

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBA 09 of 2021

BETWEEN : **MARC WINSTON TJIN KONKOEN** and **MITCHELL MEDONA REDDY**

APPELLANTS

AND : **DORSAMI NAIDU**

RESPONDENT

Appearances: Ms. Ali A. for the Appellants
Mr. Dass for the Respondent
Date of Hearing: Ruling on Submissions
Date of Ruling: 20 February 2023

R U L I N G

1. The Appellant (Marc Winston TJIN Konkoen) was a client of the Respondent Legal Practitioner. On 30 January 2020, the Respondent/Plaintiff had filed a claim in the Nadi Magistrates Court seeking payment of \$10,135.00 being discounted legal fees due and owing in respect of legal services rendered Nadi Criminal matter and a Lautoka High Court action.
2. The Court records show that the matter was first called on 10 March 2020 when Ms. Ali appeared for the Appellant/Defendant and Mr. Nair for the Respondent/Plaintiff. On that occasion, the Court gave the Appellant 21 days to file and serve Statement of Defence and then adjourned the case to 28 April 2020.
3. There was no appearance by the Appellant on 28 April 2020, or thereafter on 23 June 2020. Understandably, that was the period when the first or the second wave of the Covid -19 pandemic was hitting Fiji – and the rest of the world for that matter.
4. On 23 June 2020, the Learned Magistrate directed that the matter proceed by “Formal Proof by a way of Affidavit...”. She then adjourned the case to 11 August 2020 for formal proof.
5. The Learned Magistrate however was on sick leave on 11 August 2020. The matter was then adjourned to 06 October 2020 for mention. On 06 October 2020, the Learned Magistrate adjourned the matter to 19 January 2021 for Ruling.
6. On 19 January 2021, the Learned Magistrate delivered the Ruling in open Court.

7. It appears that the Learned Magistrate was influenced by two factors when deciding to proceed to formal proof:
- (i) first is the fact that the appellant had failed to file a Statement of Defence despite having been given time
 - (ii) second is the fact that neither the defendant nor his counsel ever bothered to follow up with the Court Registry and send instructions
8. I think the above answers the main point of contention raised – as to whether or not the Learned Magistrate was correct in directing formal proof. In my view, she was entitled to.
9. I have read the Ruling. It is well written and well-reasoned. A Bill of Costs had been rendered to the Appellant by the Respondent and despite numerous reminders – the defendant had simply failed to respond or make any attempt to settle.
10. I dismiss the appeal. Costs to the Respondent which I summarily assess at \$1,000-00 (one thousand dollars only).



Anare Tuilevuka
JUDGE
Lautoka

20 February 2023