

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CIVIL APPEAL NO. HBA 05 OF 2018

[MC Case No 304 of 2015]

[SCT (Lautoka) Claim No. 957 of 2015]

BETWEEN : **SAIMONI NACOLAWA** of Nacolawa & Co, Lautoka.
APPELLANT

AND : **MICHAEL FINAU BROWN** of Natabua, Lautoka.
RESPONDENT

Appearances : Ms S. Ravai for the appellant

: Respondent in person

Date of Hearing : 18 May 2018

Date of Judgment : 18 May 2018

J U D G M E N T

[01] This is an appeal from an order of 23 April 2018 made by the learned Magistrate ('the Magistrate') sitting at the Lautoka Magistrate's Court, in Judgment Debtor Summons ('JDS') proceedings brought by the respondent. The appellant filed an application to strike out the JDS on the ground that service was defective as it was not served on the appellant personally. After hearing the application, the Magistrate dismissed the appellant's application with no order as to cost. The Magistrate noted that: *"In any event, I note from his affidavit in support that there is no defence on merits. It seems he is too engrossed on the allegation of unfairness and injustice on service, if any when the very live issue is whether he owes the claimant anything if at all. He completely avoids this."*

[02] The appellant filed in the court below a notice of intention to appeal within 7 days after the day on which the decision appealed against was given, as required by Order 37, Rule 1 of the Magistrates' Court Rules ('MCR').

- [03] The appeal has come to this court without any grounds of appeal. It was pointed out to the appellant. The appellant admitted that the appeal has come to the appellate court without any grounds of appeal being filed.
- [04] The appellant had filed his intention to appeal the Magistrate's decision made dismissing the appellant's challenge on the JDS proceedings on the basis of the JDS was not personally served on the appellant. The appellant did not challenge the actual decision of the Small Claims Tribunal ("SCT") that led to JDS proceedings. There was no appeal against the SCT's decision delivered against the appellant for the payment of \$3,650.00 on **18 September 2015**.
- [05] However, the appellant expressed his willingness to pay the JDS sum of \$3,650.00 within one month from today. The respondent also accepted the proposal. Accordingly, I order the appellant to pay the JDS sum of \$3,650.00 to the respondent within one month from the date of this judgment (18 May 2018).

The Result

1. Appeal disposed by consent.
2. Appellant will pay the JDS sum of \$3,650.00 within one month from the date of this judgment.
3. There will be no order as to costs.
4. Original record is to be transmitted to the Magistrate's Court Lautoka forthwith.

M. H. Mohamed Ajmeer
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18/5/18

M. H. Mohamed Ajmeer

JUDGE

**At Lautoka
18 May 2018**

