

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 216 Of 2013

BETWEEN : **DIGICEL FIJI LIMITED** a duly incorporated limited liability company having its office at 1st Floor, Kadavu House, 414, Victoria Parade, Suva

Plaintiff

AND : **THE UNIVERSITY OF THE SOUTH PACIFIC STAFF UNION** a trade union duly registered pursuant to the Trade Unions Act (Cap 96) and having its registered office at Laucala Bay, Suva

Defendant

BEFORE : Justice M. Javed Mansoor

COUNSEL : Mr P. Katia P for the 1st Plaintiff
Mr S. Valenitabua for the 1st Defendant

ORDER

1. The Plaintiff filed this action claiming a sum of \$66,459.77 from the Defendant. On 25 October 2016, the Court, on an application on behalf of the Plaintiff, referred the matter to the Registrar, in terms of Order 36 Rule 2(1), to inquire and report to Court on the basis the matter required prolonged examination of documents and accounts. Pursuant to the Court's direction, the Deputy Registrar submitted to Court a report dated 23 June 2017. Subsequently, when the matter came up before Court on 17 July 2017, the amount of the Plaintiff's claim was agreed by Counsel for both parties as \$56,324.06, which was \$200 less than the amount agreed by Counsel before the Deputy Registrar.
2. Judgment was entered by Court on 19 July 2017, whereby the Defendant was ordered to pay the Plaintiff a sum of \$56,324.06, with interest thereon at the rate of 4% per annum

from the date of judgment to the date of payment, and costs summarily assessed at \$2,500. A final demand notice dated 20 July 2017 was sent to the Defendant on behalf of the Plaintiff. The judgment, however, remained to be satisfied.

3. Pursuant to an application by the Plaintiff, on 16 February 2018, the Court ordered the Magistrate Court of Suva to conduct an examination into the means of the Judgment - Debtor in terms of Order 48 Rules (1) & (3). The statement dated 17 May 2018 given to the Magistrate on behalf of the Judgment - Debtor is now before Court.
4. As the judgment dated 19 July 2017 was not satisfied, by an Ex-Parte Notice of Motion dated 5 February 2019, the Plaintiff prayed for "final orders":
 - a. *for the Defendant to pay the Plaintiff the sum of FJ\$56,324.06, with interest thereon at the rate of 4% from the date of judgment, being 19 July 2017, to the date of full payment and costs of 2,500.00 pursuant to the Ruling of this Honourable Court and the report of the Magistrate after completing an examination into the means of the Defendant;*
 - b. *costs of this application in favour of the Plaintiff".*
5. In his aforesaid Ex-Parte Notice of Motion, the Plaintiff cited Order 48 Rule 1 of the High Court Rules 1988 and the inherent jurisdiction of Court. Though Order 48 makes no provision for the Court to make final orders, as prayed for in the Plaintiff's motion dated 5 February 2019, this Court has inherent jurisdiction to take cognizance of the statement dated 17 May 2018 given to the Magistrate on behalf of the Judgment - Debtor.
6. The Secretary of the University of South Pacific Staff Union in her statement dated 17 May 2018 to the Magistrate stated that the Defendant has 320 members, with each member depositing a fortnightly subscription of \$10. There are two bank accounts which had balances of \$770.52 as at 10 May 2018 and \$1,261.00 as at 5 May 2018. The aggregate subscription of members for the years 2016 and 2017 were \$84,860.00 and 78,068.00 respectively, as set out in the annual report (C3 annexed to the aforesaid statement). The Secretary also made references in her statement to the expenses incurred by the Defendant on behalf of its members. These have resulted in a net surplus of income of \$16,248.00 and 3,523.00 respectively for the years 2016 and 2017. The Defendant has granted loans to its members to the value of \$86,622.00, according to its annual report; these loans constitute current assets in the Defendant's Statement of Financial Position as at 31 December 2017. Such loans also constitute a very substantial

part of the net assets of \$101,362.00 as at 31 December 2017 as reflected in the financial statements.

7. When this matter was mentioned on 26 April 2019, Counsel for the Defendant submitted that a settlement would be discussed at the Defendant's Annual General Meeting held on that day, and agreed to revert on the next day, 30 April 2019. A settlement, however, did not materialise, necessitating an order on the Motion dated 5 February 2019.
8. In the aforesaid, considering all of the above factors, the Court makes order as follows:

The Defendant is ordered to pay the Plaintiff \$56,324.06 in 18 equal monthly installments together with interest of 4% per annum from the date of judgment until settlement in full, and satisfy the judgment dated 19 July 2017. There will be no costs in respect of this application.



M. Javed Mansoor

M. Javed Mansoor

JUDGE OF THE HIGH COURT

Dated at Suva this 7th Day of May 2019.