

IN THE MAGISTRATE'S COURT AT LABASA
APPELLATE JURISDICTION

Civil Appeal No. 14 of 2010
SCT Claim No. 167 of 2010

BETWEEN : **SAKEASI RAIYAQONA**

APPELLANT

AND : **NINA FONG TOY**

RESPONDENT

For the Appellant : **Ms Vucukula. N**

For the Respondent : **Ms Vreetika**

Judgment : **26 January 2018**

JUDGMENT

1. The Appellant is appealing the order of the Small Claims Tribunal (*Tribunal*) made on 13 September 2010. The notice of appeal was filed on 20 September 2010, and was on time.
2. The ground of appeal listed in the notice of appeal is that ; -

"The proceedings were conducted by the referee in a manner that is unfair to the Appellant and it prejudicially affected the result of the proceeding in that he failed to confirm that the Respondent breached the terms of the contract and any damages are payable to the Appellant."

3. This appeal has been prolonged by an interlocutory issue between this appeal and *Civil Action No. 316 of 2010*. On 16 April 2014, the Court had struck out *Civil Action No. 316 of 2010*, and ruled for this appeal to proceed.
4. On 16 April 2014, leave was granted to the Appellant to file amended grounds of appeal. The same was filed on 24 July 2014.
5. The amended grounds of appeal are:-
 - a. That the Referee exceeded his jurisdiction when he dealt with a contract for the sale of land for \$45,000.00 which was in writing and which was tendered as evidence in the Tribunal.
 - b. That the Tribunal denied the Appellant procedural fairness when he heard the case when there was Magistrates Court Civil case seeking specific performance of the contract.
6. On 24 September 2014, directive was given to the Appellant to file his submission. The Respondent filed his submission on 25 August 2014. On 2 December 2015, Mr Lomaloma. P, Counsel for the appellant submit that the last instruction he received from the Appellant is about 2 years ago and he will file submission to assist the court. On 15 June 2016, counsel for the Applicant informed the court that their submission was filed on 20 August 2013. The Respondent then provided the court with a copy of submission filed on 20 August 2013, for *Civil Action No. 316 of 2010*, which was struck out on 16 April 2014.
7. On 9 November 2016, both the counsels have consented for the court to make it judgment based on the submission already filed by the parties. Those are the submission referred to in paragraph 6 above.
8. On the first ground of appeal, the claim at the Tribunal as per the form 1 filed is \$4,296.25. In terms of the monetary value, the Tribunal has jurisdiction in

respect of any claim that does not exceed \$5,000.00 in value. That is provided under *section 8(1)* of the *Small Claims Tribunal Act*. The amount claimed is within the jurisdiction of the Tribunal. There is nothing from the Appellant submission to support this ground. This ground has no merit and dismissed.

9. The second ground of appeal is pursued under *section 33(1)(a)* of the *Small Claim Tribunal Act (Act)* which state ;-

"the proceeding were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affect the result of the proceeding"

10. The manner in which the referee should conducted the Tribunal proceedings are stated by *Fatiaki. J*, in ***Sheet Metal Plumbing (Fiji) Ltd v Deo*** [1999] FJHC 26 ;-

"As to the manner or procedure required to be followed by the referee in conducting a proceeding under the Decree these are principally to be found in section 24 to 29 (inclusive) under the heading HEARING"

11. In this case, the Appellant was given his right of audience as he was present on the hearing date and his evidence was recorded as shown in the copy record. There is no argument that what is required in *section 24 to 29* of the *Act* was not accorded to the Appellant. That shows that the referee has conducted the proceeding in compliance to the requirements of the law.
12. There is nothing in the Appellant submission to support the second grounds of appeal. The copy record of the proceeding at the Tribunal (page 35 and 37) shows that the Appellant was present and gave her evidence and statement which was recorded by the referee. There is no procedural unfairness shown by the Appellant in his submission. Accordingly, there is no merit on this ground.
13. In this judgment, I have considered all the documents filed in this appeal together with the applicable laws.

14. In my judgment, I find that there is no merit on both the grounds of appeal. Accordingly, I dismiss the Appellant's appeal and I order the Appellant to pay costs of \$500.00 to the Respondent within 31 days.

28 days to appeal.



C. M. Tuberi
RESIDENT MAGISTRATE