IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

APPELLATE JURISDICTION

CIVIL APPEAL NO.: HBA 11 OF 2015

BETWEEN : KALISITO MAISAMOA of Naqoro Settlement, Rakiraki, Ra, Solicitor.

APPELLANT

A N D : SHAKAUT ALI of Mullah Settlement, Rakiraki Ra, Driver.

RESPONDENT

Counsel : The Appellant in person

: The Respondent is absent and unrepresented

Date of Hearing : Wednesday, 25th April, 2018

Date of Ruling : Friday, 01st June, 2018

RULING

1. This is an appeal against the decision of the Magistrate Court at 'Rakiraki'.

2. On 05th June, 2014 the Appellant (Plaintiff) issued a Writ in this action against the Respondent (Defendant) in the Court below seeking following reliefs:

A. (i) the sum of $1040.00 as balance of the legal cost and pledged monies

(ii) *General Damage for breaching the binding contract/agreement through Instruction signed on 27th March, 2013 amount of $5000.00.*

(iii) *Interests.*

(iv) *Such further order or other relief this Honourable Court deems just.*

(v) *Costs of this action.*

3. The Appellant (Plaintiff) in his Statement of Claim pleads as follows:

1. *That the Plaintiff works as an Associate lawyer in the Nacolawa & Daveta Law before Vilitati Daveta was suspended from practicing law.*

2. *That the Plaintiff was engaged by Defendant to defend himself in the Criminal Case No. 46 of 2010.*

3. *That on 27th March, 2013 the Defendant and the Plaintiff enters into an agreement by way of signing an instruction for the Plaintiff to represent the Defendant.*

4. *That the Plaintiff and the Defendant both agreed that the legal cost would be $2000.00 to defend the Criminal Case No. 46 of 2013.*

5. *That the Defendant has made several payments amounting to $1260.00 as legal cost.*

6. *That the Defendant and his daughter came to the Plaintiff's office and made a pledge/promise that if the Defendant is not behind bars the Defendant will give an extra $300.00 as token of thanks.*

7. *That out of the $2000.00 legal cost the balance was only $740.00 therefore the Defendant has paid $1260.00.*

8. *That since the Defendant's Criminal Case has been withdrawn by the prosecution sometimes 30th April, 2014 and the Plaintiff verbally requested several times for the Defendant to pay the balance of the legal cost and the $300.00 pledge he refused to do so.*

9. *That the Defendant should pay the Plaintiff the $740.00 as balance of the legal cost plus $300.00 pledge, which adds up to $1040.00.*

10. *That due to the refusal of the Defendant to pay the balance of the legal cost and the money pledged the Plaintiff issued a Demand Notice on 13th May, 2014 requiring the Defendant to pay amount demanded within 14 days from the time it receives the Demand Notice.*

11. *That the Plaintiff hand delivered the Demand Notice to the Defendant on 14th May, 2014 at the carrier stand.*

12. *That the Plaintiff finds that the Defendant's action in refusing to pay the balance of the legal costs plus the money pledge amounts to breach of his legal obligation to the Plaintiff as per the signed instruction and pledged on the Defendant's part.*

4. In the Magistrate's Court, the case had proceeded by formal proof because the Respondent (Defendant) did not file a Statement of Defence.

5. The learned Magistrate dismissed the Claim on the basis that the Appellant does not have 'locus standi' to bring an action against the Respondent to recover legal practitioner fees.

6. Being aggrieved by the said decision, the Appellant filed the 'Notice of Intention to Appeal' and also 'Grounds of Appeal'. His Grounds of Appeal are as follows:

1. ***THAT*** *the learned Magistrate erred in law and fact by saying that the Appellant/Plaintiff has no Locus Standi to bring the cause of action against the Respondent/Defendant in claiming the balance of his legal costs/promised monies.*

2. ***THAT*** *the learned trial Magistrate erred in law and fact by saying that the Appellant/Plaintiff would act contrary to Section 50(3) of the Legal Practitioner Decree 2009 by making an agreement with the Respondent/Defendant.*

3. ***THAT*** *the learned trial Magistrate erred in law and fact for not considering that the Appellant/Plaintiff was a legal practitioner at the time he made the agreement with the Respondent/Defendant therefore the Appellant/Plaintiff has the right to sue to recover costs pursuant to Section 79 in spite of working as an*

associate of the disband law firm therefore has every right to claim legal fees as per Section 77 of the legal practitioner decree 2009.

4. **THAT** *the learned trial Magistrate erred in law and fact by impliedly saying that the Appellant/Plaintiff would not be able to sue for costs pursuant to Section 79 because the Appellant/Plaintiff was an associate to Nacolawa & Daveta Law, which was disband by the Independent Legal Service Commission.*

5. **THAT** *the learned trial Magistrate erred in law and fact for interpreting Section 50 (3) with the Section 79 taking into account that Section 79 stand on its own, which specifically refer to legal practitioner and not a law firm.*

7. The issue to be considered is whether the Appellant legal practitioner has 'locus standi' to bring the action against the Respondent to recover practitioner's fees.

8. Section 77 of the Legal Practitioners Decree, 2009 allows a Solicitor to make a Written Agreement with his or her client in relation to the amount and manner of payment the whole or any part (s) of any past or future services fees, charges and disbursements in respect of business done or to be done by such practitioner, either by a gross sum or otherwise howsoever.

9. Under Section 79, a practitioner is entitled to sue for and to recover costs pursuant to any agreement on these matters. But in the absence of such an agreement any issue about costs will be determined in accordance with the schedule of fees established by the regulations.

10. Of course, the Appellant (Plaintiff) was Counsel for the Respondent (Defendant) in the Criminal Case of CF- 30/10 that was pending before the Magistrate's Court of 'Rakiraki'.

The basic point which the Court is concerned to underline is that the written agreement (exhibit 1) made in accordance with Section 77(1) of the Decree was **entered between 'Nacolawa & Daveta Law' and the Respondent (Defendant).**

What is plain from the written agreement (exhibit 1) is that the Respondent (Defendant) 'Shaukat Ali' agreed to retain the **services of Messrs 'Nacolawa & Daveta Law' to represent and defend him in the Criminal Case of CF-30/10** that was pending before the Magistrate's Court of 'Rakiraki'.

11. **The Appellant (Plaintiff) who now sued to recover the practitioner's fees pursuant to the agreement (exhibit 1) made in accordance with Section 77(1) of the Decree misses the fundamental point that he was taking instructions from the Respondent as an associate of 'Nacolawa & Daveta Law' because he was not allowed to commence practice as a practitioner on his own since he had no three (03) years legal practice envisaged in Section 50(3) of the Decree.**

The key position of the 'Legal Practitioners Decree, 2009', for the purposes of this appeal is Section 50(3). As appears from the grounds of appeal set out earlier this appeal reduces to the question of the proper construction of Section 50(3) of the Act.

What is the rationale of Section 50 (3) ?

Section 50(3) of the 'Legal Practitioners Decree, 2009,' reads;

3. *No person shall commence practice as a practitioner on his or her own account other than in partnership with a practitioner of at least three years standing in the Fiji Islands, unless during the five years immediately preceding the date of commencement of practice he or she has had at least three years legal experience. Such legal experience may be-*

(a) as a practitioner in the office of a practitioner or barrister or solicitor or firm of practitioners of solicitors in active practice either in the Fiji Islands or in any of the jurisdictions referred to in the previous subsection, or in the legal branch of the government department, instrumentality, or statutory authority in the Fiji Islands.

(b) or such other experience as the Council may consider adequate.

12. The Appellant heavily relied on Section 79 (1) and contended that he is entitled to bring legal proceedings to recover his fees. He construed Section 79 (1) without making specific reference to Section 50 (3).

This construction tends to make Section 50 (3) meaningless or ineffective. In constructing a provision of a statute the Court should be slow to adopt construction which tends to make any part of the statute meaningless or ineffective. Every statute has to be construed as a whole and the construction

given should be a harmonious one. It is legitimate to all parts of the statute and to make the whole of it effective and operative. An interpretation which would defeat the purpose of the statutory provision and, in effect obliterate it from the statute book should be eschewed.

At this point, I cannot resist in saying that the Appellant's construction is certainly contrary to the apparent intention of the legislature and would indeed reduce Section 50 (3) to an absurdity. To be more precise, the appellant's construction could defeat the obvious intention of the legislature and produce a wholly unreasonable result.

I must stress here that an intention to produce unreasonable result is not to be imputed to a statute. Where possible, a construction should be adopted which will facilitate the smooth working of the scheme of the legislation established by the Act or Ordinance which will avoid producing wholly unreasonable result.

13. The Appellant's action is misconceived. I totally agree with the learned Magistrate.

14. The Appeal is dismissed. I make no order as to costs.

HIGH COURT OF FIJI
LAUTOKA

.....01/06/2018.

Jude Nanayakkara
Judge

At Lautoka

Friday, 01st June 2018