

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

Civil Action No MBC 111 of 2019

BETWEEN: **MANOJ KUMAR trading as COMMS BUSINESS SOLUTIONS**

PLAINTIFF

AND : **EUREKA INVESTMENT LTD**

DEFENDANT

For the Plaintiff : Mr. Kumar (**PATEL SHARMA LAWYERS**)

For the Defendants : Mr Jamnadas (**MESSRS. JAMNADAS & ASSOCIATES**)

Date of Ruling : 9th June 2023

Ruling on Non-suit

1. The Plaintiff has filed its claim in the sum of \$6800.00.
2. On the day when the matter was listed for hearing, counsel for the Plaintiff sought leave to amend paragraph 1 of the Statement of Claim. They wished to amend the status of the Plaintiff from a Limited Liability Company to a Sole Trader.
3. When counsel for the Defendant objected to the same, this court ruled in favour of the objection on the basis that the Plaintiff waited until the hearing date to seek an amendment even though the Writ was issued in the year 2019.
4. Learned counsel for the Plaintiff then sought to vacate the hearing however the court ruled against it.
5. Following the above, learned counsel for the Plaintiff called a Manoj Kumar to the witness stand.
6. Mr. Manoj Kumar whilst giving evidence then informed the court inter alia that he was a sole trader.

7. There was an objection raised by learned counsel for the Defendant on the basis that the witness could not purport to give evidence on behalf of a limited liability company as a result.
8. This court ruled in favour of the objection which then resulted in learned counsel for the Plaintiff not requiring Manoj Kumar to give any further evidence. Learned counsel also chose to close the Plaintiff's case.
9. As a consequence. Learned counsel for the Defendant moved the court to consider a non-suit.

NON-SUIT

10. In ***Chandra v Ali*** [2008] FJCA 32;ABU0077.2007S (11 July 2008) this was stated at paragraph 9, that is,

"9. Jitoko J held that a Magistrate has the power to enter a non-suit against the Plaintiff in a civil action. He observed that the rules made under the Magistrates Court Act do not explicitly provide for such a procedure. However, he held that section 46 of that Act does incorporate by reference the practice for the time being observed in England in the County Courts and courts of summary jurisdiction. The learned Judge reinforced his holding by reference to a decision in ***New India Assurance Co Ltd v Morris Hedstrom Co*** [1967] FLR 12. In that Judgment, the Supreme Court recognized the existence of a power to enter a non-suit."

11. In this case no evidence has been led by the Plaintiff to establish it's claim as counsel for the Plaintiff stopped his witness from giving any further evidence and also choosing not to call any other witness.
12. As such in this Court's view there is no evidence which requires the Defendant to answer to.
13. Resultantly this court rules that there is non-suit and the Defendant does not have a case to answer.

14. The Plaintiff's claim fails as a result.

15. Costs were sought however given the manner of the proceedings the Court shall order that costs shall be borne by the respective parties.

16. Seven (7) days to appeal.


JEREMAI N.L SAVOG
Resident Magistrate

