

**IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
APPEAL JURISDICTION**

Small Claims Tribunal File No. 174 – 17; Appeal Case No 03 - 2019

**ROHINDRA NAND**

-v-

**YAQARA PASTORAL COMPANY LTD**

For the Appellant : In person  
For the Respondent : In person, Co. CEO Mr. Adrian Ram appearing  
Date of Appeal Hearing : 22<sup>nd</sup> November 2019  
Date of Appeal Judgment : 28<sup>th</sup> January 2020

**JUDGMENT**

**Background**

1. The Appellant has filed an appeal against the Referee's decision, who dealt with his claim when the matter was before the Small Claims Tribunal [ SCT ].
2. The Respondent in this appeal was the defendant before the SCT.
3. The impugned decision of the Referee was given on the 27<sup>th</sup> of February 2019.
4. The Appellant filed his appeal on the 13<sup>th</sup> of March 2019.
5. The appeal is within time and was lodged within the appeal period of 14 days.
6. The Appellant in his appeal expresses that he is dissatisfied with the Referee's decision in ordering the Respondent to pay him \$500 when his claim was for \$3,055.45. Even a Fiji Sugar Corporation [ FSC ] report estimated the amount of compensation due to the Appellant to be \$6,000.
7. The Appellant owns a 25 acre sugar cane and vegetable farm and his farm is near the Respondent's farm.

8. The Appellant claims that the Respondent's cattle traverse onto his farm and damage his crops. He normally harvests 80 tons of sugar cane but that reduced to 80 tonnes.
9. An assessment report from FSC was relied upon by the Claimant to substantiate his claim and the assessment gave a \$6,006 compensation value due to the claimant.
10. During the proceedings in the SCT and even before me during this appeal, the Respondent does not dispute that their cattle had come onto the Appellant's property causing some damage. They accepted that they owe the Appellant \$500 and not the amount claimed by the Appellant and the Respondent has paid that \$500 amount to the Appellant.
11. The Appellant verifies before me during the Appeal that he has received that \$500 payment from the Respondent.
12. The Appellant accepts before the Referee and before me during the Appeal that not only the Respondent's cattle traverse onto his farm but cattle belonging to other parties who are not joined in the action by the Appellant.
13. The Referee found that not only the Respondent's cattle entered the Appellants property and that the Appellant during the SCT proceeding did not provide corroborative evidence to substantiate his claim such as FSC tonnage documents and did not call the FSC employee namely Arun to explain the assessment report.

#### Law

14. The Appellant's appeal is within the 14 day appeal period required pursuant to section 33 ( 3 ) of the **Small Claims Tribunal Act 1991**. The appeal is within time.
15. Section 33 ( 1 ) of the same Act allows an appeal against a referee's decision if:
  - (a) The proceedings were conducted by the Referee in an unfair manner to the Appellant and prejudicially affected the result of the proceedings;or
  - (b) The tribunal exceeded its jurisdiction.
16. Section 35 ( 1 ) of the same Act prescribes the following powers on appeal. The Magistrate on appeal may:

- (a) quash the order of the tribunal and order a rehearing of the claim in the tribunal on such terms as he or she thinks fit;
- (b) if the appeal is heard by a Resident Magistrate, quash the order and invoke his authority under section 4 to exercise the jurisdiction of the tribunal;
- (c) quash the order and transfer the proceedings to a Magistrates' Court for hearing;  
or
- (d) dismiss the appeal.

### **DISCUSSION**

- 17. Corroboration of the Appellant's claim or evidence is not required but in some cases it may very well be needed.
- 18. I can understand why the Referee in the Claimant's case required that his claim be supported and that more evidence from FSC was provided.
- 19. I would have required more information too especially when it is accepted as a fact that it was not only the Respondent's cattle that came onto the Appellant's farm.
- 20. Generally, the party that makes the claim carries the burden of establishing the claim.
- 21. The Appellant was required to prove to the requisite standard that the Respondent was liable for the damage or loss.
- 22. If the Appellant establishes this, then the Appellant was also required to prove to the requisite standard that the damage or loss amounted to \$3,055.45 as he outlined in his claim.
- 23. The Appellant has only satisfied one part of his burden. He was helped when the Respondent admitted liability and paid him \$500.
- 24. The Appellant is required to establish that the damage or loss amounting to \$3,055.45 is wholly owed to him by the Respondent, in light of the established fact that it was not only the Respondent's cattle that came onto the Appellant's farm.
- 25. Even the assessment report from FSC relied upon by the Claimant provides a different compensation value of approximately \$6,000.

26. The discrepancy in the value of compensation owed and the amount claimed by the Appellant only adds confusion to the amount actually owed by the Respondent.
27. There is no clear evidence or information laid before the Referee to apportion the liability of the whole \$3,055.45 to the Respondent.
28. The Appellant is fortunate that the Respondent has paid him \$500.
29. I do not see that the Referee acted unfairly which prejudicially affected the proceedings.

**Conclusion**

30. For the aforementioned reasons, I dismiss the appeal.
31. The dismissal of the Appellant's claim by the Referee before the Small Claims Tribunal stands.
32. The parties will bear their own costs in this appeal.
33. The parties have 28 days to file an appeal against my decision if they wish.



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Lisiate T.V. Fotofili  
**Resident Magistrate**

At Tavua this 28<sup>th</sup> day of January, 2020.