

IN THE HIGH COURT OF FIJI
IN THE CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No: HBA. 07 of 2024

BETWEEN: **MOHAMMED ZOHEB IFIKAR ALI**

APPELLANT

AND: **SANJAY SINGH VERMA**

RESPONDENT

For the Appellants : **Mr Chand**

For the Respondents : **In Person**

Date of Hearing : **13 May 2025**

Before : **Waqainabete -Levaci, SLTT, Puisne Judge**

Date of Decision : **13 March 2026**

J U D G E M E N T

(APPLICATION FOR LEAVE FOR INTERLOCUTORY APPEAL)

INTRODUCTION AND SUBMISSIONS

- 1.0 The Appellant appeals against the interlocutory order of the Learned Magistrate on 31 October 2023 for costs of \$1800 personally against their solicitors and \$400 against the Appellant generally for wasting courts time and adjourning trial.
- 2.0 On the day of Trial, the Learned magistrate found that directions were not complied with for Pre-Trial Minutes and Bundle of Documents to be filed, and the Appellant's primary witness, who was aware of the Trial dates, was away sorting out a sale and purchase of his cattle.
- 3.0 The Learned Magistrates' decision was as follows:
 - (i) The Defendant is to pay costs of \$800 for wasting Courts time and for laxity and arrogance in wasting taxpayers' money.
 - (ii) The Defendant is to pay the defendant costs of \$800 for wasting plaintiff's time.
 - (iii) Defendants counsel is to pay personal costs of \$400 for wasting courts time for not being prepared for Trial.
 - (iv) All payments are to be made in 14 days from today.
 - (v) Bundle of Documents to be exchanged within 14 days
 - (vi) PTC to be held and minutes to be filed/served in 14 days thereafter.
 - (vii) Mention to fix Trial 11. 12.23.
 - (x) Plaintiff to move the court for non-compliance of any of the above directions.
- 4.0 The Court granted time for partes to peruse the court transcripts and to file their written submissions prior to hearing.

GROUND OF APPEAL

5.0 The grounds of appeal are as follows:

1. THAT the Learned Magistrate was unreasonable and unrealistic to order costs of \$400 against the solicitors for the Appellant/Defendant when the Learned Magistrate failed to take into consideration that the solicitors for the Appellant/Defendant were not at fault and the said solicitors had appeared in court during the date of the hearing being 31st October, 2023.
2. THAT the Learned Magistrate was unreasonable and unrealistic by ordering costs against the Appellant/Defendant in the sum of \$1,600.00 for failure to appear in court on the date of hearing, even after the solicitors for the Appellant/Defendant had advised the reason for his non-appearance.
3. THAT the Learned Magistrate had failed and erred to take into consideration that pleadings had not being closed by Plaintiffs as no pre-trial conference minutes had been filed and bundle of documents not filed by the Respondent/Plaintiff. Hence, the matter was not properly readied for hearing and despite pleadings not being closed, costs were issued against Appellant/Defendant and its solicitors.
4. THAT the Learned Magistrate had failed to consider on the day of hearing that the Respondent/Plaintiff had wasted courts substantial time and the Appellant/Defendant and its solicitors time by filing an unreasonable application to add Bank of Baroda as a party for which the said application was dismissed and court had failed to issue costs against the Respondent/Plaintiff in favour of the Appellant/Defendant.
5. THAT the Learned Magistrate erred by failing to properly analyze her file records as the first hearing listed on 8th November 2022 was vacated without any costs by the Respondent/Plaintiff's solicitors for non-appearance of the Plaintiff, to which the Appellant/Defendant had consented to.
6. THAT the Appellant/Defendant reserves it's right to amend its grounds of appeal upon production of the copy records.

SUBMISSIONS BY APPELLANT

- 6.0 In their submissions, the Appellant argued that the file was not ready for trial when the Learned Magistrate allowed for adjournment but imposed costs unfairly. They also argued that the failure of the Respondents to comply with directions of the Court amounted to abuse of process referring to the case of Ravendra Kumar -v- Praveen Kumar and Ors HBC 163 of 2015.
- 7.0 The Appellant also argued that since both parties had not complied with court directions, it was disproportionate to penalize the Appellants alone relying on the case of Ravendra Kumar (Supra) to argue that the parties failed to determine an appropriate cause of action.
- 8.0 The Respondents had been granted leave to join parties and to file original certified documents which they had failed to tender on the last Trial date. The adjournment for Trial from those dates was a waste of courts time.
- 9.0 Despite attempts by the Appellants to settle the PTC minutes, the Respondent inaction contributed to the delays.

RESPONDENT SUBMISSIONS

- 10.0 In reply, the Respondent argued that the Learned magistrate had correctly imposed costs as the Respondent was ready with their witnesses, costs were paid for trial to bring witnesses to court and that the Appellant was not ready for trial. Thus Respondents submitted that the Appeal had no merits and to be dismissed with costs.

LAW AND ANALYSIS

PROCEDURE FOR APPEAL

- 11.0 Order 37 Rule 1 of the Magistrate Court Rules 1945 (hereinafter referred to as the 'MCR') requires that within 7 days of the decision, a notice of appeal is to be filed. Within 28 days thereafter, grounds of appeal are to be filed.

12.0 The Appellant filed their Notice and Grounds of Appeal on the 3 of November 2023 within the requisite time.

ISSUES ON APPEAL

13.0 Order 28 Rule 1 of MCR empowers the Resident Magistrate to postpone a hearing on the basis that the postponement will allow for the determination of matters on merit.

14.0 In Order 28 Rule 2 of the MCR, the Court may postpone where the absent witness is material for the trial and will attend at the next trial date.

15.0 The Appellant argues that the learned magistrate erred in law and fact when she imposed costs of \$1600 paid against the Defendant and \$400 personally against Defendant's counsel.

16.0 The decision by the learned magistrate was as follows:

“The Defendant is to pay court costs of \$800 for wasting the courts time and for the laxity and arrogance in wasting taxpayers' money. The Defendant is to pay the plaintiff's costs of \$800 for wasting plaintiff's time. Defendants counsel is to pay personal costs of \$400 for wasting courts time for not being prepared for Trial. All payments to be made in 14 days from today.”

17.0 Order 33 of the Magistrates Court Rules prescribes the way the Magistrates Court may award costs:

Costs in discretion of court

4. The costs of every suit or matter and of each particular proceeding therein shall be in the discretion of the court; and the court shall have full power to award and apportion costs, in any manner it may deem just, and, in the absence of any express direction by the court, costs shall abide the event of the suit or proceeding:

Provided that the court shall not order the successful party in a suit to pay to the unsuccessful party the costs of the whole suit; although the court may order the successful party, notwithstanding his success in the suit, to pay the costs of any particular proceeding therein.

Liability of barrister or solicitor to pay costs

10. Where upon the trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the barrister and solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the court, and which according to the practice ought to have been delivered, such barrister and solicitor shall personally pay to all or any of the parties such costs as the court shall think fit to award.”

- 18.0 Under Order 33 Rule (4) and Rule (10) of MCR courts may award costs against one of the parties and also impose costs against the barrister and solicitor.

Costs imposed against Appellant for adjourning trial

- 19.0 The Appellant argued that the costs imposed were prejudicial and that the learned Magistrate erred in law to impose such costs.
- 20.0 Costs to be imposed for adjourning a trial is a discretion that the Court can exercise judiciously. To grant an application for adjournment, two grounds are required to be established and they are whether the adjournment is prejudicial to the other party and whether there are reasonable grounds for adjourning the matter.
- 21.0 The learned magistrate had exercised her discretion to impose costs to be paid to the Respondent after granting adjournment for wastage of time to the Respondent.
- 22.0 In their argument, Counsel for Appellant submitted that the parties were both not ready for trial as Pre Trial Conference Minutes were not complied with by both parties.
- 23.0 When considering this argument and the basis for exercising her discretion to impose costs, she had correctly found that the adjournment for trial would have delayed the matter further.
- 24.0 The Court finds that the discretion exercised by the learned magistrate was exercised correctly and therefore the discretion to impose costs against the Appellant should be upheld.

Costs against Counsel

- 25.0 To impose costs against Counsel personally, there must be some form of misconduct, neglect to attend or omitted to deliver paper necessary for use of the Court in accordance with Order 37 Rule 10 of the MCR.
- 26.0 According to their submissions, despite court directions, the Appellant alone was not neglectful that the Respondent had also failed to assist in preparing pre-trial minutes. The Learned Magistrate exercised her discretion to impose costs against the Appellants for \$400 for failing to proceed to trial.
- 27.0 The Appellant argued that both parties were at fault as they had failed to file necessary documents. The \$400 imposed was not appropriate.
- 28.0 **In Griffith -v- McGrath** [2025] FJCA 45; ABU 0063.2024 (24 March 2025) Prematilaka JA held:
- ‘34] Costs are by statute and by rules of court in the discretion of court. The starting point is the general rule that **costs** follow the event and, therefore, the successful party ought to be paid its **cost** by the unsuccessful party. That general rule would apply unless there are cogent reasons to depart from it. The judge has a large discretion as to **cost** ^[14]. However, that discretion must be exercised judicially *i.e.* in accordance with established principles and in relation to the facts of the case.’
- 29.0 From the Court records both parties were required to appear prepared for trial. The Appellant was unable to proceed to trial as his witness was not present due to business commitments.
- 30.0 The Court considered that the costs imposed against the Counsel and found that the court had not provided proper reasons in accordance with Order 37 Rule 10 of the MCR to impose costs against Counsel. The only reason for imposing costs was not being prepared for Trial was not a proper and cogent reason for imposing costs against the Counsel personally. There was no misconduct or negligent act portrayed by Counsel for which the learned magistrate could impose costs. There was also nothing in her decision to show that she was of the view that the Counsel for the Appellant had acted in a manner to deliberately delay trial.

- 31.0 The Court finds that the learned magistrate erred in law and in fact in imposing costs against the Counsel personally.
- 32.0 The Orders imposed for costs to be imposed against Counsel is hereby quashed.

Costs imposed by Court

- 33.0 Finally, the learned magistrate imposed \$800 as court costs. Although the Court has a discretion to impose costs, this is to be exercised judiciously. Consideration must be had to the reasons for awarding costs, the amount of costs awarded, the failure of the counsel to comply with directions repetitively with the costs being of a punitive basis only.
- 34.0 In the case of Tabaiwalu -v- Pickering [2025] FJCA 89; ABU 001;2025 (12 June 2025) the Prematilaka JA imposed wasting hearing costs against the Respondent and Wasted hearing costs payable to the court. He said:
- “In the circumstances, the appellant should be made to pay costs of \$1000.00 requested by the counsel for respondent (June Pickering) but he must also pay wasted court costs. The solicitors for the appellant have demonstrated an awful lack of professionalism & disrespect and scant regard for this court by persisting with fundamental errors despite the accommodation to file amended summons generously accorded from time to time by this court.”
- 35.0 The court direction was for the parties to proceed to trial. The Court records show that prior to this Trial date, a number of directions were imposed that both the Appellant as well as Respondent had failed to comply with. In addition, the matters were delayed in proceeding to Trial for the lack of compliance by both parties, not only the Appellant and the presiding learned Magistrate had adjourned the matter on previous occasions without proper explanation for the reasons of. The Court finds that there was no lack of disrespect for the court or repetitive misconduct by Counsel to warrant the imposition of \$800 as Court wastage costs.
- 36.0 The Court therefore finds that the imposition of Court costs of \$800 was prejudicial and unfair to the Appellant and that the learned Magistrate had erred in law and in fact to have imposed costs to the Court.

ORDERS

37.0 The Court Orders as follows:

- (i) That Appeal grounds 1,2,3,4,5 be partially upheld;
- (ii) That Court costs imposed against the Appellant's counsel personally of \$400 be quashed;
- (iii) That Court costs of \$800 imposed against the Appellant payable to Court is quashed;
- (iv) That Court costs of \$800 imposed against the Appellants payable to the other party be upheld;
- (v) Costs awarded to the Appellant for \$500.



Hon. Justice Madam Senileba L.T.T. Waqainabete-Levaci

Puisne Judge of the High Court of Fiji