

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

**Civil Appeal No. HBA 04/2023
Magistrate Court of Nadi, Case No.07/2022
Small Claims Tribunal Claim No. 664/2021**

BETWEEN : **SAROJINI DEVI, of Sabeto, Nadi.**
APPELLANT

AND : **DIRECTO- RICKY OF COURTS FIJI, Head Office, Level -2. Vivrass
Plaza, LAUKALA Beach Estate, Suva.**
RESPONDENT

COUNSEL : Appellant in Person
Mr. Sailendra Krishna -for the Respondent

DATE OF HEARING : 28th July 2023

WRITTEN SUBMISSIONS: On 30th June 2023 by the Appellant
On 28th July 2023 by the Respondent

DATE OF JUDGMENT : 4th August, 2023

JUDGMENT

1. This is an Appeal preferred by the Appellant hereof against the Ruling dated and pronounced on 7th February 2023 by the learned Magistrate of Nadi in relation to the Small Claim Tribunal (SCT) Appeal bearing No- 07 of 2022, affirming the decision of the Referee thereof made on 27th January 2022 in the SCT Application no. 664 /2021.
2. The Appellant had made a claim at the SCT of Nadi, seeking to recover \$ 2,785. 45 from the Respondent, alleging that a refrigerator she had bought from the Respondent was defective, faulty and they had failed to attend to it.
3. The Respondent refuted the claim. The Appellant did not call any witness for evidence on her behalf though she was directed by the Referee. Both witnesses called by the Respondent were cross examined by the Appellant. Both parties had filed written submissions as well.
4. The Referee of the SCT, having heard and duly recorded the proceedings before him, by his decision dated 27th January 2022 dismissed the Appellant's claim.
5. Being aggrieved by the decision of the SCT , the Appellant Appealed to the Magistrate's Court of Nadi and the same was dismissed by the learned Magistrate by her impugned

Ruling dated 7th February 2023. This Appeal is against the said Ruling of the learned Magistrate.

6. The Appellant relies on 13, purported, grounds of Appeal, which I have carefully perused and found to be with no merits at all. However, same are reproduced bellow for the sake of lucidity.

PURPORTED GROUNDS OF APPEAL:

1. *That the Learned Magistrate's erred in law was unjust in that its practical effects is unjustly to deprive the Appellant of its Claim.*
2. *That the Magistrate erred in law and in fact that the wrong principles of law in dismissing the Appellants/Original Plaintiff's Summon for Ejectment filed on the 27th January 2022 Want for Jurisdiction.*
3. *That the Learned Magistrate erred in law and in fact in failing to consider in depended of the Plaintiff's evidence that were there was sufficient prima facie evidence and fail in discretion to accept the submission in evidence given by the Plaintiff as filed and issued by the Court Registry must pursue their application under the provisions.*
4. *That the Learned Magistrate failing to exercise her discretion properly ignoring the crucial ingredients of the claim and there was no proper hearing held which the matter had proceed.*
5. *That there has a substantial miscarriage of justice in that Learned Magistrate's misconducted the fact put by the Appellant in her claim.*
6. *That the Learned Magistrate erred in law and fat by adjudging and pronouncing that the Appellant/Original Plaintiff's evidence was unreliable simply because the Appellant/Original.*
7.
 - a. *That the Learned Magistrate erred in law by given a Judgment by Appellant had read the copy record and submission what the Respondent had mention by bring the witness whose named is not mention in the documents in Small Claim Tribunal.*
 - b. *That the Defendant had entered the witness as she had entered in court of Small Claim Tribunal and Referee had allowed it, the Defendant should have bought the person to court for witness whose named had been mention in the documents of TECHNICIAN to prove they came to Appellant's place to check the fridge or not and the name of the person on the Claim Summon.*
 - c. *That the Appellant would say that the Appellant request to High Court for the proper Hearing and the person whose name had been mention in the Claim and the Technician to prove.*
8. *That the Learned Magistrate erred in law in holding that application was made promptly in the light of the fact that default Judgment was entered on 7th day of February,2023 and the ought to be SET ASIDE.*

9. *That the Learned Referee erred in law and in fact in holding that the Respondent was put to considerable expenses when the application filed the summon in Small Claim Tribunal by unjustly and unfair.*
 10. *That the Learned Magistrate erred in law and in fact awarding what appear to be indemnity costs when the circumstances of the matter does not justify in award of indemnity costs.*
 11. *That the Appellant would say that the Defendant/Original Respondent had fail to do their duty and in the carelessness the Fridge had breakdown and the Appellant had lost plenty items since the next day the Defendant had not come to Appellant's place to check their faulty items and according by the staff and other customer they had mention the product the Court Home Center had sold to Appellant plenty complains had gone to them and company IGNORED plenty customer to fixed to problem.*
 12. *That the Appellant would say that the Defendant named Ricky the Director of Courts to appear in court and Two Technician had been mention that they had appeared at Appellant's place to check the fridge.*
 13. *That the Appellant request the High Court for a proper Hearing by the persons named mention in the documents of technician and the named mention in Claim Summon.*
7. At the hearing of the Appeal, the Appellant appeared in person and opted to have the matter disposed by way of written submissions filed by her on 30th June 2023. She did not make any oral submissions, though she was called up on by the Court. The Learned Counsel for the Respondent also intimated that he would also rely on the written submissions filed on 27th July 2023 and will not be making any oral submissions. I thank the learned Counsel for the written submissions and the copies of reported authorities filed.

ANALYSIS

8. Under section 33(1) of the Small Claims Tribunal Act 1991, any party to proceedings before a Tribunal may appeal against an order made by the Tribunal under section 15(6) or section 31(2) 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; or*
 - (b) *The Tribunal exceeded its jurisdiction.*
9. The proceedings held before the Referee, do not show that he conducted the proceedings in a manner which was unfair and/or prejudicial to the appellant. This Court carefully considered the proceedings held before the Referee. I find that he has given opportunity for both parties to present their respective cases before the Tribunal and duly considered the overall evidence led before him. Though, the Appellant was afforded an opportunity to call evidence, she failed to do so. The Referee, after considering the evidence of the parties has made his order, which in my view does not violates the relevant provisions of the Act.

10. The learned Magistrate, who heard the Appeal therefrom has taken all the above factors into consideration before arriving at her finding that the Appeal of the Appellant is without any merit. It is also important to note that there is nothing on record to arrive at a conclusion that the Tribunal has exceeded its powers in making its decision. In my view the learned Magistrate is correct in arriving at the conclusion that the decision of the Tribunal is within the powers conferred upon it by the legislation.
11. I find some of the purported grounds are totally unfounded, particularly, on the issue of indemnity costs, which was not a part of the Ruling of the learned Magistrate, while other grounds are devoid of merits and do not warrant any favorable consideration.

COSTS:

12. On careful perusal of the contents of the record from the Small Claim Tribunal, I find that the Appeals to both the Magistrate's Court and this Court are frivolous and abuse of process on the part of the Appellant.
13. The Respondent seeks costs in a sum of \$ 5,500.00 on an indemnity basis. The Respondent would, undoubtedly, have incurred a considerable amount, being the cost in taking defence at all 3 forums for last two years commencing from July 2021.
14. This Court is of the view, that the Appellant need to be dealt with appropriately as far as the costs are concerned. However, considering the circumstances, this Court makes no Order for Costs and the parties shall bear their own costs.
15. For the reasons aforementioned, this Court makes the following orders.

ORDERS:

- A. The Appeal of the Appellant is dismissed.
- B. The Ruling dated 7th February 2023 pronounced by the Hon. Magistrate of Nadi is hereby affirmed.
- C. No cost ordered and the parties shall bear their own costs.




A.M. Mohamed Mackie
Judge

At the High Court of Lautoka on this 4th day of August 2023

SOLICITORS:

For the Appellant

In Person

For the Respondent:

Messrs. S. Krishna & Company- Barristers & Solicitors