

IN THE HIGH COURT OF FIJI  
AT SUVA  
APPELLATE JURISDICTION

Civil Appeal NO. 21 of 2024

**BETWEEN:**            **PETER SAVONA** of Lami.

**Appellant**

**AND:**                    **SERUPEPELI SERUVATU** of Lot 46, Ono Street, Samabula, Suva.

**Respondent**

**Appearance:**

**Appellant:** In Person.

**Defendants:** Mr. S, Valenitabua (Ratumaiyale Esquire)

**Date of Hearing:** 2<sup>nd</sup> July 2025.

**Judgment**

**A.    Introduction**

[1]    This matter initiated in the Small Claims Tribunal (SCT) in February 2022. On 27<sup>th</sup> February 2025 I extended the time to appeal. The appellant was given 7 days to file the grounds of appeal. The matter was stayed pending determination of the appeal.

**B.    Brief History**

[2]    In the SCT, the Respondent was the claimant, the appellant being the respondent. On 6<sup>th</sup> April 2022, the Tribunal ordered in favour of the claimant. On 31<sup>st</sup> August 2023, a motion was filed on behalf of the Appellant in the Magistrate's Court seeking leave to appeal the SCT Ruling out of time and a stay of the JDS and other proceedings. On 17<sup>th</sup> January 2024, the Learned Magistrate delivered a ruling and dismissed the application and ordered no costs.

**C.    The Grounds of Appeal**

[3]    The grounds of appeal can be briefly summarized as follows:

- (a) *That the Learned Magistrate erred in law and in fact by failing to consider the existence of a written agreement between the parties. The parties being Ajesh Bidesi and Peter Savona.*
- (b) *That the Learned Magistrate erred in law and in fact by failing to consider that the Form 1 filed in SCT by the Respondent was incomplete and lacking in number of essential details, like the claim number and the date of lodgment.*

- (c) That the Learned Magistrate erred in law and in fact by not recognizing that the affidavit of service was not properly executed.
- (d) That the Learned Magistrate erred in law and in fact in failing to consider that the Appellants non-attendance at the SCT was due to insufficient information regarding the claim and the status of the proceedings.
- (e) That the Learned Magistrate erred in law and in fact when he failed to give sufficient weight to the fact that the Appellant was unrepresented and unfamiliar with court procedures.
- (f) That the Learned Magistrate erred in law and in fact when he failed to consider the advice given by the court officer to write to the Chief Registrar misled the Appellant and contributed to the delay in filing the appropriate appeal.

#### **D. Powers of High Court on appeal**

- [4] The Magistrates' Court Rules gives wide powers to the High Court in dealing with appeals from it. The powers of the High Court sitting as an appellate court from a decision of a Magistrates Court are set out in Order XXXVII Rules 18 and 19. The Rules are as follow:

##### ***“General Powers of Appellate Court***

*18. The appellate court may, from time to time, **make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its finding on any question which the appellate court thinks fit to determine before final judgment in the appeal, and, generally, shall have as full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the appellate court as a court of first instance, and may rehear the whole case, or may remit it to the court below to be reheard, or to be otherwise dealt with as the appellate court directs.**(emphasis is mine)*

*Power of appellate court to give any decision or make any order*

*19. The appellate court shall have power to give any judgment and make any order that ought to have been made, and to make such further or other orders as the case may require, including any order as to costs. These powers may be exercised by the appellate court, notwithstanding that the appellant may have asked that part of a decision may be reversed or varied, and may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision.” (emphasis added)*

- [5] The power of the High Court regarding the Appeals from a Magistrate's Court in terms of Rule 18 and Rule 19 include re hearing on the documents that are contained in the copy record. The powers of the Magistrate Court can be exercised by the High Court in the exercise of Appellate powers.
- [6] In **Aaryan Enterprise v Mehak Unique Fashion [2011] FJHC 727; Civil Appeal 17.2011** (decided on 10 November 2011) (unreported) Calanchini J (as his Lordship then was) held:

“In my judgment the jurisdiction conferred on this Court as an appellate court under Order XXXVII to hear appeals from the Magistrates Court entitles the Court to consider the matter in question as a court of first instance (i.e. afresh) unfettered by the decision of the learned Magistrate and as a result, I am entitled to exercise my own discretion. Under Order XXXVII I am not restricted to reviewing the manner in which the learned Magistrate exercised her discretion. (See **CM Van Stillevoeldt BV - v. EC Caviers Inc**[1983] 1 All ER 699)11 **C M Van Stillevoeldt BV v El Carriers Inc** [1983] 1 All ER 699 .”

- [7] The general power of appellate court is discussed in a more recent decision in England , in **Beacon Insurance Co Ltd v Maharaj Bookstore Ltd** [2014] UKPC 21; [2014] 4 All ER 418 at 423 (Privy Council) and it was held:

*‘It has often been said that the appeal court must be satisfied that the judge at first instance has gone ‘plainly wrong’. See, for example, Lord Macmillan in Watt (or Thomas) v Thomas* [1947] 1 All ER 582 at 590, [1947] AC 484 at 491 *and Lord Hope of Craighead in Thomson v Kvaerner Govan Ltd* [2003] UKHL 45, 2004 SC (HL) 1 (at [16]–[19])......’

- [8] An appeal is against the final decision and not against the reasons given in the decision, so even if reasoning is wrong there may not be an appeal unless the final decision is wrong. (See Fiji Court of Appeal decision **Kaur v Singh** (unreported ABU 11 of 1998; August 1999) and **Commonwealth of Australia and Others v Bank of New South Wales and Others** [1949] 2 ALLER 755 at 763).

- [9] When a party is aggrieved by the decision of the Small Claims Tribunal Decree 1991 (SCT Decree) there is a right of appeal to the Magistrate’s Court. It reads 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.”*

#### **E. Determination**

- [10] The appellant through Legal Aid had filed a motion seeking leave to appeal the SCT ruling, stay of proceedings and other enforcement orders. The Learned Magistrate dismissed the application.

- [11] I have perused the ruling of the Learned Magistrate. The Learned Magistrate had before him the affidavit of the appellant. The affidavit of the Appellant clearly set out the background of the claim. He annexed the sales and purchase agreement which was entered into between him and Steve Ajesh Bidesi. He annexed an incomplete Form 1 without the relevant details, which is the case number and the date of hearing. He also annexed the letter to the Chief Registrar following the advice from the Court Officer.

- [12] The Learned Magistrate did not agree with the Appellant and refused him leave to appeal out of time. The Learned Magistrate erred when he found that the application by the Appellant did not have merit. It is unjust to allow a matter which was determined in the absence of a party to stand. It is unjust for a matter to be heard without proper service on the other party. It is unjust for a person who is not party to an agreement to be claiming. All these matters came up on appeal before the Learned Magistrate and then it came before me when I dealt with the issues on leave to appeal out of time.
- [13] This matter first came before me on 19<sup>th</sup> November 2024. I dealt with the notice of motion to enlarge time. On 27<sup>th</sup> February 2025 I extended time to appeal the Learned Magistrates ruling. When I was writing this ruling I had called for both the Magistrates Court and the SCT files. I had during the course of writing the ruling perused both the files. Going through the SCT file during the writing of the Ruling I found merit in the issues brought up by the Appellant. I even asked Mr. Valenitabua to look at the files and recall informing him that he might find things in the file which will better inform him.
- [14] I have noted on 9<sup>th</sup> April 2025, Mr. Valenitabua informing me that he has familiarized himself with the contents of the file. Subsequently the files were returned to the respective Registries for the preparation of the records.
- [15] At the hearing of this matter, I was amazed to note that the records that were provided as part of the SCT records are different from what was in the SCT file that was given to me earlier. The documents that the appellant had annexed in his affidavits which were part of the file were no longer part of the records.
- [16] When I perused the SCT file I found a number of documents were incomplete. I had noted that Form 1 was incomplete without a hearing date. A copy of that was in the file. Even the affidavit of service in the file when I had seen the file was incomplete. It is no longer there. The records that I see now were not part of the records when I had the file before me. How they were completed once the records were called for can only be explained by those preparing the records. The records seem to have been manipulated.
- [17] I have noted evidence of improper notation of hearing dates and improper affidavit of service. Something is amiss in the SCT. It need be addressed aptly. The Appellant was not heard in the SCT. He needed to have his say before the matter is determined. The Referee only had one side of the story before he determined the matter. In fact the contract was between the appellant and one Steve Ajesh Bidesi. It is clear from the claim filed by the Respondent in SCT. The agreement relied upon by the Respondent is dated 4<sup>th</sup> February 2021 and it states an “agreement between Peter Savona and Steve Ajesh Bidesi”. I note it is signed by the appellant and Ajesh Bidesi. The respondent also signed it. In what capacity he signed this agreement is not explained in the agreement.
- [18] The meaning of **privity of contract** is explained in **Price v Easton** (1883) 4 B & Ald.433, where it was established:

*"That the Plaintiff not being a party to the contract was unable to recover, and it was said that an action for breach of contract must be brought by the person from whom the consideration moved."*

In simple terms the doctrine of privity of contract established that only parties to the contract, that is, those that provided consideration, could sue or be sued under the contract. Third parties could not derive rights from, nor have obligations imposed on them by, someone else's contract. The contract was between Peter Savona and Steve Ajesh Bidesi. Serupepeli Seruvatu was not a party to the contract. Serupepeli brought about the claim as if he entered into an agreement with Peter Savona. This is not so. His claim is misleading.

[19] For the reasons given the appeal succeeds. The decision of the Referee and the Learned Magistrate are set aside. The claim is dismissed. Any monies paid by the Appellant to the Respondent is to be refunded to him within 21 days. The Respondent is to pay the appellant \$1000.00 as costs within 21 days. The costs have been summarily assessed.

### Court Orders

- (a) Appeal succeeds.
- (b) The decision of the Referee and the Leaned Magistrate are set aside.
- (c) The claim is dismissed.
- (d) Any monies paid by the Appellant to the Respondent is to be refunded to him within 14 days.
- (e) The Respondent is to pay the appellant \$1000.00 as costs within 21 days. The costs have been summarily assessed.

.....  
Chaitanya S.C.A Lakshman  
**Puisne Judge**



25<sup>th</sup> July 2025