

**IN THE MAGISTRATES' COURT
AT BA
CIVIL JURISDICTION**

Civil Case No. 63 of 2022

BETWEEN: SAN MOGAM NADAN

PLAINTIFF

AND: PRAVINDRA PILLAY

DEFENDANT

Counsel: Ms. S. Singh (Dayal Lawyers) for the Plaintiff
 Mr. R. Filipe for the Defendant

Date of Plaintiff's Case: 28 August & 26 October 2023

Date of Defendant's Case: 18 December 2024

Date of Judgment: 24 October 2025

JUDGMENT

Introduction

1. On 23 September 2022, the Plaintiff through his counsel filed a Writ of Summons with a Statement of Claim seeking the following:
 - i. The return of the following items to the Plaintiff:
 - a. Vehicle registration EE 432
 - b. PSV Player (Two)
 - c. Brush cutter
 - d. Water pump
 - e. Generator
 - f. Circular Saw Machine
 - g. Drill Machine
 - h. Microwave
 - i. Hot water system
 - j. Electric Kettle
 - k. Lawn mower (2)
 - l. Lead wire
 - m. Electric cooker
 - n. Goat (1)
 - o. 3 Chickens
 - p. Fishing rod
 - ii. Judgment in the sum of \$3,810.14 (AUD) equivalent to \$5789.78 Fijian Dollars; and
 - iii. Costs of this proceedings.
2. The Defendant filed a document titled Statement of Defence and Defence to Counterclaim on 31 January 2023. Upon perusal of this document, the Defendant has not pleaded a counterclaim against the Plaintiff.
3. On 4 April 2023, the Plaintiff's counsel filed a Response to Statement of Defence and Defence to Counterclaim, which I will refer to as the Reply to Defence.

4. The Hearing for this matter proceeded on 28 August 2023 before this Court's predecessor with the Plaintiff giving sworn evidence. The matter was then adjourned and on 26 October 2023, the counsel for the Defendant cross-examined the Plaintiff. The matter was then adjourned to 14 December 2023 for the Defendant's case.
5. When the matter was called on 14 December 2023 before this Court's predecessor, counsel for the Defendant informed the Court that they would be making an application for non-suit. Directives were then given to parties to file legal submissions. Counsel for the Defendant filed legal submissions on 3 January 2024 and counsel for the Plaintiff filed legal submissions on 22 May 2024.
6. On 5 July 2024, this Court dismissed the Defendant's application to strike out the Plaintiff's Statement of Claim as well as refused the Defendant's application for non-suit.
7. On 18 December 2024, the Defendant and another gave evidence with respect to the Defendant's case. Further, from the evidence of the Defendant, it became evident that he was willing to return certain items that the Plaintiff had given to him as such by consent the following orders were made:
 - i. The Defendant is to return the following items to the Plaintiff:
 - a. Water pump;
 - b. Generator;
 - c. Microwave;
 - d. Hot Water System;
 - e. 2 Lawn Mowers;
 - f. 1 Lead wire; and
 - g. 1 Electric Cooker.
 - ii. The Defendant is to bring the abovementioned items to the Ba Police Station on Thursday 19 December 2024 by 3pm and the Plaintiff is to collect the abovementioned items from the Defendant.
8. Thereafter, parties were given time to file Closing submissions. The Defendant counsel filed submissions on 26 May 2025 and Plaintiff counsel filed submissions on 20 June 2025.
9. Having considered the evidence and the submissions filed, I now pronounce by Judgment.

Legal Provisions and Analysis

10. It is apparent from the evidence herein that relations between the Plaintiff and the Defendant's family have broken down.
11. The Plaintiff's position is that the items he had given to the Defendant was for his sole benefit with there being a mutual agreement between parties about the same.
12. The Defendant acknowledged that there were some items that had been given by the Plaintiff and as agreed to by parties, orders were made for the return of these items to the Plaintiff.
13. The following items are the items that the Plaintiff wants returned but which the Defendant denies being the Plaintiff's:

- i. Vehicle Registration No. EE 432;
- ii. 2 PSV Player
- iii. Brush Cutter
- iv. Circular Saw Machine
- v. Drill Machine
- vi. Electric Kettle
- vii. 1 Goat
- viii. 3 Chickens
- ix. Fishing rod

14. As stated in paragraph 11 herein, the Plaintiff states that the above items were for his sole benefit with there being a mutual agreement between the parties about the same. It is submitted by the Plaintiff counsel that there was an understanding between the parties with respect to this.
15. It is submitted on behalf of the Defendant that any arrangement between the Plaintiff and his father was a family/social arrangement especially with the monies sent by the Plaintiff to the Defendant.
16. In the case of **Goundar v Naicker**; Civil Appeal No. ABU 114 of 2020 (30 November 2023) His Lordship Justice Qetaki, JA stated:

[10] Generally: On applicable laws, it is submitted that, the presence of the four elements essential to a valid agreement must be established. That is there must be an offer, an acceptance, consideration, and an intention to create legal relations: Sen v Patel [2020] FJHC 281, at paragraph 27 of judgment. The case Balfour v Balfour [1919] 2 KB 571, had set the foundation for contract law as it gave birth to the purpose behind the creation of intention to create legal relations. His Lordship (Lord Atkin) observed that,

“...agreements that are made between a husband and his wife, specifically personal family relationships, to provide maintenance costs, and other related capitals are generally not categorized as contracts because in general, the parties to the agreement do not intend to enter into an agreement that should be attending legal ends. Therefore, a contract cannot be enforceable by nature if the parties to the same do not intend to create legal relations with each other.”

(my emphasis)

17. Accordingly, agreements between families are generally not categorized as contracts as the parties do not intend to create legal relation with each other.
18. It is, therefore, a plaintiff who carries the burden to prove that there existed an intention to create legal relations.
19. The Plaintiff testified that he had sent the following money which was received by the Defendant:

Date	AUD Amount Sent	FJD Amount Received
10 April 2015	\$600.00	
22 April 2015	\$200.00	

11 January 2018	\$842.00	\$1,301.00
15 October 2018	\$588.70	\$864.00
1 April 2020	\$300.00	
22 December 2020	\$200.00	
1 June 2021	\$549.44	
18 August 2021	\$100.00	

20. The Plaintiff explained that the money sent from 2015, 2020 and 2021 was sent for the Defendant to buy a car to allow the Defendant to pick the Plaintiff from the airport. The Plaintiff further testified that the value of the vehicle being vehicle with registration number EE432 was \$3,000.00.
21. The Plaintiff further testified that he had sent AUD300.00 to the Defendant on 2 April 2020 as the Defendant had no food.
22. The Court notes that in cross-examination the Plaintiff maintained that the items listed in his Claim were not purchased for the Defendant but only to be used by the Defendant and his family whilst the Plaintiff was at their home.
23. Further, the Court observed that in cross-examination, the Plaintiff stated that he had given the Defendant money to purchase the vehicle to assist in the Plaintiff's transportation when he was in Fiji and for the Defendant to use the vehicle to commute daily.
24. Moreover, in cross-examination, with respect to the money sent, the Plaintiff stated:
 - i. The money sent on 11 January 2018 was sent for car maintenance and not to the Defendant's father.
 - ii. The money sent on 15 October 2018 was not for the Defendant's father but sent to the Defendant for the vehicle, food to eat and petrol.
 - iii. The money sent on 22 December 2020 was to change the oil in the vehicle.
 - iv. The money sent on 1 June 2021 was for the lease of the land.
 - v. The money sent on 18 August 2021 to buy medication for the Defendant's mother.
 - vi. The money sent on 4 January 2022 to buy a goat for Christmas.
25. The Defendant and his father, Vera Samy ('Mr. Samy') agreed to have the items listed at paragraph 7 herein returned to the Plaintiff given that these items were at their home and not in use by them.
26. The Defendant as well as his father – Mr. Samy maintained that they did not know what a PSV Player was and that the Defendant had a circular saw which belonged to him. Mr. Samy maintained that the brush cutter he had was his own and that he had purchased it.
27. Regarding the drill machine, the Defendant maintained that the Plaintiff did not give it to him whereas the electric kettle had been given by the Plaintiff's wife to the Defendant's mother but then thrown away as it had gotten damaged. Regarding the fishing rod, whilst the Defendant had stated that the Plaintiff had given it to his father, Mr. Samy testified that it was his own fishing rod.
28. With respect to the goat and 3 chickens, the Defendant and Mr. Samy testified that the Plaintiff had bought it for a family gathering at which he was present and had eaten the same.

29. When suggested that there had been an arrangement between the Plaintiff and Defendant regarding the items sent by the Plaintiff, the Defendant stated that there was no such arrangement.
30. Further, regarding the monies given by the Plaintiff to the Defendant, the Defendant testified that the Plaintiff had sent money on 11 January 2018, 2 April 2020, 1 June 2021, 22 April 2015 for the prayer ceremony which the Defendant had withdrawn and given to his father. Regarding the money sent on 15 October 2018, the Defendant confirmed that he was the receiver of this money and that the money was sent to his father to pay rent to iTLTB whilst the money sent on 10 April 2015 was sent as there had been some issues regarding the lease.
31. With respect to the money sent on 18 August 2021, the Defendant explained that it was a birthday gift to his father which had been given to the Defendant's father whereas the money sent on 22 December 2020 was sent for the Defendant's father's Christmas. The Defendant could not recall the purpose of the money sent on 1 April 2020 but he maintained that he received the money and gave it to his father.
32. Moreover, regarding the vehicle the Defendant agreed that in 2016 he had a motor vehicle being vehicle registration number EE432 which he had bought for \$1,500.00 from his own money from doing private work.
33. During cross-examination, when questioned if there was any arrangement regarding the vehicle, the Defendant stated no, however, he explained that the Plaintiff would call him to pick and drop the Plaintiff from the airport and the Plaintiff would pay for the fuel.
34. The Court observed that with the remaining items that the Plaintiff is wanting the Defendant to return, the Plaintiff failed to provide any identifying information of these items in his evidence to allow the Court to determine whether these items are the items in the Defendant's possession especially as the Defendant and his father – Mr. Samy claim that these items belong to them.
35. Further, considering *Goundar* [supra], no evidence was elicited from the Plaintiff with respect to when and how the understanding he alludes to was reached between him and the Defendant especially with respect to the vehicle and the monies that the Plaintiff had been sending. The Court is unable to ascertain when parties had entered any sort of arrangement due to the lack of evidence.
36. Additionally, no evidence was provided by the Plaintiff with respect to what the terms of the understanding between the parties were. The counsel for the Plaintiff merely suggested in cross-examination that anything sent by the Plaintiff was for the sole benefit of the Plaintiff.
37. More importantly, there was nothing to suggest from the Plaintiff's evidence that parties had agreed that such an understanding would create a legal relationship with each other and that if any of the parties failed to comply with what was agreed to that there would be legal consequences. Given that no such evidence was elicited, the Court is unable to find that the Defendant had breached the parties' arrangement and that he ought to be liable.

38. Given that no such evidence has not been adduced by the Plaintiff, the Court is unable to make any such orders against the Defendant.

Determination

39. The Plaintiff's claim is dismissed.

40. No order as to costs.


N. Mishra
Resident Magistrate

