

IN THE HIGH COURT OF FIJI AT SUVA

APPELLATE JURISDICTION

CASE NUMBER:

HBA 20 OF 2024

[Magistrate's Court civil Action Number 107 of 2022]

BETWEEN:

PRANIL GOUNDAR

APPELLANT

AND:

TIMOTHY GRAHAM EDEN

RESPONDENT

Appearances:

Ms. S. Naidu for the Appellant.

Mr. S. Singh for the Respondent.

Date/Place of Judgment:

Thursday 2 October 2025 at Suva.

Coram:

Hon. Madam Justice Anjala Wati.

JUDGMENT

Cause and Background

1. This is an appeal against the decision of a Senior Resident Magistrate Ms. Hamza of 28 August 2024 whereby she refused the appellant's application to set aside a judgment obtained in his absence on 11 December 2023. The Senior Resident Magistrate Ms. Hamza had also ordered costs of the proceedings against the appellant in the sum of \$1,000 to be paid within 14 days of the date of the ruling.
2. The substantive claim was made under a promissory note for unpaid loan of \$32,233.34 and default interest at a sum of \$50 per week until full payment.
3. The appellant/defendant in his statement of defence had admitted taking the loan of \$60,000 from the plaintiff. However he says that the default interest was agreed to be waived. He also asserted making regular payments.

4. It was also raised in the defence that it was agreed between the parties that repayments were going to be offset against accounting services that the defendant provided to the plaintiff.
5. The appellant/defendant says that upon reconciliation of payments and services invoices, he only owes the plaintiff 34 cents against the loan.
6. The defendant also made a counter claim against the plaintiff in the sum of \$10,000 for professional services pursuant to various service agreements between the parties.
7. The matter was listed for trial on 11 December 2023. The defendant and his counsel failed to turn up for hearing and the matter was heard on an undefended basis. Judgment was entered for the plaintiff as claimed but limited to the jurisdiction of the court.
8. On 16 February 2024, the appellant made an application for setting aside of the judgment entered against him.
9. In support of his application, his counsel Mr. Armish Amendra Pal filed an affidavit. Mr. Pal stated that he appeared in the Magistrate's Court and obtained a hearing date of 11 December 2023.
10. Mr. Pal deposed that his office failed to record the hearing date in the Master Diary or the MyCase Case Management System as a result of which there was failure to appear in court on the day of the hearing. He also said that since it was an oversight by his office and no fault or neglect of the defendant in not appearing in court for the hearing, it was going to be manifestly unfair if the judgment was allowed to stand against the defendant.
11. Mr. Pal said that when he was reviewing the litigation file, he then became aware of the judgment. This was on 15 January 2024. He then took steps for setting aside.
12. According to Mr. Pal, the setting aside application was made without any delay as no steps had been taken on the judgment. Their office had not even been served with a sealed copy of the judgment.
13. Mr. Pal emphasized on having a defence on merits. He said that the defence had a chance of succeeding on the basis that default interest on the loan had been waived by agreement between the parties; the repayments of the loan were going to be offset against accounting services that the defendant was to

provide and actually did provide to the plaintiff; various payments had been made to the plaintiff; and there is a legal issue about recovering payments under unsigned promissory notes.

14. In respect of his counter claim, the defendant maintained having done accounting works for the plaintiff based on which he claimed \$10,000.
15. The plaintiff's response to the application for setting aside was that the defendant is also a lawyer. He had legal representation too. Both lawyers failed to appear in court for the hearing.
16. The plaintiff's position was that the defendant's action of not diarizing the case in their system is not a valid reason to set aside the judgment.
17. According to the plaintiff, the defendant also had the responsibility to follow up on the case and to be present in court for hearing. The plaintiff says that he will be prejudiced as he will again have to bear legal costs and take time out to present his case in court.
18. The plaintiff also stated that there was no evidence to support the defence which could have been adduced as annexures in the affidavit.

The Ruling on Setting Aside

19. In her 10 page judgment, the only reason the Senior Resident Magistrate gave for dismissing the application is that she agreed with the plaintiff's submission.
20. The court summed up the plaintiff's submission at paragraph 10 of the judgment as follows:

"The plaintiff's counsel submitted that this matter was for hearing by the Resident Magistrate presiding at the time. He submitted that both counsel for the plaintiff and he defendant were present with their clients to take the hearing date given by the Resident Magistrate. He further submitted that on the day of the hearing, when the defendant and his party failed to appear, she proceeded to hear the evidence of the plaintiff and gave her judgment based on merits."

The Appeal

21. Aggrieved at the ruling, the appellant raised 2 grounds of appeal asserting that the court erred in law in:

- (a) *Holding that the remedy available to the defendant was an appeal and not an application pursuant to Order 30 Rule 5 of the Magistrates Court Rules 1945 which entitled the appellant to apply for a setting aside of the judgment obtained in his absence.*
- (b) *Failing to consider the appellant's application based on Order 30 Rule 5 and evidentiary material placed before the court.*

Law and Analysis

22. When I see the Senior Resident Magistrate's one line finding that she agrees with the plaintiff's submissions, it concerns me hugely. She has seriously failed to explain why she accepts the plaintiff's argument and not the defendants. Her decision is bereft of any reasons.
23. Any party whose application or claim is accepted or denied has a right to know the basis on which it is so done. They have a right to know why the application or claim is so granted or refused.
24. It is very convenient for a court to say that it accepts one party's argument. Anyone can say that, but whether that outcome is based on exercise of legal principles and facts, has to be reflected in the judgment.
25. It is an error of law and fact if a Magistrate fails to give reasons for her findings. The purpose of writing a judgment is to provide reasons and that is a legal requirement which cannot be avoided or ignored.
26. I am wondering why there was this need to write so many pages of judgment if the legal principles and arguments were not to be analysed. Order 32 Rule 4 of the Magistrates Court Rules 1945 very clearly spells out that every judgment or decision must contain the decision and the reasons for those decision. The judgment of the court is bad in law and ought to be set aside except for the order for costs which I will elaborate on later.
27. The court below had accepted the plaintiff's argument which means that it accepted the plaintiff's argument that both the plaintiff and his lawyer are legal professionals and that it is not a valid excuse to say that the date was not diarized. The court also seems to have accepted that this was a judgment on merits and as such the court is functus in setting aside the same. That was actually the plaintiff's argument in court.

28. It was important for the court to outline why the mistake on the part of Mr. Pal was not accepted. Further, a judgment obtained in absence of a party can be set aside: *Order 30 Rule 5 of the Magistrates Court Rules 1945*.
29. The court below did not even cast its mind to that provision of the law and accepted that since this is a judgment on merits, it cannot be set aside.
30. The defendant's counsel had sighted all the relevant laws and cases. If attention was paid, it would have been clearer to the court below that even a judgment on merits can be set aside.
31. The cases presented by the defendant also adequately summarized the legal principles based on which the application for setting aside in this case ought to have been considered. None of these principles were considered.
32. Further, another important consideration that the court below did not take into account is the issue of merits of the defence, The defendant had raised many issues ranging from payments being made, outstanding payment by the plaintiff for accounting services, agreement to waive default interest, and an unsigned promissory note. There was a counter claim for \$10,000. The trial court did not even strike out the counter-claim in the ex-tempore ruling or any time before it.
33. The pressing legal issue that needed some reflection was the issue of unsigned promissory note based on which a claim was made: *S. 96 of the Bills of Exchange Act 1891*. Although this provision of the law was not brought to the attention of the court by any party, the issue of unsigned promissory note was raised. That issue immediately gives rise to the question of admissibility of the promissory note based on which the claim was made. It needed some reflection.
34. If the defendant's defence did not have any real prospects of success then that should have been identified. I have not undertaken the exercise of hearing the setting aside application and as such I cannot determine the application for setting aside on the legal principles outlined by the case precedents. It is a matter that should be left to the Magistrate's Court.
35. This matter needs to be sent back to the Magistrates' Court for a fresh hearing on the application to set aside the judgment. However the order for costs by the court below need not be disturbed. It is due to the defendant's inaction that the plaintiff finds himself in this situation of not being able to have a finality in the litigation. It is always important that there is finality to litigation and every party is entitled

to have the same done within a reasonable period of time. Had it not been for the defendant's inaction, this matter would have been finalized by now.

36. The plaintiff had to again pay legal fees to argue this appeal. He will also have to pay legal fees to defend the setting aside application in the court below. If unsuccessful, he will have to go through the trial again. It is only proper that he be compensated in costs for this appeal. I find that in this appeal, although unsuccessful, the costs should still be paid by the appellant/defendant. It is unfair to burden the plaintiff/ respondent.

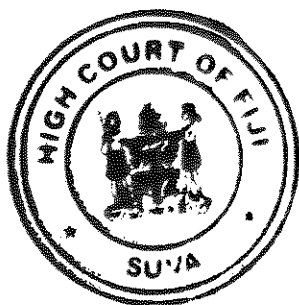
37. The court below might consider costs for the plaintiff again in the fresh hearing of the setting aside application.

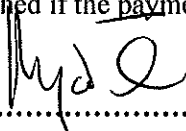
Final Orders

38. In the final analysis, I allow the appeal and send the matter back to the Magistrate's Court for hearing of the application for setting aside by a different Magistrate. Before the application is listed for hearing, the appellant/defendant is to pay to the plaintiff/respondent the following costs:

- (i) \$1000 ordered by Senior Resident Magistrate.
- (ii) \$3000 for this appeal, which I order.

39. All costs are to be paid within 14 days, in absence of which the application for setting aside should be deemed abandoned and not listed for hearing by the Registry. Once payment is made within time, the counsel for the appellant/defendant is to inform the Registry and request the matter to be listed for hearing. No such request shall be entertained if the payments are not made as specified.





Hon. Madam Justice Anjala Wati

Judge

2.10.2025

To:

1. AP Legal for the Appellant.
2. Shelvin Singh Lawyers for the Respondent.
3. File: HBA 20 of 2024.