

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Appeal No HBA 17 OF 2022
(Magistrates Court Civil Case No 215 of 2019)

BETWEEN : **ADVANCED JOINERY BUILDING SOLUTIONS**

Appellant/Original Defendant

AND : **AUTOMART PTE LIMITED**

Respondent/Original Plaintiff

BEFORE : **Banuve, J**

Counsels : Mr P. Kumar for the Appellant
 : Ms N. Choo for the Respondent

Date of Hearing : 8th April 2024

Date of Judgment : 19th April 2024

JUDGMENT

A. INTRODUCTION

1. On 19th September 2022 the Magistrates Court in a **Ruling on Formal Proof** issued orders as follows;
 - (a) *Judgment in the sum of \$24, 067.25 with interest at the rate of 13.5% per annum until the date of this judgment.*
 - (b) *Interest on the total judgment sum at the rate of 5% per annum pursuant to Order XXXII Rule 8 of the Magistrates Court Rules 1945.*
 - (c) *Costs summarily assessed at \$500*
2. The Appellant/Original Defendant initially filed a **Notice and Grounds of Appeal** pursuant to Order 37 rule 3(1) of the *Magistrates Court Rules 1945*, in preparation for the filing of the appeal in the High Court, thereafter.
3. The Respondent/Original Plaintiff in the Magistrates Court had initiated a matter on 24th September 2019, by way of Writ in which a Statement of Claim was indorsed seeking the payment of a sum of \$24,000, with interest at the rate of 13.5% per annum, from the date of judgment
4. The outstanding sum constituted the amount remaining unpaid for the purchase of a 'Sino-Howo' 12 Wheeler Dumper Truck (Registered No. JP 330), valued at FJD \$43,000, by the Appellant/Original Defendant. The latter paid off an amount of \$19,000 for the vehicle, but after 17th April 2019, ceased making further payments. Despite the Respondent/Original Plaintiff issuing demand notices for the payment of the outstanding amount, the Appellant/Original Defendant has not cleared the balance owed, leading to the filing of the claim on 14th September 2019, limited to the jurisdiction of the Court below.
5. A Statement of Defence was filed in the Court below on 10th December 2019, premised on non- admission and denial of the substantive claim, and instead the

Appellant/Original Defendant sought to plead a set-off of the outstanding payment with the proceeds of sale of a vehicle it owned.

6. The matter was fixed for hearing in the Court below, on 19th September 2022, at 8.30 am. On that date, the matter was called at 8.40 am, with only the Respondent/Original Plaintiff represented. The Appellant/Original Defendant was not represented and the Magistrate stood the matter down until 8.50 am¹, to await counsel, prior to the commencement of the hearing. When the matter was called at 8.50 am, the Appellant/Original Defendant remained unrepresented, and as there was no reason provided for counsel's absence, the Magistrate decided to proceed, with the Respondent/Original Plaintiff formally proving its case.
7. After hearing the evidence of the Respondent/Original Plaintiff, the Court entered judgment against the Defendant as follows;
 - (i) *Judgment in favour of the Plaintiff for the sum of \$24,067.25 at the rate of 13.5% per annum up to date of judgment.*
 - (ii) *Post Judgment interest at the rate of 5% per annum.*
 - (iii) *Costs summarily assessed at \$500*

B. The Appeal

8. The **Notice and Grounds of Appeal** filed against the decision of the Magistrate of 19th September 2019 were;
 1. *THAT the learned Magistrate erred in law and in fact by failing to wait for the Appellant and the Solicitor for the Appellant to arrive prior to proceeding with the hearing of this matter on 19th September 2022 at 8.30 am;*
 2. *THAT the learned Magistrate erred in law and in fact by failing to consider that the Plaintiff in this matter had failed to disclose any documents*

¹ See p 35 **Record of the Magistrate's Court** at Suva dated 25th November 2022

mentioned in paragraph 6 of the Ruling on Formal Proof prior to the hearing which they were willing to rely on at the date of the hearing.

9. Both parties, through their counsel filed written submissions which the Court has found of assistance in clarifying their respective position.

10. Non-Appearance of the Appellant/Original Defendant

The Court Record affirms that the Magistrate delayed the start of the hearing until 8.40 am on 19th September 2021, and in the absence of the Appellant/Original Defendant's counsel, further stood down the hearing until 8.50 am, on that day. The Magistrate delayed the commencement of proceedings on 19th September 2022, to accommodate counsel's absence. The hearing proper, only commenced after further time was exhausted and when no explanation was forthcoming to the Court, to explain counsel's absence.

The Court finds the comments of this Court in Verma v Nisha [2021] FJHC 286² relevant, even if it, respectfully, restates a long standing tenet of practice³,

"Though adjournments are inevitable in certain unavoidable circumstances, it should not be considered as order of the day to delay or postpone matters for the convenience of the parties. It should be borne in mind that wasted time of court is lost time for all prospective litigants who await time of the court, for hearings"

The sense of entitlement conveyed in this appeal ground, that the hearing of 19th September 2022, be delayed by the Court until the Appellant/Original Defendant's counsel deigned to turn up, *without any prior arrangement provided to explain his absence according to a hearing fixture he had earlier agreed to*, is wholly misplaced and this ground of appeal is dismissed as without merit, in law or fact and contrary to long standing practice.

11. Failing to consider Non-Disclosure by the Respondent/Original Plaintiff.

² (per *Amaratunga J*-Cited in the Respondent's written submissions filed on 20th July 2023.

³ Rules of Professional Conduct and Practice, Chapter 3, **Rules 3.2(i) and (ii)**

The Court notes the submissions of the Respondent/Original Plaintiff in response to this ground of appeal that where there are no provisions in the *Magistrates Court Rules 1945*, Order 3 Rule 8 ordains, that the options⁴ provided in the *High Court Rules 1988* for the discovery of documents be considered by the Respondent/Original Plaintiff in the preparation for the hearing of the matter in the Court below.

No such option was exercised by the Appellant/Original Defendant in the Court below. At the close of pleadings the Appellant/Original Defendant opted to have the matter set for hearing, rather than seek discovery of documents pursuant to Order 24 of the *High Court Rules 1988*.

This ground of appeal is dismissed also as having no merit.

C. FINDING

- (i) The appeal grounds are dismissed *in toto* as having no merit.
- (ii) The **Ruling on Formal Proof** issued by the Magistrates Court on 19th September 2022 in Civil Action No. 215 of 2019, is affirmed.
- (iii) Costs, summarily assessed at \$700 to be paid by the Appellant/Original Defendant to the Respondent/Original Plaintiff.




Savenaca Banuve
Judge

19th April, 2024
At Suva

⁴ Orders 24 Rule 1, 2 and 3