

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 308 of 2015**

**BETWEEN** : **MELI MAIVUSAROKO and BEATRICE OLSO**  
both of No. 10, Waimate Street, Lami, Architect &  
Project, Officer.

**Plaintiffs**

**AND** : **VAKALOLOMA & ASSOCIATES** a private law firm  
having its principle place of business at 57, Amy  
Street, Toorak, Suva.

**Defendant**

**Counsel** : Ms. L. Jackson for the Plaintiffs  
Mr. S. Valenitabua for the defendant

**Date of hearing** : 12<sup>th</sup> May, 2016

**Date of Judgment** : 08<sup>th</sup> June, 2016

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**JUDGMENT**

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[1] The plaintiffs filed originating summons seeking the following reliefs;

1. A declaration that the defendant has no legal right or justification or lawful authority to retain and/or refuse to release the plaintiffs' money in the sum of \$41,524.77 held in the defendant's trust account.

2. An order that the defendant pay to the plaintiffs' solicitors trust account the whole of the plaintiffs' money in the sum of \$41,524.77 held in the defendant's trust account within seven days.
3. Costs of the proceedings on an indemnity basis.

[2] The plaintiffs' case is that they retained the defendant to represent them in the Civil Action No. 66 of 2012, in the Magistrate's Court of Suva, filed against one Chand and the Land Transport Authority. The defendant, according to the plaintiffs, verbally agreed to represent them in Court for a contingency fee of 10% of the total award of damages. The court entered judgment for the plaintiffs and \$41,524.77 was paid into court and the court deposited the money in the trust account of the solicitors. When the plaintiffs requested for the money the defendant presented a bill of costs claiming \$17,310 which was immediately objected to by the plaintiffs. The defendant then filed action No. 134 of 2014 in the Magistrate's court to recover costs but the court struck the writ of summons out for want of appearance.

[3] The defendant denies having any agreement with the plaintiffs to represent them in court for a total fee of 10% of the judgment sum. It is the position of the defendant that since the plaintiffs did not have money they requested the defendant to appear in court and agreed to pay the cost of the solicitor upon presenting the bill of costs.

[4] The learned counsel for the plaintiff tendered her written submissions at the commencement of the hearing and after the conclusion of oral submissions the learned counsel for the defendant sought time to file written submissions and the court granted time till 19<sup>th</sup> May 2016 for him to file written submissions and the plaintiffs were given time to file their reply till 26<sup>th</sup> May 2016 but the defendant's counsel did not file written submissions. On 31<sup>st</sup> May 2016 the learned counsel for the defendant had tendered written submissions with the consent of the counsel for the plaintiffs and the registry has accepted it without ascertaining the date on which it was due to be filed. Once the court sets a time frame the solicitors of the parties must comply with it. They cannot with

consent of each other flout the directions of the court. Therefore, the submissions tendered by the counsel for the defendant will not be considered in my findings.

[5] I will first deal with the objection taken up by the learned counsel for the defendant to the legality of the originating summons of the plaintiffs. It was submitted by the learned counsel for the defendant that the amended Legal Practitioners Decree has not been mentioned in the originating summons. The originating summons filed on 22<sup>nd</sup> September 2015 was later amended and the amended originating summons was filed on 15<sup>th</sup> October 2015 where it is stated that **“THIS APPLICATION is made pursuant to section 78, Section 78A and Section 78B of the Legal Practitioners Decree 2009 and to the Inherent Jurisdiction of this Honourable Court”**.

[6] The Legal Practitioners Decree was amended twice in the year 2012 and by amending decree No. 53 of 2012 the original section 78 was repealed and new section 78 with sections 78A and 78B were brought in. Therefore, when these three sections are mentioned there is, in my view, has no reason to refer to the amendment and no injustice would be caused to the defendant by not mentioning the amending decree in the originating summons for the reason that he has had sufficient notice of the provisions under which these proceedings were instituted. Therefore, the failure to mention the amending legislation in the originating summons does not have the effect of vitiating these proceedings. The objection is accordingly overruled.

[7] Section 78 of the Legal Practitioners Decree 2009 as amended by Decree No. 53 of 2012 provides as follows;

- (1) A legal practitioner or law firm may enter into any agreement with a client under which the amount payable by the client to the legal practitioner or the law firm, or any part of that amount, is calculated by reference to the amount of any award or settlement or the value of any property that may be recovered in any proceeding or claim by or for on behalf of the client; provided however, that no such agreement shall

entitle the legal practitioner or the law firm to take more than 10 percent of the total amount awarded or settled for or value of any property recovered by or for on behalf of the client in any such proceeding or claim.

- (2) A legal practitioner or law firm may enter into any agreement under which the client's interest in any proceeding or claim to which the agreement relates is transferred to the legal practitioner or the law firm instead of the client being required to pay an amount payable to the legal practitioner or law firm; provided however, that no such agreement shall entitle the legal practitioner or the law firm to take more than 10 percent of the client's interest in any proceeding or claim to which the agreement relates.
- (3) At the date of the commencement of this section, any agreement which, is contrary to subsections (1) or (2) and is in relation to any proceeding or claim which is still pending at the date of commencement of this section, shall be deemed to be invalid, and the legal practitioner or law firm which is a party to any such agreement, shall immediately upon the commencement of this section; inform the client accordingly, and may enter into such agreements for the payment of fees, other than an agreement that is contrary to subsections (1) of (2).
- (4) Any legal practitioner who enters into any agreement which is contrary to subsections (1) or (2), or who fails to comply with subsection (3), shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 5 years, or to both".

[8] Under these provisions the defendant is only entitled to recover as costs 10% of the judgment sum. The defendant does not admit the existence of such an agreement although the plaintiffs insisted that the defendant represented them on the understanding that its fees would be paid out of the judgment sum. Whether there was an agreement between the parties to charge legal fees against the amount awarded by the court or not has to be decided on the

affidavits filed by the parties. The defendant's position is that the plaintiffs agreed to pay the fees later because they did not have money to deposit at the time the instructions were given to represent them in court and they agreed to pay later. It cannot be believed that the solicitors of the plaintiffs agreed to appear for them without a guarantee that their fees would be settled. The only way the solicitors could secure the recovery of their dues from the plaintiffs was to consent to recover the fees from whatever the amount awarded by the court. Therefore, the matter in dispute between the parties is, in my view, governed by the provisions of sections 78, 78A, and 78B of the Legal Practitioners Decree 2009 as amended by decree No. 53 of 2012.

- [9] The judgment sum was paid into the court and credited to the defendant's trust account on or about 26<sup>th</sup> June 2014. The defendant is having this money in their trust account for last almost two years depriving the plaintiffs of their dues. As stated earlier in this judgment the defendant instituted proceedings in the Magistrate's Court for the recovery of fees due to it from the plaintiffs but the summons was struck out and dismissed the action of the defendant for want of appearance, few days before the hearing of this matter.
- [10] The learned counsel for the defendant submitted that they have a lien over the money that is held in trust for the plaintiffs. Under the common law there are two types of liens available to solicitors, they are, retaining lien, which allows the solicitor to retain his client's property with few exceptions, until he has been paid and charging lien, which entitles the solicitor to charge against property that has been recovered or preserved for his client through a litigation proceeding. The defendant's position in this case is that it is entitled to hold on to the monies paid into the trust account until such time the plaintiffs consent to deduct the amount claimed by the defendant. It is not a disputed fact that the defendant represented the plaintiffs in court. Therefore, the defendant is entitled to recover its charges. The question here is not whether the defendant is entitled to retain the money until the defendant consent to deduct the legal fees due to them but how much the defendant is legally entitled to recover from the plaintiffs. The amount demanded by the plaintiff as its legal charges

was challenged by the plaintiffs and the defendant's claim has already been struck out by the Magistrate's Court. Since there is no determination by a court of competent jurisdiction on the quantum which the defendant is entitled to recover from the plaintiffs, the court has to fall back on Section 78, 78A, and 78B of the Legal Practitioners Decree 2009.

- [11] Since the court has already concluded that the dispute between the parties as to legal fees is governed by the provisions of sections 78, 78A, and 78B of the Legal Practitioners Decree, the defendant is only entitled to recover 10% of the sum awarded by the court.
- [12] For the reasons aforesaid I make the following order.

#### **ORDERS.**

- (1) The defendant shall pay the plaintiffs the balance sum of \$41524.77 deposited to the credit of the trust account after deducting 10% as its fees.
- (2) The defendant shall pay \$1000 as costs (summarily assessed) to the plaintiffs.

Lyone Seneviratne



**JUDGE**

08<sup>th</sup> June, 2016.