

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBA 23 of 2020

BETWEEN: **CREDIT CORPORATION (FIJI) PTE LIMITED** now known as **CREDIT CORPORATION (FIJI) PTE LIMITED** a limited liability company having its office at Credit House, 10 Gorrie Street, Suva, Fiji Islands.

APPELLANT/PLAINTIFF

AND: **LUKE NASETAVA** of 37 Nasinu Road, Nasinu Fiji, Transport Provider/Farmer.

FIRST RESPONDENT/ FIRST DEFENDANT

AND: **JOELI QARAVANUA BUKARAU** of 37 Nasinu Road, Nasinu Fiji, Supervisor.

SECOND RESPONDENT/SECOND DEFENDANT

BEFORE: **Honorable Mr. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Khan D.** - for the Appellant/Plaintiff
Mr. Luke Nasetava in person [1st Respondent/Defendant]
Joeli Qaravanua Bukarau in person [2nd Respondent/Defendant]
Deceased

DATE OF JUDGMENT: 24th September, 2024

JUDGMENT

[Appeal against the Ruling of Resident Magistrate delivered on 11th August 2020]

INTRODUCTION

[1] Before this Court is the, Plaintiff/Appellant's, Credit Corporation (Fiji) Limited appeal filed against the Ruling of the Magistrates Court, Nasinu delivered on 11TH August 2020 wherein the presiding Resident Magistrate made the following order:

- (i) Judgment in the sum of \$26,719.32 awarded to the Plaintiff only in regards to the First Defendant, Luke Nasetava;
- (ii) Plaintiff to pay the summarily assessed legal cost of \$8,000 to the Second Defendant; and
- (iii) Second Defendant is not liable for the claim.

Grounds of Appeal

[2] There are altogether a total of three (3) Grounds of Appeal filed on 04 September 2020:

In Summary:

- (i) The Learned Magistrate erred in Law and in fact when he failed to order the first Respondent to pay costs to the Appellant in the Magistrates Court and disregarded the Common Law Principle that the unsuccessful party pays the legal costs of the successful party in the litigation. Further, there were no reasons provided to deprive the Appellant of its costs in the Magistrates Court.
 - (ii) The Learned Magistrate erred in Law and in fact when he dismissed the Appellant's claim against the second Respondent; Joeli Qaravanua Bukarau.
 - (iii) The Learned Magistrate erred in Law and in fact when he awarded costs of \$8,000 against the Appellant in favour of the Second Respondent.
- [3] However, on 21st February 2023, the Appellant/Plaintiff's Counsel informed Court and filed submissions that he will only proceed with on **two (2) grounds of Appeals, ground 1 and 3 only, instead of three (3) grounds as earlier** on filed herein.
- [4] **Ground (2) has now been abandoned because the second Respondent is now a deceased.**

[5] Ground (1) and (3) of Appeal: In summary :

Ground (1): That Learned Magistrate erred in Law and in fact when he failed to order the 1st Respondent to pay costs to the Appellant in the Magistrate's Court.

Ground (3): The Learned Magistrate erred in Law and in fact when he awarded costs of \$8,000 against the Appellant/Plaintiff in favour of the second Respondent, Joeli Qaravanua Bukarau.

The Appellant/Plaintiff's Submission

Ground (1)

The Learned Magistrate disregarded the common Law Principle that the unsuccessful party pays the legal costs of the successful party in litigation.

Further, there were no reasons provided to deprive the Appellant/Plaintiff of its Costs in the Magistrates Court.

The conduct of the parties, the proceedings before and after the dispute, the monies spent in litigation, the time spent and the work carried out by the Appellant/Plaintiff and the Appellant's solicitor, the Appellant in this matter was the successful party against its claim on the first Respondent, Luke Nasetava. Thus, it is entitled to full costs as the usual rule of practice states that the costs follow the event and in this situation, the Appellant suggest that \$800 is a reasonable amount of costs awarded to them against the first respondent, Luke Nasetava.

Ground (3)

The sum of \$8,000 was contrary to the Judicial norms, equity and good conscience.

The Discretion to award the costs is not an unfettered discretion and should have been exercised reasonably following the Judicial general principles.

The Appellants claim against the second respondent was unsuccessful.

The second respondent's counterclaim against the Appellant was also unsuccessful.

In the circumstances, the Appellant's counsel submitted that both parties should have borne their own costs.

In the event that this Court determine that costs are payable by the Appellant to the second Respondent, then counsel submitted that the \$8,000 awarded is excessive.

The Learned Magistrate erred in Law in failing to exercise discretion when awarding the second respondent \$8,000 in legal costs summarily assessed with the reason that the trial went over for three days and each of those days, the trial went on more than 2 hours with submissions.

The sum of \$8,000 that was ordered by the Learned Magistrate for the Appellant/Plaintiff to pay the Second Respondent is too excessive and unfair and that \$800 would have been a reasonable amount for the awarded costs to the second Defendant.

First Respondent's Submissions:

Filed writ on submission quoting a notice of case authorities which dealt with the issue of entitlement to costs for a successful litigant.

Orders for costs made in cases have been set aside by the Appellate Courts.

He is asking that the action against him be dismissed.

It would be unjust for the Appellant/ Plaintiff now be granted costs against the First Respondent as they suffered no additional expenses and/ or injustice in their pursuit of the claim before the Magistrate's Court.

Determination

- [6] The Appellant initially commenced proceedings in the Nasinu Magistrate's Court against the Respondents in the Magistrates Court Civil Action No. 72 of 2013 to recover \$26,719.32 pursuant to a loan facility given to the Respondent by the Appellant.
- [7] The Learned Magistrate after completing trial delivered his judgement on 11th August 2020 and entered Judgment against the First Respondent, Luke Nasetava. However, the court dismissed the Plaintiff's claim against the Second Respondent, Joeli Qaravanua Bukarau.
- [8] Learned Magistrate's reasons for dismissing the claim against the Second Respondent was that **'he found that the second Respondent was not properly explained the loan Agreement, the Bill of Sale and the Legal ramifications of defaulting repayments.'**
- [9] The Learned Magistrate did not award costs against the First Respondent, but rather ordered costs against the Appellant to pay \$8,000 to the Second Respondent as legal costs.
- [10] **Ground (1):** The general principle of awarding costs is that 'costs follows the event'. This means that the costs of an action are usual awarded to the successful litigant. Unless there are exceptional circumstance in a special instance, the rule is that, the costs should follow upon success. Bowen LJ in **Forster v Farquhar and others** [1893] 1. Q.B 564 stated at page 569 that:

'We can get no reason to a perfect test than the inquiry whether it would be more fair as between the parties that some exception should be made in the special instance to the rule that the costs should follow upon success.'

[11] In **Berwick v Singh** [1977] FJLawRp ; [1977]23 FLR101 (25 March 1977); The Court of Appeal said the following:

'A partly successful plaintiff was entitled to his full costs on the usual rule of practice that costs as follow the event, but when the Plaintiff and defendant claimed against each other and it was held that both have been to blame, the award of costs was discretionary.'

[12] In the current matter, the Learned Magistrate erred in not awarding costs against the first respondent as the Appellant's claim against the first respondent was successful. The Appellant was a successful litigant. The Appellant had a meritorious claim to recover a debt that it is rightfully owed. The litigation in the lower court was not in any way frivolous and/or vexatious.

[13] The First Respondent was served with default notices and was required to make arrangements to clear their arrears.

[14] The continuous default resulted in the commencement of legal proceedings to recover the debt.

[15] Upon the perusal of the entire court record, I find that the litigation in the lower court was meritorious. The Appellant/ Plaintiff was successful in its claim against the First Respondent. However, unsuccessful against the second respondent as can be ascertained from the Judgment delivered by the Resident Magistrate on 11th August 2020.

[16] In **Professionals West Realty (Fiji) Ltd v Facciolo** [2012] FJCA 93; ABU 0017.2011 (30 November 2012) CORAM: Hon. Mr. Justice Chitrasiri K. T., Hon. Mr. Justice Chandra S. and Hon. Mr. Justice Kotigalage C stated in paragraph [21] the following:

"The court is to have regard to all the circumstances in deciding whether costs were proportionately and reasonably incurred or were proportionate and reasonable in amount, if it is assessing costs in the standard basis. If it is assessing costs in the indemnity basis, it must also have regard to all the circumstances, in deciding whether costs were unreasonably incurred or unreasonable in amount. In particular the court must give effect to any orders which have already been made. The court must also have regard to:

1. The conduct of all the parties, including in particular conduct before, as well as during, the proceedings and efforts made, if any, before and during the proceedings in order to try to resolve the dispute.
2. The amount or value of any money or property involved.
3. The importance of the matter to all the parties.
4. The particular complexity of the matter or the difficulty or novelty of the question raised.

5. The skill, effort, specialized knowledge and responsibility involved.
6. The time spent, on the case; and
7. The place where, and the circumstances in which, work or any part of it was done.

[17] The Appellant in this matter was the successful party against all its claims against the First Respondent.

[18] Thus, bearing above in mind, the Appellant/ Plaintiff is entitled to full costs as the usual rule of practice stated that costs follow the event and in this situation, the Appellant/ Plaintiff is entitled to a reasonable costs of \$1,000 awarded to the Appellant/ Plaintiff against the First Respondent, Luke Nasetava accordingly.

[19] Ground (1) of the Appellant/ Plaintiff succeeds.

[20] I make an order that the First Respondent, Luke Nasetava pay a costs of \$1,000 to the Appellant/ Plaintiff in 28 days' time frame.

[21] **Ground (3):** The Learned Magistrate erred in Law and in fact when he awarded costs of \$8,000 against the Appellant/ Plaintiff in favour of the second Respondent, Joeli Qaravanua Bukarau.

[22] The Appellant/ Plaintiff's claim against the Second Respondent was unsuccessful in the Magistrate's Court wherein the Learned Magistrate dismissed the Plaintiff's claim against Second Respondent on 11th August 2020.

[23] However, the Second Respondents counterclaim against the Appellant/ Plaintiff was also unsuccessful.

[24] In the circumstance the question then arises to mind is '**whether both parties to the proceedings should have borne their own costs?**' was it a win-win situation between the Appellant/ Plaintiff and second Respondent?

[25] The Appellant/ Plaintiff submitted that in the event that this Court determines that costs are payable by the Appellant/Plaintiff to the Second Respondent, Joeli Qaravanua Bukarau, then the \$8,000 costs awarded is too excessive.

[26] However, a sum of \$800 would have been a reasonable amount for the awarded costs to the Second Defendant.

[27] The Appellant/ Plaintiff commenced the litigation against the Second Respondent after all attempts to pursue costs effective alternatives to recover the Appellants/ Plaintiff's Debt was pursued first.

- [28] The Learned Magistrate in his Judgement found that the Second Respondent was not properly explained the loan agreement, the Bill of Sales and the Legal ramification of defaulting repayments.
- [29] The Learned Magistrates proceeded to dismiss the Appellant/ Plaintiff's claim against the Second Respondent.
- [30] However, the Learned Magistrates ordered costs against the Appellant/ Plaintiff to pay \$8,000 to the second Respondent as legal costs.
- [31] Awarding of costs is governed by **Order 62 Rule 3 of the High Court Rules 1988**. It stipulates that:

"If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs."

- [32] It should be borne in mind that as mentioned in **Rule 3 of the High Court Rules 1988 referred hereinabove**, again the awarding of costs is entirely in the hands of the Judge such discretion vested in Court always being exercised in a judicious manner.

In Conclusion

- [33] Well, I reiterate that the Appellant/ Plaintiff failed to succeed in his claim of debt against the second respondent. Further, the Second Respondents counterclaim against the Appellant/ Plaintiff was also unsuccessful.
- [34] It is only appropriate, just and fair that the Appellant/ Plaintiff should pay the second Respondent a reasonable appropriate sum that I exercise my discretion in to assess at a sum of \$1,000 to be paid by the Appellant/ Plaintiff to the Second Respondent within 21 days' time frame.
- [35] I find that the sum of \$8,000 costs awarded against the Appellant/Plaintiff to be paid to the second respondent is too excessive and thus, harsh in the circumstances.
- [36] The sum of \$8,000 Costs awarded to the second Respondent against the Appellant/Plaintiff is set aside.
- [37] The Appellant/ Plaintiff's appeal on ground (3) succeeds in part only.
- [38] I now proceed to grant and make the following orders.

Orders

- (i) Ground no. 1 of the / Appellant/Plaintiff's appeal succeeds.
- (ii) The First Respondent, Luke Nasetava to pay to the Appellant/ Plaintiff a sum of \$1,000 costs of the proceedings within a timeframe of 28 days.
- (iii) Grounds (3) of the Appellant/ Plaintiff's Appeal succeeds partially.
- (iv) The Appellant/ Plaintiff to pay a sum of \$1,000 costs to the Second Respondent within a time frame of 21 days.
- (v) The \$8,000 costs awarded by the Learned Magistrate against the Appellant/ Plaintiff to pay the Second Respondent \$8,000 in the Magistrates Court proceedings is set aside.
- (vi) Order accordingly.

Dated at Suva this 24th day of September ,2024.




VISHWA DATT SHARMA
PUISNE JUDGE

cc: Haniff & Tuitoga Lawyers, Suva
Luke Nasetava, Suva Prison
Joeli Qaravanua Bukarau, Nasinu [Deceased]