

**IN THE HIGH COURT OF FIJI**  
**(WESTERN DIVISION) AT**  
**LAUTOKA**

Civil Action No. 09 of 2016L

**BETWEEN** : **RAJESH CHANDRA** of Malamala, Nadi **APPELLANT**

**AND** : **CLASSIC BUSES LIMITED** a limited liability company having  
its registered office in Lautoka. **1<sup>ST</sup> RESPONDENT**

**AND** : **AVNEET KUMAR** OF Nadi, Bus Driver **2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is an appeal against a decision of the Resident Magistrate sitting in Nadi dated 13 September 2016.
2. By the said Ruling, the Learned Magistrate had refused an application for adjournment from the plaintiff's counsel. The application was in fact made on the date of trial by a counsel by the name of Ms. Buli who had appeared on instruction of Anil J. Singh lawyers.
3. The copy record for 13 September 2016 does not set out in any detail as to what exactly transpired in court. All that is recorded are as follows:

**13/09/16**

<b>Plaintiff</b>	-	Bale, V .for Anil
<b>Defendant 1</b>	-	Ms. Salote for Vijay Naidu
<b>Defendant 2</b>	-	

Passport - not available.  
No instruction as why passport not available.  
Salote – Defendant received a letter.  
Seeking adjournment.  
Ruling.

**At 2pm**

<b>Plaintiff</b>	-	Not Present
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**Defendant 1** - Not Present

**Defendant 2** -

Recalled at 2.30.

Plaintiff – Vateitei for Anil J. Singh

First defendant – Counsel -

Ruling received in Court.

Plaintiff – Ms. Vateitei to proceed court procedures – no instruction at 4.00pm – Naresia instead by Anil J. Singh to enquire status of the case. 3<sup>rd</sup> Counsel – appear on the instruction of Anil J. Singh.

**Siromi D. Turaga (sgd)**  
**Resident Magistrate**

13/09/16.

4. Both counsel, Mr. Anil J. Singh for the appellant and Mr. Victor Sharma for the respondent, confirmed in Court that the adjournment had been discussed beforehand and agreed to by both counsel.
5. Mr. Sharma said that he himself would not have been able to proceed with the trial because a director of his client company (defendant) had just passed away. He said he had disclosed this to Mr. Singh beforehand. Mr. Singh said that, knowing that the trial could not proceed, and because he had to travel abroad urgently for medical reasons and to visit his two daughters in London, he had instructed another counsel in Nadi namely Mr. Lutumailagi to be on a standby in case the defendant wished to proceed. Mr. Singh said his client was also in Court. All this is confirmed by an affidavit sworn by the appellant on 07 February 2017 who said he was privy to the discussions between his counsel and Mr. Sharma.
6. There is no indication in the court record that the learned Magistrate had inquired as to one counsel was seeking an adjournment and why the other was amenable to it.
7. The plaintiff is claiming damages when a public service bus owned by the defendant company travelling in the opposite direction zigzagged across the lane along a stretch of the main Road in Namaka in Nadi on 16 May 2013 at around 3.00 p.m. and hit the plaintiff's taxi causing damage. On 14 October 2010, judgement was already entered against the second defendant who was

driving the bus for the defendant bus company (first defendant). The only issue left to be determined is whether or not the first defendant bus company is vicariously liable. It looks from where I sit that the plaintiff has a good prospect of success against the first defendant bus company.

8. In a situation such as this, where both parties could not proceed with trial for good reason, a decision to strike out the plaintiff's claim on account only of the plaintiff's difficulty would appear to be rather lopsided.
9. If the plaintiff's solicitor had appeared, the trial would not have proceeded in any event on account of the death of the director of the defendant bus company.
10. That, in my view, would have been a very good reason to simply adjourn the trial.
11. From where I sit, the decision of the Magistrates Court to strike out the plaintiff's claim, in the circumstances, was rather arbitrary considering the following:
  - (i) in this case, judgment had already been entered against the second defendant servant of the first defendant bus company.
  - (ii) all that remained to be determined was whether the first defendant bus company is vicariously liable.
  - (iii) the plaintiff, *prima facie*, has a good case.
  - (iv) the defendant was not ready to proceed with trial on the said date.
  - (v) there is nothing in the records to suggest that the learned Magistrate had inquired as to whether the defendant was ready.
12. To strike out the claim on account only of the plaintiff's application appears to me to amount to a denial of the plaintiff's right to have the matter determined by a Court of law as granted under section 15 (2) of the 2013 Constitution.
13. In **Sharveen Chand v Avinesh Sharma trading as AVINESH PLUMBING SERVICES** Civil Appeal No. 09/14, Mr. Justice Ajmeer held that to strike out and dismiss a claim on account of a mere technicality without considering its merits (of the claim), particularly where the basis for striking out was not permitted by legislation or by the rules of the court, is a denial of

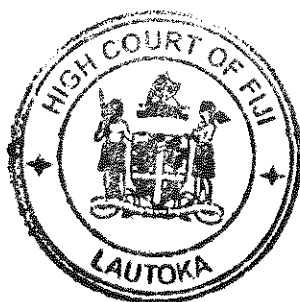
the constitutional right of access to justice as enshrined in section 15(2) of the 2013 Constitution.

14. Section 15(2) of the Constitution provides as follows:

15(2) Every party to a civil dispute has the right to have the matter determined by a court of law or if appropriate, by an independent and impartial tribunal.

15. I agree with Ajmeer J's statement of principle in the above case and add that in this case, the discretion to strike out the plaintiff's claim was exercised rather lightly and arbitrarily, the effect of which was to deny the plaintiff's rights under section 15(2) of the 2013 Constitution.

16. Appeal allowed. Case remitted to the Magistrates Court in Nadi for trial.



Anare Tuilevuka  
**JUDGE**  
25 April 2017