

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

**HBM 38 OF 2022**

**BETWEEN** : **MUNSAMY t/a SWAMY'S DIARY SHOP** of Sabeto, Nadi, Businessman.  
**APPLICANT/ORIGINAL DEFENDANT**

**AND** : **EG NADAN** of Drasa, Lautoka, Fuel Tanker Driver, Merchandiser.  
**RESPONDENT/ORIGINAL PLAINTIFF**

Appearances: Ms. Sandhiya S. for the Applicant  
Ms. Chand A. for the Respondent  
Date of Hearing: Ruling on Submissions  
Date of Ruling: 24 May 2023

**R U L I N G**

1. On 16 September 2022, the Magistrates Court sitting in Ba granted Order in Terms of our application by Eg Nadan to reinstate his (Nadan's) statement of Claim on the cause list.
2. Nadan was the original Plaintiff in the Court below.
3. He had filed a claim seeking to recover from Munsamy, trading as Swamy's Dairy Shop, the sum of \$26,650.00 ("sum").
4. This sum represents the total amount which Nadan's employer, Autocare (Fiji) Limited, had deducted from Nadan's Salary in order to recover a debt owed by Munsamy to Autocare for fuel delivered and supplied by Autocare owner on certain period of time.
5. Notably, Nadan had delivered the fuel to Munsamy in his capacity as employee of Autocare. He was one of four Merchandiser/Tanker Drivers for Autocare.
6. Nadan's job description included Inter-Alia that he would take orders of fuel for individual customers (Munsamy) and deliver the same and if a customer on a credit account failed to pay within a certain amount of time then the merchandiser/ driver would settle it by periodic deductions from his wages.
7. I imagine that the Company Autocare, would reimburse the merchandiser/driver in the event the defaulting customer settles the debt.

8. So, while Nadan's claim was pending in the Magistrate's Court it looked as if he was progressing well in settlement talks with Munsamy.
9. Munsamy in fact had made an offer to settle the claim.
10. However, on 22 January 2020, on a call over date, the Learned Magistrate struck out Nadan's claim when he did not appear.
11. Thereafter, Nadan then filed an application to reinstate the claim on 08 July 2020 and on 16 September 2022, the Learned Magistrate ruled in favour of Nadan's application and reinstated his claim.
12. I agree with the Respondent's submissions that the decision in question was an interlocutory decision.
13. I also agree with the submissions that, while Section 36 (1) (b) of the Magistrates Court Act 1944 provides that an appeal shall be to the High Court from all interlocutory orders or decisions. Interlocutory orders and decisions will seldom be amenable to appeal (**Totis Incorporated Sport (Fiji) Ltd v Clark** (Civil Appeal No: 33 of 1996); **Ashmore v Copr. of Lloyd's** [1992] 2 ALL ER 486).
14. I am of the view that, considering the nature of Nadan's claim against Munsamy, the Learned Magistrate was correct in reinstating Nadan's claim after having taken into account the 6 months delay in filing the reinstatement application (in 2020 in the midst of the COVID-19 lockdown); the reason for Nadan's non-attendance on 22 January 2020 (there was Inter-Alia, an offer of settlement from Munsamy). The merits of Nadan's claim and the prejudice to Munsamy.
15. Taking all this into account and considering that this matter will be referred back to the Magistrates Court for trial if I refuse leave, I do not see any good reason to grant order in terms to the Applicant's (Munsamy's) Originating Summons filed on 04/10/22.
16. In the final, the Originating Summons is dismissed. Costs to the Respondent (Nadan) which I summarily assess at \$1,500 (one thousand five hundred dollars only).



Anare Tuilevuka  
JUDGE

24 May 2023