

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

Civil Appeal No. HBA 09 of 2015

BETWEEN : **CAROLYNE GREGORY** of the Hangar, Maintenance &
Administration Centre, Nasoso Road, Nadi
Appellant/
Original Respondent

AND : **CLAIRE DIANE GIRALDEAU**, of Nasoso, Nadi
Respondent/
Original Claimant

Counsel : Ms. V. Lidise for the Appellant/Original Respondent
Respondent/Original Claimant, In Person

Date of Ruling : 2nd September 2016

Before : The Hon. Mr. Justice R. S. S. Sapuvida

JUDGMENT

- [1]. This is an appeal preferred by the Appellant/Original Respondent [Respondent as per the Case Record of the Small Claims Tribunal (SCT) at Nadi and hereinafter referred to as "the Appellant] against the judgment of the Nadi Magistrate's Court delivered on 20 August 2015.
- [2]. The said appeal which is before me, as well as the proceedings before the Nadi Magistrate Court arose from two claims filed by the Respondent/Original Claimant [Claimant before the SCT and hereinafter referred to as "the Respondent"] in the SCT in Nadi.

Claims before the SCT

- [3]. The first claim before the SCT at Nadi was claim No. **864/14** lodged on the 31st of July 2014. A copy of the claim is at page 14 of the Copy Record.

- [4]. In that claim the "Respondent" is named as "**Carolyne Gregory of Fiji Airways**" (the Appellant in this appeal). The particulars of this claim as per the page 16 of the Copy Record states as follows:

"I Claire Diane Giraldeay of Nasoso claims to Carolyne Gregory of Fiji Airways that from February 13 to May 2013, I conducted workshop at Fiji Airways Training Centre for the value of \$9750. They have paid me so far \$3174.80 in the form of an airline ticket, the only ... Economy ticket. I was supposed to be issued a Business class ticket to Hong Kong to assess service. Even though they have issued me an "employee" ticket NAN – HKG which was \$0 value. The balance due to me as per invoice is \$6,575.20 which I agree to reduce to \$5000 as Per SCT jurisdiction to be paid without any delays.

**attached are all documentary evidence for you".*

[Italic added]

- [5]. For reasons unknown and not revealed to this court, the Respondent's second claim which was pending before the SCT has not been included in the Copy Record. However it is the Annexure CG- 5 of the Appellant's Affidavit.
- [6]. The Respondent's second claim at SCT was No. **896/14** and lodged on the 14th of August 2014. In that Claim Form the "**RESPONDENT**" is named as "**Carolyne Gregory of Fiji Airways**" (the Appellant in these proceedings) the particulars of this claim stated as follows:

"I Claire – Diane Giraldeau of Nasoso Claim to Carolyne Gregory of Fiji Airways that from May 2013 to July 2013, I conducted workshops at Fiji Airways Training Centre for the value of \$6000 . I have not been paid anything for this work. I have been issued any tickets as per previous agreement, neither been compensated in cash. Even though I have issued an invoice it has been ignored. The balance due to me is of \$6,000.00 and I agree to reduce it to \$5,000 as per SCT jurisdiction, to be paid without delay. [Italic added]

- [7]. It appears from the contents of the Copy Record that both the claims were dealt with together. When the matter was called on 28th August 2014, both parties had been present before the SCT.

The SCT's minutes confirms the above and as to what occurred on this date and is the page 8 of the Copy Record.

- [8]. On the 28th of August 2014 the Appellant had informed the SCT that the summons had been served on her in her personal capacity when it should have been served on the company[Fiji Airways], referring to her employer Fiji Airways. She also informed that she was just only an employee and that she

had no personal liability or responsibility over the Respondent's claim. In response the Tribunal has stated "Claimant file to the Company"

- [9]. The Respondent's response had been that the Appellant was the one who handled the case for Fiji Airways and was individually making the decisions on behalf of the company. The result was this:

"since the Respondent was the person making decision she is not liable for the results but the company will if a decision is made against them"
(page 8 of the Copy Record)

- [10]. The SCT's orders were delivered on 24th October 2014 when both parties were present. (pages 9 to 12 of the Record). The SCT has held that the first claim being claim No. 864/14 was for the period from 4th February 2013 to 15th May 2013 for which a total of 12 training sessions had been conducted.

- [11]. As for the second claim being claim No. 896/14, the SCT had noted that it was for the period from 22 May to 17th July 2013 for which a total of 8 sessions had been conducted.

- [12]. In assessing the evidence the conclusions of the SCT [at pages 11 and 12 of the Copy Record] were as follows:

"In view of all the emails and evidence provided the Tribunal's decision is as follows:

- *The claim no 864/14 to be dismissed as 3 tickets were provided and claimant has already travelled on these flights.*
- *That the claim no. 896/14 to compensated as there is still 8 sessions not paid for refer to exhibit #8.*

Therefore Fiji Airways Limited to provide 2 LH tickets to Miss Giraldean on Business Class tickets. These are to be issued by end of this year. The appeal time advised to both parties."

- [13]. Following the SCT's pronouncement of the order, the Appellant again realised, that she was not the Respondent in the matter and requested the case be dismissed. In reply, the SCT has stated that the Tribunal has already voiced this but she was representing Fiji Airways and was the person whom the claimant was liaising with, in regards to her ticketing and the person making all the decision on behalf of Fiji Airways. (page 12 of the Copy Record)

- [14]. Despite the fact that the SCT's order [page 11 of the Copy Record] made as:
"Claim No. 864/14 to be dismissed as 3 tickets were provided and Claimant has already travelled on these flights"

The Order sealed in respect of SCT Claim No: 864/14 stated as follows:

"THE TRIBUNAL ORDERED:

THAT *the Respondent; Fiji Airways Limited to issue 2 (two) economy class ticket to the Claimant; Claire Diane Giraldean on or before December 31st, 2014 which should be valid for flight within 6 months from date of issue*

THAT *the economy tickets to be upgraded to business class ticket subject to availability and the Claimant should not pay for the taxes.*

THAT *In default of above the Respondent; Fiji Airways to pay \$5,000.00 (five thousand dollars) by January 31st, 2015 direct to the Claimant."*

(a copy of the order is the Annexure CG-7 of Appellant's affidavit. but the Copy Record does not carry this order)

- [15]. In the same manner in respect of Claim No. **896/14**, even though the SCT found that the Claimant was to be compensated stating that "there were still 8 sessions not paid for..." the SCT again made the order sealed in respect of Claim No. **896/14**, where it stated:

"1. THAT this claim is dismissed on the ground that the Claimant was provided with the air tickets."

- [16]. This made the whole process of the two claims in SCT made by the Respondent diverted into a more complexed dispute in addition to the then existing issue of identification of the proper party to the claims as seen in the sealed orders of the SCT.

- [17]. Nonetheless, in both the sealed Orders the respondent to the claim was simply described as "**Carolyne Gregory**" without any further reference to "Fiji Airways".

- [18]. Then on **14th November 2014** another order had been sealed by the SCT in respect of Claim **864/14** with orders identical to the Order sealed on **24th October 2014**. The only change in the contents of this sealed order was that the description of the "RESPONDENT" was changed to "**CAROLYNE GREGORY for Fiji Airways Limited**" (copy of the said Order is contained at page 33 of the Copy Record and, the index to the Copy Record sent by the Magistrate's Court Nadi is misleading and that it says under its document No.8, that it is the SCT Order dated **24th October 2014** and yet it is the Order sealed on **14th November 2016** which is attached at page 33 of the Copy Record)

- [19]. On 14 November 2015 what the SCT had done was it recalled the Claim No. 864/14 and sealed a second order relating to the said successful claim. The second order is annexed to the appellant's affidavit as CG-8 (**page 33 of Copy Record**). It is curious to notice as to how and under what circumstances that the SCT has altered the previous order CG-7 (**this is left out in the Copy Record**) by the subsequent order sealed on 14th November 2015 (CG-8). The only difference between these two orders is the description of the "respondent".
- [20]. Namely, in the first order CG-7 the Respondent is described as "**Carolyne Gregory**" whilst in the second order CG-8 the Respondent is described as "**Carolyne Gregory for Fiji Airways Limited**". The appellant being unsatisfied with the orders of the SCT, appealed to the Magistrate's Court Nadi and the Learned Magistrate delivered her judgment on 20 August 2015.

The Appeal before Magistrate's Court

- [21]. The Appellant having being unsatisfied with the SCT decision preferred an appeal to the Nadi Magistrate's Court and filed her Notice of Appeal on 24th October 2014 (page 3 of the Copy Record) and the Grounds of Appeal on 7th November 2014 (page 4-5 of Copy Record).
- [22]. The appeal had first been called before the learned Magistrate on 27 May 2015 and then had been adjourned to 2nd July 2015. The Counsel for the Appellant has sought leave to amend grounds of appeal on 2nd July, 2015. Upon the same the Appellant had been given seven days to file the amended grounds of appeal and the matter had then been adjourned to 9th July 2015. (Page 57 of the Copy Record).
- [23]. On the 9th of July 2015, when the matter was called the Learned Magistrate had noted that the amended grounds of appeal had not been filed and directed the Appellant that she has to file it on the same day. The matter had been thereafter adjourned to 23rd July 2015 but the Copy Record (page 58) does not state whether the adjournment was for a further mention or for the hearing of the appeal. Nevertheless, the Copy Record does not reflect of any clue which confirms that the Leaned Magistrate at any stage of the appeal until her judgment was delivered a hearing to the appeal was by any mean given.
- [24]. In the meantime, on or about 13th July 2015 the appellant had filed the Amended Grounds of Appeal in this matter as earlier permitted by the court but it had been out of time as directed by the Learned Magistrate to have it filed on the same day, i.e. on 9th July 2015.

[25]. When the matter was called on 23rd July 2015 Counsel for the Appellant Ms Lidise had confirmed and informed the Learned Magistrate that the amended grounds of appeal had been filed and served. The Respondent had then confirmed to court that she was relying on the same objections that she filed earlier. Then quite surprisingly the Learned Magistrate has listed the appeal matter for the ruling to be delivered on 20th August 2015.

[26]. The Annexure CG-9, a copy of the Cause List of the Nadi Magistrate's Court No. 3, for Thursday the 23rd of July 2015 and its item no 4 clearly reflect that the Appeal matter before the learned Magistrate was "**for mention**" and "**not for Hearing**".

[27]. However, when the matter was then called before the learned Magistrate on 20th August 2015, the Learned Magistrate did deliver the judgment despite the fact that the Appellant's Counsel attempting to convince the court to conduct a hearing for the appeal matter on the basis that the Appellant's appeal had not been heard and however it was turned down by the Learned Magistrate. Moreover, the Learned Magistrate in addition to this had rejected the amended grounds of appeal filed by the Appellant. Then she has failed to consider that the grounds of appeal originally filed were subjected to be heard between the parties.

[28]. Learned Magistrate in her judgment delivered on the appeal at paragraph 12 states:

"After considering those documents I have found that the order of the Small Claim Tribunal directed to the Fiji Airways is not against the Appellant and the appellant considered as a representative of Fiji Airways and the Appellant also acted as a representative."

It is not clear why this appellant filed this appeal without any orders against her".

and finally dismissed the appeal.

The Grounds of Appeal in this Court

[29]. The Appellant in this case brings her grounds of appeal as follows:

- "1. The Learned Magistrate erred in law in dismissing the Appellant's appeal.
2. The learned Magistrate erred in law in failing to afford the Appellant her right to be heard on her grounds of appeal before pronouncing judgment on 20th August 2015.

3. The learned Magistrate erred in law in failing to ensure that the Appellant was afforded her right to a fair hearing in the proceedings before the Magistrates Court.
4. The learned Magistrate erred in law in failing to grant the application made on behalf of the Appellant for judgment not to be pronounced on 20 August 2015 on the basis that the Appellant had not been heard.
5. The learned Magistrate erred in law in failing to grant a hearing to the application made on behalf of the Appellant for judgment and the judgment not to be pronounced on 20 August 2015 on the basis that the Record of the proceedings of the Small Claims Tribunal was deficient in that it did not contain the claim 896/14 and other documents including the order sealed on 24th October 2014.
6. Alternatively, the learned Magistrate erred in law when she held that the order of the Small Claims Tribunal was directed to "Fiji Airways" and not against the Appellant and further, that the Appellant was appearing before the Small Claims Tribunal as a representative of Fiji Airways when:
 - (a) The only named respondent to the claims filed by the Original Claimant was "Carolyn Gregory" in her personal capacity;
 - (b) The evidence before the Small Claims Tribunal shows that the Appellant was not appearing in a representative capacity on behalf of "Fiji Airways";
 - (c) "Fiji Airways" was never named as a party to any of the claims filed by the Respondent and therefore could not be properly and legally made the subject of any orders of the Small Claims tribunal.
7. Alternatively, the learned Magistrate erred in law when she failed to consider that the Small Claims Tribunal had exceeded its jurisdiction when it purported to make orders against "Fiji Airways Limited" as "the Respondent", when Fiji Airways was never a named respondent in any of the claims filed by the Original Claimant.
8. Alternatively, the learned Magistrate erred in law when it failed to find that the proceedings were conducted by the Tribunal in a manner which was unfair and prejudicially affected the result of the

proceedings in that it had held "Fiji Airways Limited" liable for monies purportedly owed to the Original Claimant when "Fiji Airways Limited" was never a party to any of the Claims filed by the Original Claimant and therefore could not be legally and properly made the subject of any orders."

Hearing

[30]. The hearing of the appeal in this court was taken up on 21st April 2016 .

[31]. The Respondent in the instance participated in the hearing and she appeared in person.

[32] The Respondent clearly identified the Appellant in open court and said that she did not/do not have any claim, and will not be claiming any relief in this case against the Appellant but her claim is against " The Fiji Airways".

[33]. She further stated when the court explained and convinced her that she (if she so wishes to file) can submit her written submissions to which she said that she does not intend to file.

[34]. The Appellant's Counsel in addition to the oral submissions she made, filed her written submissions too, to which I have given the due attention as same as I have given it to the Copy Record of the Magistrate's Court.

[35]. Then I find the following:

- (a) That the learned Magistrate has failed to afford the appellant her right to be heard when she went to deliver the judgment on 20th August 2015 whilst the matter was fixed for mention on 23rd July 2015 according to CG-9.
- (b) That the learned Magistrate misled herself when she held that the order of the SCT was directed to Fiji Airways and not against the appellant and further that the appellant was appearing before the SCT as a representative of Fiji Airways. This is contrary to the certified documents relating to the SCT proceedings. The only named respondent to the claims filed against the respondent (the appellant) before the SCT was "Carolyn Gregory" in her personal capacity. The certified documents of the SCT confirmed that the appellant was not appearing in a representative capacity on behalf of Fiji Airways.

- (c) That the learned Magistrate has failed to observe that "Fiji Airways" was never named as a party to any of the claims filed by the respondent (Claimant in the SCT) and therefore could not be properly and legally made "Fiji Airways" the subject of any orders of the SCT.
- (d) That the learned Magistrate erred in facts when she stated in her judgment dated 20th August 2015 at paragraph 12 as:

"After considering those documents, I found that the order of the Small Claims Tribunal directed to the Fiji Airways and it is not against the appellant and the appellant considered as a representative of Fiji Airways, and the appellant also acted as a representative."

And further when she stated at paragraph 13:

"It is not clear why this appellant filed this appeal without any orders against her. "

(The foregoing findings of the Learned Magistrate are totally contrary to the facts revealed from the Copy Record. The page 33 of the Copy Record/CG-8 is the Order of the SCT and that is against the Appellant, but not against the Fiji Airways)

- (e) The Fiji Airways had never been a party to any of the claims before the SCT.
- (f) The cause list of the Nadi Magistrate's Court No. 3 before Ms Chand Dias on 23 July 2015 (CG-9) confirms that SCT Appeal 02 of 2015 was scheduled in the cause list for mention only.
- (g) The learned Magistrate in her judgment dated 20 August 2015 has stated that she rejected the appellant's amended grounds of appeal since the appellant failed to file the amended grounds of appeal within seven (7) days of her order to file the same and on that ground itself learned Magistrate has not offered a hearing for the grounds of appeal originally filed by the appellant before her.
- (h) That the learned Magistrate has failed to consider that the appellant's original grounds of appeal were before her subject to a hearing, but the learned Magistrate has not given a hearing for the appeal filed by the appellant. This confirms the fact that the learned Magistrate has failed to administer the rules of natural justice ("*audi altarem partem*") to hear the both parties. When the appellant was not given a hearing of her appeal against the orders of SCT before the Magistrate Court it is a blatant violation of rules of natural justice.

- (i) The learned Magistrate has mistaken herself when she went to deliver the judgment whilst it was listed only for mention on 23rd July 2015 and on that day without fixing for hearing the matter, had straight been fixed for the judgment which she did on 20 August 2015.

[36]. In Pal v Public Service Commission ABU 72U of 1998S which was decided on 1st December the Court of Appeal made the following observation in respect of the right to be heard:

“The requirement that a person be given a fair opportunity to be heard before a body determines a matter that affects him adversely is so fundamental to a civilised legal system that it is to be presumed that the legislative body intended that a failure to observe it would render the decision null and void. If there are no words in the instrument setting up the deciding body requiring that such a person be heard the common law will supply the omission. It will imply the right to be given a fair opportunity to be heard. While the legislative clearly and expressly be words of plain intendment. The intention must be made unambiguously clear. Finally we add that what is a fair hearing will depend on the circumstances of each case. It does not mean that in every case right of personal appearance must be given.”

[37]. In The Commissioner of Police v Tanos [1958] HCA 6;98 CLR 383, Dixon CJ at page 395 said,

“For it is deep rooted principle of the law that before anyone can be punished and prejudiced in his person or property by any judicial or quasi juridical proceedings he must be afforded an adequate opportunity of being heard.”

[38]. The SCT Claim form and the particulars of both claims clearly show that it is the Appellant that was sued before the SCT and not Fiji Airways. The Appellant when she appeared before the SCT pointed out this issue at least three occasions, to name the Fiji Airways as the respondent in those claims, and that was when the matter was first called on 28 August 2014 (page 8 of the Record), then on 24 October 2014 (page 12 of the Copy Record) and again on 14 November 2014 before the SCT sealed its new order in respect of claim 864/14.

[39]. None of these issues had been taken into consideration by the Learned Magistrate when she delivered the judgement on 20 August 2015, and that was even without a proper hearing being given for the parties to submit their respective cases before her.

[40]. On the forgoing reasons, I have no further clarification of her judgment but it should be set aside.

[41]. Hence, I make the following orders:

1. The appeal is allowed.
2. The judgment of the Magistrate's Court of Nadi dated 20 August 2015, is wholly set aside.
3. The Orders made by the Small Claim Tribunal Nadi on 24 October 2014 and on 14 November 2014 in Claim No. 864/14 are quashed and set aside.
4. The parties shall bear their own costs.



R. S. S. Sapuvida

[JUDGE]
High Court of Fiji

On the 2nd day of September 2016
At Lautoka