

**IN THE MAGISTRATE'S COURT AT LABASA**  
**APPELLATE JURISDICTION**

*Civil Appeal No. 1 of 2018*  
*SCT Claim No. 692 of 2017*

**BETWEEN** : **NASRU DEAN KHAN**

**APPELLANT**

**AND** : **PREM SUSHIL**

**RESPONDENT**

Appearance : **Appellant** in person  
**Mr Radio. E** for the Respondent

Judgment : **27 February 2019**

**JUDGMENT**

1. The Appellant is appealing the order of the Small Claims Tribunal (*Tribunal*) made on 15 November 2017. The notice of appeal was filed on 17 November 2017, and was within the 14 days required under *section 33(3)* of the *Small Claims Tribunal Act (Act)*.
2. On 7 March 2018, both the Appellant and the Respondent confirmed to the court that they have received the copy record for the Tribunal proceeding. Directions were issued for filing of submission.
3. The Appellant filed his submission on 8 May 2018. The Respondent filed his submission on 9 July 2018. The appeal was heard on 19 September 2018.

4. At the hearing, the Appellant informed the court that he will rely on his submission filed. The Respondent in addition to their written submission submitted oral submission.
5. The Appellant grounds of appeal is that the court did not hear his story.

**Law**

6. Section 33(1) of the Act state that the order of the Tribunal can only be appealed on the following two grounds ;-
  - a. *“the proceeding were conducted by the referee in a manner which was unfair to the appellant and prejudicially affect the result of the proceeding;*  
*or*
  - b. *the tribunal exceeded its jurisdiction.”*

**Appellant's case**

7. The Appellant submission was about his claim in the Tribunal. There is nothing in the submission to address the ground of appeal put forward.

**Respondent's case**

8. The Respondent submission was about what happened during the incident. There is no submission to address the ground of appeal or on the conduct of the proceeding by the Referee.
9. On the hearing date, the Counsel for the Respondent orally submitted that the Appellant is relying on the first limp, that the proceeding was unfair. He submitted that the hearing was conducted in a fair manner. Both the parties were present during the hearing and they both make submission. The Referee had informed the Appellant that the Tribunal had no jurisdiction to determine claim based on medical report. The claim was based on vehicle accident. The case was dismissed by the Referee for lack of jurisdiction and in doing so the Referee was acting within her jurisdiction.

**Analysis and determination**

10. The ground of appeal that the court did not hear his story comes under section 33(1)(a) of the Act. Section 26(3) of the Act provides  
*“A tribunal may receive and take into account any relevant evidence or information, notwithstanding the provisions of the Evidence Act 1944 and whether or not the same would normally be admissible in a court of law”.*
  
11. The above proviso used the word “*may*” which means it is on the discretion of the Tribunal to receive and take into account any relevant evidence or information.
  
12. The manner in which proceeding must be conducted are stated in **Sheet Metal Plumbing (Fiji) Ltd v Deo**[1999] FJHC 26, where *Fatiaki.J* stated;-  
*“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.”*
  
13. In **Singh v Koroï**, Civil Appeal No. HBA 16 of 2014 (18 September 2015), *Alfred. J.* stated at paragraph 24 ;-  
*“With all respect, I do not think the Referee can take such attitude as evinced above. At the least, he should have asked the Appellant whether her witness were present and recorded her answer whether it be in the affirmative or the negative.”*
  
14. The High Court further stated in **Singh v Koroï** in paragraph 22;-  
*“...the Tribunal is required to adopt a procedure that will meet the ends of justice....”*  
and in paragraph 15 it state;-  
*“Although the Tribunal is not a court, it still required by section 29 of the Decree to adopt such procedure as it thinks best suited to the ends of justice. In my opinion, the procedures best suited to the end of justice, is the procedure which complies with the lodestar for both civil litigation and the alternative system set up to give ready access to those with small claims to have them resolved, which are;*

(i) *Audi alteram partem* which means requires a tribunal to hear the other side ....”

15. The minutes of the Tribunal proceeding are in page 21 and 23 of the copy record. The record show no evidence or statement given by the Appellant or recorded for the Appellant. The absence of any evidence in the minutes of the proceeding and in light of the above authorities, it shows that the Referee was not complying with *section 26* of the *Act*, thus the proceeding was conducted unfairly.
16. The Appellant is claiming for damages for the alleged injury caused to him by the Respondent. The claim is \$5,000.00 and was within the jurisdiction of the Tribunal. The amount claim has been quantified and the Referee has jurisdiction to adjudicate on the claim. The Referee had dismissed the Appellant claim for lack of jurisdiction. The Referee had erred in that regard as she can transfer the case to the Magistrate Court to adjudicate on the claim, but there is no need to do that as she has the jurisdiction to hear the claim under the *Act*.
17. In hearing the claim, the Referee must first established if there is sufficient evidence to establish liability of the Respondent. If the finding is affirmative, then assessment on the amount submitted must be evaluated and the Tribunal can make it finding accordingly.
18. Though, the submission filed by the Appellant did not address the ground of appeal put forward, the error in the proceeding highlighted above is sufficient to allow the appeal.
19. I have considered the copy record, the written submission filed by the parties, the applicable laws, and the case authorities relevant to this judgment.
20. In this judgment, I allow the appeal and I make the following orders ;-
  - a. *The order of the Small Claims Tribunal made on 15 November 2017 is hereby quashed.*

- b. *I order a rehearing of the claim in the Tribunal before another Referee.*
- c. *I make no order as to costs.*

**28 days to appeal.**



C. M. Tuberi  
RESIDENT MAGISTRATE

