

IN THE MAGISTRATE'S COURT OF FIJI
APPELLATE JURISDICTION
WESTERN DIVISION AT LAUTOKA

Civil Appeal Case No. 28 of 2017

[In the Matter of an Appeal from
the Lautoka Small Claims
Tribunal Case No. 691 of 2017]

BETWEEN: Alvin Sagar t/a **Australian Recruitment Service** of Lot 10 Omkar Road, Nasinu.

Appellant

(Original Respondent)

AND : **Seresio Silivale** of Lautoka.

Respondent

(Original Claimant)

Appearance

The Appellant in person

The Respondent in person

Judgment

Introduction

1. On the 5th of July, 2017, the Appellant filed a Notice of Appeal under Section 33 of the Small Claims Decree. The Appellant is appealing the decision of the Small Claims Tribunal made on the same day. The grounds of Appeal raised under the Notice is that:
 - a. Appellant never dealt with the Respondent.
 - b. Appellant does not own and/or operated a business called the Australian Recruitment Service.
 - c. Appellant was not served with any Notice/Summons to attend Court.
2. Both parties have filed written submissions. The parties have also agreed that a Judgement be delivered based on the submissions filed.

The Law

3. The Small Claims Decree provides in section 33 that:

“(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."

4. The said Decree further provides in section 29 that:

'Subject to this Decree and any rules made hereunder, a Tribunal shall adopt such procedure as it thinks best suited to the ends of justice'.

5. The appeal herein was filed on the same date of the decision hence the Appellant is appealing as of right.
6. The scope of appeals from decisions of the Small Claims Tribunal is limited. There can only be two grounds of appeal either where a hearing was conducted in an unfair manner that prejudicially affected the outcome and/or that the Tribunal exceeded its jurisdiction. There can be **no appeal on merits** (see: **Sheet Metal and Plumbing (Fiji) Limited v. Deo** – HBA 7 of 1999) neither can there be any appeals on **an error of law and/or factual error** (see: **Aaryan Enterprise vs. Mehak Unique Fashion (2011) FJHC 727**, Civil Appeal No.17 of 2011)

Legal Matrix

7. In the matter herein, the issue is whether the Learned Referee had conducted the Hearing in an unfair manner that has prejudicially affected the outcome of the case.
8. The Appellant submits that he was not served with any Notice and/or Summons to attend Court. A close perusal of the Court Record does indicate that the Appellant was not present at the Hearing. A further perusal of the copy of the Affidavit of Service filed as Appendix 'B' also indicate that the same is incomplete. The place of service, name of person served and how identification was confirmed is not specified. The requirement in section 19(1), (a) is specific and clear. It states that: ***'give notice thereof in the prescribed form to the claimant by endorsing the details on Form 1'*** (underlining for emphasis). The details in Form 1 have not been fully endorsed herein. The Respondent in his written submissions has failed to address this issue. In light of the facts, I find that the said Affidavit of Service is defective and cannot be admitted as proof of service.
9. In the case of **Ministry of Health v Semesa Nacanieli** [2010]FJMC 41, the Court held that:

'The failure to notify a party to the proceedings amounts to 'conducting the proceedings in an unfair manner'.

10. Section 24 of the Small Claims Tribunal Decree stipulates that 'at a Hearing of a claim, every party shall be entitled to attend and be heard. Wittingly or unwittingly, it is clear from the facts of this case that the Learned Referee has breached the fundamental principle of **'audi alteram partem'** meaning **'hear the other side'**. It is for the reasons herein, I make the following Orders:

- a. The decision of the Small Claims Tribunal dated 5th July, 2017 is hereby quashed.
- b. The Small Claims Tribunal is to re-hear the matter afresh before another Referee.
- c. Any party aggrieved by this decision is entitled to lodge an appeal within 28 days.



Ordered Accordingly,

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke.

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JEREMAIA N. LEWARAVU
RESIDENT MAGISTRATE

22nd of February, 2018.