

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Civil Appeal No. HBA 03 of 2019
(Appealing the Resident Magistrate's Ruling
dated 06th September 2018 in Civil Action
No. 293 of 2017).

BETWEEN: GYANNENDRA PRASAD of Lot 130 Biau Drive, Cunningham Road, Suva, Retired.

APPELLANT/PLAINTIFF

AND: RENTAL SOLUTION LIMITED a limited liability company having its registered office at Lot 1,
Mavoa Road, Walu Bay, Suva.

FIRST RESPONDENT/FIRST DEFENDANT

AND: LALINI DEVI of Lot 130 Biau Drive, Cunningham Road, Suva, Chef.

SECOND RESPONDENT/SECOND DEFENDANT

BEFORE: Hon. Justice Vishwa Datt Sharma

COUNSELS: Mr. Prasad K. - for the Appellant [Original Plaintiff]
Mr. Goundar K. - for the 1st Respondent [Original 1st Defendant]
Mr. Nambiar - for the 2nd Respondent [Original 2nd Defendant]

Date of Decision: 12th March, 2020 @ 9.30 am

JUDGMENT

*[Appeal pursuant to Order 37 Rule 3(1) of the Magistrate's Court Rules 1945 against
the decision of the Magistrate's Court striking the Plaintiff's substantive claim on the
ground of failing to limit the claim to the Magistrate's Court civil jurisdiction]*

INTRODUCTION

- [1] Before me is the **appeal** against the decision of the Magistrate's Court Suva delivered on 06th September 2018.
- [2] The Learned Magistrate struck out the Appellant's [Plaintiff's] substantive claim on the grounds that the Plaintiff's [Appellant's] claim has not been restricted to the jurisdiction of the Magistrate's court and the court has **no jurisdiction** to hear the claim.
- [3] The parties to the proceedings at the Appeal hearing furnished court with written submissions and argued the Appeal accordingly.

BACKGROUND

- [4] The Plaintiff filed a **Statement of Claim** in the Magistrate's Court claiming **damages** caused to his vehicle by the Defendant's vehicle in a road accident on 27th March 2017 amounting to \$10,200.
- [5] The First Defendant [1st Respondent] raised a **preliminary objection** at the Magistrate's Court that the Plaintiff's [Appellant] claim has not been restricted to the civil jurisdiction of the Magistrate's Court to \$50,000 and therefore the Magistrate's Court had no jurisdiction to hear the Plaintiff's claim.
- [6] The Legal Aid counsel present in court informed the court that she had no instructions to appear on behalf of the Plaintiff.

JUDGMENT OF THE MAGISTRATE'S COURT

- [7] The Learned Magistrate delivered his ruling upon hearing the parties on the preliminary objection on 6th September 2018.

He made reference to *Section 16(1) of the Magistrate's Court Act 1944* and stated that *'the statutory requirement mandates the parties has to limit the claim to the jurisdiction of the court that is not more than \$50,000.*

However, the claim in this matter is not specifically limited to the jurisdiction of this court as one cannot calculate the interest claimed until the conclusion of the case.'

He concluded *'that it is pertinent to note that the interest claimed also comes within the purview of the claim, thus need to be considered when one calculates the value of the whole claim.*

- [8] The Learned Magistrate accordingly **struck out the Plaintiff's substantive claim with summarily assessed costs to the Defendants.**

GROUNDS OF APPEAL

- [9] Upon being dissatisfied with the Learned Magistrate's Ruling delivered on 6th September 2018 on the preliminary objection, the Appellant filed this appeal and raised the following Grounds of Appeal:
- (i) The Learned Magistrate erred in law in holding that in order to be within the jurisdiction of the Magistrate's Court, the Plaintiff/Appellant had to specifically plead in the claim or the was limited to its jurisdiction when:
 - (a) There was no such requirement in the Magistrate's Court Act or Rules;
 - (b) By commencing the proceedings in the Magistrate's Court the Plaintiff had limited himself to the jurisdiction of the court; and
 - (c) The issue of jurisdiction is matter of law and not fact and the Plaintiff was only required to plead material facts.
 - (ii) The Learned Magistrate erred in law by striking out the claim without considering the substantive matter and evidence and doing so he denied the Plaintiff/Appellant Natural Justice and Constitutional Right as per section 15(2) of the Constitution of the Republic of Fiji 2013 to have his matter determined by a Court of law.
 - (iii) The Learned Magistrate erred in law and in fact by not considering section 27(2) of the Magistrate's court Act 1944 to render a conclusive determination on all the issues of the case *inter alia* a question of jurisdiction.
 - (iv) The Learned Magistrate erred in law in is interpretation of section 16(1) (a) of the Magistrate's Court Act 1944.
 - (v) The Learned Magistrate erred in law and in fact in ordering costs against the Appellant.

ANALYSIS AND DETERMINATION

- [10] In **essence** this appeal has been brought about by the Appellant against the decision of the Magistrate's Court, Suva delivered on 6th September 2018 wherein the learned Magistrate struck out the Plaintiff's substantive Magistrates Court civil claim on the grounds that **'the Magistrate's court lacks jurisdiction to hear and determine the claim of the Plaintiff as he failed to specifically limit the jurisdiction of the Magistrate's Court to its ordinary limit of jurisdiction.**
- [11] Counsels representing parties made references to the following case authorities -
- (a) *Ram Khelawan v Budh Ram* (1967) 13 FLR 196
 - (b) *Govind Holdings Ltd v Kalia Nand* Civil Appeal No. HBA0015 of 1998L
 - (c) *Misha Praksh & Associates v Credit Corporation (Fiji) Ltd* (2005) FJHC 603; HBA0007.2000
 - (d) *Aatur v Dame t/a Dame Consultancy* [2013] FJHC 409; Civil Appeal 15.2012
 - (e) *Sharveen Chand v Avinesh Sharma t/a Avinesh Plumbing Services* Civil Appeal No. 9.2014
- [12] It will be noted from the case authorities referred herein above at paragraph 11 (a) - (d) inclusive that the Magistrate Court's jurisdiction to file a civil claim was up to a sum of **\$15,000**. After a subsequent amendment of the Magistrate's Court Act that the Magistrate Court jurisdiction was **extended** allowing claims to be filed up to **\$50,000**, as was in the case above at 11 (e) accordingly.

However, the current appeal before me will be dealt with in isolation to above mentioned case authorities in light of the nature of the meagre sum claimed coupled with the interest and

amendment allowing extension of jurisdiction to file claims up to \$50,000 within the Magistrate's Court jurisdiction.

Grounds (i) and (iv)

- [13] Grounds (i) and (iv) hereinabove can be dealt with as one ground since both grounds of appeal raise the same issue of jurisdiction.
- [14] The Appellant's [Plaintiff] Substantive Amended Claim in the Magistrate's Court civil action sought for the following relief:
- (a) Judgment against the First and Second Defendant in the sum of \$10,200;
 - (b) Post judgment interest at a rate of 5% per annum as per O 32 Rule 8 of the Magistrate Courts Rule;
 - (c) Cost of this action; and
 - (d) Such further or other relief this honourable court deems just and equitable in the circumstances.
- [15] It is clear from the above that the Appellant's (Plaintiff's) original claim in the Magistrates Court against the Defendants was that the Plaintiff sought damages sustained to his vehicle by the Defendant's vehicle in a road accident on 27th March 2017 amounting to \$10,200. Further, the Appellant [Plaintiff] sought for an order for post judgment interest of 5% per annum in terms of Order 32 Rule 8 of the Magistrate's Court Rules 1945.
- [16] Magistrate's Court is a creature of statute and the Magistrate's Court can only exercise the function which is provided for by the Provisions of section 16(1) of the Magistrate's Court Act 1944.
- In particular, *Section 16 (1) (a)* provides as follows:
- [MC 16] Jurisdiction of Magistrates in civil causes*
- 16 (1) Without prejudice to the jurisdiction of a Magistrate under this Act or other written law, a Resident Magistrate shall have and exercise jurisdiction in the following civil causes—*
- (a) in all personal suits arising out of any accident in which any vehicle is involved if the amount, value or damages claimed*
- [17] A careful reading of *Section 16(1)(a) of the Magistrate's Court Act 1944* reveals and confirms the following:-
- (a) *It doesn't require or specifically state that it is mandatory for a claimant to include averment to the claim limiting the jurisdiction of the Magistrate Court \$50,000.*
 - (b) *There is no legislative required for unspecified claims to also include the averment limiting the claim to the Magistrates Court jurisdiction of \$50,000.*
- [18] I have taken judicial notice of the fact that Plaintiff's as litigants rarely include an averment to the claim limiting the jurisdiction of the Magistrate's Court to \$50,000.
- [19] Further, there is **no legislative requirement** for unspecified claims to also **include an averment limiting the Magistrate Courts jurisdiction to \$50,000.**
- [20] The substantive judgment sum claimed by the Plaintiff [Appellant] in the Magistrate's Court civil case was \$10,200 with post judgment interest @ 5% per annum.

- [21] This meant that the Plaintiff [Appellant] was claiming a **specific amount of \$10,200** against the Defendants for the damage caused to his vehicle in the accident on 27th March 2017.
- [22] The substantive claim sought herein was a **meagre and a specific sum of liquidated amount**. Liquidated amount can be arithmetically calculated.
- [23] If the Plaintiff [Appellant] succeeded in obtaining judgment for the specific liquidated sum of claim of \$10,200, then he would be entitled to claim for the 5% per annum post judgment interest on \$10,200 accordingly.
- [24] The interest sought by the Plaintiff [Appellant] was in terms of **order 32 Rule 8 of the Magistrate's Court Rules 1945**. Therefore, this interest claimed would have been the Plaintiff's **statutory entitlement in law**.
- [25] In an **accident case interest typically begins to run only after the judgment is entered by the court**.
- [26] In the current case before the Magistrate's Court the Plaintiff [Appellant] sought for damages sustained to his vehicle at a fixed sum of \$10,200. Post judgment interest sought would have been applicable only if the Plaintiff had succeeded in obtaining judgment by the court. The interest claimed would form a separate component to the substantive sum of damages claimed by the Plaintiff. Even if the Magistrate's Court civil case took some ten years to hear and determine the final outcome, still the interest arithmetically calculated at 5% per annum on judgment sum claimed at \$10,200 will be at \$510 per annum x 10 years will come to \$5,100 and if added to the sum claimed at \$10,200 will come to a total sum claim of \$15,300 that will still not exceed the Magistrate's Courts jurisdiction of \$50,000.
- Thus, the Plaintiff's substantive case needed to be heard and determined on merits. Until the substantive matter is heard and determined by a court of law, the court cannot presume that the sum claimed will exceed the jurisdiction limitation of \$50,000 of the Magistrate's Court.
- Therefore, the current claim by the Plaintiff [Appellant] in the Magistrate's Court I reiterate was a specific liquidated amount fixed at \$10,200 and would have in no way exceeded the Magistrate's Court jurisdiction.
- [27] The sum claimed within the substantive Magistrate's Court civil claim should not have been assumed to have exceeded the Magistrate's Court jurisdiction on a preliminary issue but should have been entirely heard on merits and then determined if the claim exceeded the Magistrates Court jurisdiction. If the claim did exceed the Magistrate's Court jurisdiction then the Learned Magistrate should have arrived at an appropriate decision in law.
- [28] I have taken judicial notice of the fact of including an averment to liquidated claims within the jurisdiction of the Magistrates Court to \$50,000. The Magistrate's Court Registry will reveal and confirm that hardly any claimant will include an averment to the claim to show that the amount claimed for does not exceed the Magistrate's Court jurisdiction of \$50,000.
- [29] Any pending matter before a court of law inclusive of the current should be heard and determined in a just and fair manner rather than deciding a matter of the current nature on a preliminary issue striking out the Plaintiff's [Appellant] claim without hearing and considering the entire case on merits.
- [30] Further, the Learned Magistrate could have exercised his powers in terms of Order XIV of the Magistrate's Court Rules and of its on motion allowed the Plaintiff [Appellant] to amend his civil

claim by inserting or adding the words "the claim is limited to the jurisdiction of the Magistrate's Court to \$50,000."

- [31] The Appellant succeeds with his grounds of appeal (i) and (iv) for the aforesaid rational accordingly.

Grounds (ii) and (iii)

Section 15(2) of the constitution of the Republic of Fiji 2013 provides: -

Every party to a civil dispute has the right to have the matter determined by a court of law or if appropriate, by an independent and impartial tribunal.'

- [32] The Appellant submitted that the Magistrate's Court civil claim was struck out for lack of jurisdiction without considering the merits of the substantive matter in such a manner as to allow all matters in controversy between the parties to be completely and finally determined.
- [33] Counsel representing the First Respondent submitted that the Magistrate Court does not have the jurisdiction to determine the constitutional matters, hence section 27(2) of the Magistrate's Court Act should not have any applicability for determining this appeal.
- [34] Counsel representing the Second Respondent submitted that the Learned Magistrate did not err in law by striking out the claim without considering the substantive matter as the claim exceeded the jurisdiction of the Magistrates Court.
- [35] It is noted from the ruling of the Learned Magistrate of 6th September 2018 that he reached his decision to strike out the appellant (Plaintiff's) claim based on the preliminary objection raised by the First Respondent (First Defendant) that the court lacks jurisdiction to hear and determine the Plaintiff's claim since he failed to specifically limit the jurisdiction of the Magistrate's Court to its ordinary limit of the jurisdiction.
- [36] The ruling confirms that the Appellant (Plaintiff's) substantive matter was struck out for not including an averment in the Plaintiff's claim in limiting the jurisdiction of the Magistrates Court) without giving consideration to the merits of the Plaintiff's case.
- [37] The Plaintiff's substantive Magistrate's Court civil action claimed a specific amount of \$10,200. The claim was not an open claim or unspecified claim, nor was there any legislative requirement to include an averment to limit the claim to the jurisdiction of the Magistrate's Court. The matter should not have been determined and struck out on the preliminary issue raised and/or assumptions that the claim exceeded the Magistrate's Court jurisdiction limited to \$50,000. An amendment to the substantive claim could have been granted at the court's own motion and thereafter the substantive matter should have been fully heard and determined on merits accordingly.
- [38] The Learned Magistrate's order to strike out the Plaintiff's substantive civil claim was without hearing and consideration of the substantive matter on merits and evidence. This led to Plaintiff's constitutional rights being infringed in order to have the matter rightly determine by the Court of Law.
- [39] It would be against the interest of Justice and the right to access justice to strike out any claim before a Magistrate Court (either specific or unspecified) on assumptions and without hearing the entire case on its merits. Again, there is no legislative requirement in terms of section 16(i) of the Magistrate's Court Act 1944 that either a specified claim or unspecified claim when filed must be endorsed with the words or have an averment (limited to the jurisdiction of the Magistrate's Court).

[40] In the current case the claim for damages in the Plaintiff's claim is a specified amount of \$10,200 with post judgment interest at 5% per annum is void above until such time frame when the jurisdictional limit of \$50,000 had been exceeded. The amount claimed is also a very meagre and interest added on the claim would take years to exceed the current Magistrate's Court jurisdiction limit of \$50,000.

[41] The Appellant therefore succeeds with his second and third grounds of appeal accordingly.

Ground (v)


[42] Likewise, on the aforesaid rational the Appellant succeeds with this ground of appeal accordingly. The Learned Magistrate's order for costs against the two Defendants is hereby set aside.

FINAL OUTCOME

- (i) Appeal is allowed;
- (ii) Magistrate's Court Order of 6th September 2018 striking out the Plaintiff's Statement of Claim together with costs of \$200 to each of the Defendants is set aside;
- (iii) The High Court Civil Registry to remit this file with all documents intact to the Magistrate's Court Civil Registry, Suva for hearing and determination of the substantive matter before another Resident Magistrate;
- (iv) There will be no order as to costs at the discretion of this Honourable Court;
- (v) Orders accordingly.

DATED at SUVA this 12TH DAY of MARCH, 2020




VISHWA DATT SHARMA
JUDGE
SUVA

cc. Legal Aid Commission, Suva
Kumar Goundar Lawyers, Suva
Messers Neel Shivam Lawyers, Suva