the decision in ***Autar v. Dame t/a Dame Consultancy [2013] FJHC 409; Civil appeal No. 15, 2012 (15<sup>th</sup> August, 2013*** by his Lordship Kamal Kumar-J and the decision in ***Dean v Marshall Wholesales Ltd [2018] FJHC 1123; HBA -2 of 2018 (28<sup>th</sup> November 2018)*** a judgment by self, which in any event does not fully support the position taken up by the respondent as alluded by the counsel for the appellant in his written submissions.

#### **Ground-01**

19. In view of the arguments advanced on by both the learned counsel, the foremost duty before this Court is to ascertain whether there is a provision of law under the Magistrate's Court Act or Magistrate's Court Rules or under any other written law to say that an unspecified claim filed in the Magistrate's Court is to be struck out for want of jurisdiction,

unless the pleadings include an averment to the effect “The **claim is limited to the jurisdiction of the Magistrate’s Court (or similar wording).**”

20. The appellant filed his action in the Magistrate’s Court claiming, inter-alia, recovery of \$25,000/- paid as advance with special damages in the sum of \$3087.06, damages for fraudulent misrepresentation and breach of contract, last two of which were, undisputedly, for an unspecified amount. The learned Magistrate has struck out the claim of the appellant by finding fault with the appellant for **not** specifically limiting his claim for the said last two categories of damages, by a separate averment to fall within the jurisdiction of the Magistrate’s Court. (Vide paragraph 14 of the impugned judgment).
21. It seems that the learned Magistrate had foreseen that the claim for damages, sought by the appellant in his SOC, on account of **fraudulent misrepresentation and breach of contract** without quantifying the same, has exceeded the jurisdiction of the Magistrate’s Court.
22. The Magistrate’s Court is vested with the jurisdiction to hear and determine civil cases where the claim is not more than \$50,000.00 (see MCA s.16-(1) (a) (b). Obviously, the learned Magistrate appears to have felt that he cannot deviate from the High Court decisions stated above and the decision in **Autur v Dame t-a Dame Consultancy** (supra) wherein the High Court held:

*“It is well established that the amount claimed and interest forms part of the monetary jurisdiction of the Magistrate and Magistrate Courts have no jurisdiction to deal with the matter where there is a failure by the parties to limit the amount of claim (liquidated or unliquidated) plus interest within the jurisdiction of the Magistrate Court”.*
23. As per the relevant section 16 (b) of the MCA, if the value of the property or any sum sought as remedy is not more than \$50,000.00, then the Magistrate has the jurisdiction to hear and dispose the matter. There is no any provision in the Magistrate’s Court Act or the Magistrate’s Court rules which states that where an open claim or an unspecified claim for damages is made then the claim is assumed to be in excess of \$50,000.00.
24. Also I do not find any provision under MCA or MCR or any other written law that requires a litigant claiming an unspecified / unliquidated sum to plead in their respective pleadings that his/ her claim is limited to the jurisdiction of the said court.
25. It is submitted on behalf of the appellant that the error in law by the learned Magistrate had arisen due to the misinterpretation of the case law authorities in **Govind Holdings Limited v Kalia Nand** (supra) and **Autur v Dame t/a Dame Consultancy** (supra), where the latter was pronounced relying on **Govind Holdings Limited v Kalia Nand** (supra) for its decision.
26. In **Govind Holdings Ltd v Kalia Nand** (supra), the High Court in the appeal had established the ratio that where the claim is an open one (for unliquidated/ unspecified damage) then it must be assumed to exceed the jurisdiction of the Magistrate’s Court.

27. It is also submitted on behalf of the appellant that the ratio of the High Court in ***Govind Holdings*** (supra) was an assumption and this assumption was created through a wrong interpretation of the authority of ***Imam Din v Muna Lal*** (supra), which the learned Magistrate has referred in paragraph 9 of the impugned ruling.
28. In ***Imam Din v Muna Lal*** (supra) the High Court in paragraph 4 of the judgment Hammet –J had made the ratio that an unspecified claim cannot be made in the Magistrates Court and by way of obiter had given the opinion that a specified amount must be given in the claim so that the Court may assess whether the claim was within the jurisdiction of the Magistrates Court.
29. However, the court in ***Govind Holdings Limited v Kalia Nand*** (supra) went further than the obiter made by Hammet –J and held that all claims that has unspecified damages must contain the words “ *The plaintiff limits its claim to the jurisdiction of this court*” otherwise an open claim will be deemed to exceed the jurisdiction of the Court.
30. It has been alluded by the appellant’s counsel that the assumption by the High Court in ***Govind Holdings Limited v Kalia Nand*** was made in the absence of any basis or reasoning and without following the previous precedents, thus, it has stifled the claim of the appellant and denied the right guaranteed under section 15(2) of the 2013 constitution of Fiji to have a civil dispute determined by a court of Law.
31. I am inclined to follow the judgments in ***Chand V Sharma [2016] FJHC 1022; Civil appeal No- 9/2014 (8<sup>th</sup> November, 2016)*** , which has held that there are no provisions requiring a litigant to plead that its claim is limited to the jurisdiction of the Magistrates Court and rightly recognized the right of the plaintiff in a matter of this nature to proceed with his/her claim with no hurdles of this kind.
32. In ***Chand v Sharma*** (supra) Ajmeer –J ( as he then was) has correctly observed that if an assumption can be made that an open claim without it being limited exceeds the jurisdiction of the Magistrates Court , then an assumption can also be made that by filing a claim in the Magistrates Court the claimant had limited his claim to the jurisdiction of the Magistrates Court.
33. The legislature, while conferring civil jurisdiction to the Magistrate Court by section 16 of the MCA, has drawn a clear line by specifying the upper monetary limit of the cases that should go to the Magistrates court as \$50,000.00, which assists the practitioners and the litigants in deciding the venue that they should litigate. By mere reading of this section a practitioner and/ or a litigant in the Magistrate’s Court, whether they have specifically limited the claim or not, should know that the maximum amount that can be awarded by the Magistrate is only \$50,000.00.
34. The sitting Magistrate also has a role to play and stop at the point beyond which he cannot proceed to award. This controlling role should be played by the Magistrate NOT preliminarily, but only when he decides on the claim after taking evidence, unless it is

explicitly clear from the pleadings that the amount claimed is above the limits of the monetary jurisdiction exercised by that Court.

35. I totally agree with the learned counsel for the appellant who says in paragraph 36 of his submissions “ *The assumption that a plaintiff limits his claim to the jurisdiction of the Magistrates Court automatically, by filing his claim in the Magistrates Court , is better in law than an assumption that an open claim exceeds the jurisdiction of the Magistrates Court , as the latter assumption denies a plaintiff his constitutional right and the former preserves the right under the section 15(2) of the constitution*”
36. For the reasons stated above, I find that the ground of appeal No-1 is meritorious and the appellant should succeed on it.

### Ground 02.

37. The next ground of appeal relied on by the appellant, that by commencing the proceedings in the Magistrate’s Court, the Plaintiff had limited himself to the jurisdiction of the Court, in my view is also meritorious.
38. The appellant, who was represented by a senior counsel, when filing his claim in the Magistrates courts was aware of what he can obtain from that Court and accordingly has resolved to limit his claim to fall within the jurisdiction of the Magistrates Court. If the appellant had intended to obtain a sum exceeding \$50,000.00, he would have filed his claim in the High Court.
39. Though, the appellant in his SOC had not averred that he limits his claim to \$50,000.00, which was not a mandatory requirement, however in his reply to defence had specifically stated that he limits his claim to \$50,000.00 in order to reiterate that he is well within the jurisdiction of the Magistrates Court, which was sufficient, though not necessarily needed, for the learned Magistrate to have proceeded with the matter.
40. I find the decision of Ajmeer –J in ***Chand v Sharma*** (supra) is persuasive and I am inclined to follow it as the decision therein had been arrived at after a thorough analysis of the earlier authorities on the subject and has justifiably deviated from those authorities, on which the learned Magistrate in this matter had totally relied to arrive at the impugned ruling, by disregarding the decision in ***Chand v Sharma*** above.
41. On perusal of record, it is observed that the action before the Magistrate had been filed in November 2013 and the hearing came up on 18<sup>th</sup> October, 2018 nearly after 5 years, for the Plaintiff to be told finally on 4<sup>th</sup> June, 2019, after trying the purported preliminary issue, that his claim exceeds the jurisdiction of the Magistrates Court. The appellant, in my view, was entitled to be heard on his substantial claim, without being summarily tried on the so-called preliminary issue, which required him to abide by a provision not found in the Magistrates Court Act or Rules.

42. The appellant could have been afforded with the benefit of the latest case law authorities on the subject, which are well- founded and the denial of this benefits to him can be interpreted as denial of his right to have his case heard in the manner expected of. The decision in **Chand v Sharma** (supra), which remains intact, binding and found to be similar in facts and issues to the case in hand , could have been followed in order to proceed with the trial by overruling the preliminary objection taken by the respondent's counsel before the learned Magistrate.

H. **CONCLUSION:**

43. There is no requirement in the Magistrates Court act or Rules that an unspecified claim filed in the Magistrate's Court must carry the words 'limited to the jurisdiction of the court. The case law authorities discussed above that had introduced such a requirement, are not being followed now for good and sufficient reasons. The argument advanced on behalf of the respondent that the appellant had failed to comply with the mandatory requirement of the law by not limiting his unspecified claim to the jurisdiction of the Magistrate's Court, is unfounded.
44. I am more inclined to agree with the appellant's Counsel who submits that the unfortunate error in law by the learned Magistrate had arisen from the interpretation of the case authorities of **Govind Holding Limited v Kalia Nand** (supra) and **Autar v Dame t/a Dame Consultancy** (supra) which relied on **Govind Holding Limited v Kalia Nand** (supra) for its decision.
45. I am also of the opinion that it would tantamount to depriving a claimant of his right to access to justice if the claim is dismissed on the assumption, at the time that the claim was lodged, that the quantum would exceed the monetary jurisdiction set by the Magistrate's Court Act in respect of the jurisdiction of the Magistrate's Courts.
46. The proper procedure to be adopted by the Magistrate's Court when a claim, especially an unspecified claim, is filed in the Magistrate's Court without pleading that the claim is limited to the jurisdiction of the court, might be to proceed with the claim on the basis that the claim is limited to the jurisdiction of the Magistrate's Court and to determine it on the merits and grant relief subject to monetary jurisdiction of the court.
47. The learned Magistrate could have proceeded with the claim, without striking out it summarily, on the foresight that he has limited his claim to the jurisdiction of the court as a result of filing the same in the Magistrate's Court.
48. For all these reasons I would allow the appeal and set aside the learned Magistrate's ruling dated 4<sup>th</sup> June, 2019 that struck out the appellant's claim on the , purported, ground of want of jurisdiction. The substantial matter be heard by another Magistrate expeditiously on the same statement of claim or by allowing an amendment, if such an application is made, and determined on its merits.



49. The original record of the Magistrate's Court, along with a copy of this judgment, shall be dispatched back to the Magistrate's Court for hearing and determination, after giving due notice to the parties.
50. Considering the circumstances, I find that an order for the payment of cost in a sum of \$1000.00, being the summarily assessed costs to the appellant, is justifiable.

I. **FINAL OUTCOME:**

1. Appeal is hereby allowed.
2. The learned Magistrate's order dated 4<sup>th</sup> June, 2019 is hereby set aside.
3. The matter shall proceed for substantial trial on its merits before another Magistrate.
4. The Respondent shall pay the appellant One Thousand Dollars (\$1000.00) within 28 days from today, being the summarily assessed costs.
5. The Registry shall forthwith dispatch the original case record, together with a copy of this judgment, to Magistrate's Court, Ba for trial and determination.



At High Court Lautoka this 23<sup>rd</sup> day of November, 2022.

**SOLICITORS:**

For the Appellant: Samuel Ram Lawyers  
For the Respondent: Ravneet Charan Lawyers