

1. **COMPTROLLER OF CUSTOMS**
2. **THE ATTORNEY-GENERAL**

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v

LITTLE ITALY (FIJI) LIMITED

[HIGH COURT, 1993 (Scott J), 31 March]

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Appellate Jurisdiction

Practice (Civil)- interlocutory applications in the Magistrates Court- duty of Resident Magistrate to record the proceedings and to deliver an adequate ruling-Magistrates Courts Act (Cap. 14).

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On appeal against an interlocutory order in the Magistrates Court it emerged that no proper note of the proceedings had been taken and that no adequate reasons had been given for the order being made. The High Court quashed the orders and remitted the matter to the Magistrates Court for rehearing.

Case cited:

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Ram Khelawan v. Budh Ram 13 FLR 196

Appeal to the High Court.

P. Cowey for the Appellants
J. Howard for the Respondent

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Scott J:

The Respondent is an importer of Italian foods and catering equipment supplying both the public and resort hotels.

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On 29 October 1992 the Respondent imported a quantity of rice and buffet warmers. The items were not released by the Comptroller and are to this day held in a bonded warehouse at Nadi. The Respondent made numerous efforts to secure the release of the goods but these efforts were unsuccessful and so on 8 March 1993 it issued proceedings in the Suva Magistrates' Court seeking a declaration that it was entitled to have the goods released to it and an order for their release. Damages and costs were also sought. On the same day it applied to the Court ex-parte for the declaration and order of release.

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The entire minute of the application made by the resident Magistrate (S.M. Shah Esq.) is as follows:-

“ Mr. Howard Plaintiff

- Defendant

Court: Satisfied that Order in terms of notice should be issued.

S. Shah".

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On the next day, 9 March 1993 the Court was moved again. This time an application to stay the Order made the previous day was made by Counsel for the Appellants. The entire minute of the application made by the Magistrate reads as follows:

"Defendant : Paul

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Paul : M.C. Can't issue injunction as contrary to law.

Court : Proceeding stayed till arguments heard on 10.3.93 at 3.00 p.m. Order in terms of motion.

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S. Shah".

On 10 March 1993 Counsel for the Parties came before the Magistrate and there followed detailed arguments on such questions as the propriety of the ex-parte Order made on 8th March the jurisdiction of a Magistrates' Court to grant injunctions against the State, to grant stays or declarations and the possibility of a Magistrates' Court entertaining a suit where the retail gross sale value of the goods was, according to an affidavit filed by the Respondents, \$17,800, when the jurisdictional limit of a Magistrates' Court is \$15,000 (see Decree 35/88; Ram Khelawan v. Budh Ram (13 FLR 196) and Section 172 of the Customs Act 11/86). On 11 March the Magistrate delivered the following ruling:-

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"I have considered arguments advanced by the Counsel yesterday in detail. I am not satisfied that the effect of the Order and declaration made on 8th March 1993 be stayed any further. In my view this Court has the jurisdiction to make the Order which it did.

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S. Shah"

The Appellants then gave oral notice of intention to appeal and applied for a stay pending appeal. That application was declined by the resident Magistrate without any reasons being given.

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On 12 March 1993 the Appellant filed Notice of Appeal and applied ex-parte to the High Court for a stay of the Magistrate's Orders of 8 and 11 March 1993. The Court granted a stay until the application could be heard inter partes.

A On 19 and 25 March 1993 I heard argument. Counsel for the Appellants filed a written skeleton argument which amounted to an expanded version of the arguments placed before the Magistrate on 10 March. He argued that the Magistrate should not have entertained the application on 8 March ex parte, that the Magistrates' Court had no jurisdiction to entertain the claim at all, that the Magistrates' Court had no power to grant declarations, injunctions or stays against the State and furthermore that the Respondent had no cause of action against the Appellants. In addition, Counsel argued that if the goods were now to be released to the Respondent then the First Appellant would be deprived of the bond and sureties to which it was entitled under section 161 (1) of the Customs Act.

B In answer, Mr. Howard referred me to large number of reported decisions, sections of Acts of Parliament and Rules of Court which, he submitted, tended to show that the Magistrate had acted correctly. He strongly submitted that the Comptroller had throughout acted both inefficiently and vengefully and told me that it was only in desperation that the respondent had finally gone to Court. The goods were deteriorating and his client was facing financial ruin.

C In my opinion the history of this litigation is a perfect example of how legal proceedings should not be conducted. The application of 8 March 1993 should never have been made or heard ex parte. There was no extreme urgency and the Parties had been negotiating for weeks if not months. Although Magistrates' Courts are Courts of Record (see Section 10(1) Magistrates' Courts Act - Cap 14) the Magistrate did not take any notes either on 8 or 10 March and did not deliver any adequate judgments at any time. While there is no civil equivalent to section 155 of the Criminal Procedure Code every judgment or ruling in Civil proceedings in the Magistrates' Court must at least contain the points for determination, the decisions thereon and the reasons for those decisions. Where important and basic submissions are made questioning the Resident Magistrate's jurisdiction then these should be explicitly referred to any properly dealt with. The procedural shortcomings in the Magistrates' Court have resulted in a muddle. Not even the basic facts in issue were before the Magistrates' Court; they are not before me either. Even at this late stage I do not know why the goods were retained or why the Comptroller of Customs would not release them. I do not know whether the goods were seized in October 1992 or merely detained. There were vague references from the Bar to possible criminal proceedings against the Respondent but of the nature of these proceedings and their progress so far I was kept in the dark. The whole situation is highly unsatisfactory. Without a firm grasp of the facts and the Magistrate's reasoning this Court cannot possibly reach a conclusion on the fundamental questions which are: should these goods now be released to the Respondent and, if so, on what terms?

In my opinion there is now no sensible alternative but to begin again. In exercise of the powers conferred upon me by Order XXXVII Rule 18 of the

Magistrates' Courts Rules, Cap 14, I set aside all Orders made in the Magistrates' Court in this matter.

I direct that a Defence be filed to the Statement of Claim within 14 days. There will be liberty to all Parties to apply in the Magistrates' Court inter partes. There will be no order as to costs.

(Application dismissed)

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