

**SUKH RAM (s/o JAGASSAR of Ellington, Rakiraki, Farmer) (as next kin and best friend of AMIT KUMAR) v FLYING PRINCE TRANSPORT CO LTD and Anor (HBA0004 of 2003L)**

5 HIGH COURT — APPELLATE JURISDICTION

CONNORS J

7, 28 October 2005

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**Practice and procedure — costs — whether claim for costs in addition to claim for damages exceeded jurisdiction of Magistrates Court — costs awarded not part of Plaintiff’s claim for purpose of determining if claim falls within jurisdiction of Magistrates Court — Magistrates Court (Civil Jurisdiction) Decree 1998 s 2 — Magistrates Courts Rules O 33 rr 1, 3.**

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In the substantive proceeding, the Appellant sought damages for personal injuries sustained as well as costs. The learned magistrate ordered the striking out of the Appellant’s statement of claim of \$15,000 as it was beyond the jurisdiction of the Magistrates Court. The Appellant appealed against the magistrate’s order.

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**Held** — Section 2 of the Magistrates Court (Civil Jurisdiction) Decree 1998 states “a resident magistrate shall have and exercise jurisdiction in civil causes” for amounts not exceeding \$15,000. Costs are up to the discretion of the court, as per O XXXIII, r 3 of the Magistrates Courts Rules. Costs are determined at the end of the proceedings and usually awarded to the successful party. It is not necessary or possible for the party to claim costs in their pleadings. Any costs which may be awarded to the Plaintiff by the court at the conclusion of the proceedings does not form part of the Plaintiff’s claim for the purpose of calculating whether the claim falls within the jurisdictional limits of the Magistrates Court.

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Appeal allowed.

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**Cases referred to**

*Govind Holdings Ltd v Kalia Nand* Civ App HBA0015 of 1998L; *Legon v Viscount* [1945] 1 CA 710; *Lovejoy v Cole* [1894] 2 QB 861; *Nichols v Patrick Stevedoring Co Pty Ltd* (1979) 2 NSWLR 457, cited.

*Donald Campbell & Co Ltd v Pollak* [1927] AC 732, considered.

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*A. Patel* and *S. R. Shankar* for the Appellant/Plaintiff

*S. Krishna* and *D. Kumar* for the Respondents/Defendants

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**Connors J.** This is an appeal by the Appellant against the learned magistrate’s order striking out the Appellant’s statement of claim upon the basis that the claim was beyond the jurisdiction of the Magistrates Court.

In his statement of claim, the Appellant claimed the sum of \$15,000 in respect of damages for personal injuries. The claim was pleaded as follows:

Special Damages — \$850

General Damages — \$14,150

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The Appellant also claimed costs of the action.

Endorsed on the writ of summons are details of the amount claimed together with the court fees, bailiff’s fees and solicitor’s costs. These fees and costs totalled \$96.50.

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The issue for determination by this court is whether the Appellant’s claim for costs in addition to damages in the sum of \$15,000 creates a claim which exceeds the jurisdiction of the Magistrates Court.

The civil jurisdiction of the Magistrates Court is governed by s 2 of the Magistrates Court (Civil Jurisdiction) Decree 1998 which provides that:

A resident magistrate shall have and exercise jurisdiction in civil causes — ...

- 5 (ii) in all other personal suits whether arising from contract, or from tort, or from both, where the value of the property or the debt, amount or damage claimed whether as a balance claimed or otherwise, is not more than \$15,000.00 ...

The section is silent as to whether costs and disbursements are to be included in calculating the value of the claim for the purpose of the jurisdictional limit.

- 10 The authority for the Magistrates Court to award costs comes from O XXXIII of the Magistrates Courts Rules. Rule 1 provides:

- 15 Under the denomination of costs is included the whole of the expenses necessarily incurred by either party on account of any cause or matter, and in enforcing the decree or order made therein, including the expenses of summoning and of the attendance of the parties and witnesses, and of procuring copies of documents, the fees of Court, and the remuneration of referees.

Rule 3 relevantly provides:

- 20 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 ...

- 25 The issue of costs is a matter which is determined at the conclusion of the proceedings. It is not a matter which forms part of the proceedings themselves but can only be considered and determined once the proceedings themselves have been finalised.

- 30 In all common law jurisdictions, the general rule in relation to costs is that costs follow the event and in the discretion of the court. Viscount Cave LC in *Donald Campbell & Co Ltd v Pollak* [1927] AC 732 at 811 said:

- 35 A successful defendant in a non-jury case has no doubt, in the absence of special circumstances, a reasonable expectation of obtaining an order for the payment of his costs by the plaintiff; but he has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them.

As costs are usually awarded to the successful party, it is not necessary or possible for the party to specifically claim costs in their pleadings. It may be either the Plaintiff or the Defendant who is the recipient of the costs order.

- 40 There are throughout the Commonwealth jurisdictions many cases where a Plaintiff has been awarded an amount of damages up to the jurisdictional limit and then awarded his or her costs — *Lovejoy v Cole* [1894] 2 QB 861; *Legon v Viscount* [1945] 1 CA 710; *Nichols v Patrick Stevedoring Co Pty Ltd* [1979] 2 NSWLR 457.

- 45 The Respondent relies upon *Govind Holdings Ltd v Kalia Nand* Civ App HBA0015 of 1998L as authority for the proposition that costs must be factored into the amount claimed for the purposes of establishing whether the claim exceeds the jurisdictional limit of the Magistrates Court. In that case, Madraiwiwi J was considering the issue of interest and the effect that interest might have on a claim and whether the claim would then exceed the jurisdictional limit of the Magistrates Court. There is merely an obiter reference in that  
50 authority to costs. It does not form part of the ratio of that case.

I have not been referred to any other authority in this country which would support the proposition that costs are to be included in the claim when determining if that claim exceeds the jurisdictional limit of the Magistrates Court.

5 The regime of O XXXIII of the Magistrates Courts Rules together with the authorities referred to from other Commonwealth countries lead to the conclusion that any costs which may be awarded to the Plaintiff by the court at the conclusion of the proceedings do not form part of the Plaintiff's claim for the purpose of calculating whether the claim falls within the jurisdictional limits of the Magistrates Court.

10 **Orders of the court**

- (1) Appeal allowed.
- (2) Matter remitted to the Magistrates Court, Rakiraki for trial according to law.
- 15 (3) Respondent to pay the Appellant's costs assessed in the sum of \$500.

*Appeal allowed.*

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