

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

**Civil Appeal No. HBA 22 of 2020**  
**Magistrates Court Appeal No. 45 of 2019**  
**(Small Claims Tribunal No. 189 of 2019)**

**BETWEEN:**           **AARKAY MOTORS PTE LTD** a limited liability company having its registered office at Lot 6 Jaiamrana Road, Bhindi Industrial Subdivision, Suva.

**APPELLANT/ ORIGINAL RESPONDENT**

**AND:**               **AMINIASI VULAONO** the intended Personal Representative of the estate of **SAULA VULAONO** of 49 Kaudamu Road, Delainavesi Lami, Occupation Unknown.

**RESPONDENT/ ORIGINAL CLAIMANT**

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

**COUNSEL:**       **Mr. Singh S.** - for the Appellant  
**Mr. Niubalavu P.** - for the Respondent

**DATE OF JUDGMENT:**   **24<sup>th</sup> September, 2024**

**JUDGMENT**

*[Setting Aside of Resident Magistrate's Decision and Costs]*

## INTRODUCTION

[1] The Appellant, Aarkay Motors Ltd filed an Originating Summons coupled with an Affidavit in Support on 29 September 2024 and sought for the following orders:

- (i) Extension of time to file a Notice of Intention to Appeal the Decision delivered on 24 July 2020.
- (ii) Extension of time to file Notice and Grounds of Appeal in Magistrates' Court Civil Appeal No. 45 of 2019 and leave to appeal out of time, And
- (iii) Such further orders and costs.

[2] On 12<sup>th</sup> May 2022, the Respondent, Aminiasi Vulaono consented to the two (2) orders sought in the originating summons as paraphrased hereinabove at paragraph 1 (i) - (iii) inclusive.

[3] Subsequently, the Appellant filed its **Notice and the Grounds of Appeal** on 25<sup>th</sup> May 2022 and sought for an Order that the Judgment and/or orders of the presiding learned Magistrate made and delivered on 24<sup>th</sup> July 2020 that:-

- (i) *For the above reasons, I dismissed the appeal. Costs follow the event, and assessed costs in the sum of \$500,*

Be wholly set aside and revoked and quashed and/or that this High Court make the following orders:

- (i) The Learned Resident Magistrate's Decision delivered on 24<sup>th</sup> July 2020 be set aside ; And
- (ii) The Respondent's pay the costs of this Appeal and of this action.

Upon the following Grounds:

1. The Learned Resident Magistrate erred in law and fact by holding that the Appellant has failed to prove *res judicata* when the Learned Resident Magistrate himself has stated that the two matters raised in the Tribunal were of the same facts and parties.
2. The Learned Resident Magistrate failed to take into account the fact that the Appellant has filed a claim of \$4,565.50 and was dismissed by the Tribunal and the Respondent could have filed for a counter claim instead of filing a fresh SCT claim against the Appellant.
3. That the Learned Resident Magistrate erred in law and fact by holding that the two claims had separate causes of actions when the 1<sup>st</sup> claim was dismissed on the finding that the repair works done on 22 November

2017 were return job done for the repair works done on 7 December 2016.

4. The Learned Resident Magistrate has failed to take into account that the analysis of the matter before the Tribunal was only on one issue which was unqualified mechanics and based on the evidences of a third party who was not present for cross-examination.
5. The Learned Resident Magistrate erred in law and fact by failing to properly evaluate the evidence provided and gave more weight to the evidence of the Respondent.
6. The Learned Resident Magistrate erred in law and fact by not considering that the Tribunal failed to properly assess the evidence that the Respondent came with the mechanical issues after one year of repair works done on the Respondent's vehicle.
7. The Learned Resident Magistrate erred in law and fact by not holding that the Referee was bias in considering the evidence of the Respondent only.
8. The Learned Magistrate erred on law and fact by not considering section 12 of the Small Claim Tribunal Acts 1991 and that the Tribunal had exceeded its jurisdiction by allowing the claim by the Respondent and giving the Respondent an award.
9. Such further and/or other grounds as shall become apparent from the Court Record.

### **Background**

- [4] The Appellant filed a claim in the Small Claims Tribunal vide Claim No. 2159 of 2018 on 31 October 2018 for the recovery of payment of \$4,621 against the Respondent for mechanical works carried out on his vehicle dated 22 November 2017.
- [5] On 16<sup>th</sup> January 2019, the Tribunal **dismissed** the Appellant's claim stating that **it bears no merit**. The Appellants appealed this decision of the Tribunal on 30 January 2019 on the basis that:
- (a) The proceedings were conducted by the Referee in a manner which was unfair to the Appellant and prejudicially affected the results of the proceedings.
  - (b) The Tribunal exceeded its Jurisdiction.
- [6] However, the appeal was struck out and dismissed on 10 July 2019 and the Appellant to pay the Respondent summarily assessed costs of \$200.

- [7] The Respondent, Aminiasi Vulaono filed a claim against the Appellant claim on 4 February 2019 at the Small Claims Tribunal against claiming a sum of \$5,000 as per Small Claims Tribunal claim no. 189 of 2019 for prior mechanical work carried out on the Respondent's vehicle on 07 November 2016.
- [8] The Tribunal delivered its decision on 11<sup>th</sup> September 2019 and in summary ordered that:-
- The Respondent, Aminiasi Vulaono pay a sum of \$5,000 cash at the Small Claims Tribunal Registry, Suva within 14 days.
  - In the event of any default of payment, order to be enforced and compel the Respondent to pay the amount defaulted;
  - A copy of the order to be served onto the Respondent.
  - Respondent may appeal the Decision.
- [9] According to the Appellant, the matter was appealed by filing a form 6 notice of appeal pursuant to section 33 (1) of the Small Claims Tribunal Decree and provided the two Grounds of Appeal in terms of referee's unfairness and exceeding its jurisdiction to the Magistrates Court and while the Learned Resident Magistrates found that the proceedings had been conducted properly and fairly before an impartial Tribunal, the Appellant's Appeal had been dismissed.
- [10] Hence, the Appellant filed a Notice and Grounds of Appeal on 25<sup>th</sup> May 2022 against the Decision of the Learned Resident Magistrate delivered on 24 July 2020.

### **Determination**

- [11] The Respondent is the owner of Vehicle Registration No. EN065 and used to service his vehicle with the Appellant Company, Aarkay Motors Ltd.
- [12] His vehicle engine lacked power- low compression and the Appellant recommended on 07 November 2016 that the engine needs an overhaul.
- [13] The work was carried out on his vehicle and the Appellant remitted an invoice to the Respondent on 01 February 2016 in the sum of \$5,990.20, which the Respondent paid.
- [14] On 09 October 2017, the Respondent brought back his vehicle EN065 to the Appellant's for service work since there were defects noted by the Appellant and they did mechanical repair works and part replacement on the vehicle for the defects. The Respondent considered this service work to be a return job and therefore would not have to pay for the repair work.
- [15] However, the Respondent was given an invoice for the value of \$4,565.50 and the Respondent refused to pay since his vehicle was brought back for service works after a lapse of 09 months.

[16] Hence, the Respondent filed a claim of \$5,000 at the Small Claims Tribunal for poor mechanical work done on his vehicle EN065.

[17] The question before the Tribunal as it was ascertained was to determine, **"whether the mechanic who carried out work on the said vehicle EN065 was competent enough to make repair work good on the vehicle or not?"**

[18] The issue the Small Claims Tribunal had devised was 'whether the claimant Saula Vulaono ought to be paid with \$5,000 or not?'

[19] **The Small Claims Tribunal determined that the Appellant, Aarkay Motors Ltd was liable to settle** the claim by paying \$5,000 in cash at the Small Claims Tribunal Registry within 13 days from 11 September 2019.

[20] Hence, the Appellant, Aarkay Motors Ltd filed a **Form 6 Notice of Appeal** pursuant to **Section 33 (1) of the Small Claims Tribunal Decree 1991**.

[21] The Appellant's Argument then was:

(i) **Whether the proceedings in the Small Claims Tribunal conducted by the Reference was in a manner that was unfair to the Appellant and therefore prejudicially affected the result?;AND**

(ii) **Whether the Small Claims Tribunal Exceeded its Jurisdiction?**

[22] Apart from the above arguments, the Appellant also raised the issue of '*Res-judicata*'.

#### **Proceedings in the Magistrates Court**

[23] The Appellant in this matter before the Magistrate's Court argued that:

(i) This matter should not have been entertained by the Tribunal since Aarkay Motors as an Appellant filed an earlier proceedings against the Respondent in the Small Claims Tribunal which was later dismissed by the Small Claims Tribunal.

(ii) Upon Appeal the Magistrates Court determined the matter and accordingly dismissed the Appeal.

[24] The presiding Resident Magistrate had dealt with this issue in his Judgment delivered on 24<sup>th</sup> July 2020. That the Small Claims Tribunal had addressed this issue, and held 'that the issues to be canvassed were different. That this is a claim against the Appellant, Aarkay Motors Ltd. Compared to the first civil action, a claim by the Appellant against the Respondent.

[25] The Presiding Resident Magistrate noted that the facts of these two (2) matters were the same and even the parties are the same as well.

[26] The Presiding Resident Magistrate also questioned 'should the Tribunal have taken into account the issue of Res-Judicata? This is a question of law, can the decision of the Tribunal be set aside on an error of Law?

[27] I ascertain from the Presiding Resident Magistrate's Judgment at paragraph 14 to 17 that he referred to *Section 33 (i) of the Small Claims Tribunal Act* that Limits the grounds of Appeal to "procedural fairness and exceeding the Jurisdiction of the Tribunal" and cited two (2) cases of:

(a) **Sheet Metal Plumbing - v - Deo** [1999] FJHC 25 where Justice Fatiaki extensively discussed the restricted right of appeal in the Small Claims Tribunal; AND

(b) In the matter of **Aaryan Enterprise - v - Mehak Unique Fashion** [2011] Civil Appeal 17 of 2011, the Court stated:

*"Put, bluntly, there is no right of appeal on the merits even when there may be a clear error of law in the Tribunal's decision.*

[28] The Presiding Resident Magistrate pointed out to *Section 15 (4) of the Small Claims Tribunal Act 1991*, which specifically states that the Tribunal must have regard to the law.

[29] The presiding Resident Magistrate also discussed in his Judgment the twin principles underlying the Doctrine of Res- Judicata and have said -

The facts revealed that the Appellant's earlier claim was in the sum of \$4,500 on repair works purportedly carried out by its mechanics around 22 November 2017 as per invoice no. 00199303 on 22 November 2017 plus Admin costs of \$65.50.

[30] However, in the current case, the Respondent's claim was on \$5,990.20 (limited to \$5,000).

[31] The presiding Resident Magistrate quite rightly and categorically refused to accept the Appellant's Argument that the remedy of *Res Judicata* applied in the current case. He quite rightly found that the issues pleaded in the current matter have not been adjudicated upon by an impartial and incompetent Tribunal of fact. He added that the burden of proving Res-Judicata was on the Appellant - 'He who alleged must prove,' in his case the Appellant failed to discharge the burden on the balance of probabilities.

[32] The presiding Resident Magistrate quite correctly arrived at his conclusion and dismissed the Appellant's Appeal in the Magistrate's Court together with assessed costs at \$500.

- [33] I uphold the final decision of the presiding Resident Magistrate that the Appellant failed to prove the issue of Res Judicata and hence, the Appellant's Appeal was fatal in the circumstances.
- [34] Further, on the Appellant's grounds that the Small Claims Tribunal proceedings were conducted by the Referee in a manner which was unfair to the Appellant and prejudicially affected the result of the proceedings and exceeded its Jurisdiction also fails accordingly.
- [35] The issues in the two (2) separate Small Claims Tribunal claims filed by the Appellant, Aarkay Motors Ltd claiming a sum of \$4,500 on repair works carried out around 22 November 2017, then 9 months after the first repair works were carried out and paid for by the Respondent, Saula Vulaono, which was finally dismissed and the other second claim filed by the Respondent, Saula Vulaono are matters with two distinct and different facts, that the Respondent's claim was on \$5,990.20, limited to \$5,000.
- [36] Therefore, in all fairness both matters needed to be dealt and determined with on the distinct facts accordingly.
- [37] The Decisions made by the Referee were independent of the two claims with distinct facts that is the first claim was that the Appellant's purportedly carried out the mechanical works on the Respondent, Saula Vulaono's vehicle EN065 and was paid for by the Respondent. However, the second works carried out on the Respondent's vehicle was according to the Respondent, Saula Vulaono that it was a return job and therefore, nothing should have been charged for the work carried on since the vehicle engine gave him the same problems after prior works were carried out on the same vehicle EN065.
- [38] I fully agree with the reasons of his Judgment and orders made therein. I uphold the presiding Resident Magistrate's Judgment and reasons accordingly.
- [39] For the aforesaid rational, I do not find that the Appellant, Aarkay Motors Ltd had established that the proceedings in the Small Claims Tribunal conducted by the Referee was in a manner unfair to the Appellant and had prejudicially affected the result of the proceedings and that the Small Claims Tribunal had exceeded its jurisdiction.

#### **Other grounds**

- [40] The remaining eight (8) or so grounds of the Appellant are dismissed in limine since the matters claimed are the subject matter of the current appeal that was initiated at the Small Claims Tribunal. Any subsequent appeals from the Small Claims Tribunal to Magistrates Court and to High Court will be dealt with on only two (2) grounds of:

- (1) The proceedings in Small Claims Tribunal by the Referee was unfair to the Appellant and prejudicially affected the result of the proceedings; and
- (2) The Small Claims Tribunal exceeded its jurisdiction.

[41] Apart from above two grounds, this Court will not deal and determine with any further grounds which has no relevance to the Small Claims Tribunal Act 1991 accordingly.

[42] Hence, the orders sought by the Appellant to set aside the Decision of the Magistrates Court fails and holds no water and accordingly, I have no alternative but proceed to dismiss the Appellants appeal in its entirety.

#### **Costs**

[43] The Appeal proceeded to full hearing with the Appellant initially filing an Originating Summons seeking for extension of time to file its Notice and Grounds of Appeal which was granted by Consent.

[44] Further, the parties filed their respective written submissions and argued the Appeal orally.

[45] It is only just and fair that the appellant failing to succeed on its appeal is ordered to pay a summarily assessed costs of \$2,500 to the Respondent, Saula Vulaono, within 14 days' time frame.

#### **Orders**

- (i) The Appeal of Aarkay Motors Ltd fails and is accordingly dismissed in its entirety.
- (ii) The Appellant, Aarkay Motors Ltd to pay the Respondent, Saula Vulaono, a sum on \$2,500 as summarily assessed costs within 14 days timeframe.

Dated at **Suva** this **24<sup>th</sup>** day of **September** ,2024.



VISHWA DATT SHARMA  
PUISNE JUDGE

cc: **Shelvin Singh Lawyers, Suva**  
**Oceanica IP, Suva.**