

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBA 05 of 2017

BETWEEN : BARE FOOT KUATA

APPELLANT

AND : PRAKASH RAO

RESPONDENT

Appearances: In Person for the Appellant
Ms J. Singh for the Respondent
Hearing: 10.05.19
Date of Ruling: 16.05.19

R U L I N G

1. The Respondent in this matter filed a claim against the Appellant at the Small Claims Tribunal in August 2017. His claim was to the tune of \$3,203-00. I shall not go into the details of the claim as it is irrelevant at this time.
2. After a few mentions, the claim was set for hearing on 28 August 2017 before the SCT. However, on the said date, the Appellant did not appear. As a result, the SCT heard the claim and proceeded to make an Order against the Appellant.

3. Later, on the Appellant's application, the SCT agreed and ordered a re-hearing. The matter was re-heard on 16 October 2017.
4. On 24 January 2018, the Appellant filed a Notice of Motion and affidavit at the Magistrates Court seeking leave to appeal out of time.
5. However, the Learned Magistrate refused leave and dismissed the application. The relevant decision of the Magistrates Court, which is the subject of this appeal, was handed down on 30 January 2019.
6. In the decision in question, the Learned Magistrate Bandula Gunaratne refused to grant leave to the Appellant to appeal out of time.
7. In his Ruling, the Learned Magistrate noted that the Appellant had failed to appear at the SCT on both hearing dates.
8. On the first hearing date, which was 28 August 2017, the Appellant claimed that he was delayed because of some boat-issues. He had travelled from the island which I understand was just off the Nadi coast around the Denarau area. When he arrived at the SCT premises, he learned that the matter had been called, and heard, and that a decision had been handed down against him.
9. The Appellant had then written to the SCT and asked for a re-hearing. This was granted to him, based on the excuse he gave.
10. On the second occasion, the Appellant also did not appear, and a decision was handed down in his absence in favour of the Respondent.
11. The explanation which the Appellant gave for his absence on the second occasion was that his car had broken down on his way to the hearing. This happened allegedly at some named point between Nadi and Lautoka. He arrived late at the SCT, only to be told that the hearing had gone ahead and a decision was handed down against him.

12. I note from the records that, on the second occasion, the SCT had waited for the Appellant for some time beyond the scheduled time of hearing. The hearing only proceeded after the Tribunal felt it had waited long enough.
13. Notably, with all that background and record of being late at the SCT, the Appellant still could not file an appeal on time at the Magistrates Court, hence, his application to appeal out of time.
14. All the above was noted by the Learned Magistrate in his Ruling.
15. At paragraphs 08, 09, 10 and 11 of his Ruling, the Learned Magistrate said as follows:

08. *On the above findings this court is of the view that appellant has adopted a lethargic process in defending their case and not shown a due care or interest on the claim against them.*

09. *It is worth mentioning at this point that this court has no any powers and also not willing to look into the merits of the case. The only consideration of this court is whether appellant had any good cause not to lodge and appeal within the time frame.*

10. *After overall consideration of the affidavit and submissions by both parties along with the substantive file of SCT, court finds the following:*

- *Applicant has not made proper representation to Small Claims Tribunal having knowledge of pending claim against them and their reasons for non-appearance are not justifiable.*
- *Appellant has not taken any swift action for the refusal of rehearing and court finds that time between the final order and this application is too lengthy.*
- *Reasons that has mentioned in the appellant's affidavit for non-appearance has no reasonable grounds and does not grant them any special exemption or privilege.*

11. *At this juncture Court would like to draw its mind to the maxim "Vigilantibus Et Non Dormientibus Jura Subveniunt" which means "Law helps those who are vigilant over their rights and not those who sleep thereon".*

16. At the hearing before me, the Appellant submitted that all he wants is a chance to be heard again at the SCT. He begs this Court to order that the matter be referred again to the Tribunal to re-hear the case and his evidence.
17. I cannot do that. That would entail an appeal on the merits. This Court does not hear appeal on the merits.
18. The Small Claims Tribunal was established under the Small Claims Tribunal Decree 1991 to deal with small claims and provide relief to claimants by a process that is prompt and inexpensive (see **Sheet Metal & Plumbing (Fiji) Ltd v Deo** [1999] FJHC 25; [1999] 45 FLR 80 (14 April 1999)). As Mr. Justice Fatiaki noted in the above case, sections 24 to 29 of the Decree highlight the informal, non-adversarial nature of the proceedings before the Small Claims Tribunal and militates against a general appeal on the merits or for errors of law.
19. Fatiaki J would further observe as follows in Sheet Metal:

The non-legalistic nature of a Tribunal proceeding is further exemplified by the requirement in Section 15(4) of the Decree that: 'The Tribunal shall determine the dispute according to the substantial merits and justice of the case and in doing so ... shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.'

20. In addition to the above, Fatiaki J observes that the Tribunal exercises what is in effect "**an equity and good conscience jurisdiction**" and that under section 17, any order of the Tribunal '**shall be final and binding on all parties to the proceedings ... and except as provided in section 33, no appeal shall lie in respect thereof**'.
21. Section 33 of the Small Claims Tribunal Decree 1991 states:

Appeals

- 33.-(1) *Any party to proceedings before a Tribunal may appeal against an order made by the Tribunal under section 15(6) or section 31(2) on the grounds that:*
- (a) *the proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings; or*

(b) *the Tribunal exceeded its jurisdiction.*

22. The above section provides a right of appeal limited to two grounds, namely:

- (a) the proceedings were conducted by the referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings; or
- (b) the Tribunal exceeded its jurisdiction.

23. In my view, the learned Magistrate had duly taken into account the grounds of appeal as stated above in paragraphs [9] and [10] and that his conclusions (see above) are quite correct.

24. I dismiss the Appellant's appeal and order costs in favour of the Respondent which I summarily assess at \$200-00 (two hundred dollars only).



Anare Tuilevuka
JUDGE
Lautoka