

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

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.: 11 OF 2019

BETWEEN : ABHAY CHAUDHARY

[APPELLANT]

AND : PETER PINSON

[RESPONDENT]

Appearances : Appellant in person
Respondent in person

Hearing : Friday, 21st February, 2020

Decision : Wednesday, 22nd April, 2020

DECISION

- (01) The respondent lodged a claim in the Small Claims Tribunal (SCT) on 19-09-2016 and claimed for sale of soap which was manufactured by the respondent and his family and given to the appellant to be sold but the proceeds were not allegedly given to the respondent.
- (02) On 07-02-2017, the SCT Referee made an order that the appellant pay the respondent the total sum of \$5,000.00 and the Referee ordered the appellant to pay \$100.00 a month.
- (03) The appellant being aggrieved by the decision of the SCT Referee, filed his Notice of Appeal on 23-02-2017 in the Magistrate's Court at Sigatoka.
- (04) On 03rd April, 2019, the learned Magistrate dismissed the appeal since the notice of appeal has been filed out of time and there being no application seeking an extension of time.

- (05) On 04th April, 2019 the appellant filed a notice of intention to appeal and grounds of appeal against the decision of the learned Magistrate to the High Court.
- (06) The grounds of appeal filed on 04-04-2019 were stated as being;

Ground 1

The Learned Appellate Magistrate erred in law when he failed to consider that his brother Magistrate had granted Appellant leave to file Application at the time of Judgment Debtor Summons Hearing on the bases of his Medical Report and such Application for rehearing or to file Notice of Appeal out of time leave was made 16th November, 2017 annexed is the copy; the file minutes will speak for itself.

Ground 2

The Learned Appellate Magistrate erred in law when he failed to maintain neutrality and to apply the proper principles of proof of civil liability thereby causing substantial miscarriage of justice.

Ground 3

The Learned Appellate Magistrate erred in law when he wrongly applied principles of law relating to the computation of time when the Appeal was due; see Order 11 Rule (a) and (b) of the Magistrates Court Act Cap 14.

Ground 4

The Appellate Magistrate erred in law when he failed to consider that there was no precise nature of claim and voluminous nature of documents were filed, the Appellant was not aware how was the claim arrived at.

Ground 5

The Learned Appellant Magistrate erred in law when he took into account the documentary evidence which was not proved by oral evidence and also no response to the Appellants Application for rehearing or to file Notice of Appeal out of time leave till to date no ruling delivered.

Ground 6

The Learned Appellate Magistrate erred in law in failing to act judiciously by delivering ruling which is contrary to the Court Record tendered in court, which had verbal notice of Appeal given to the Tribunal see page 13 of the minutes of Referee and which has seriously prejudiced the Appellant; see cases Pett v Dunkley [1971] 1 NSWLR 376 CA.

(07) Section 33(3) of the Small Claims Tribunal Act 1991 expressly provides that;

“An appeal shall be brought by the filing of a notice of appeal,within 14 days of the Tribunal’s order.”

(08) Plainly therefore, in this case, the appeal before the Magistrate Court was brought two days (02) out of time and the appellant has not sought an extension of the time within which his appeal could be filed and which the Magistrate Court is empowered to grant pursuant to order xxxvii, rule 4 of the Magistrate Court Rules [Cap 14].


(09) Indeed, no ground has been advanced which identifies any error in the learned Magistrate’s decision.

ORDERS

(01) Appeal is dismissed.

(02) I make no order as to costs.




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22/04/2020
Jude Nanayakkara
[Judge]

At Lautoka
Wednesday, 22nd April 2020