

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
(EXERCISING CIVIL APPELLATE JURISDICTION)**

High Court Civil Appeal No. HBA- 13 of 2024.

IN THE MATTER of an Appeal from the decision of the Magistrate's Court of Lautoka in Civil Case **No. 82 of 2018.**

BETWEEN : **PRITHI RAJ CHAND & SANJOGITA**, both of Yalalevu, Ba, Company Directors of Designtech Limited.

**APPELLANTS
(ORIGINAL PLAINTIFS)**

AND : **KEVIN PURSER** of 40 Bouwalu Street, Lautoka, and **DAVID WOLFSWINKEL** of 3850 East Baseline, Suite 123, Mesa, United States of America, both Company Directors of SRB Investment (LLC) of 15262 N 75th Avenue, Suite 450, Peoria Arizona 85381.

**RESPONDENTS
(ORIGINAL DEFENDANTS)**

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Ms. Naidu. J – For the Plaintiff – Appellant.
Ms. N. Khan – For the Defendant Respondents.

DATE OF HEARING : 13th May 2025 (Agreed to dispose by way of written submissions)

W. SUBMISSIONS : Filed by the Appellant on 27th May 2025.
Filed by the Respondent on 29th August 2025.

DATE OF JUDGMENT : 13th October 2025.

JUDGMENT

A. INTRODUCTION:

1. This is an appeal preferred by the Plaintiff-Appellants (“the Appellants”) against the Judgment dated and pronounced on 13th February 2024 by the Hon. Resident Magistrate of Lautoka (“the Magistrate”)
2. By the impugned judgment, the Magistrate, after hearing the Civil Action bearing No- **082 of 2018** before him, proceeded to dismiss the same for the reasons stated in the said judgment.

3. Being dissatisfied of the said judgment dated 13th February 2024, having filed their Notice of Intention to Appeal on 20th February 2024, the Appellants on 7th March 2024 filed their following Grounds of Appeal.

B. GROUND OF APPEAL:

1. *THAT the Magistrate erred in fact and in law by not considering that the letter from the Tax Agent had stated that the tax amount was payable to the Tax Department was of the period when the company was not sold to the Appellant.*
2. *THAT the Magistrate erred in fact and in law by not considering the tax statement of tax department, which showed tax amount that was payable by the Respondents for the period when the company was not sold to the Appellant.*
3. *THAT the Magistrate erred in fact and in law by not considering the fact that the Respondent had breached the agreement clauses, which has led the Appellant to suffer and bear unnecessary costs.*
4. *THAT the Magistrate erred in fact and in law by not considering that the act of Respondent was fraudulent towards the Appellant by not paying his vat returns in the sum of \$29,506.51*

C. BACKGROUND:

4. As per the Statement of Claim, the Appellants had averred, *inter alia*, as follows
 - a. *THAT the Defendants at the time material were the Directors of the limited liability Company called "Designtech Limited".*
 - b. *THAT by an Agreement dated 31st May 2012, the Defendants sold the said Company called "Designtech Limited" to the Plaintiffs and exchanged the total ownership of the shares of the Company.*
 - c. *THAT it was an expressed term of the Agreement that the subject Company was to be transferred to the Plaintiffs by the Defendants free of all encumbrances.*
 - d. *THAT it was further an expressed term of the said Agreement that all the taxation returns due of the Company were settled and there was no outstanding dispute or demand between the Company and the Taxation Authority at the time of the sale.*
 - e. *THAT upon the subject Company accounts being audited by the Government Tax Department, it was discovered that there were pending tax to be paid from the month of January to June 2012 in a sum of \$29,506.51.*
 - f. *THAT in breach of the said Agreement dated 31st May 2012, the Defendants have failed to pay the sum of \$29,506.51, which is pending as arrears for the months of January to June 2012.*

accordingly , the Appellant filed his written submissions on 27th May 2025 and the First Respondent filed his written submissions on 29th August 2025. No reply submissions were filed by the Appellant, though he was left at liberty for the same.

E. ANALYSIS:

Who is bound by this Judgment?

11. Before I proceed to the merits of the Appeal, it must be put on record as to whether both the Respondents hereof are to be bound by the judgment of this Court and the Court bellow.
12. When this action was filed before the Magistrate’s Court on 09th August 2018, the Respondents were not the Directors of the Company called “Designtech Limited” as they had already sold the Company and its shares unto the Appellants. Thus, in 2018, the action was filed against the Respondents in their personal capacity, not as the Directors of the “Designtech Limited”.
13. Therefore, the Writ of Summons should have been personally served on both of them. The record shows that, in case of the first Respondent, the same was served on one Swastika, the Assistant Manager of Zipline Fiji, on behalf of the 1st Respondent as per the Affidavit of Service filed of record. This was an irregularity. However, the formal Proof judgment entered against him on 07th August 2019 being duly served on him on 7th October 2019, on an application made by him, the formal proof judgment was subsequently vacated and he was allowed to file his statement of Defence.
14. Accordingly, as the irregularity in the service of the Summons on him was regularized and he filed the statement of defence, he took part at the trial of the action, and finally by the impugned judgment delivered on 13th February 2024, the same Magistrate dismissed the Appellant’s action. Since the Appeal hereof is against the said dismissal, the outcome of this Appeal has to bind only the first Respondent hereof, namely KEVIN PURSUR.
15. As far as the 2nd Respondent Mr. **DAVID WOLFSWINKEL**, is concerned, it is observed that he did not have an address in Fiji as per the case record, and his both residential and business addresses were in the United State of America. Neither an application seeking leave to issue the writ of Summons on him and to serve it out of the jurisdiction was made nor the writ of Summons was served on him in Fiji. Accordingly, no proceedings against him could have been commenced and continued with in the absence of the leave to commence and for the service of the writ of summons on him out of jurisdiction. The Magistrate in this case has had no jurisdiction to proceed with the trial against him. Thus, he could not have been made a party to this Appellate process as well. Accordingly, any judgment by the Court bellow or by this Court will not have any effect on the 2nd Respondent. The Appellant, if he wishes, may have to proceed with the action against him after service of Summons on him with necessary leave of the Magistrate. as he too could be found jointly liable to the Appellants.

Merits of the Grounds of Appeal:

16. I have carefully considered the merits of all 4 grounds of Appeal adduced above, together with the contents of the record before the Court below, particularly, the evidence presented, those of the Agreement marked as “PRC-1” entered into for the sale of the Company and its shares, the letter from the Accountants, including the “Statement of Tax Account” from the Fiji Revenue & Customs (FRCA) marked as “PRC-2”, and the annexures marked as “PRC-3”, which included the details of the payments done by the Appellants to the FIRCA and 10 official payment receipts issued by FIRCA.
17. I have also considered the contents of the letters sent by the “Designtech Limited” to the FIRCA, which were marked as “PRC-4” & “PRC-5”. It is to be observed that all those documents were admitted in evidence by the former Magistrate at the formal proof hearing held on 5th March 2019 and the judgment was accordingly entered in favor of the Appellants, which however was set -aside due to the obvious irregularity in the service of the writ of summons on the 1st Respondent.
18. However, at the substantive trial held on 17th September 2023, all those documents being tendered in evidence through the 1st Appellant, none of those documents was **validly** objected by the learned Counsel for the 1st Respondent. Thus, the contents of those documents have been duly admitted, along with the oral evidence of the 1st Appellant.
19. During the cross examination of the PW-1, a question being posed by the Counsel for the 1st Respondent in relation to a purported benefit of Tax Credit in a of \$149,000.00 given to the Appellant when he took over the “Designtech Limited” from its former owners, it has been answered by the 1st Appellant by saying that it was not mentioned in the Agreement. If there was such a valid defence, the 1st Respondent should have pursued his defence, instead of relying on the plea of non-suit (No case to answer).
20. After considering the Respondent’s plea of no case to answer, on the written submissions filed, the Magistrate by his Ruling dated 15th December 2023 correctly dismissed the said plea of non-suit. However, subsequently by his impugned Judgment dated 13th February 2024 dismissed the Appellant’s action in its entirety with costs in a sum of \$1,500.00.
21. In my view, had the Magistrate carefully scrutinized the contents of the Tax Statements marked as annexure “PRC-2”, undoubtedly, he would have found that it was very clear that the relevant Value Added Tax was for the period commencing from **01st January 2012 till 31st May 2012**. The 1st statement shows that the taxing for the year 2012 had commenced with an opening balance of \$421.33 and ended showing an arrears of **\$29,506.51**, which was brought forward as opening balance as at 1st June 2012.
22. The statement, with **Ref No- VAT/50-14787-0-2/OPS (Page -9)** from FIRCA, annexed to the “PRC-2” clearly shows that the said finally audited amount of **\$29,506.51 was in respect of the tax years prior to 2010, for the period from January to December 2010,**

for the months of January, February, June and November 2011 and finally for the month ending on 31st May 2012. For the purpose of clarity, I have highlighted the relevant portion of the said document and reproduced the same in this judgment.

23. This clearly shows that the tax for the month of June 2012 was not a part of this amount. This seems to have had escaped the attention of the Magistrate, who had formed a wrong view that the month of June 2012 was also caught in the calculation and the auditing. The calculation shows only the opening balance as at the 1st of June 2012. This has not included any tax or penalty for the month of June 2012.
24. The Respondents in the Agreement marked “PRC-1”, in no uncertain terms had agreed that the taxes till the date of signing the Agreement (ie-31st May 2012) had been duly paid with no arrears. But later, after the auditing being done, it has been revealed that there had been such an arrears of the tax and penalties thereto.
25. This was an encumbrance, which the Appellants did not want to face after signing the Agreement on 31st May 2012 and taking over of the “Designtech Limited” with the shares of it from the Respondents. The Appellant in order to avoid the embarrassment and to be a tax compliant has paid the said sum of \$29,506.51 as substantiated by annexures marked as “PRC-4” the payment receipts issued by the FIRCA.
26. I find that the learned Magistrate has erred in arriving at the decision that the amount claimed by the Appellant in his SOC, which was paid and settled by the Appellant as aforesaid, had included the taxes for the month of June 2012 as well. The Magistrate failed to consider that there was a breach of Agreement on the part of the 1st Respondent by avoiding the liability to pay the taxes and penalties’ for the period till 31st May 2012, though he had managed the Company “Designtech Limited” and run the business thereof. The opening balance shown as at 1st June 2012 has been construed by the Magistrate to have included the tax for the whole month of June 2012 as well.
27. Thus, I find that all 4 grounds of appeal are with full of merits and this Court has enough reason to set aside the impugned judgment dated 13th February 2024 pronounced by the Magistrate.
28. Having arrived at the aforesaid conclusion, I also find that the learned Magistrate had overwhelming evidence before him to arrive at the finding that the Respondents had caused the Appellants to enter into the Agreement by representing that there was no any tax encumbrances in respect of the Company sold to the Appellant. In my view, the Appellants are entitled to recover the said sum of \$29,506.51 from the 1st Respondent as he should be liable to the Appellants.
29. Since the Appellants have satisfied that they have paid and settled the said sum of \$29,506.51 unto the FIRCA, and the 1st Respondent has failed and neglected to pay it unto the Appellant, though demanded, the 1st Respondent should be held liable to pay and

settle this amount unto the Appellants with interest from the date of this judgment until the said sum is fully paid and settled.

F. COSTS:

30. This is an action commenced by the Appellants before the Magistrate's Court in the year 2018. They had to go through the laborious proceedings before the Magistrate for nearly 6 long years. They were legally represented before the Magistrate and this Court as well. The 1st Respondent, being aware of his liability to pay and settle the taxes and penalties for the relevant time period, deliberately avoided it in the absence of any tangible defence for him. Accordingly, I decide a sum of \$3,000.00 (Three Thousand Dollars as costs would do justice to the Appellants.

G. FINAL ORDERS:

- a. The Appeal is allowed.
- b. The judgment pronounced by the Hon. Magistrate of Lautoka, on 13th February 2024, is hereby set aside.
- c. A judgment is hereby entered in favor of the Appellants against the 1st Respondent for a sum of **\$29,506.51** (Twenty-Nine Thousand Five Hundred Six Dollars and Fifty-One Cents).
- d. The Appellants are entitled for interest at Four percent (4%) per annum on the said sum of \$29,506.51 from the date of this Judgment till the said sum is fully paid and settled.
- e. The 1st Respondent shall also pay the Appellants a sum of \$3,000.00 (Three Thousand Dollars) being the summarily assessed costs before the Court bellow and this Court.


A.M. Mohamed Mackie
Judge



At the High Court of Lautoka on this 13th day of October 2025.

SOLICITORS:

For the Appellants:

Messrs. Jyoti Legal, Barristers & Solicitors

For the 1st Respondent:

Messrs. Natasha Khan & Associates, Barristers & Solicitors