

IN THE HIGH COURT OF FIJI
AT LABASA
APPELLATE JURISDICTION

HBA 02 of 2018

BETWEEN : JAMES KUMAR

APPELLANT

AND : SANJEEV SHARMA

RESPONDENT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. A Sen for the appellant

: Mr. J. Lagonilakeba with Mr. A. Prasad for the respondent

Date of Hearing : 19 October 2020

Date of Judgment : 30 August 2023

JUDGMENT

APPEAL

Breach of contract – Oral agreement – misrepresentation

1. The respondent filed a statement of claim in the Magistrates Court of Taveuni seeking judgment against the appellant in the sum of \$35,000.00, and damages for breach of contract together with interest and costs.
2. The action was based on an oral contract for the purchase of Yaqona plants from the appellant. In his statement of claim, the respondent claimed that he paid a sum of \$70,000.00 for a patch of Yaqona plants on the appellant's representation that all the plants in the farm belonged to him. Subsequently, ownership for half the plants was claimed by one Satish Kumar. The respondent's claim is for half the purchase price for the plants.
3. By his statement of defence, the appellant denied the respondent's claim. He stated that the purchase price was \$85,000.00 and that the respondent had paid only \$70,000.00. According to the appellant, the respondent owed him \$15,000.00. He denied misrepresenting facts to include Satish Kumar's patch of plants. He stated that the price agreed between the parties was for his plants alone.
4. Three witnesses gave evidence on behalf of the respondent and another three witnesses gave evidence for the appellant. After hearing the parties, the magistrate gave judgment in the sum of \$35,000.00 in favor of the plaintiff together with general damages of \$2,000.00. Post judgment interest of 5% per annum was awarded together with costs in the sum of \$500.00. The appellant's counter claim was dismissed.
5. The appellant initially filed his grounds of appeal on 6 September 2019 through Jiten Reddy Lawyers. Another set of grounds of appeal was filed on 7 November 2019 through the appellant's present solicitors, Maqbool & Company. The later grounds of appeal are reproduced below:
 - i. "The learned magistrate erred in hearing the suite when he did not have any jurisdiction to do so.

- ii.* The learned magistrate erred in failing to take into consideration that the Agreement between the Appellant and the Respondent offended the Indemnity Bailment and Guarantees Act.
 - iii.* The learned magistrate erred in failing to take into consideration that the Agreement between the Appellant and the Respondent offended Section 12 of the iTLTB Act.
 - iv.* The learned magistrate erred in failing to take into consideration that the oral agreement made reference to the area being purchased which is clearly demarcated and not otherwise and which contained mature yaqona plants and therefore any reference to the quantity of plants is erroneous.
 - v.* Alternatively, the learned magistrate erred in failing to take into consideration the testimony of the Appellant together with the testimony of his witnesses before arriving at his decision.
 - vi.* The learned magistrate erred in failing to analyse the evidence and apply proper law to the construction of the purported agreement between the Appellant and Respondent.
6. At the hearing of the appeal, the appellant contended that the magistrate did not have jurisdiction to hear the respondent's action, as the value claimed exceeded \$50,000.00. He relied upon section 16 (1) (b) of the Magistrates Court Act 1944, which places a monetary limit on the jurisdiction of Magistrates Courts.
7. In his statement of claim, the respondent has asked for judgment in the sum of \$35,000.00. The respondent also prayed that awards under the proceeding be restricted to the jurisdiction of the magistrate i.e: \$50,000.00. The sums awarded by the magistrate are clearly within his monetary jurisdiction. This is clearly a misconceived and frivolous ground.
8. The appellant submitted that the agreement between the appellant and the respondent was contrary to the Indemnity Bailment and Guarantees Act 1978. The grounds of appeal do not specify the section that the appellant relies upon. This was also not a contention taken by the appellant before the magistrate, or pressed by way of submissions in appeal. Another ground raised by the

appellant is that particulars of misrepresentation were not pleaded in the statement of claim. Nevertheless, the respondent has pleaded misrepresentation and alluded to the material facts.

9. The appellant also submitted that the magistrate had failed to take into consideration that the contract between the appellant and the respondent offended section 12 of the *iTaukei* Land Trust Act 1940. The respondent submitted that section 12 of that Act did not deal with the sale of personal property such as yaqona plants. It was submitted that the action was based on an agreement for the purchase of \$70,000.00 worth of yaqona from a plot of land, and not for the sale or lease of the land itself.
10. I agree with the respondent's submission. The yaqona plants are detachable from the land. The sale of the plants after their detachment does not require the consent of the iTaukei Land Trust Board in terms of section 12 of the *iTaukei* Land Trust Act 1940.
11. The appellant submitted that the contract between the parties made reference to the area that was purchased, and that any reference to the quantity of plants is erroneous. The respondent submitted that the appellant had shown him the yaqona plantation, and claimed that the entire patch belonged to him.
12. The respondent submitted that the appellant did not at any stage mention that only half the patch belonged to him. On this basis, the respondent submitted, the portion owned by the appellant was only \$35,000.00. The respondent submitted that the appellant fraudulently represented the entire plantation to be his when in fact half of it belonged to Satish Kumar.
13. It emerged in evidence that the plantations belonging to the appellant and Satish Kumar adjoined each other. They were separated by one to four meters. Satish Kumar, who gave evidence, said that when looked at from a distance the two plantations looked as one. He said that his yaqona plants were about ten months old and yet to mature while the plants that belonged to the appellant were two to three years old and were ready for removal. Immature plants, he said, had no

market. Two hundred immature plants, he said, would not have fetched \$35,000.00.

14. The magistrate preferred to believe the evidence given on behalf of the respondent. He has done so after seeing the witnesses and hearing their testimonies. He has accepted the respondent's evidence on the basis of credibility. He was in an advantageous position to do so. He stated that the appellant was aware of the boundaries to his plantation, and that he had a duty to make a true representation. Judgment was given in favour of the respondent. The appellant's counter claim was dismissed on the basis that there was no evidence to prove that the parties agreed that \$85,000.00 would be the contract price.
15. The oral nature of the contract poses difficulties in ascertaining what was truly intended by the parties. This is a risk that parties take in their dealings when they do not reduce transactions into writing. In resolving disputes to such transactions, the court is then called upon to decide the interests of the parties on probabilities based upon the evidence.
16. Where findings of fact are based on evidence, a court sitting in appeal will not interfere with such findings. Interference will be warranted if the findings are plainly wrong. The main findings of the magistrate that led to the judgment are not plainly wrong, and do not warrant interference.
17. However, there are matters in the judgment that require rectification.
18. The magistrate does not say the basis upon which he awarded \$35,000.00 to the respondent. Satish Kumar in his evidence said that the appellant's plants were 2 to 3 years old. In contrast, his plants were immature. These were about 10 months old, and his testimony was that they would not fetch \$35,000.00. The older plants in the appellant's farm would have fetched a higher value in comparison to the younger plants. The magistrate has ordered the payment of \$35,000.00 on the basis of his finding that half the plants did not belong to the appellant. In the court's view, this is not a fair apportionment. On the basis of the available evidence, a more equitable basis would be to take into consideration

the age of the plants in awarding damages. A precise calculation is a difficult task at this juncture. An award of \$20,000.00 would be equitable in the circumstances.

19. The magistrate has awarded general damages in a sum of \$2,000.00. He has not explained the reason for the award of general damages. There is also no assistance from the evidence in order to award general damages.
20. The appellant raised a ground of appeal that the magistrate erred in awarding interest at the rate of 5% on the judgment debt. Section 4 (1) of the Law Reform (Miscellaneous Provisions) Death and Interest Rate provides for judgment debts to carry interest at the rate of 4% per annum from the time of entering the judgment until it is satisfied. The interest rate on judgment ordered by the magistrate is revised to carry the statutory rate.
21. The appeal is dismissed subject to the variation of the magistrate's orders.

ORDER

- A. The appeal is dismissed.
- B. The appellant is ordered to pay the respondent \$20,000.00 within 21 days.
- C. The order for the payment of \$2,000.00 as general damages is struck off.
- D. The appellant is to pay the respondent costs summarily assessed in a sum of \$1,500.00 within 21 days of this judgment.

Delivered at **Suva** *via Skype* on this 30th day of **August 2023**



A handwritten signature in blue ink, appearing to read "M. Javed Mansoor".

M. Javed Mansoor
Judge