

**IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA, FIJI
EXERCISING CIVIL APPELLATE JURISDICTION.**

CIVIL APPEAL No- HBA 12 of 2023

**MAGISTRATE'S COURT OF LAUTOKA
CIVIL ACTION NO. 23 OF 2018**

BETWEEN : **SATEN SINGH** of Natabua, Lautoka, Taxi Driver
PLAINTIFF-APPELLANT

AND : **BANK OF SOUTH PACIFIC**, a limited liability Company of Papua New Guinea, and having duly incorporated in Fiji to operate as Banking & Finance institute throughout Fiji Islands having its head office for Business at Level 12 at BSP Suva Central Building Thompson Street, Suva
DEFENDANT-RESPONDENT

BEFORE : Hon. A.M. Mohamed Mackie- J.

COUNSEL : Ms. Naidu J for the Plaintiff-Appellant.
Ms. Dewan S. For the Defendant- Respondent.

DATE HEARING : 24th October 2025.

W. SUBMISSIONS : Filed by the Plaintiff-Appellant on 24th October 2025.
Filed by the Defendant- Respondent on 24th October 2025.

DATE OF JUDGMENT : 3rd February 2026

**JUDGMENT
(On Appeal)**

A. Introduction:

1. Before me is an Appeal preferred by the Plaintiff-Appellant ("the Appellant") on 12th May 2023 by filing his Notice of Appeal, together with Grounds of Appeal, against the judgment dated 26th April 2023 pronounced by the Hon. Magistrate ("the Magistrate") of Lautoka in the above styled Magistrate's Court action.
2. By the impugned judgment, the Magistrate had dismissed the action of the Appellant with an Order for a sum of \$800.00 to be paid as costs to the Defendant-Respondent ("the Respondent") Bank of South Pacific ("BSP").
3. Prior to filing the Notice & Grounds of Appeal, the Appellant had on 27th April 2023 duly filed the Notice of Intention to Appeal against the impugned judgment dated 26th April 2023, which was within 7 days' time from the date of the impugned judgment. Thus, parties are not in dispute as to the propriety of the procedures followed in initiating this Appeal.

B. Background History in Brief:

4. The Appellant on 05th April 2018 had filed his Writ of Summons and the Statement of Claim (SOC) before the Magistrate Court of Lautoka, claiming, *inter alia*, the following reliefs against the Respondent.
 - i. *A declaration that the Defendant Bank committed the fraud in the sum of \$18,000.00 (Eighteen Thousand Dollars) on 29th September 2003.*
 - ii. *An Order in the alternate to set off the sum of \$18,000.00 together with all interest paid till to date on the current loan account.*
 - iii. *An Order for Exemplary damages to be assessed by the Honorable court.*
 - iv. ***INTEREST on*** the judgment sum at the rate of 6.5% per annum computed from the date of fraud on pro rata until the date of full and final payment.
5. The basis of the Appellant's claim before the Magistrate, as per his SOC, was **THAT**;
 - a. The Appellant was initially a customer of **Colonial National Bank** in respect of some financial activities, operations of which were subsequently taken over by the Respondent Bank (BSP). By the year 2003, the Appellant and his wife had taken a further Home-Loan in the sum of \$40,250.00 from the Respondent Bank.
 - b. On 5th August 2003, he requested the Respondent Bank for the release of \$17,500.00 to **Vimal Construction and Joinery Works** ("Vimal Construction") being the first stage progress payment for the works done by Vimal Constructions on his premises, which was paid by a cheque dated 6th August 2003 to Vimal constructions.
 - c. After receiving first stage payment, Vimal Constructions withdrew its services of construction at the Appellant's premises and exited.
 - d. The Respondent on 29th September 2003 without the expressed authority or request of the Appellant released the payment for second stage of works to **Vimal Constructions** by cheque in a sum of \$18,000.00.
 - e. The Respondent willfully and on its own authority had sanctioned the said payment to Vimal, Constructions without any knowledge of the Appellant, and the Respondent's action was fraudulent and has caused enormous loss to him.
 - f. He was unaware of this fraudulent act until sometimes early 2017 when he was concerned about his loan account with the Respondent not reducing, however became aware of it after going through the Account statements.
 - g. He made a Police complaint on 12th July 2017 to investigate the matter and sent a notice to the Respondent through his Solicitors on 13th February 2018 seeking satisfactory explanation on the payment of this \$18,000.00 to Vimal Constructions. But, the Respondent refused to make any comments pending the

Police investigation, thus he has been put to loss and damages through the fraud and mistake on the Respondent's part as he had not given his consent to release the second payment.

6. The Respondent by filing its Statement of Defence on 20th June 2018, having admitted the averments in paragraphs 1 to 5 of the SOC, denied the rest of the averments from paragraphs 6th to 13, except for pleading ignorance of the averments in paragraphs 8 and 9 of the SOC, and moved for the claim to be struck out as it was defective and statute barred pursuant to section 15 of the Limitation Act, Cap 35.
7. After hearing the witnesses from both parties at a lengthy trial and considering the whole evidence led, being satisfied that there are merits on the evidence presented by the Respondent on the balance of probability, the Magistrate by his impugned judgment dated 26th April 2023 dismissed the Appellant's action with costs. It is against this judgment the Appellant is before this Court.

C. Grounds of Appeal:

8. The Appellant relies on the following, purported, grounds of appeal;
 1. *That the Magistrate erred in fact and in law by not considering that the Respondent failed to prove to whom the \$18,000.00 (Eighteen Thousand Dollar) was paid to and to whom the cheque (if any) of the said amount was released to.*
 2. *That the Magistrate erred in fact and in law by not considering that the Respondent failed to adduce any evidence to the Court as to how the sum of \$18,000.00 was released.*
 3. *That the Magistrate erred in fact and in law by not considering that the Respondent failed in its duty of care towards the Appellant by releasing the funds without his consent and Authority.*
 4. *That the Magistrate erred in fact and in law by not considering that the Respondent's act has been fraudulent towards the Appellant by debiting the Appellant's Account for the sum of \$18,000.00.*
 5. *That the Appellant reserves the right to amend and/or add further grounds of appeal, if need be.*

D. Hearing:

9. At the hearing of appeal held on 24th October 2025, learned Counsel for both parties made oral submissions, in addition to the written submissions filed at the hearing.

E. Analysis:

10. This court has been called upon to look into the propriety of the impugned judgment dated 26th April 2023 under four (4), purported, grounds of appeal, by relying on the arguments presented in the oral and written submissions and the decided case law authorities cited by both parties.

Grounds 1 & 2:

11. As I find that both the first and the second grounds of appeal above are on the same issue, for the sake of convenience, I shall address those grounds together as follows.
12. The main argument raised by the Appellant through these two grounds of appeal is that the Magistrate failed to consider that the Respondent had failed to prove as to whom the second payment of \$18,000.00 was made by the Respondent, by releasing the cheque in that regard.
13. I don't find that these two grounds warrant any serious and in-depth scrutiny by this Court as the Magistrate was not called upon to go into as to whom the second payment of \$18,000.00 was in fact made, since the Appellant had, in paragraph 7 (i) & (ii) of his SOC, admitted that the second payment was made to **Vimal** Constructions.
14. The Plaintiff's witness No—3, **Vimal Prakash** (Director of the Vimal Constructions) during his examination in chief and under cross examination has admitted that his Company had quoted \$40,000.00 (Forty Thousand Dollars) for the job at the Appellant's residence and obtained the payment in a sum of \$17,500.00 for the first stage of works on submission of the certification of payment (**MFI No-01**) provided by his Architect. Parties were not in dispute on this payment.
15. With regard to the second stage, though the Appellant's witness No-3 **Vimal Prakash**, asserted that his company did not engage in the 2nd stage works, under his cross examination from pages 22, 23 & 24, he has admitted that the letter in Tab-28 (**MFI No-2**) in respect of payment for 2nd stage was from one **Monesh Vikash** from his Company, who was employed by his Company at the time material, particularly when the 2nd payment was made on 17th September 2003.
16. He added further that according to the said letter, his Company had requested for the 2nd payment in a sum of \$22,500.00, and one has to ask about this payment only from **Monesh Vikash** (Monesh), who was employed by his Company at that time. He also stated that **Monesh** has now migrated to New Zealand. When he was cross examined further whether the 2nd stage works could have been done by **Monesh** on behalf of his Company (Monesh's own Company) his answer had been "**Yes it can Sir because many places happened Sir**", "**Yes it is possible**". He also has admitted that this payment has been requested on behalf his company and not by **Monesh Vikash** personally. **Vide page 24 of the transcript.**
17. Further, the Appellant's witness "**PW-5, one Amendra Kumar** (Architect) has given his evidence that the said "**MFI No-2**" being the document for payment was signed by him and the owners (the Appellant). I find that the learned Magistrate has duly analyzed these parts of the evidence on record and arrived at the correct findings, thus no blame can be pinned on the learned Magistrate's impugned judgment.
18. If the Appellant had carried out the 2nd stage of works on his own, he should have adduced some kind of evidence in that regard as correctly observed by the learned Magistrate. If the Respondent bank was up to any fraud as alleged by the Appellant, it need not have retained \$4,500.00 out of the second stage claim of \$22,500.00. As per

the evidence, this retained amount of \$4,500.00 has subsequently been transferred to the Appellant's credit in a different account.

19. If there was any issue with regard to the said sum of \$18,000.00, it should have been raised at that early stage. The Appellant need not have waited for 14 years to raise any question on this sum of \$18,000.00, which he ought to have become aware of through regular Bank Statements he received as correctly pointed out by the learned Magistrate. The Appellant has opted to chase behind the Respondent Bank, when the relevant payment appears to have gone elsewhere on proper document being submitted to the Bank as revealed in the evidence. Thus, I find that the grounds 1 and 2 adduced by the Appellant should necessarily fail.

Ground-3

20. The ground No-03 appears to have been formulated on the basis that the Respondent Bank had a duty of care towards the Appellant. The Appellant's pleading did not carry any averments and nor any issue had been raised before the Magistrate in this regard. Thus, the learned Magistrate was not called upon to decide on the question of duty of care. Therefore, this ground is redundant and will not play any role in this decision.

Ground -4

21. This ground 4 is based on fraud alleged to have been committed by the Respondent Bank. The Appellant cannot simply allege fraud on the part of the Respondent, when he has failed to have a close watch as to how his funds with the bank were paid out. The evidence given by the Appellant's witnesses "**PW-3 Vimal Prakash**- the Director of Vimal Construction , and "**PW-5 Amendra Kumar** - the Architect , themselves have clearly demonstrated as to whom the 2nd stage payment of \$18,000.00 could, possibly, have been released to by the Respondent Bank , as analyzed in the foregoing paragraphs. Hence, this ground also should necessarily fail.

F. Costs

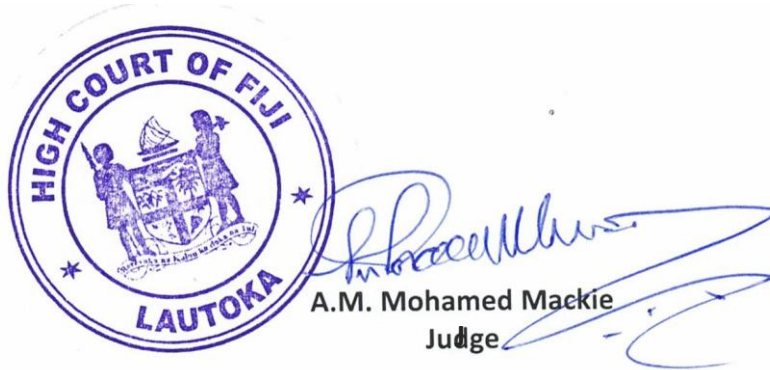
22. The Magistrate had imposed a cost of \$800.00 (Eight Hundred Dollars) being the costs before the Court below. There was no appeal with regard to these costs. The Appellant in the absence of any meritorious grounds, has proceeded to appeal causing substantive costs to the Respondent Bank. Hence, I decide to impose a further sum of \$700.00 (Seven Hundred Dollars) being the summarily assessed costs of appeal.

G. Conclusions:

23. I find all 4, purported, grounds of appeal are with no merits for consideration in favor of the Appellant to warrant the intervention of this Court. This court has no alternative but to dismiss the appeal and affirm the impugned judgment by the Magistrate of Lautoka, with an order for summarily assessed cost in a sum of \$700.00 (Seven Hundred Dollars) in favor of the Respondent Bank.

H. Final Orders:

1. The Appeal fails.
2. The Appeal filed by the Plaintiff-Appellant on 12th May 2023 is hereby dismissed.
3. The impugned judgment dated 26th April 2023 pronounced by the Magistrate is hereby affirmed.
4. The Appellant shall pay the Respondent a sum of \$700.00 (Seven Hundred Dollars) as summarily assessed costs of this Appeal.
5. A copy of this judgment be dispatched to the Magistrate's Court of Lautoka, along with the original records.



At the High Court of Lautoka on this 3rd day of February, 2026.

SOLICITORS:

For the Appellant

For the Respondent

Messrs. JYOTI LEGAL – Barristers & Solicitors.

Messrs. NEEL SHIVAM LAWYERS – Barristers & Solicitors.