

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**APPELLATE JURISDICTION**

**CASE NUMBER:** HBA 03 of 2018

**BETWEEN:** **RAVINDRA KUMAR LAL**  
**APPELLANT**

**AND:** **AMMIT MORGAN**  
**RESPONDENT**

*Appearances:* Mr. A. Sen for the Appellant.  
Mr. H. Robinson for the Respondent.

*Date/Place of Judgment:* Thursday 30 April 2020 at Suva.

*Coram:* Hon. Madam Justice Anjala Wati.

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**JUDGMENT**

**A. Catchwords:**

*Appeal against an order for costs – “wastage costs” ordered against the plaintiff- no reasons advanced why wastage costs was necessary and who was being compensated with the order for costs - the power to order costs on an application for transfer not identified by the court – order for costs set aside on appeal.*

**B. Legislation:**

**1. Magistrates’ Court Act 1944 (“MCA”): s. 32 and s. 33.**

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*Cause*

1. This appeal concerns an order of the Resident Magistrate in Labasa of 7 March 2018. The order appealed against is an order for costs against the plaintiff in the sum of \$150.
2. At the outset I must say that Mr. Robinson had conceded to the appeal and since the issue on the appeal was very simple and could be disposed through an ex-tempore judgment, I had set aside the order for costs immediately. However for the sake of guidance to the Magistrates' Court and for reasons of completeness, I had indicated to both the counsel that I will issue a written ruling so that such erroneous orders are not issued again.
3. The circumstances surrounding how the order was made is very important. The defendant had filed in the Magistrates Court an application for transfer of the action to High Court Suva. The principal provisions under which the application was founded was ss. 33 and 34 of the MCA.
4. The application was made via a motion and was listed in the Magistrates' Court for 29 November 2017. On this day, the plaintiff was not present in court, nor was he represented by any counsel. The court records at page 20 reads that the matter was adjourned to 24 January 2018 for the defendant's counsel to get proper instructions on whether the application was for a transfer or a stay of execution.
5. I was confused as to what the court meant when it said "stay of execution" as there was no order to execute at that stage. My understanding is that the stay was in relation to the stay of the proceedings in relation to which transfer was sought.
6. On 24 January 2018, the plaintiff sought time to respond to the motion. The plaintiff was given an opportunity to respond to the application within 14 days and the defendant was given the liberty to respond to the reply within 7 days thereafter. The matter was then adjourned to 7 March 2018.
7. On 7 March 2018, the plaintiff sought further time to file the affidavit in reply. The defendant objected to the reply and sought costs for the appearance in court. The court granted the

plaintiff further 14 days to respond and ordered wastage costs in the sum of \$150.00. A further order was given for the defendant to respond to the reply within 7 days thereafter.

*Analysis*

8. I had at least two legal basis on which I had instantly thrown out the order for costs notwithstanding that Mr. Robinson had conceded to the appeal. The first was the powers of the court to grant the order for costs.
9. The application for transfer was founded on s. 33 of the MCA. This section does not empower the Magistrate to consider an application for transfer to the High Court. This sections sets out the powers of the High Court to transfer causes. Under this section, the court did not have powers to hear the case or to make any orders for costs.
10. The parties had not asked the court to exercise its powers under any other provision of the law. However, the only provision under which the court could consider the application at all was s.32 of the MCA which reads:

*“Subject to the provisions of the Criminal Procedure Act 2009, a Magistrate may, of his or her own motion, or on the application of any person concerned, report to the High Court the pendency of any cause or matter which in the opinion of such Magistrate ought for any reason be transferred from his or her court to any other Magistrates Court or to the High Court. The High Court shall direct in what mode and where the cause or matter shall be heard and determined”.*

*Underlining is Mine*

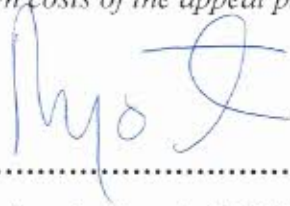
11. The above section only empowers the Magistrates Court to report to the High Court the pendency of the matter which ought to, in his or her view, be transferred to the High Court. It is my view that in order to form an opinion on whether a transfer is required, the Magistrate can call for the affidavits from the parties and form an opinion on the matter without coming to a finding.

12. Once a positive opinion is formed on the application, the matter can be reported to the High Court. It is the High Court which shall direct whether the transfer would take place and the place and venue for the hearing of the matter.
13. Since the Magistrates Court cannot make an order for transfer in this case, I find that it too cannot make an order for costs in this application. What it could have done was to ask the parties to make an application for costs in the High Court if the question of costs kicked in. The order for costs by the Magistrates Court was premature.
14. If the plaintiff did not comply with the order for filing the affidavits on time, the court was to hear and determine whether further time was to be allowed. If it found that the reasons were genuine to allow further time, it should then grant further time for doing so. If the defendant was to be compensated for any loss, harm or prejudice as a result of the delay in filing the affidavits, then it could make the application in the High Court for costs.
15. If the court found that the reason was not genuine, then it could refuse to grant more time and base the opinion on the existing materials and reported the matter to the High Court. The parties would have a chance to address the High Court on the proposed order for transfer.
16. I do not find that the Magistrates Court had the jurisdiction to order costs for upon allowing an extension of time to file the affidavit at that stage.
17. The second reason for setting aside the order was the lack of reasons for which the order cannot be justified. It was not clear what wastage costs was meant to cover and compensate for. Wastage costs do not go to a party and any order for costs needs to be supported by simple reasons without a need for a fully flashed judgment. In this case there was lack of reasons why wastage costs was allowed.
18. Succinctly, it was on the basis of the power of the court to order costs and lack of reasons to justify the same that the orders could not be allowed to continue any further. That is the basis on which I set aside the same.

***Final Orders***

19. I therefore:

- (a) *confirm my earlier orders allowing the appeal.*
- (b) *confirm my earlier orders setting aside the order of the Magistrates' Court of 7 March 2018 making an order for wastage costs against the plaintiff in the sum of \$150.*
- (c) *Each party to bear their own costs of the appeal proceedings.*



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***Hon. Madam Justice Anjala Wati***

***Judge***

***30. 04. 2020***



**To:**

- 1. Maqbool & Company for the Plaintiff.***
- 2. Tadrau Legal.***
- 3. File: Labasa HBA 03 of 2018.***