

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**APPELLATE JURISDICTION**

**Civil Appeal No.: HBA 07 of 2014**

**BETWEEN** : **SUSHIL KUMAR SHARMA** f/n Narendra Sharma, Drasa Dam Road,  
Lautoka, Meteorologist.

**PLAINTIFF/APPELLANT**

**AND** : **GENERAL MANAGER** Diesel Center Australia [Fiji] Limited, Lot 3 Kabani  
Road, Legalega Industrial Estate, Nadi Airport.

**DEFENDANT/RESPONDENT**

**Appearances:**

Plaintiff/Appellant appears In-person  
Mr Anil J. Singh for Defendant/Respondent

**J U D G M E N T**

1. This appeal is concerned with a ruling of the Honourable Magistrate of the Lautoka Magistrate Court delivered on 4<sup>th</sup> June, 2014.
2. By her ruling the learned Magistrate struck out and dismissed the Statement of Claim of the Plaintiff in Civil Action No.: 60 of 2013 and ordered costs summarily assessed in a sum of \$2,000.00 to be paid to the Defendant.
3. The Respondent in this application being the Defendant in Action No. 60 of 2013 filed an Affidavit opposing the appeal of the Appellant.
4. When the matter was taken up on the 2<sup>nd</sup> call date, 16<sup>th</sup> October, 2014 the learned Counsel

for the Respondent raised a preliminary objection to the Appeal being heard on the ground that the matter before this court did not exist at the Magistrate Court and also that the Appeal is not connected to the case which was before the learned Magistrate. Having heard the oral submissions of both parties on this issue, Court granted time for them to file written submissions with relevant documents.

5. The Respondent then filed the written submission as ordered by Court and the Appellant failed to file his submission on the due date. However, he filed his written submission later with the leave of Court.

#### **Determination**

6. It is evident from the Magistrate Court case record that the Appellant has filed two sets of Statement of Claims with different captions. In one Statement of Claim the Defendant is named as the “**General Manager, Diesel Center Australia [Fiji] Limited**” and the other refers to two Defendants namely;

**“Dev Anand Mishra** Lot 3 Kabani Road, Legalega Industrial Estate,  
Nadi Airport, Director, Diesel Center  
Australia [Fiji] Limited

#### **First Defendant**


**AND Salva Rajan Pillay** Lot 3 Kabani Road, Legalega Industrial Estate,  
Nadi Airport, General Manager & Sales  
Representative, Diesel Center Australia [Fiji] Limited

#### **Second Defendant**

7. The copy of the Statement of Claim which the Respondent submits with the written submission is the one with the names of two Defendants. It is evident from the said copy that the Defendants were served with the said copy in Action No. 60 of 2013.
8. The Appeal is filed naming the “**General Manager, Diesel Center Australia [Fiji]**” as the Defendant and not the two Defendants represented by Mr Anil J. Singh in this Court.

9. It is also noted that the facts stated in the above mentioned two Statement of Claims also differ. In once copy the names of two Defendants are stated in paragraph 2 and in the same paragraph of the other copy said names are not stated.
10. If the Court assume that the Appeal is against the “General Manager Diesel Center Australia [Fiji] Limited,” I have to accept the argument of the learned Counsel for the Respondent that the Appeal is not against a legal person and therefore it’s an abuse of process.
11. The Appellant has in one Statement of Claim named two employees of the Company as the Defendants and in another the “General Manager” of the company as the Defendant. In the Appeal he has named only the “General Manager” of the Company as the Respondent who is not a legal entity.
12. Due to the facts stated in the aforementioned paragraphs, I hold that the Appellant cannot maintain this appeal against the Respondent named and therefore the appeal should be dismissed.
13. For the purpose of ordering costs, I hold that it should be paid to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants mentioned above.
14. **Final Order**
  1. The Appeal is dismissed.
  2. The Appellant to pay the First and Second Defendant costs summarily assessed at \$1,000.00 (\$500.00 to each Defendant).



  
Lal S. Abeygunaratne  
Judge

At Lautoka  
17<sup>th</sup> April, 2015