

IN THE HIGH COURT OF FIJI AT SUVA

APPELLATE JURISDICTION

Small Claims Tribunal No. 616 of 2020

Magistrates' Court Appeal No. 5 of 2020

High Court Appeal No. 19 of 2020

BETWEEN

PRANIL SHARMA INVESTMENT

APPELLANT

AND

ASHWIN RAJ

RESPONDENT

Counsel : Appellant in person
Mr. Vananalagi R. for the Respondent

Date of Hearing : 05th February 2021

Date of Judgment : 26th February 2021

JUDGMENT

- [1] The appellant instituted proceedings before the Small Claims Tribunal (the Tribunal) seeking to recover \$5000.00.
- [2] In the particulars of claim filed before the Tribunal by the appellant it is stated as follows:
- Subject to the failure of human right antidiscrimination commission proper obligation I'm not able do my business and meet my daily food water and Bill (rents) also that is to the current licked down I am not able to run my business.
- [3] The Tribunal fixed the matter for hearing on 18th May 2020 and since there was no appearance of the claimant, the tribunal struck out the appellant's claim.
- [4] Being aggrieved by the decision of the Tribunal the appellant appealed to the Magistrates' Court and the learned Magistrate who heard the appeal dismissed it with \$250.00.
- [5] The appellant appealed the decision of the Tribunal to the Magistrates' Court on the following grounds of appeal:
1. That the Tribunal erred in law not providing proper and full information of the respondent given that the appellant has provided full information of the respondent.
 2. That the tribunal erred in law by not considering Section 27 of the Small Claims Tribunal Act 1991.
 3. That the Tribunal erred in law by not considering Corona Virus and the Raiwaqa Road block that morning which caused the appellant's delay in travelling.

4. That the Tribunal erred in law by not considering submissions that the appellant had prepared and in light of the review ruling in HAC 54 of 2020S.
5. That the Tribunal erred in law by not considering statement by National Federation Party on 15th May 2020.

[6] The appellant appealed the decision of the learned Magistrate to this court on the following grounds:

1. The learned Magistrate erred in law and in fact by not providing justice and not accepting that the missing document from court registry that was rival in court on the 8th of June 2020 and therefore court further directed to reserve the document to the respondent.
2. The learned Magistrate erred in law and in fact by not accepting section 26 subsection 3 of the Small Claims tribunal Act 1991. Which was place in writing to Tribunal.
3. The learned Magistrate erred in law on the last page of the ruling stating that I find no procedural unfairness in this matter as the tribunal ruled based on the evidence produced before it, in fact the court has fail in the constitutional obligation by not looking in the missing document.

[7] The learned Magistrate has based his findings mainly on the provisions of section 33(1) of the Small Claims Tribunal Act 1991 which provides as follows:

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.


- [8] There had been not conduct of proceedings since the matter was struck out by the Tribunal for want of appearance of both parties and since the claim made by the appellant was \$5000.00 it was within the monetary jurisdiction of the Tribunal.
- [9] In the first and third grounds of appeal the appellant refers to a certain document but he does not say what that document is. Therefore this court is unable to consider the first ground of appeal.
- [10] Section 26(3) of the Small Claims Tribunal Act 1991 provides:
- A Tribunal may receive and take into account any relevant evidence or information, notwithstanding the provisions of the Evidence Act 1944 and whether or not the same would normally be admissible in a Court of Law.
- [11] In this matter there was no hearing conducted by the Tribunal to consider whatever the materials available to it.
- [12] Striking out the appellant's claim for want of appearance has not caused any injustice to him. It is clear from the report of the Referee that the tribunal has advised that the appellant was at liberty to file a fresh application if he was so inclined.
- [13] The learned counsel for the respondent submits that the Tribunal did not have jurisdiction to hear this matter since the claim of the appellant was based on violation of his constitutional rights.
- [14] The appellant's claim before the Tribunal was that the Antidiscrimination Commission failed to assist him during Covid 19 pandemic and provide him with food and water and to pay his rent.
- [15] This application before the Small Claims Tribunal was, in my view, frivolous and as submitted by the learned counsel for the respondent, the Tribunal should not have even entertained it.

- [16] If the appellant had such a right guaranteed by the Constitution he should have made an application for constitutional redress to the High Court and not to the Small Claims Tribunal.
- [17] The appellant's entire claim is based on a speech made by the leader of a political party seeking assistance for the people who were affected by the Covid 19 pandemic. This speech does not have any legal effect and cannot be enforced in law.
- [18] For the above reasons the court makes the following orders.

ORDERS

1. The appeal of the appellant is dismissed.
2. The appellant is ordered to pay the respondent \$1000.00 as costs of this appeal within 30 days from the date of this judgment.




~~Lyone Seneviratne~~

JUDGE

26th February 2021