

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBA 26 of 2019

Magistrates Appeal Action No. 17 of 2018

SCT Claim No. 717 of 2016

BETWEEN: **SANJAY SINGH VERMA** of 31 Donu Place, Lower Ragg Avenue, Tamavua,
Suva in the Republic of Fiji Islands, Businessman.

APPELLANT

AND: **SAVNEEL SINGH** of Raralevu, Nausori, in the Republic of Fiji Islands,
Businessman.

RESPONDENT

BEFORE: **Hon. Mr Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Verma S.S.** for the Appellant [In Person]
Mr. Singh S. for the Respondent [In Person]

Date of Decision: **30th May, 2024 @ 9.30am**

DECISION

[Appeal from the Magistrates Court]

INTRODUCTION

1. This is an Appeal arising from the Magistrates Court Decision delivered on 26th June 2019.
2. The claim was regarding the monies borrowed by the Respondent [Savneel Singh] from the claimant [Sanjay Singh Verma] as per the written agreement dated 05th January 2011, initiated and filed in the Small Claims Tribunal.
3. The Referee presiding in the matter at the Small Claim Tribunal concluded that the claim fails and that the Respondent is not liable to pay the claimant \$2,000 together with an interest of 12.5%.
4. The claimant being dissatisfied with the Referees Decision, filed an appeal against the Decision in the Magistrate Court.
5. The Magistrates Court upon the conclusion of the Appeal hearing, proceeded to dismiss the appeal with no costs.
6. Hence, the Appellant [Sanjay Singh Verma] filed an Appeal against the presiding Magistrate's Decision.

7. **Grounds of Appeal [Appellant's Contention]**

- (1) That the Learned Resident Magistrate erred in law and in fact by not allowing the Appellant herein the appeal based on the submission that clearly quoted the involvement of the referee with appellant in the matter 2274/10 whereas the Referee commented that he did not want the appellant in his tribunal either as claimant and/or respondent.
- (2) That the Learned Resident Magistrate erred in law and in fact by not considering that by making such a comment the referee has committed an act of bias and the appellant was not given a fair trial in this matter.
- (3) That the Learned Resident Magistrate erred in law and in fact failed to analyze that with ground 1 as stated above should have been sufficient to allow the appeal of the appellant before the Magistrate.
- (4) That the Learned Resident Magistrate erred in law and in fact when he did not direct himself in regards to the principles of appeal from the Small Claims Tribunal Act 1991 in the case of ***Sheet Metal and Plumbing (Fiji) Ltd v Deo***, HBA 07 of 1999.
- (5) That the Learned Resident Magistrate erred in law when he took notice that the Appellant had signed and cancelled the agreement between parties and by doing so has jumped a process. The Learned Magistrate ought to have granted the appeal under section 33 (1) a and thereafter

invoked powers under section 35 (1) b, and then gone onto the merits of the substantive matter. By doing so there is a gross misconduct and miscarriage of Justice.

- (6) That the Appellants reserve their rights to argue and/or add and/ or amend the Grounds of Appeal.

Respondent's Contention

8. The claim amount was paid in Full and endorsed onto the agreement executed between the claimant/Appellant and Respondent.
9. The Appellant/Claimant is misleading the Court.

DETERMINATION

10. The substantive issue that was pending before the Small Claims Tribunal and on subsequent appeal to the Magistrate Court was:

"Whether the Respondent, Savneel Singh owed the claimant/Appellant a sum of \$2,000 loan together with a 12.5% interest by agreement executed between them on 05th January 2011?"

11. Apart from the above issue, this Court also needs to determine the (5) grounds of Appeal filed herein as enumerated at paragraph 7 of my Judgment hereinabove.
12. The power of the High Court sitting as an Appellate Court from a Decision of a Magistrates' Court are set out in Order 37 rule 18 and 19 of the Magistrates Court Rule 1945 and provides:

"General Powers of Appellate Court

18. The appellate court may, from time to time, make order necessary for determining the real question in contrary in the appeal, and may amend any defect act or error in the record of appeal, and may direct the court below to inquire into and certify its finding on any question which the appellate thinks fit to determine before final judgment in the appeal, and, generally, shall have as full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the appellate court as a court of first instance, and may rehear the whole case, or may remit it to the court below to be reheard, or to be otherwise dealt with as the appellate court directs.

Power of appellate court to give any decision or make any order.

19. The appellate court shall have power to give any judgment and make any ought to

have been made, and to make such further there as the case may require, including any order as to costs. These powers may be exercised by the appellate court, notwithstanding that the appellant may have asked that part of a decision may be reversed or varied, and may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision."

13. The power of the High Court regarding the Appeals from a Magistrate's Court in terms of Rule 18 and Rule 19 of Magistrates Court Rules 1945 is extensive and can make any order in order to determine real question in controversy in appeal including rehearing on the documents.
14. I also need to bear in mind whilst determining this Appeal on what grounds, an Appeal may be preferred to the Magistrate Court from the Small Claims Tribunal?
15. As per section 17 of the Small Claims Tribunal Decree 1991, paraphrased hereunder, the orders made in the Small Claims Tribunal is final between the parties to the proceedings:

"17. An order made by a Tribunal shall be final and binding on all parties to the proceedings in which the order is made, and subject to section 32 and except as provided in section 33, no appeal shall lie in respect thereof."
16. However, an Appeal against an order of the Small claims Tribunal is available to a party aggrieved by the order of the Small Claims Tribunal of Section 33 of the Small claims Tribunal Decree 1991:
 - (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.
17. Further, whether the proceedings were conducted by the Small Claims Tribunal Referee in a manner which was unfair to the Appellant and procedurally affected the result of the proceedings?
18. The Learned Presiding Resident Magistrate details and summarizes what the Appellant's contention was and the Respondent's reply and is paraphrased hereunder:
 - (1) The Appellant's contention in the Small Claims Tribunal was that, \$2,000 given to the Respondent upon an agreement dated 05th January 2011 but, the same was not returned.
 - (2) The Respondent, in reply, submitted to the Tribunal a copy of the Agreement with the endorsement that. "**paid in full**" with the signature of the Appellant. The Appellant conceded that, the signature in that document was of his.

- (3) The inference deducible from that endorsement in the absence of a reasonable explanation on the contrary is that, the sum stated in the Agreement had been paid to the Appellant in full.
 - (4) Upon perusal of the case record, no such explanation is evident. Therefore, there is no error in the Ruling of the Tribunal that, the sum claimed by the Appellant had been paid in full to the Appellant.
19. On the foregoing reasons, the Presiding Resident Magistrates dismissed the claim with no costs.
20. In terms of the First, second and third grounds of Appeal, they can be consolidated since it refers and/or complaints of referee's 'bias' and not giving the Appellant a fair trial in the matter before the presiding Resident Magistrate. Therefore, should have allowed the Appeal.
21. I have perused the entire Court Record of the Small Claims Tribunal and fail to find that the Small Claims Tribunal Referee had made certain comments to the extend telling the Appellant/ Claimant in SCT Claim No. 2274 of 2010 that

'He did not want the Appellant/ Claimant in his Tribunal either as a claimant and/or Respondent, and the Resident Magistrate should have allowed the Appeal.
22. It was for the Appellant to pin point where the evidence was in relation to this Complaint of biasness; but he failed to do so.
23. In terms of the remaining Grounds of Appeal at 4 and 5 they are also consolidated and will be now dealt with together.
24. What principles of Appeal the Appellant is talking about on the case HBA 07 of 1999 **Sheet Metal and Plumbing (Fiji) Ltd v Deo** although is understandable but this Court cannot presume things. The Appellant should have labored on the principle that he wanted to raise in order to allow this Court deal with the issue and or the principle.
25. I find that the presiding Resident Magistrate had correctly dealt with the Appeal before him and eventually dismissed the Appeal without any costs on the basis that the substantive impending issue of the Appellant/ Claimant raising against the Respondent that he has failed to pay the loan amount of \$2,000 together with 12.5% interest, when he cited the documentary evidence and took into consideration that the loan amount was 'PAID IN FULL' and signed by the claimant/Appellant and later, the Appellant also without any dispute confirmed to Court that it was his signature that appears therein.
26. There was no reasonable explanation given by the Appellant that the signature appearing on the Agreement stating '**PAID IN FULL**' was not his and the Resident Magistrate proceeded to draw the inference that in absence of any explanation otherwise, the sum stated in the Agreement of 05th January 2011 had been paid in full.

27. Further, I do not find any gross misconduct and/or miscarriage of Justice by the Resident Magistrate whilst determining the Grounds of Appeal therein before him.

IN CONCLUSION

28. The Grounds of appeal No. 1, 2, 3, 4 and 5 accordingly fails and are dismissed in its entirety.

COSTS

29. The Appeal proceeded to full hearing with parties furnishing Court with their respective written and oral submissions.
30. It is only appropriate, just and fair that the Respondent should be paid a summarily assessed costs of \$1,500 within 14 days timeframe accordingly.

ORDERS

- (i) The Appellants Appeal on Grounds 1, 2, 3, 4 and 5 are accordingly dismissed in its entirety.
- (ii) The Appellant is ordered to pay the Respondent a summarily assessed costs of \$1,500 within 14 days timeframe.
- (iii) File is closed.

Dated at **Suva** this **30th** day of **May**, **2024**.



Vishwa Datt Sharma
PUISNE JUDGE

Cc: **K S LAW, SUVA**
SAVNEEL SINGH, RARALEVU, NAUSORI