

IN THE MAGISTRATE'S COURT AT LABASA

APPELLATE JURISDICTION

Civil Appeal No. 874 of 2019

SCT Claim No. 2 of 2020

BETWEEN : **EMMANUEL PILLAY**

APPELLANT

AND : **SAMUEL RANDEER JEET**

RESPONDENT

Appearance : **Appellant** in person
Mrs Raj. R for the respondent

Judgment : **21 February 2020**

JUDGMENT

1. The Appellant is appealing the order of the Small Claims Tribunal (*Tribunal*) made on 17 December 2019. The notice of appeal was filed on 30 December 2019, and was within the 14 days required under *section 33(3)* of the *Small Claims Tribunal Act* (Act).
2. On 22 January 2020, both the Appellant and the Respondent have confirmed to the court that they have received the copy record. Directions were issued for filing of submission.
3. The Respondent filed his submission on 27 January 2020. The Appellant filed his submission on 29 January 2020. The appeal was heard on 5 February 2020.

4. On the hearing date, the Appellant informed the court that he will rely on his submission. The same position was also taken by the respondent. Because the respondent filed his submissions first, the Counsel for the respondent submitted that the \$1,000.00 excess raised by the appellant in his submission was not raised before the Tribunal and it should not be considered. The Appellant then submitted that he got the \$1,000.00 excess later and that why he appealed.

Grounds of appeal

5. The Appellant stated that the Small Claims Tribunal failed to give due consideration to the issue he raised in the case. The vehicle sustained damage in November 2016, and the initial arrangement with the respondent that the respondent will use the insurance claim to repair the vehicle. Due to personnel differences between his father and the respondent, the respondent filed the claim in the Tribunal and was in breach of their initial arrangement and understanding.

Law

6. Section 33(1) of the Act state that the order of the Tribunal can only be appealed on the following two grounds ;-

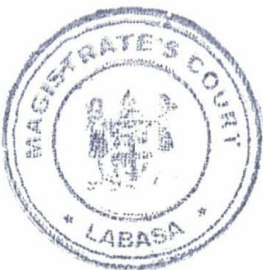
"a. the proceeding were conducted by the referee in a manner which was unfair to the appellant and prejudicially affect the result of the proceeding; or

b. the tribunal exceeded its jurisdiction."

Analysis and determination

7. On the ground submitted by the appellant, he is challenging the Tribunal consideration of his submission and said that the Tribunal failed to give due consideration to his submission.
8. In ***Sheet Metal Plumbing (Fiji) Ltd v Deo*** [1999] FJHC 29, where *Fatiaki.J* held that;-
- "...there is no appeal on the merit even if there is a clear and fundamental error of law in the conclusion of the Tribunal."*
9. The Tribunal's consideration of the submission of the parties and the evidence tendered by the parties and how the Tribunal give weight to those submission and evidence goes to the merit of the case. The challenge advanced by the appellant in this appeal and the consideration of his submission is on the merit of the case. Therefore, it is not a ground of the appeal under the Act. The appeal has no merit.
10. In this judgment, I upheld the decision of the Tribunal and I dismiss the appeal with costs of \$500.00 to be paid by the appellant to the respondent within 31 days.

28 days to appeal.



C. M. Tuberi

RESIDENT MAGISTRATE