

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBA 06 of 2014

BETWEEN : **THE MANAGER, N. SOLANKI & COMPANY**

APPLICANT

AND : **ERONI RANADALI**

RESPONDENT

RULING

INTRODUCTION

- [1]. This is an appeal against a decision of the Magistrates Court sitting in Lautoka. The decision of the Learned Resident Magistrate Sujeewa Nishshanka was handed down on 14 March 2013. RM Nishshanka had dealt with an appeal from a decision of the Small Claims Tribunal which was handed down on 14 June 2012. In its decision, the Small Claims Tribunal had awarded the sum of \$243.75 (two hundred and forty three dollars and seventy five cents) in favour of Eroni Ranadali, who was the applicant before the SCT and respondent in the Magistrates Court and also, before me now.

UNDISPUTED FACTS BEFORE THE SCT

- [2]. On 23 December 2011, Ranadali bought a mobile phone from N. Solanki and Co. for \$190.00. No receipt was issued on payment. Ranadali lives in Nagado Village. Electricity supplies to the village is serviced by Fiji Electricity Authority. On the first occasion when Randali tried to charge the phone battery after it went flat, the charger was faulty. Randali then went to N. Solanki in Lautoka and got a replacement charger. In January 2012 whilst charging the battery with the said replacement charger, it

(the charger) suddenly blew up. As a result, both the charger and the mobile phone were damaged. The next day, Randali returned the charger and the mobile phone to Solanki to have them replaced. But Solanki only advised Randali that the cost to have the said phone replaced could be more than the cost of the new phone and that he may buy a new phone "on nett cost". Randali rejected the offer and went to the Consumer Council of Fiji first before lodging a claim at the Small Claims Tribunal.

RECORD OF PROCEEDINGS BEFORE THE SCT

- [3]. I have perused the SCT Appeal Report compiled under section 34 of the Small Claims Tribunal Decree 1991. Eroni Ranadali, the claimant before the SCTR, had bought a mobile phone from N. Solanki & co for \$190-00 (one hundred and ninety dollars). No receipt was issued for that purchase. The record of proceedings before the SCT is very elaborate and well written. It shows that both parties were present at the hearing of the claim before the Referee on 24 May 2012. The Referee explained the proceedings to both parties before commencing the hearing proper. He also allowed both parties to call their respective witnesses as well as the opportunity to cross-examine the other's witnesses.
- [4]. The evidence of each witness is also recorded in detail.
- [5]. The SCT records will show that the referee had given the parties an opportunity to settle which they did explore but to no avail.

APPEAL TO THE MAGISTRATE & DECISION OF THE MAGISTRATE

- [6]. The record of proceedings in the Magistrates Court is summarised in the Ruling of Resident Magistrate Nishshanka. RM Nishshanka began by

noting the Order of the SCT¹ and then observed the grounds of appeal before him as follows:

3. The ground for appeal that the appellant has stated in Notice of Appeal is that;
 - I. *That the decision of referee is biased.*
 - II. *That the referee did not consider the evidence produced.*
4. Both parties filed their written submissions. Thus, the case was fixed for ruling.

[7]. Then RM Nishshanka correctly sets out section 33(1) of the Small Claims Decree which limits the ground on which an appeal from the SCT will lie to the Magistrates Court.

5. The section 33(1) sets out the grounds on which an appeal against an order made by the Small Claim Tribunal can be made. Accordingly, 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.
6. As per the Grounds of appeal stated in his notices of appeal, the Appellant is relying his case on the first limb of Section 33(1).

[8]. RM Nishshanka then observed from the SCT records that both parties were present at the hearing and also at the time when the SCT ruling was handed down.

7. It was clear from the journal entries that the both parties were present at the time of hearing and when the Order of the Small Claim Tribunal was made.

[9]. The Learned Magistrate then made a note of the nature of the claim before the SCT and also noted from the records that both parties were given an opportunity to, and did take that opportunity, to call their respective witnesses and also to cross-examine each other's witnesses.

8. The initial claim is as follows;

That Modyl brand of mobile phone bought on 23/12/11 is not of Merchantable quality. On 15/01/12 the phone charger blew off. Only 1 month warranty was provided even though the mobile phone was purchased for \$180.00 and no receipt.

➤ Mobile phone price	-	\$180.00
➤ Lodgement fee	-	\$ 5.75
➤ Working hours [\$12/day]	-	\$ 72.00
➤ Transport	-	\$ 25.00
➤ Stationery	-	\$ 2.00

¹ The Learned Magistrate's Ruling:

1. This is an appeal made against the order of the Small Claims Tribunal case No 950/12. The Appellant in this case is the Respondent in the Small Claim Tribunal case and the Respondent is the Claimant in that case.
2. The Small Claim Tribunal has ordered on the 24th October 2011, as follows:
That the respondent Narendra Maganlal the director of N. Solanki and Company at 136 Vitogo Parade to pay the Claimant Eroni Ranadali the total sum of \$243.75 being the refund of his money plus cost for the faulty mobile phone sold to him and the total sum to be paid in full by the 15/07/12 and payment to be paid and the Small Claims Tribunal in Lautoka on production of this order.

9. I have perused the Tribunal record. The evidence recorded is appeared in page no. 04 to page no 09. It is evident that both parties have called their witnesses and cross-examined the other party witnesses. In the conclusion the Referee has said as follows; Facts of the case proved as follows,

- *That allegedly the claimant had brought the said telephone from Solanki at 136 Vitogo Parade Lautoka on 23rd December 2011.*
- *That he bought the telephone for 180.00 has bank statement marked/ 1 proved that on 23rd December 2011 \$200 was withdrawn.*
- *Evidence proved that the charger given to Claimant was faulty. It was returned on 14 January 2012 and was replaced by a new one.*
- *The respondent promised to send the phone to Suva when it returned they advised the Claimant that it would cost more to repair than the actual cost.*

[10]. RM Nishshanka then noted that the SCT Referee had considered all the evidence before him before coming to his conclusion.

10. Although the Appellant said that **that the referee did not consider the evidence produced**, it is clear that the Referee has come to his conclusion after considering all the available evidence. On the other hand, the Appellant did not mention anything about his allegation in his submissions. In the Submissions the Appellant has reiterate the evidence. It is also evident that both the Appellant's witnesses were unable to explain the transaction as they were joined the business after this transaction. (Vide Page 08 and Page 09 of the copy record.)

11. Therefore, the appellant has failed to prove his ground of appeal, on that effect.

[11]. As to the allegation of bias, RM Nishshanka found that there was no basis whatsoever for that and proceeded to dismiss bias as a ground of appeal.

12. The appellant's other ground of appeal is **that the decision of referee is biased**. Apart from saying that, the Appellant, did not submit any materials to show the biasness. Even in his submission nothing was mentioned about the ground of appeal or biasness. In that event there is no material before this Court to come to a conclusion that the referee's decision was biased. Nothing suggests that any prejudice is caused to the Appellant by the way the proceedings were conducted.

13. In the absence of such material to support the Appellant's grounds of appeal, I decide that the Appellant has failed to show that the proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings.

14. Therefore, I am satisfied the manner in which the proceedings in the Tribunal is conducted.

15. Accordingly, I dismiss the appeal.

16. No cost.

THE LAW

[12]. 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)). 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.

[13]. 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.'

[14]. In addition to the above, 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'.

[15]. Section 33 of the Small Claims Tribunal Decree 1991 states:

Appeals

33.-(1) Any party to proceedings before a Tribunal may appeal against an order made by the Tribunal under section 15(6) or section 31(2) on the grounds 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.

[16]. The above section 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.

[17]. In my view, the learned Magistrate had duly taken into account the grounds of appeal as stated above in paragraphs [9] and [10] and that his conclusions (see above) are quite correct.

[14] Section 15(6) states as follows:

Functions of other jurisdictions

15.-(1) The primary function of a Tribunal is to attempt to bring the parties to a dispute to an agreed settlement.

(2) If it appears to the Tribunal to be impossible to reach a settlement under subsection (1) within a reasonable time, the Tribunal shall proceed to determine the dispute.

(3) If an agreed settlement is reached, the Tribunal may make one or more of the orders which it is empowered to make under section 16 or under any other Law, and shall not, where giving effect to the agreement of the parties, be bound by the monetary restriction provided for by subsections 16(3) and (4).

(4) The Tribunal shall determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to actual forms or technicalities.

(5) Without limiting the generality of subsection (4), a Tribunal may, in respect of any agreement or document which directly or indirectly bears upon the dispute between the parties, disregard any provision therein which excludes or limits,

(a) conditions, warranties, or undertakings; or

(b) any right, duty, liability, or remedy which would arise or accrue in the circumstance of the dispute; if there were no dispute; if there were no such exclusion or limitation.

(6) To give effect to its determination of the dispute or in granting relief in respect of any claim, which is not disputed, the Tribunal shall make one or more of the orders which it is empowered to make under section 16 or under any other law.

[18]. Section 16 states as follows:

Order of Tribunal

16.-(1) A Tribunal may, as regards any claim within its jurisdiction, make one or more of the following orders and may include therein such stipulations and conditions (whether as to the time for, or mode of, compliance or otherwise) as it thinks fit:

(a) the Tribunal may order a party to the proceedings to pay money to any other party;

(b)

(c)

(d)

(e) if it appears to the Tribunal that an agreement between the parties, or any term thereof, is harsh or unconscionable, or that any power conferred by an agreement between them has been exercised in a harsh or unconscionable manner, the Tribunal may make an order varying the agreement, or setting it aside (either wholly or in part);

(f) if it appears to the Tribunal that an agreement between the parties has been induced by fraud, misrepresentation, or mistake, or that any writing purporting to express the agreement between the parties does not accord with their true agreement, the Tribunal may make an order varying or setting aside the agreement, or the writing (either wholly or in part);

CONCLUSION

[19]. 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.

[20]. Costs to the respondent Ranadali which I summarily assess at \$200-00 (two hundred dollars only).



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

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Anare Tuilevuka
JUDGE
Lautoka
02 March 2015.