

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

HBA 07 of 2013

BETWEEN : **MOHAMMED NASIR**

APPELLANT

AND : **MOHAMMED RAFIQ**

RESPONDENT

R U L I N G

INTRODUCTION

1. This is an appeal against a decision of the Magistrates Court sitting at Lautoka dated 26 March 2013. In that decision, the Learned Magistrate had dismissed the appellant's appeal of a decision of the Small Claims Tribunal of 12 April 2012. The record of proceedings in the Magistrates Court is summarized in the Ruling of Resident Magistrate Nishshanka.
2. At the outset, I will say here that, in general, the provisions of the Small Claims Decree are designed to protect the sanctity of a ruling of the Small Claims Tribunal. The Decree does this by providing under section 17 for the finality of any Order of the SCT and further, by limiting the grounds of appeal under section 33 (see further discussion below).
3. Hence, the Magistrates Court, to which a right of appeal lies under the provisions of the Decree, and certainly, the High Court, to which a further appeal of the Magistrates Court decision lies, will not interfere with a finding of the Small

Claims Tribunal unless any of the grounds provided under section 33 is/are made out. The ever increasing body of Fiji case law on the matter all reiterate the same point in one way or another. Suffice it to say here that there is a public interest involved in ensuring the finality of the Orders of the SCT, as provided under section 17, which public interest, in part, acknowledges the immense value of the SCT as a mechanism to resolve small claims. The of-cited words of Lord Wilberforce in **Amphill Peerage** (1976) 2 WLR 777 are useful:

English law place(s) high in the category of essential principles that which requires that limits be placed upon the right of citizens to open or to reopen disputes. [It]...is the same principle as that which requires judgments in the courts to be binding, and that which prohibits litigation after the expiry of limitation periods. Any determination of disputable fact may, the law recognises, be imperfect: the law aims at providing the best and safest solution compatible with human fallibility and having reached that solution it closes the book. The law knows, and we all know, that sometimes fresh material may be found, which perhaps might lead to a different result, but, in the interest of peace, certainty and security it prevents further inquiry. It is said that in doing this, the law is preferring justice to truth. That may be so: these values cannot always coincide. The law does its best to reduce the gap. But there are cases where the certainty of justice prevails over the possibility of truth (I do not say that this is such a case), and these are cases where the law insists on finality. For a policy of closure to be compatible with justice, it must be attended with safeguards: so the law allows appeals: so the law, exceptionally, allows appeals out of time: so the law still more exceptionally allows judgments to be attacked on the ground of fraud: so limitation periods may, exceptionally, be extended. But these are exceptions to a general rule of high public importance, and as all the cases show, they are reserved for rare and limited cases, where the facts justifying them can be strictly proved."

MAGISTRATE'S APPROACH

4. The Learned Magistrate, in his Ruling, approached the appeal of the SCT decision as follows:
 - (i) he began by revisiting the SCT Order of 12 April 2012.
 - (ii) he also revisited the SCT journal entries, the record of proceedings and SCT records.

- (iii) he then observed that the Appellant's sole ground of appeal was that the Referee had been biased in his conduct of the proceedings.
 - (iv) he then considered section 33 (1) of the Small Claims Decree.
 - (v) he observed that, according to the SCT journal entries, both parties were present before the Referee, at the hearing, as well as at the time when the Referee handed down the Orders.
 - (vi) applying section 33(1), he then asked himself whether the SCT proceedings were conducted in an unfair manner?
 - (vii) in considering the above question, he noted at the outset that the Appellant, when he appeared before the Learned Magistrate, had said nothing as to how the SCT proceedings might have been unfair. Rather, all the Appellant did at the Magistrates Court was reiterate his version of the facts at the SCT.
 - (viii) the Learned Magistrate then said that he had examined and reviewed the SCT records but had found nothing in the record of SCT proceedings to suggest that the Referee might have been biased.
5. Having considered all the above, the Learned Magistrate then stated that he was limited in his inquiry by section 33(1) of the Small Claims Decree and that he did not have jurisdiction to revisit the merits of the case. He then concluded by saying that the Appellant had failed to show that the SCT proceedings were biased and accordingly, dismissed the appeal.

HEARING BEFORE ME

6. At the hearing before me, the Appellant did exactly what he did at the Magistrates Court in that he was only interested in presenting his (same) version of the facts that he had presented at the Small Claims Tribunal. The Appellant then submitted that the Referee had erred in not considering some payments (and receipts) that he had made and that consequently, had misconstrued the nature of the agreement between him (appellant) and the respondent.
7. It is not necessary for me to even consider the evidence in question or the nature of the claim before the SCT. Suffice it to say that the Learned Magistrate had considered and addressed these points at length, and in doing so, had also observed that the Referee had done the same. Below is the relevant extract from the Learned Magistrate's ruling:

In the submissions, Appellant had reiterated the facts of the case. Appellant has not stated as to how the proceedings were conducted at the SCT in an unfair manner. At this stage, the Court has no jurisdiction to consider the merits of the case or to consider evidence regarding the claim.

The Appellant says that he paid \$500.00 after the commencement of the case. Only receipt I found are the two receipts for \$300 (EX1). Copy record also confirmed that the Appellant paid \$200.00 on 16/03/2012. It is very clear that the Referee has considered this payment when he made his order.....

8. For the record, I too have examined the record of the SCT proceedings. I can do no better than to repeat the observations and conclusions of the Learned Magistrate above.

OBSERVATIONS

9. RM Nishshanka was correct when he stated that 33(1) of the Small Claims Decree limits the ground on which an appeal from the SCT will lie to the Magistrates

Court. Section 33(1) sets out the grounds on which an appeal against an order made by the Small Claim Tribunal can be made. The grounds are that:

- (a) the proceedings were conducted by the referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings: or
- (b) the Tribunal exceeded its jurisdiction.

10. The Small Claims Tribunal was established under the Small Claims Tribunal Decree 1991 to deal with small claims and provide relief to claimants by a process that is prompt and inexpensive (see **Sheet Metal & Plumbing (Fiji) Ltd v Deo** [1999] FJHC 25; [1999] 45 FLR 80 (14 April 1999)).

11. As Mr. Justice Fatiaki noted in the above case, sections 24 to 29 of the Decree highlight the informal, non-adversarial nature of the proceedings before the Small Claims Tribunal and militates against a general appeal on the merits or for errors of law.

12. Fatiaki J would further observe as follows in **Sheet Metal**:

The non-legalistic nature of a Tribunal proceeding is further exemplified by the requirement in Section 15(4) of the Decree that: 'The Tribunal shall determine the dispute according to the substantial merits and justice of the case and in doing so ... shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.'

13. Fatiaki J observes that the Tribunal exercises what is in effect "**an equity and good conscience jurisdiction**" and that, under section 17, any order of the Tribunal '**shall be final and binding on all parties to the proceedings ... and except as provided in section 33, no appeal shall lie in respect thereof**'.

14. Section 33 provides a right of appeal limited to two grounds, namely: (a) the proceedings were conducted by the referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings; or (b) the Tribunal exceeded its jurisdiction.

15. In my view, the learned Magistrate had duly taken into account the grounds of appeal as stated above and that he was correct in dismissing the appeal.

CONCLUSION

16. I am of the view that the Learned Magistrate was quite correct to dismiss the appeal before him and that the appeal to this court against that decision is without merit and I so Order accordingly. Costs to the respondent which I summarily assess at \$150-00 (one hundred and fifty dollars only).



Anare Tuilevuka
JUDGE

Lautoka
09 October 2015.