**IN THE COURT OF APPEAL, FIJI**
**[On Appeal from the High Court]**

**CIVIL APPEAL NO. ABU 016 OF 2023**
**[Lautoka Civil Action No. HBC 080 of 2020]**

| | | |
|---|---|---|
| **BETWEEN** | : | **PRINTERS ONLINE PTE LTD** |
| | | ***Appellant*** |
| **AND** | : | **1. KAMIL MUSLIM COLLEGE**<br>**2. FIJI MUSLIM COLLEGE** |
| | | ***Respondents*** |
| **Coram** | : | **Prematilaka, RJA**<br>**Morgan, JA**<br>**Heath, JA** |
| **Counsel** | : | **Mr. M. Yunus and Mr. R. Prasad for the Appellant**<br>**Mr. S. Singh and Ms. M. S. Kumar for the Respondents** |
| **Date of Hearing** | : | **04 July 2024** |
| **Date of Judgment** | : | **26 July 2024** |

# JUDGMENT

**Prematilaka, RJA**

[1] I agree with Morgan, JA that the appeal should be dismissed with costs of $5,000.00.

**Morgan, JA**

**Introduction**

[2] This is an appeal against a High Court judgment dismissing the Appellants claim and action against the Respondents for the sum of $91,440.20 for photocopy charges and costs.

**Background**

[3] The Appellant had supplied a Multifunction Photocopier ("the copier") to the First Respondent on the 5th July 2019 pursuant to a purchase order from the Second Respondent dated 14th June 2019. An invoice was issued by the Appellant to the Second Respondent at the time of delivery for the copier in the sum of $18,000.00.

[4] The Second Respondent is a religious body located in Suva and the First Respondent is an educational institution located in Ba operating under the authority of the Second Respondent.

[5] The First Respondent admitted receiving the copier and using the same for approximately two months after delivery. The Appellant "repossessed" the copier on the 26th September 2019.

[6] At the time of repossessing the copier the Appellant delivered a tax invoice to the First Respondent claiming the sum of $91,440.20 for copying and print charges purportedly incurred by the First Respondent by using the copier to make copies and prints.

[7] The invoice claimed the sum of $75,841.20 for 379,206 copies made at 20 cents per copy and $15,599.00 for 31,198 prints made at 50 cents per copy. The Appellant through its solicitor made written demand for the said sum of $91,440.20 and when payment was not forthcoming, issued a Writ of Summons and Statement of Claim for the said sum.

[8] The First and Second Respondents understandably filed a Statement of Defence denying the claim entirely.

[9] Significantly the Appellant did not make a claim against the Respondents for the sale price of the copier or for damages. Its sole claim was for the copy and print charges.

[10] After a trial in the High Court at Lautoka Justice A. M. Mohammed Mackie ("the Judge") found that the Appellant's claim failed and dismissed it's action.

[11] The Appellant filed a Notice of Appeal to this Court seeking an order that this Judgment be wholly set aside and revoked on the following grounds:-

1. The Learned trial Judge erred in law and in fact when he stated at paragraphs, 15 16, and 17 of his judgement that;

***15. 'There is no iota of evidence before the court to prove that there was an agreement between the parties for the usage of the machine and about the rate to be levied. Also, no evidence adduced to show that the defendants were aware that they were to be charged and if so on what basis and rate…,'***

***16. The plaintiff did not adduce any evidence to the effect that at least it made a request from the defendant for it to be charged for the copies it makes using the machine in dispute, or to prove that it put the Defendants on notice warning that they will be charged for service they obtain through the Machine at a particular rate during the time material.***

***17. In the absence of such an Agreement or a Notice given to the Defendants on the "would be charges" for the use of the Machine, this Court finds itself handicapped to adjudicate the issue in hand, in favor of the plaintiff relying on the evidence adduced."***

Despite having clear evidence of the same by way of plaintiff's exhibit number 5 and 7 *(Tax Invoice Number 0181 & Demand Notice dated 25th October 2019)*, and the admission of the defence witness that she had received the invoice number 0181 on the 26th September 2019 and the demand letter on the 25 October 2019 and was aware that the Plaintiff was claiming for the usage of the photocopier.

2. The Learned trial Judge erred in law and in fact when he stated at paragraph 20 that; ***'the plaintiff has not proven how a supply of a photocopier for a sum of $18,000.00 on 5th July 2019 could have brought a benefit worth in a sum of $91,440.20 on the 26th September 2019, within a short period***

***of 2 months and 3 weeks' time'*** despite having clear evidence of the number of the copies and print made for the said period through plaintiff's exhibit number 6 and the admissions from the defence witness that she was aware of the number of copies and prints made for the said period.

3. The Learned trial Judge erred in law and in fact when he stated that paragraph 24 of the judgement that ***'…the learned Counsel for the Defendant indicated that they had offered $5,000.00 to the Plaintiff in consideration of such usage, but the offer was rejected by the Plaintiff,'*** when there was no evidence adduced by the Counsel for the Defendant to substantiate his offer if any made to the Plaintiff.

4. The Learned trial judge erred in law and in fact when he failed to consider the circumstance which prevailed the plaintiff to repossess the photocopier from the Defendants and he failed to comprehend that the Defendants failed to pay any part of the consideration sum but kept on using the photocopier for 2 months and 3 weeks.

5. The Learned trial Judge's judgement is not supported by the evidence adduced in the trial and therefore is unreasonable or repugnant to justice as such in the interest of justice it must to wholly set aside or revoked.

**Proceedings in the High Court**

[12] The Judge recorded in his judgment that the pivotal issue before him for determination was whether there was an agreement between the parties for the Appellant to charge the Respondents for the usage of the copier during the period it was in the custody of the First Respondent.

[13] The Judge found that there was no evidence to prove that there was an agreement between the parties for the usage of the copier or the charge rate levied. The Judge noted that the witness for the Appellant had admitted under cross-examination that the Respondents were unaware of the charges for the copying and printing until the time the copier was repossessed.

[14] Having found that there was no agreement between the Appellant and the Respondents for the copying charges the Judge concluded that there was no cause of action upon which the Appellant could base it's claim.

[15] The Judge also considered that there was no basis for a claim in unjust enrichment and dismissed the Appellant's claim.

**Discussion**

[16] At the hearing before this Court Counsel for the Appellant conceded both in written submissions and orally that the Judge was correct to state that the pivotal issue before him was the claim for usage of the copier and whether there was an agreement in any form between the parties for the Appellant to charge the Respondent for the usage of the machine when it was in the possession of the First Respondent.

[17] The Appellant further conceded that there was no agreement to charge for usage because the sale of the copier was an "outright sale and purchase agreement."

[18] The answer to this appeal lies in that concession alone. I cannot see how the Appellant could make a claim for the charges when it acknowledges that it was an outright sale. Property in the copier had passed to the Respondents pursuant to Section 20 Rule 1 of the Sale of Goods Act 1977 which provides that unless a different intention appears where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment or the time of delivery or both is postponed. There was no dispute that delivery had occurred.

[19] During the course of the hearing before this Court Counsel for the Appellant was asked by my brother judge Heath, JA whether there were any retention of ownership provisions in the agreement for the sale and purchase of the copier. Counsel for the Appellant conceded there were none. It was an "outright" sale.

[20] Likewise there could be no claim for unjust enrichment simply because at the relevant time the Respondents owned the machine. Put simply, one person cannot be unjustly enriched as a result of another using his or her own property for their own purposes.

[21] The Appellant could have made a claim for the sale price instead of repossessing the copier. The Judge addressed this in paragraph 10 and 26 of his judgment as follows:-

10. It is also observed that the Plaintiff, through this action , does not intend to recover, from the 1st and 2nd Defendants, the consideration for the said Photocopy Machine or any damages on account of the aborted sale and purchase of it . It is not prayed for as a relief in the SOC of the Plaintiff as well. Moreover, learned counsel for the Plaintiff, before the commencement of trial, has intimated that they are not demanding the purchase price as they have repossessed the Machine. Also see the evidence in chief the **PW-3** in page 34 of the transcript in this regard. Thus, the Plaintiff has forfeited its right to claim the sale price of the said Photocopier Machine.

26. Under the Sale of Goods Ordinance, the Plaintiff has had the opportunity to claim the sale price of the Machine, along with damages, if any, and interest. For reasons best known to it, the Plaintiff repossessed the Machine instead of claiming the sale price as aforesaid.

**Conclusion**

[22] The Judge was correct in finding that there was no cause of action between the Appellant and the Respondent upon which the Appellant could base it's claim.

[23] For the reasons set out above I find that the Appellant's appeal has no merit. I can find no reason to set aside the High Court Judgement. Both the Appellant's claim in the High Court and the appeal to this Court are totally misconceived.

[24] The Respondent submitted that the Appellant was fortunate that costs were not awarded against it in the High Court. The Appellant should not have taken the matter further and brought this appeal to this Court at considerable cost to the Respondents. He therefore asked for compensation for such costs.

[25] I agree the Respondents should not have been put through the expense of responding to this meritless appeal and this is reflected in this Court's order for costs.

**Heath, JA**

[26] I have read in draft the judgment prepared by Morgan, JA. I agree with it. For the reasons he gives, I would dismiss the appeal on the basis he proposes.

***Orders of the Court***

[27] *This Court makes the following orders:*

*a) The appeal is dismissed.*

b) *The Appellant is to pay the Respondents costs of this appeal in the sum of $5,000.00 within 21 days of the date of this judgment.*

**Hon. Justice Chandana Prematilaka**
RESIDENT JUSTICE OF APPEAL

COURT OF APPEAL FIJI

**Hon. Justice Walton Morgan**
JUSTICE OF APPEAL

**Hon. Justice Paul Heath**
JUSTICE OF APPEAL

**Solicitors**
MY LAW for the Appellant
Shelvin Singh Lawyers for the Respondents