

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
(CIVIL APPELLATE JURISDICTION)**

High Court Civil Appeal No. HBA 03 of 2025

IN THE MATTER of an Appeal from the decision of the Magistrate's Court of Lautoka in Civil Action No. 140 of 2020

BETWEEN : **RAJENDRA PRASAD, of Vuda Point. Lautoka**
**APPELLANT
(ORIGINAL PLAINTIFF)**

AND : **KALISITO MAISAMOA, of Rakiraki Town**
**RESPONDENT
(ORIGINAL DEFENDANT)**

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Ms. Prasad R. For the Plaintiff – Appellant.
Mr. Maisamoa K. Defendant – Respondent (appearing in person)

DATE OF HEARING : 21st May 2025 (Agreed to dispose by way of written submissions)

W. SUBMISSIONS : By the Appellant filed on 30th June 2025.
By the Respondent filed on 19th March 2025.

DATE OF JUDGMENT : 17th September 2025.

JUDGMENT

A. INTRODUCTION:

1. This is an Appeal preferred by the Plaintiff-Appellant (“the Appellant”) against the Judgment dated and pronounced by the learned Resident Magistrate (“the Magistrate”) of Lautoka on 18th December 2024.
2. By the impugned judgment, the Magistrate had dismissed the Appellant’s action against the Defendant -Respondent (“the Respondent”) with an order for costs in a sum of \$3,000.00 payable by the Appellant to the Respondent.
3. The Appellant had sued the Respondent before the Magistrate under Civil Action Case No- 140 of 2020 claiming general damages on account of the alleged trespass without lawful excuse and assault.
4. Being aggrieved by the above decision, the Appellant, having filed the Notice of Intention to Appeal on 24th December 2024, subsequently on 13th January 2025 filed the Notice and Grounds of Appeal adducing 12 Grounds.

5. The said Grounds of Appeal relied upon by the Appellant are as follows:

1. *THAT the Learned Magistrate erred in the law and in fact in delivering a judgment in the within matter when the evidence of the Appellant and the Respondent was already taken by the Presiding Magistrate and the said Presiding Magistrate had failed to deliver a decision on the evidence so taken.*
2. *THAT the Learned Magistrate erred in the law and in fact in delivering a judgment on a matter not presided on by her.*
3. *THAT the Learned Magistrate erred in law and in fact in delivering a Judgment on a matter not presided on by her and after a lapse of two years thereby causing a substantial miscarriage of Justice to the Appellant.*
4. *THAT the Learned Magistrate erred in law and in fact in dismissing the Appellant's claim based on speculation and hypothesis not supported by evidence taken at the hearing.*
5. *THAT the Learned Magistrate erred in law and in fact by dismissing the Appellants claim based on poor and ineffective analysis of the evidence.*
6. *THAT the Learned Magistrate erred in law and in fact by failing to apply the correct legal principles to found a case for the Plaintiff thereby causing a substantial miscarriage of justice to the Plaintiff*
7. *THAT the Learned Magistrate erred in law and in fact in using convoluted and distorted facts to dismiss the Appellant's claim thereby causing a substantial miscarriage of Justice.*
8. *THAT the Learned Magistrate erred in law and in fact by ignoring the basic rules of pleadings and failed to give any weight whatsoever to the Respondent's admission in his defence that he had in fact physically arrested the Appellant when at law he was not entitled to arrest the Appellant.*
9. *THAT the Learned Magistrate erred in law and in fact by exhibiting bias in favour of the Respondent.*

PARTICULARS OF BIAS

- (i) Giving undue weight to that the Respondent and the fact that he was a legal Practitioner.*
 - (ii) Suggesting that the Respondent as a Legal Practitioner was carrying out a lawful exercise in entering upon the Appellant's property and arresting him.*
 - (iii) Failing to deal with the counterclaim as in the event of a dismissal of the same, the Respondent would have been penalized by an award of costs against him.*
 - (iv) Ruling in favour of the Respondent without any evidential basis.*
10. *THAT the Learned Magistrate erred in law and in fact in dismissing the Appellant's claim when the totality of evidence received in the proceedings warranted a verdict in favour of the Appellant.*
 11. *THAT the Learned Magistrate's Order of costs is exorbitant and not based on correct legal principles and also unjustified.*

12.THAT the Appellant prays that the whole of the impugned Judgment be wholly set aside and a verdict be delivered in favour of the Appellant together with an order of costs against the Respondent both of the Magistrates Court and the High Court.

6. The hearing of the Appeal was agreed to be disposed by way of written submissions and accordingly, parties have filed their respective written submissions as stated above.

B. BACKGROUND

Civil Action No- HBC -46 of 2017.

7. The Respondent hereof, who is a Legal practitioner, was representing one DEO SAGAYAM, who was the Defendant- Appellant in Civil Appeal bearing No- HBC 46 of 2017, wherein the Appellant in this action, namely, RAJENDRA PRASAD was the Plaintiff -Respondent.
8. The said RAJENDRA PRASAD, as the Plaintiff therein, had commenced proceedings under Order 113 of the High Court Rules 1988 against the said DEO SAGAYAM for vacant possession of the property contained within Crown Lease reference No.4/7/2015 more particularly described as lot 2, Plan LDSW 448 proposed S/D Lot 4 ND 5014 situated at Vuda('the land').
9. After hearing the matter, the Master on 13th October 2017 delivered the Ruling granting the vacant possession of the said land to the Plaintiff-Respondent therein, namely RAJENDRA PRASAD (the Appellant in this action).
10. Being aggrieved by the said Ruling , the Defendant-Appellant therein , DEO SAGAYAM preferred an Appeal against the Master's ruling , and after hearing the Appeal, Hon. Mohammed Ajmeer-J (as he was then) on 15th June 2018 delivered the Judgment granting the reliefs, inter alia, allowing the appeal, Setting aside Master's Ruling dated 17th October 2017 and for the Appellant , DEO SAGAYAM, to be restored to the possession thereof, if he had been evicted from the land following the Master's Ruling dated 17th October 2017.
11. The Defendant- Respondent in this action, namely. Mr. KALISITO MAISAMOA, who was appearing for the Defendant- Appellant in the said action No-HBC 46 of 2017, namely, DEO SAGAYAM, on 13th September 2018 caused the Orders therein to be perfected, sealed and, as per his pleadings and evidence, proceeded to the subject land, along with his client, the said DEO SAGAYAM, to serve it for the purpose of the execution.

Current Action NO- HBC 140 of 2020

12. It was at the said point of time of service / attempted service, the incident leading to this action No- HBC 140 of 2020 said to have occurred within the subject land. The Plaintiff-Appellant hereof , RAJENDRA PRASAD, as per his SOC, alleges that the Defendant- Respondent (Mr. MAISAMOA) trespassed upon his land without any lawful authority or excuse and assaulted him. Conversely, the Respondent in his SOD and evidence has taken up the position that he went to the subject land along with his client in the said action, namely, DEO SAGAYAM, to serve the order and inform the party, who was occupying the property, to vacate the property. In short, his stance was that he was carrying out his duty as a Lawyer for and on behalf of his client.

C. ANALYSIS

13. The task before me hereof, in exercising the Appellate jurisdiction of this Court, is to examine the correctness of the impugned judgment delivered by the Magistrate's Court, whether the Magistrate has erred and failed in her duty as alleged in the grounds of Appeal adduced on behalf of the Appellant.
14. I have carefully considered the contents of the copy record from the Court bellow, including the pleadings, the evidence and the impugned judgment, and those of the grounds of appeal and the written submissions filed before this Court.
15. Out of the 12 grounds of appeal, I find that the first 3 grounds are inter-connected and deal with the same issue. As such, I decide to consider those 3 grounds together for the sake of easy disposal.

Grounds 1-3

16. The argument of the learned counsel for the appellant on these 3 grounds is, that the Magistrate decided the matter on the evidence of the Appellant and the Respondent that had been led before the predecessor Magistrate, who failed to deliver the judgment, no evidence whatsoever had been led before the current Magistrate and she delivered the judgment on a matter not presided by her, after laps of 2 years, causing miscarriage of justice to the appellant.
17. In this regard, the provisions of section 47 of the of the Magistrate's Court Rules seems to have escaped the attention of the learned Counsel. Section is reproduced for the sake of easy reference.

Completion by magistrate of process begun by his predecessor

*47. Where a magistrate has issued any summons or warrant or otherwise taken or commenced any proceeding or matter whether civil or criminal, under any authority however conferred, and subsequently ceases to act as such magistrate, it shall be lawful for the person in whose hands such summons or warrant may be to execute or serve the same in the same manner as if the magistrate who issued such summons or warrant had not ceased to act **as such magistrate and any successor of such magistrate, or any person acting for such magistrate, may hear, determine, execute, enforce and carry to completion any proceeding or matter so commenced as aforesaid save that, except where otherwise provided by the Criminal Procedure Code, such magistrate shall commence the trial of any such cause or matter ab initio.** (Emphasis mine)*

18. The above section clearly confers the jurisdiction on the next Magistrate in office to continue with and conclude the proceedings that was commenced and conducted before the predecessor Magistrate. I also take judicial notice that the predecessor Magistrate, who heard the matter hereof was appointed as the Judge of the High Court, as such he was not in a position to write the judgment.
19. It is also to be observed through the perusal of the record, that the Appellant's Counsel (Ms. Prasad), who appeared before the current Magistrate on 05th July 2024, had recorded her no objection for the current Magistrate to deliver the judgment on the evidence already led.

Accordingly, I find that all these 3 grounds of appeal are clearly devoid of merits and should therefore be rejected.

20. The grounds 4 to 7 also can be collectively dealt with, wherein the learned counsel for the appellant is making allegations with regard to the approach and the analysis of the evidence by the Magistrate. Appellant's counsel alleges that the judgment was given on speculations, ineffective analysis, by failing to apply correct legal principles and distorted the facts to dismiss the action.
21. The matter before the Magistrate was a civil claim, wherein the burden was squarely on the appellant to prove his case on preponderance of evidence. Only the appellant gave evidence for and on his behalf. His evidence in chief was very short confined to 3 pages with no required substance. As per his SOC, the causes of action and the claim for damages were on the allegation of assault and trespass.
22. He did not utter a word on his own that he was assaulted, except for saying that he was punched on his left hand on a leading question being put to him by his Counsel. His particular portion of evidence goes as follows;

Q. Did he identify himself to you?

A. He was a lawyer. Then he asked whose house was that, they have to demolish that house, then I asked him who are you.

Q. Yes?

A. He grabbed my hand and he was trying to get me to sit in the Car. He was forcing me. I didn't want to sit and then he punched me on my left-hand.

Q. So, you resisted?

A. Yes, I resisted. (Vide page 4)

Q. So, he hit you on your right or left?

A. Left Sir.

23. Unarguably, the above was a leading question, which could not have escaped the attention of the Magistrate, when she arrived at the impugned judgment. If it was an incident of assault and the Respondent had the intention of assaulting the Appellant as alleged, the Respondent would not have tried to make the Appellant to sit in his (the Respondent's) own Car as the Appellant stated in his evidence. Further, if the Respondent had any intention of harming the Appellant by punching, it would not have been on his hand. However, there was no sufficient evidence to substantiate the alleged punching, and particularly no medical evidence for the pain and sufferings as a result of such punching was adduced .
24. Further, the Respondent has given clear evidence on the circumstances under which he happened to go to the land in question. This cannot be categorized as an act of trespass. Why only the Respondent was picked to level this allegation, while 2 others also had gone there? The Appellant knew or ought to have known as to who the Respondent was at the time material. He was the Counsel representing DEO SAGAYAM, the Appellant-Original Defendant in the former ejectment case No- HBC 140 of 2020. The Appellant has admitted the receipt of the court Order

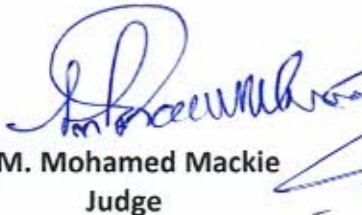
through his wife in the evening. He agreed that there was an Order by the High Court against him for his ejection and he had not obtained the lease at the time material. He also admitted that DEO SAGAYAM was not a trespasser. This shows that the entry of the Respondent was with a lawful purpose.

25. There has not been sufficient evidence before the Magistrate to arrive at the finding desired by the Appellant. I don't think that the Respondent, being a senior and responsible member of the profession would have resorted to this kind of conduct as alleged by the Appellant. Had he assaulted the Appellant, the Police would have arrested the Respondent. He comes out with the alleged assault on his own for the first time only under his cross examination. In examination in chief, he talks about the assault only on a leading question being put by his Counsel to the effect (*"Question. So he hit you on your right or left". Answer. Left Sir*).
26. On careful perusal of the evidence led, I find that the Magistrate has correctly evaluated the evidence when she arrived at the decision. In the absence of required evidence, the Magistrate could have arrived at any decision favorable to the appellant, but dismissing his action. I don't find any error in this regard on the part of the Magistrate as alleged by the counsel in her submissions. Thus, the purported grounds of appeal nos-4 to 7 also are not with merits and should be dismissed.
27. The allegation of arrest of the Appellant by the Respondent is concocted and baseless. When the Respondent was under cross examination, Counsel for the appellant, through her question, has admitted that the Respondent was serving the Court Order. Apart from the evidence of the Respondent, the evidence of the 2nd witness for the Defence, namely, Deo Sagayam, gives the clear picture as to what really happened and how it happened on the day of this incident. The ground No- 08 also fails. Further, on careful perusal of the Judgment, I don't see any tangible ground to substantiate the allegation of bias on the part of the Magistrate in arriving at the finding. Thus, the ground No-09 also has to fail.
28. However, I find that the amount of cost ordered in a sum of \$ 3,000.00 against the Appellant and in favour of the Respondent appears to be excessive in the circumstances. The Respondent was self-represented and not relying of any paid services. He did not even opt to file his written submissions before the Magistrate. The witness he summoned in his favor was none other than his own client with whom he had gone to the land for the service of the Order on the day in question. Thus, awarding of a sum of around \$500.00 as costs before the Court bellow would have done justice to both the parties. Accordingly, I decide to vary the costs ordered by reducing it to \$500.00 payable by the Appellant unto the Respondent within 28 days from today.
29. For the reasons discussed above, this court decides to allow the appeal partly, by reducing the costs ordered in favor of the Respondent from \$3,000.00 to \$500.00 and affirming the rest of the judgment pronounced by the learned Magistrate.

FINAL ORDERS

- A. The Appeal is partly allowed.
- B. The learned Magistrate's decision in dismissing the Appellant's action is affirmed.

- C. The decision of the learned Magistrate ordering costs in a sum of \$3,000.00 in favor of the Respondent is set aside, and substituted with an Order of costs in a sum of \$500.00, and the same shall be paid in 28 days.
- D. There shall be no order for costs on account of proceedings before this Court and the parties shall bear their own costs.
- E. The Original case record be dispatched to the Magistrate's Court of Lautoka, along with a copy of this judgment, forthwith.


A.M. Mohamed Mackie
Judge



At the High Court of Lautoka on this 17th day of September 2025.

SOLICITORS:

For the Appellant:

Messrs. Fazilat Shah Lawyers - Barristers & Solicitors

The Respondent:

Kalisto Maisamoa Solicitor & Barrister In person)