

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
APPELLATE JURISDICTION

CIVIL ACTION NO. HBA 15 OF 2019

MC Appeal No. 12 of 2017

SCT No. 36 of 2017

BETWEEN : **SUNIL DUTT** of Namosau, Ba.
APPELLANT/APPELLANT/RESPONDENT

AND : **UMESH RAM** of Balevuto, Ba.
RESPONDENT/RESPONDENT/CLAIMANT

Appearances : Mr A. Dayal for the appellant
Ms V. Diroiroi (as amicus) for the respondent

Date of Hearing : 22 July 2019

Date of Judgment : 22 July 2019

J U D G M E N T

[01] This is an appeal from the Magistrates Court, Ba, where the Learned Magistrate dismissed an appeal of the appellant from Small Claims Tribunal (SCT), which ordered the respondent must pay a sum of \$1,656.90 to the respondent on or before 31 May 2017.

[02] The claim appears to be an outstanding rent (according to the claimant to the SCT, from January 2012 till October 2016) of \$1,500.00. The respondent/claimant (*'the respondent'*) confirmed that he claimed the outstanding rent from January 2016 till October 2016.

[03] It is common ground that the monthly rent was \$150.00. There was no written rental agreement between the parties.

[04] The appellant/respondent (*'the appellant'*) says he did not pay rents from January 2016 till October 2016, when he vacated the house without paying the rent

because he repaired the house spending a total sum of \$1,500.00 after the cyclone Winston, where the roof of the house was blown off. However, he is willing to pay a sum of \$600.00 excluding \$50.00, which he had paid in the Magistrates Court, Ba, as a result of the Judgment Debtors Summons ('JDS') filed by the respondent, as full and final settlement of the claim.

- [05] When the Court put this offer to the respondent, he agreed to accept \$550.00 as full and final settlement of his claim. The term '*full and final settlement*' was explained to the respondent in Hindustani language by the court clerk. Thereafter, he confirmed that he understood the meaning of full and final settlement and confirmed that he has no further claim against the appellant after payment of \$550.00.
- [06] The parties have raised a settlement. In Court, the appellant paid the sum of \$550.00 to the respondent, which he accepted as full and final settlement of his claim against the appellant. They made a joint request asking for the appeal to be dismissed by consent with no order as to costs and the JDS filed by the respondent to be struck out.
- [07] On appeal, the appellate court does have the full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the appellate court as a court of first instance (see O 37, R 18 of the Magistrates Courts Rules).
- [08] It will be noted that the appellant had paid a sum of \$50.00 in the Ba Magistrates court in view of the JDS filed by the respondent. It appears he had paid \$50.00 pending appeal. The appellant was not obliged, unless the High Court or the Magistrates Court otherwise orders, to pay the JDS sum pending his appeal. The appeal was from a decision of the SCT. Under section 33 (5) of the SCT Act, the appeal against an order of the SCT operates as a stay of any enforcement process. Subsection 5 provides:

“(5) The filing of a notice of appeal against an order shall operate as stay of any process for the enforcement of that order, but the High Court or the Magistrates Courts may at any time, on the application of a party to the

proceedings, order that any process may be resumed or commenced or the process having been resumed or commenced, order that it be further stayed."

[09] I am satisfied that I should dispose of the appeal by consent. Accordingly, I dismiss the appeal without costs and strike out the JDS application filed by the respondent against the appellant in the Ba Magistrates Court.

The result

1. Appeal dismissed.
2. The JDS filed by the respondent is struck out.
3. No order as to costs.

M.H. Mohamed Ajmeer
22/7/19
.....

M.H. Mohamed Ajmeer
JUDGE



At Lautoka
22 July 2019

Solicitors:

For the appellant: Dayal Lawyers, Barristers & Solicitors.

For the respondent: Legal Aid Commission, Lautoka.