

IN THE HIGH COURT OF FIJI  
(WESTERN DIVISION) AT LAUTOKA  
CIVIL JURISDICTION

CIVIL APPEAL NO. HBA 5 OF 2022  
M.C.NADI – SCT APPEAL NO. 0012 of 2021  
SMALL CLAIM TRIBUNAL CLAIM NO.1044/20

**BETWEEN:** SHALENDRA REDDY of Sonaisali, Nadi

**APPELLANT**

**AND:** JAMIE UDAY SINGH of Malamala, Nadi

**RESPONDENT**

**BEFORE** : Hon. Mr. Justice Mohamed Mackie

**APPEARANCES** : Mr. Lutumailagi for the Appellant  
Ms. Begg with Ms. Ali for the Respondent

**DATE OF DECISION** : 25<sup>th</sup> November, 2022.

## JUDGMENT

### **A. INTRODUCTION:**

1. This is an appeal arising out of the judgment dated 09<sup>th</sup> February, 2022 and pronounced by the Learned Resident Magistrate of Nadi, by which she dismissed the Appellant's Appeal that had been preferred against the award dated 18<sup>th</sup> March, 2021 made by the Referee of the Small Claims Tribunal ('SCT') Nadi allowing the claim made by the Respondent (claimant) in a sum of \$3,800.00 together with \$50, 00, being the charges of bailiff, totaling to \$3,850.00.
2. At the hearing before this court on 26<sup>th</sup> September, 2022 counsel for both parties made oral submissions. Additionally, the **Appellant**, who was the Appellant at Magistrate Court as well and the Respondent at the SCT, had filed his written submissions prior to hearing on 14<sup>th</sup> September, 2022 and the **Respondent**, who was the Respondent at the Magistrate's Court as well and the Claimant at the SCT filed his written submissions at the hearing.

**B. BACKGROUND:**

**Respondent's position:**

3. The Respondent had entered into a verbal Agreement with the Appellant in October, 2019 for the Appellant to carry out some Electrical Wiring works at his House in Malamala Road, Nadi and the agreed amount for the job, including the cost for materials, labor charges and charges for EFL Inspection plus Compliance Certificate was \$6,500.00.
4. A sum of \$1,500.00 was paid as advance deposit on 1<sup>st</sup> October, 2019 on invoice No.368 and a further sum of \$3,000.00 was also paid on 18<sup>th</sup> October,2019 on invoice No.369 by the Respondent unto the Appellant , the receipt of which was not disputed by the Appellant.
5. Balance sum of \$2,000.00 was to be paid after the completion of the work and the receipt of the Compliance Certificate. The Respondent wanted to move in before the work was completed and accordingly moved in to the house in June 2020, when the Electrical work was still incomplete according to him.
6. The Appellant asked for the balance \$2,000.00 and the Respondent took up the position that the balance sum was to be paid only after the completion of the work and the Certificate of Compliance was obtained. As a result, dispute arose and finally, the Respondent intimated that he no longer wished to engage the services of the Appellant, as he had already paid \$4,500.00 to the Appellant.

**The Appellant's Position:**

7. The Appellant, having admitted his Agreement to do the work for the Respondent for a total sum of \$6,500.00 and the receipt of \$4,500.00 as averred by the Respondent, stated that he finished the work by June 2020, attended to fix certain problems on the request of the Respondent free of charge and did some extra works as well as stated in paragraph 11 of his Affidavit. He denies the allegation by the Respondent that he had not fixed extra lights and power points.

**The Proceedings before Referee:**

8. The Referee at the SCT duly heard the matter. The Respondent hereof had not given evidence before the SCT. Both the Respondent and the Appellant had filed their respective affidavits. The Appellant called 2 witnesses. Several documents were also tendered in evidence, including a Quotation obtained by the Respondent from "Intelligence Electrical Services" for \$3,800.00, being the charges for the remaining work left unattended by the Appellant. Several photographs to show the incomplete works also were submitted as evidence.
9. An undated letter was also tendered as evidence marked as "G" by the Appellant through his witness **Avneel Chand** , being written by him , who happened to be the very same person who had issued the quotation marked as "F" to the Respondent for the

remaining works to be done. The EFL inspection report had a remark that the “work in progress”.

10. The SCT Referee, after hearing both the parties and the 2 witnesses called by the Appellant finally decided as follows:

1. *“The Respondent pay the Claimant the sum of \$2,000.00 the balance amount previously paid to the electrical Work, \$1,800.00 to engage another Electrician to complete the Electrical work at Malamal, Nadi. In addition is the Bailiff charge of \$50.00 all to the total amount of \$3,850.00” (emphasis mine)*
2. *Respondent to pay monthly installments of \$250.00 commencing 31/03/21”*

11. Thereafter, the Appellant appealed the Tribunal’s decision to the Magistrate on the ground that the decision was;

- i. Bias; and
- ii. Errors of Law on the part of the Referee.

12. It had been submitted by the appellant’s Counsel that the referee had got the facts wrong, wherein the sum of \$2,000.00 awarded to the Respondent is in fact the sum owed to the Appellant by the Respondent from the contracted sum of \$6,500.00 and it was the Respondent who was supposed to pay the Appellant. The Appellant had also disputed the quotation obtained for the balance work.

13. The learned Magistrate, having heard the Appeal, dismissed it by concluding that *the Court cannot consider any Appeal on grounds of merits and the Appellant had not met the threshold of section 33 (1) (a) of the SCT ACT.*

### **C. GROUNDS OF APPEAL**

14. The Appellant has raised 3 grounds of Appeal before this Court, which mainly revolve around the reliability of the oral evidence of the witness Avneel Chand, called by the Appellant and on the admissibility of the quotation No-0112 marked as Appendix “F” issued by the same witness unto the Respondent. The grounds of Appeal also touches on the admissibility of the undated letter marked as Appendix “G” issued by the same witness to the Appellant.

It was averred in the grounds of Appeal that **“the Learned Magistrate committed an error of law and fact”**, and the proceedings in the SCT was conducted in a manner which was unfair and that prejudicially affected the result of the proceedings. **(Emphasis mine)**

It was also urged that the Magistrate failed to properly analyze the evidence led in the tribunal when the evidence relied upon was on false quotation and the decision was arrived in complete absence of any evidence to show that the remedial works were carried out as claimed by the respondent.

#### **D. THE LAW:**

15. The Small Claims Tribunal Act 1991 as amended ('SCTA'), S. 33 (so far as relevant) states:

[SCT 33] Appeals

33 (1) 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.

#### **E. THE ISSUE:**

16. The only issue to be decided in the Appeal is whether the Magistrate was correct in upholding the Referee's decision that allowed the claim by the Respondent, in view of the arguments advanced on behalf of the Appellant, based on the grounds of Appeal raised in that Court.

#### **F. DISCUSSION:**

17. In the case of *Wati v Waqabaca Truck Hire and Machinery [2005] FJHC 101* clearly states that an error of law is not a permitted ground of appeal nor is an appeal allowed on the merits of the case.

18. For purpose of Appeal from SCT, the Appellant must establish to the Court that there was no any irregularity or unfairness in the manner or way in which proceedings were conducted at the Tribunal. If Jurisdiction was raised as an issue of Appeal the Appellant has to establish how it was exceeded. In the present matter, the jurisdiction was not a serious issue, except for the position taken up on behalf of the Appellant that the Referee had exceeded the jurisdiction by awarding \$50.00, being the charges for bailiff, which was obviously not a part of the substantial claim.

19. On careful perusal of the record, particularly, the Order of the Referee, it is clear that the Referee had stated that the Tribunal felt it was not safe to believe Avneel Chand. Mr. A. Chand was a witness called by the Appellant to prove that the quotation relied on by the Respondent which was marked as Appendix "F" was false in the light of the contents of the letter marked as "G" signed and issued by the very same witness. But

the Referee has proceeded to accept the said quotation marked as "F" and acted upon it.

20. The question raised on behalf of the Appellant before the Court below and this Court was mainly in respect of the admission of the quotation marked as "F" by the Respondent to justify his claim that he had spent \$3,800.00 for the balance work that was left by the Appellant unattended.
21. The above arguments on the admissibility of the oral and documentary evidence, finally boil down as a question of law, on which the decision of the tribunal cannot be assailed and/ or found fault with.
22. The tribunal made order allowing the claim as it is, plus \$50.00 which was not a part of the Respondent's actual claim. There has been substantial evidence that the Appellant had left certain part of the work unattended as claimed by the Respondent and as evidenced by the photographs, EFL Report and the evidence of the Appellant's 2nd witness. Tribunal's finding in this regard cannot be faulted.
23. The Appellant appealed the order of the Tribunal to the Magistrates Court on the ground that the Referee's decision was unfair and bias. The Appellant has relied upon the ground that the proceedings were conducted by the Referee in a manner which was unfair to the Appellant and prejudicially affected the result of the proceedings.
24. Both parties had presented their case to the Tribunal. I don't find any evidence to pin the blame on the Referee that the proceedings before him were conducted in a manner which was unfair to the Appellant and prejudicially affected the result of the proceedings. The learned Magistrate's finding on this aspect also not blameworthy.
25. In view of the foregoing, it is not justifiable for this Court to interfere with the finding of the learned Magistrate, as far as the fairness in the conduct of the proceedings before the SCT was concerned, in arriving at the finding on the question of liability on the part of the Appellant. But, this Court cannot simply disregard the manner in which the Referee seems to have acted in arriving at the quantum, during the process of his task of deciding the quantum, which is a distinct part performed by him in the proceedings before him.
26. The agreed amount for the entire work was \$6,500.00, out of which only \$4,500.00 had been, admittedly, paid to the Appellant by the Respondent. The balance \$2,000.00 was, admittedly, retained by the Respondent to be paid after the completion of the work as per the Agreement, which, however, did not eventuate as the dispute cropped up. According to the Respondent, as the dispute arose, he no longer wished to obtain the services of the Appellant. Vide –para 19 of his affidavit. So the balance \$2,000.00 remained with the Respondent unpaid.

27. As per the operative part of the SCT Order, reproduced in paragraph 10 sub paragraph 1 above, the Referee, when deciding the final amount, appears to have been on the misunderstanding that the Respondent had paid the Appellant the entire sum of \$6,500.00, without retaining \$2,000.00. The wording of the Referee in his order to the effect **“sum of \$2,000.00 the balance amount previously paid to the electrical Work”** clearly demonstrate the error committed by the Referee when deciding the amount payable by the Appellant.
28. The process of the reconciliation of the amount payable is erroneous for the simple reason that when only \$4,500.00 out of the agreed amount of \$6,500.00, had been paid to the Appellant who had left a part of the work undone. The balance \$2,000.00 was still with the Respondent, who had to add only another \$1,800.00 to get the job done in the way he expected. So the amount that could have been recovered from the Appellant was only \$1,800.00.
29. Though, this had not been explicitly averred in the grounds of Appeal before the learned Magistrate, it had been clearly alluded in the written submissions filed on behalf of the Appellant before her, which unfortunately has not drawn the attention of the learned Magistrate, which finally led to the dismissal of the Appeal.
30. It was the Appellant who did the substantial part of the work. His claim that he did extra works was not refuted by the Respondent. The Appellant on his initiative managed to obtain the EFL Certificate of Conformity and made it available to the Respondent.
31. It was due to the failure on the part of the Appellant to complete the work as agreed upon between both the parties and in the manner expected of him, the Respondent had to incur an additional sum of \$1,800.00 as he claims, to complete the work.

**G. CONCLUSION:**

32. Upon perusal of the copy record, I find that the Tribunal had conducted the proceedings in a manner which was fair to the Appellant and that there is nothing I can see that would prejudicially affect the result of the proceedings. However, the Referee of the SCT, in the process of reconciling and/or deciding the amount finally payable, had erred by wrongly assuming that the Respondent had already paid the entire contracted sum of \$6,500.00 unto the Appellant. The Tribunal was not correct when it ordered to pay back \$2,000.00 when it had not been paid to the Appellant by the Respondent.
33. Though, the learned Magistrate was correct in her finding that the Appellant had failed to establish that proceedings in the SCT were conducted in a manner that was unfair and prejudicial and it affected the outcome of the proceedings, she had not paid her attention to this aspect where the Referee had erred in his process of reconciling / deciding the amount to be paid to the Respondent.

34. The Appeal should partially succeed and the judgment of the learned Magistrate and the order of the SCT should be affirmed subject to variation of the amount payable as only \$1,800.00. I would, therefore, partly allow the Appeal and confirm the judgment of the Magistrate dated 09<sup>th</sup> February, 2022 and the Order of the SCT dated 18th March, 2021 subject to above variation. The Respondent is to pay the Appellant a sum of \$600.00, being the summarily assessed costs before this forum and the Court below.

**H. THE FINAL RESULT:**

- a. The Appeal is partly allowed.
- b. The final sum payable by the Appellant unto the Respondent is varied and limited to \$1,800.00.
- c. Subject to the above variation, the judgment of the learned Magistrate and the Order of the Referee are affirmed.
- d. The Respondent shall pay the Appellant summarily assessed costs of \$600.00 within 28 days.
- e. The sum finally payable by the Appellant shall be paid and settled in 4 equal installments commencing from January, 2023.
- f. The original record is to be dispatched to the Magistrate's Court of NADI, along with a copy of this judgment, forthwith.



**A.M. Mohamed Mackie**  
**Judge**

**At High Court Lautoka this 25<sup>th</sup> day of November, 2022.**

**SOLICITORS:**

**For the Appellant:**

**Messrs Fazilat Shah Legal**

**For the Respondent:**

**Zoyab Safi Mohammed Legal**