

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Appeal No HBA 09 of 2021
(Magistrates Court Appeal No. 2 of 2020)
(Small Claim Tribunal No 1391 of 2019)

BETWEEN : **RAJENDRA NARAYAN** of Lot 13, Lal Singh Rd, Nausori,
Businessman.

APPELLANT

AND : **VILIAME JIKOBALAVU** of Lot 12, Sangam Rd, Nasinu, Not
Known.

RESPONDENT

BEFORE : **Banuve, J**

Counsels : Mr B.Ram for the Appellant
Mr V. Kumar for the Respondent

Date of Hearing : 27th March 2024

Date of Judgment : 5th April 2024

JUDGMENT

(Appeal against the judgment of the Magistrates Court of 26th January 2021)

A. INTRODUCTION

1. On 17th December 2019, the Small Claims Tribunal issued an order that the Appellant pay the Respondent the sum of \$5,000.00 within 7 days of the date of the order.
2. The Appellant filed an appeal against the said order of the Tribunal to the Magistrates Court on 20th December 2019.
3. The grounds before the Court below were¹;
 1. *The hearing was unfair.*
 2. *The Tribunal was biased.*
 3. *The Referee misdirected himself in giving his decision.*
 4. *The Appellant was deprived of natural justice.*
 5. *The Tribunal did not conduct the hearing proper.*
 6. *The claim was not properly served on the Appellant.*
 7. *That he is not a party to the proceedings as his name was struck off from the proceedings.ⁱ*
4. After a hearing in the Magistrates Court on 11th November 2020, a ruling was delivered on 26th January 2021, with the gist of it contained in paragraphs 9 and 10 of the ruling,
 9. *I have gone through the copy records of the case and find no suggestion that the learned Referee did not give a chance to state his case. The appellant gave their side of the story first. Then the respondent. There was nothing in my mind that suggests that that the proceeding were not held in a fair manner that would affect the proceedings. I understand the submissions made by the appellant. However the law does not support his argument. There was no apparent unfairness in the manner of proceedings.*

¹ Extracted from the Appellant's written submissions filed in the Magistrates Court on 24th April 2020.

10. *The claim was within his jurisdiction and was adjudicated with propriety. There is no legislative reason to upset the decision . For this reason the appeal is to be dismissed*

5. It is necessary to set out the grounds of appeal and the ruling of the Court below because of the nature of the appeal filed in the High Court.

B. THE LIMITED RIGHT OF APPEAL

6. The Appellant filed a Notice of Appeal on 2nd February 2021 setting out the grounds of appeal against the judgment of the Magistrates Court of 26th January 2021.

- (i) *That the learned Magistrate erred in law and in fact in upholding the ruling of the Referee dated 17th December 2019 that the Respondent pay the sum of \$5,000.00 to the Respondent.*
- (ii) *That the learned Magistrate erred in law and fact when he ignored the evidence of the vehicle being already involved in an accident and the vehicle sustaining damages.*
- (iii) *That the learned Magistrate erred in law and fact when he failed to read the transcript of the audio recording whereby the Referee conversed in the vernacular language in the presence of the Appellant.*
- (iv) *That the learned Magistrate erred in law and fact (in failing) to consider that the Respondent claimed for damages to the 3 (cell) of the battery but instead awarded damages for the entire battery which contained 24 (cells).*
- (v) *That the learned Magistrate erred in law and in fact when he failed to consider the Appellant's letter dated 16th October 2020 in regard to the unfairness and biasness portrayed by the Referee.*
- (vi) *That the learned Trial Magistrate erred in law and fact in that he failed to analyze how he awarded the sum of \$5,000.00 without proper consideration of the evidence.*
- (vii) *That the learned Trial Magistrate erred in law and in fact in relying on evidence of the Respondent's evidence when he never appeared in person to give the same.*

C. REVIEW OF APPEAL GROUNDS

7. The Court finds it necessary to revisit certain issues pertinent to appeals against orders of the Small Claims Tribunal because of the manner the appeal was brought.
8. Since the establishment of the Smalls Claim Tribunal under the *Small Claims Tribunal Act 1991*² judicial officers have considered themselves bound by the statutory objectives of the Tribunal,³ and the limited right of appeal allowed under section 33 of the Act, against orders of the Tribunal;

(1) Any party to proceedings before a Tribunal may appeal against an order made by the Tribunal under section 15(6) or section 31(2) 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.

(2) An appeal brought pursuant to subsection (1) shall be made:

(a) if against an order made by a Resident Magistrate exercising the jurisdiction of a Tribunal to the High Court; and

(b) in any other case, to the Magistrates' Court

9. The ruling of Fatiaki, J (as he then was), in *Sheet Metal & Plumbing (Fiji) Ltd v Deo* [1999] FJHC 26 clarified the nature of proceedings before a Tribunal, as opposed to that of a Court.⁴

² Initially passed as the *Small Claims Tribunal Decree* 1991 but became an *Act* pursuant to s 163(1) of the Constitution 2013.

³ Section 8(1)-Subject to this section and to section 9, a Tribunal shall have jurisdiction in respect of any claim which does not exceed \$5,000 in value (amended by section 2 of the *Small Claims Decree [Amendment]* Promulgation 2007-*Autoworld Trading (Fiji) Ltd v Singh – Civil Appeal HBA 07 of 2020* (per Sharma J) citing *Sheetmetal & Plumbing (Fiji) Ltd v Deo –Civil Appeal No 0007 of 1999*

⁴ Per Fatiaki J in *Sheetmetal*;

- (a) a referee who need not have legal qualifications and whose primary function is to attempt bring the parties in dispute to an agreed settlement;
- (b) qualified and practicing lawyers and professional advocates are excluded from its proceedings;
- (c) Evidence before a tribunal need not be given on oath **nor need to be oral or even originate from parties to the dispute.**

10. A passage from the *Sheet Metal* case, is oft relied on, as clarifying the limited nature of an appeal⁵ under section 33 (1)(a) and (b), of the Decree;

“At the outset it must be noted that the form of wording used in ground (a) is unusual and is plainly distinguishable from the general right of appeal such as that conferred under section 36 of the Magistrates Courts Act (Cap 14); section 12 of the Court of Appeal Act (Cap 12); and on the Supreme Court under section 122 of the Constitution.

What more ground (a) specifically refers to the ‘manner’ in which the referee conducted the proceedings as the crucial concern of the right of appeal on that first ground. Furthermore not only must the conduct complained about be ‘unfair to the appellant’ it must, in addition , ‘prejudicially affect’ the result.

As to the ‘manner’ or procedure required to be followed by the referee in conducting a proceeding under the Decree these are principally to be found in sections 24 to 29 (inclusive) under the heading HEARINGS. A cursory examination of these provisions serves to highlight the informal, non-adversarial nature of the proceedings before the Small Claims Tribunal and militates against a general appeal on the merits or for errors of law.

D. ANALYSIS

11. Given settled authority on the *merits and procedure* to be followed in the Small Claims Tribunal and the *limited right of appeal* against its orders, as opposed to a *general right of appeal* to the Courts, it is difficult to understand the objective of the Appellant, in this Court.
12. The appeal filed in the Magistrates’ Court on 20th December 2019, against the order of the Small Claims Tribunal , appeared to have been framed in compliance with the limited right of appeal available under the Act.
13. The ruling of the learned Magistrate of 26th January 2021, reflected an appreciation of the “limited appeal” approach vested on Courts, against orders of the Small Claims Tribunal.
14. In this Court, the Appellant however, abandons the “limited appeal” approach undertaken in the Magistrates Court, for a “general right of appeal” that has been adjudged inappropriate for tribunals in the *Sheet Metal* case.

⁵ The limited nature of an appeal under section 33 of the Decree is affirmed by a similar right of appeal in New Zealand granted under the *Disputes Tribunals Act 1988 (NZ) – N.Z.I Insurance Ltd v Auckland District Court* (1993) 3 NZLR 453 at p 458 (Thorp J)

15. When pressed on the divergence of the approach taken by the Appellant in this Court, counsel's response was that the Court ought to take a *unilateral* approach, for which no authority was provided.
16. The general right to appeal to a Court is not absolute. An appeal to the High Court is governed by Order 55 of the High Court Rules, *save* where appeal under any enactment for which rules governing appeals have been made thereunder⁶. For appeals against the Small Claims Tribunal, the Act itself,(section 33), proscribes the procedure to be adopted for an appeal, not the Rules. This provision clarifies the "limited right of appeal" *as one of review and not one of re-hearing*.⁷
17. Both counsels filed written submissions to support their respective positions in this appeal. The Court found the submissions filed by the Appellant of little assistance in seeking to raise issues of *appeal on the merits and on errors of law*, an approach deemed inappropriate in the *Sheet Metal* case for appeals against the Small Claims Tribunal, some 25 years ago.
18. In dealing with the specific grounds of appeal, the Court found the submissions filed by the Respondent of assistance and would rely on the categorization utilized by counsel in reviewing each ground of appeal.

Grounds 1, 2, 4 and 6

19. These grounds of appeal **seek** to raise "issues of fact" and "errors of law" which fall outside the limited appeal ambit conferred by section 33 of the Act, as affirmed by this Court in the *Sheet Metal* case.

Ground 3

20. This ground is raised in direct contradiction of rule 10(1) of the *Small Claims Tribunal* Rules 1994, that proceedings of the Small Claims Tribunal may be conducted in the language that is best suited to the parties, but the record of the Tribunal must be in English.⁸

⁶ Order.55, r. 1,(2)(b)

⁷ *Aaryan Enterprise v Mehak Unique Fashion* – Civil Appeal No 17 of 2011

⁸ *Chan Long Chong v Yev Yain Kai* [1999] FLR 36 (Scott J)

Ground 5

21. The specific issue of the letter written to the Chief Justice dated 16th October 2016 raises an issue of fact and constitutes a new ground of appeal which was not raised in the appeal before the Magistrate, meaning that the right of *limited appeal* allowed under section 33 of the *Small Claims Tribunal Act 1991*, has been contravened.

Ground 7

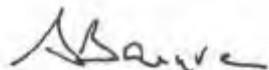
22. This ground is raised in direct contradiction with section 26(1) of the Act, which decrees that evidence before a tribunal need not be given or oath nor need to be oral or even originate from parties to the dispute.⁹

E. FINDING

23. The appeal grounds are dismissed in totality as having no merit and do not comply with section 33 of the *Small Claims Tribunal Act 1991*. There was no demonstrable basis provided to this Court on how the Appellant was prejudicially affected, in the manner and form the hearing was conducted, and the ruling issued by the learned Magistrate on 26th January 2021.
24. The ruling of the learned Magistrate of 26th January 2021, is affirmed.
25. The inadequacy of the appeal grounds and the futility of pursuing an appeal in this Court, based on them, must be reflected in an award of costs against the Appellant which are fixed summarily in the sum of \$800.00.



5 April 2024
At Suva


Savenaca Banuve.
JUDGE

⁹ *Sheet Metal & Plumbing (Fiji) Ltd v Deo* – Civil Appeal No 0007 of 1999 (per Fatiaki J).
