

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

Appeal No. HBA 08 of 2021
(Magistrate's Court Nadi Appeal No. 0048 of 2020
Small Claims Tribunal Nadi- No. 509 of 2020)

BETWEEN : **SAROJINI DEVI** of Sabeto, Nadi **APPELLANT**

AND : **ASISH AKASH CHAND** of Siberia, Labasa **RESPONDENT**

BEFORE : A.M. Mohamed Mackie- J.

COUNSEL : Appellant in person
Respondent absent and no representation

DATE OF HEARING : Hearing disposed by way of written submissions.

WRITTEN SUBMISSIONS: By the Appellant on: Filed on 15th March, 2023.
No written submissions filed by the Respondent.

DECIDED ON : 12th April, 2023.

DELIVERED ON : 18th April, 2023.

JUDGMENT

1. The appellant Sarojini Devi, on 5th June 2020, instituted proceedings in the Small Claims Tribunal Nadi (the Tribunal) claiming \$ 1,203.28 from the respondent. The respondent appeared and contested the proceedings. The Tribunal held with the respondent and dismissed the claim of the Appellant on the ground that there was no evidence to justify the claim.
2. The appellant appealed against the said order to the Magistrate's Court of Nadi and the learned Magistrate by his judgment dated 29th December 2020 dismissed the appeal. The present appeal before this court is against the said dismissal.
3. The Appellant has adduced 11, purported, grounds of Appeal, none of which, in my view, fall within the ambit of section 33 (1) of the Small Claim Tribunal Act 1991.

4. The learned Magistrate dismissed the appeal on the ground that the appellant did not have a right of appeal on the merits in terms of section 33(1) of the Small Claims Tribunal Act 1991.
5. Section 33(1) of the Small Claims Tribunal Act 1991 provides that 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.
6. The learned Magistrate also relied on the following decision in arriving at the conclusion that the appellant did not have the right of appeal on the merits.

In ***Joseph Insurance Paligaru v N. Solanki & Company, Lautoka High Court Civil action No. HBA 15of 2011***, it was held as per paragraphs 31 to 34 thereof;

[31] *A Tribunal is empowered to make orders as set out in section 16 of the Decree. Section 17 of the Decree, makes all orders made by the Tribunal final and binding on the parties, subject to the limited appealable grounds set out in section 33 of the Decree.*

[32] *Section 33 of the Decree provides as follows:
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*

[33] *A careful analysis of this section envisages that the Court exercising appellate jurisdiction under section 33(1) (a) of the Decree is precluded from considering an appeal on merits despite a palpable error of law. The only limited appealable grounds set out in section 33(1) (a) of the Decree, is for the appellant to establish that the Tribunal conducted the proceedings unfairly and thereby prejudicially affected the result of the proceedings. i.e., the Referee conducted the proceedings violating the basic principles of 'procedural rules' such as not adhering to the rules of natural justice, audi alteram partem rule, etc.*

[34] *Clearly, the grounds of 'appeal' set out in section 33 are not the usual grounds of appeal that is seen in appeal cases. They are indeed the grounds considered in judicial review applications. It is evident on a plain reading of section 17 of the Decree that the intention of the lawmakers was to seal appeals*

by placing a cap on appeals. The legislative restriction therefore only permits appeals on procedural irregularity.

7. In ***Aaryan Enterprise v Mehak Unique Fashion [2011] Civil Appeal 17 of 2011*** the court said;

“Put, bluntly, there is no right of appeal on the merits even when there may be a clear error of law in the Tribunal’s decision’.

8. Under section 33(1) of the Small Claims Tribunal Act 1991, an appeal could be made only on the grounds stated therein. I therefore see no reason to interfere with the finding of the learned Magistrate that the appellant does not have a right of appeal against the findings of the referee on the merits.

9. Since there was no allegation that the proceedings were conducted by the Referee in a manner which was unfair to him and prejudicially affected the result of the proceedings or the Tribunal had exceeded its jurisdiction, the learned Magistrate is correct in dismissing the appeal.

10. For these reasons I hold that the appeal of the appellant is without merit and must necessarily fail.

11. **Orders of the Court:-**

A. The appeal of the appellant is dismissed.

B. The parties shall bear their own costs of the appeal.

C. The Original Record, along with a copy of this Judgment, shall be dispatched to the Magistrate’s Court of Nadi forthwith.




A.M. Mohamed Mackie
Judge

At High Court Lautoka on this 18th day of April, 2023.

SOLICITORS:

Appellant: In person.

Respondent: Absent and no representation.