

IN THE MAGISTRATE'S COURT AT LABASA

APPELLATE JURISDICTION

Civil Appeal No. 11 of 2017

SCT Claim No. 135 of 2017

BETWEEN : SUMEET KUMAR

APPELLANT

AND : VISION INVESTMENT LIMITED t/a COURTS

RESPONDENT

Appearance : **Mr Raramasi. S** for the Appellant

Mrs Roshni. R authorised representative for the Respondent

Judgment : **27 February 2019**

JUDGMENT

1. The Appellant is appealing the order of the Small Claims Tribunal (*Tribunal*) made on 22 March 2017. The notice of appeal was filed on 3 April 2016, and was within the 14 days required under *section 33(3)* of the *Small Claims Tribunal Act (Act)*.
2. According to the claim that was filed at the Tribunal, the Respondent is claiming for the balance sum owed by the Respondent for the goods sold and delivered by the Respondent to the Appellant under a hire purchase agreement No. 020000469302. The Respondent is claiming for \$2,319.85 from the Appellant.
3. On 14 June 2017, both the Appellant and the Respondent confirmed to the court that they have received the copy record for the Tribunal proceeding. Directions were issued for filing of submission.

4. The Appellant filed his submission on 29 August 2017. The Respondent filed their submission on 20 September 2017. The appeal was set for hearing on 7 March 2018.
5. At the hearing, the Appellant and the Respondent informed the court that they will rely on their respective submission filed.
6. The Appellant grounds of appeal are;-
 - a. *Not satisfied with the referee's decision.*
 - b. *Referee was biased for not considering his story.*
 - c. *He was ordered by the referee to pay the amount which he is not willing to pay. The sofa set has been sold to another person at a lower price and the balance amount is claimed against him. From his view, that is not justice.*

Law

7. Section 33(1) of the Act state that the order of the Tribunal can only be appealed on the following two grounds ;-
 - a. *"the proceeding were conducted by the referee in a manner which was unfair to the appellant and prejudicially affect the result of the proceeding;*
or
 - b. *the tribunal exceeded its jurisdiction."*

Appellant's case

8. The Appellant submitted in his submission that the whole proceeding in the Tribunal was irregular and unfair in all the circumstances. The Referee erred when she failed to consider *section 8(4)* of the Act. On 22 March 2017, the Referee did not give the Appellant an opportunity to present his evidence or give the opportunity to cross examine the Claimant. The Referee did not ask the Appellant if he had any witness.

Respondent's case

9. The Respondent submitted that their claim is based on agreement signed by the parties on 4 June 2016, which gives them the right to repossess. The

Referee had done a clear calculation of the facts as agreed by the parties in pages 43 to 45 of the copy record.

Analysis and determination

10. The grounds of appeal (a) and (c) are challenging the decision and order of the Tribunal. Any challenge on how the Referee reach her decision and makes her order goes to the merit of the case. *Fatiaki. J*, stated in ***Sheet Metal & Plumbing (Fiji) Ltd v Deo***[1999] FJHC 26, that the order of the Tribunal cannot be appealed on merit. Accordingly, grounds of appeal (a) and (c) are now dismiss.
11. The ground of appeal (b) alleges that the referee was bias. This ground comes under *section 33(1)(a)* of the *Act* as it touches on the manner in which the Referee conducted the trial. I now deal with this ground of appeal.
12. The manner in which the referee should conducted the Tribunal proceedings are stated by *Fatiaki. J*, in ***Sheet Metal Plumbing (Fiji) Ltd v Deo*** [1999] FJHC 26, where his Lordship stated;-

“As to the manner or procedure required to be followed by the referee in conducting a proceeding under the Decree these are principally to be found in section 24 to 29 (inclusive) under the heading HEARING.”
13. The Appellant submitted that the Referee erred when she failed to consider *section 8(4)* of the *Act* which state;-

“If it is necessary for the purpose of this Decree to ascertain the value of any chattels or work or to resolve any dispute as to such value, that value shall be determined by the Tribunal in such manner as it thinks fit”
14. Page 43 and 45 of the copy record shows how the Referee did her calculation in reaching the value or amount of the claim. In doing so, the Referee is complying with *section 8(4)* of the *Act*. The argument by the Appellant lacks merit in that regards.
15. The Appellant submitted that on 22 March 2017, the Referee did not give the Appellant an opportunity to present his evidence or give the opportunity to

cross examine the Claimant. The Referee did not ask the Appellant if he had any witness. The record of the Tribunal proceeding are provided in page 43 to 45 of the copy record which support the Appellant submission.

16. The Appellant is relying on the judgment of Alfred, J in **Singh v Koroï**, *Civil Appeal No. HBA 16 of 2014 (18 September 2015)* stated at paragraph 24 ;-

“With all respect, I do not think the Referee can take such attitude as evinced above. At the least, he should have asked the Appellant whether her witness were present and recorded her answer whether it be in the affirmative or the negative.”

17. On the face of the Tribunal proceeding, it appears that the Referee was conducting the proceeding unfairly and specifically not in compliance with *section 26* of the *Act* as no evidence of the parties can be seen from the record.

18. This ground of appeal has merit and I will allow the appeal on this ground.

19. I have considered the copy record, the written submission filed by the parties and the applicable laws and case authorities in this judgment.

20. In this judgment, I allow the appeal in part and I make the following orders;-

- a. The order of the Small Claims Tribunal made on 2 March 2017 is hereby quashed.
- b. I order a rehearing of the claim in the Tribunal before another Referee.
- c. I make no order as to costs.

28 days to appeal.



C. M. Tuberi
RESIDENT MAGISTRATE

