

IN THE RESIDENT MAGISTRATE'S COURT
AT SUVA-CIVIL DIVISION

Civil Action No. MBC 113 of 2012

BETWEEN: LUCIA KAFOA

1st PLAINTIFF

AND: QBE Insurance (Fiji) Limited

2nd PLAINTIFF

AND: SALEND.K.LAL

DEFENDANT

For the Plaintiffs : Mr. Suguturaga (*Haniff Tuitoga Lawyers*)

For the Defendant : Ms. Begum (*Patrick Kumar Lawyers*)

Date of Ruling : 27th January 2022

Ruling on the issue of Trial De-novo

1. As a matter of clarity the court sets down herewith the filling date of the pleadings:

- i. Writ and Statement of Claim : 27th February 2012;
- ii. Statement of Defence (filed in person) : 24th October 2012;
- iii. Amended Statement of Claim : 25th September 2017;
- iv. Statement of Defence and Counter
Claim to the Amended Statement of Claim } 9th January 2018
- v. Reply to Defence and Defence to Counter-claim : 21st February 2018

2. Arising out of the afore-said pleadings, my predecessor in title heard the evidence of the Plaintiff's on 21st February 2019.

3. Following the close of the Plaintiffs case, the Defendant via his counsel sought that, my predecessor in title determine the matter in the favor of the Defendant by ruling that there was a non-suit.
4. My predecessor in title gave his ruling on the same on 27th November 2019 by dismissing the application for non-suit and finding that the Defendant had a case to answer.
5. As a result the Defendant's evidence was heard on 13th May 2020 and thereafter the Defendant closed its case.
6. Following the close of the Defendant's case both parties filed their closing submissions on 5th October 2020 and 16th October 2020 respectively.
7. The matter was then adjourned for Judgment to be prepared by my predecessor in title, however prior to Judgment being delivered, my predecessor in title seized to exercise his role as a Resident Magistrate.
8. In the backdrop of such an event, both parties were asked to consider their position on whether the matter proceeded from where my predecessor in title left off or a trial de-novo.
9. The submissions from both parties have been very informed and this court thanks both counsels for the same.
10. Arising out of the submissions, this court accepts the decisions by the High Court in *Ali v Chandra* [2014] FJHC 710; HBA14.2013 (30 September 2014); *ANZ Banking Group Ltd v Vikash* [2004] HBC 208 of 2004 and *Goldenwest Enterprises Ltd v Pautogo* [2008] FJCA 3, as authority for ordering a trial de-novo.
11. What is common in the above mentioned cases is the fact that the matters were part heard where one of the parties did not have the opportunity to present its case.
12. In this case, that is not the situation both the Plaintiff and the Defendant have not only presented their evidence but have also filed closing submissions.
13. None of the parties in this matter have been stopped or hindered from presenting their side of the story, as opposed to the situations highlighted in the above-mentioned high court decisions.

14. As such comparatively, some of the parties in the highlighted High Court decisions were indeed prejudiced by not being given an opportunity to present their case.
15. However in this case no such prejudice exists.
16. Further to the above, the notes of my predecessor in title are unblemished.
17. The only matter which this court shall not be privy to is the demeanour of the witnesses whilst giving evidence. This applies to both parties.
18. Be that as it may, in civil proceedings demeanour of witnesses is not the only matter which the court's use as yardstick to make a determination. The courts also consider documentary evidence which supports the pleadings.
19. In this case, there are documentary evidence tendered which this court shall be able to inspect and draw the necessary inferences from.
20. Therefore, as this court see's it there shall be no prejudice suffered by either party if this court were to complete the process begun by its predecessor in title.
21. As such considering the above discussions this court shall not order that the matter be heard de-novo however it shall complete the process begun by its predecessor in title pursuant to Section 47 of the *Magistrates Court Act 1944*.
22. The court so orders.


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JEREMAIA .N.L SAVOU
RESIDENT MAGISTRATE

