

IN THE SUPREME COURT OF FIJI

APPELLATE JURISDICTION

CIVIL APPEAL NO. 8 OF 1983

000355

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BETWEEN:

DIRECTOR OF MINERAL RESOURCES
for the time being of the
Government of Fiji and the
ATTORNEY GENERAL OF FIJI as
the Legal Representative for
the time being of the Government
of Fiji.

APPELLANT

-and-

JAGDEI d/o Guman

RESPONDENT

Mr. A.M. Koya for the Appellants
Mr. H.C. Sharma for the Respondent

JUDGMENT

The appellants' appeal against the ruling of the
Magistrate's Court at Nadi delivered on 25th May, 1983
whereunder the appellants were refused adjournment
Magistrate after hearing respondent's witnesses
appellants to pay the respondent the sum of \$20
with costs.

The claim arose when the employees of
dependant entered respondent's land and made
In the course of making the hole respondent's
other crops were damaged.

The grounds of appeal are as follows:

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1. THAT the Learned Magistrate erred in law and/or in principle in refusing the application for the grant of adjournment on behalf of the Appellants/Defendants.

PARTICULARS

- a) That he failed to consider or give weight to the substantial merits shown in the defence filed herein.
- b) That he failed to give weight to the circumstances surrounding the inability of the Appellants/Defendants to conduct the defence on the particular day.
- c) That he failed to direct his mind to various conditions which could have been imposed on the granting of the application for adjournment.

2. THAT the Learned Magistrate failed to exercise his discretionary powers judicially. Consequently, there has been a miscarriage of justice.

3. THAT the Learned Magistrate erred in law in refusing to grant adjournment and proceeding with the proof of the Respondent's/Plaintiff's claim on the face of a substantial defence before him.

4. THAT the Learned Magistrate's decision is unreasonable having regard to the facts presented to him in support of the application for adjournment.

The case was called before the Magistrate's Court on 12th May, 1982 when the date of hearing was fixed for 29th September, 1982. Mr. J.K.L. Maharaj of the Crown Law Office appeared for both the defendants (appellants) and Mr. H.C. Sharma appeared for the plaintiff (respondent).

On 29th September, 1982 the case was adjourned to 21st January, 1983. On 21st January, 1983 this case was again adjourned for hearing on 25th May, 1983.

On 25th May, 1983 Mr. Shah appeared for the defendant-appellant and Mr. Sharma for the plaintiff-respondent. The case was stood down for a while when the parties were negotiating settlement. When no settlement was reached Mr. Shah applied for adjournment but the application for adjournment was refused. Mr. Shah thereupon asked to be released. The record shows:

"25.5.83.

Plaintiff - Sharma
Defendant - Shah (agent)

Court - Adjournment to 2pm for negotiation to settle.

Defendant telephones Suva, no quantum settlement possible.

Defendant - seek adjournment.

Plaintiff - Object. Issue only quantum

Long Standing. Witnesses here. Ask case proceed.

Defendant - I have no instructions in case of trial.

Court - Case was listed for hearing.

It is wrong for defendant to anticipate automatic adjournment on request even though the counsel formerly acting in this a month or so ago moved to another Government department. The balance of convenience between parties and for the Court determines the Court to refuse adjournment. The plaintiff's case should proceed.

Defendant - I must withdraw.

Court - Agent for the Defence Counsel is permitted to withdraw".

There is no record to show whether the witnesses of the defendants were present or not. Mr. Shah should not have asked to be released and the Magistrate should not have agreed to his release in the circumstances.

Mr. Shah having accepted a brief should not have asked to be released unless he first notified his clients that he was going to do so so that they could if they wished engaged another counsel.

The Magistrate after close of plaintiff's case in an extremely short judgment accepted the evidence called by the plaintiff and gave judgment for her against the defendants.

On 30th May, 1983 A.M. Koya and Associates gave notice of change of solicitors stating they were appointed to act as solicitors for the defendants-appellants and gave notice of intention to appeal.

Order XXVIII(1) of the Magistrate's Court's Rules states -

- "1. The court may postpone the hearing of any civil cause or matter, on being satisfied that the postponement is likely to have the effect of better ensuring the hearing and determination of the questions between the parties on the merits, and is not made for the purpose of mere delay. The postponement may be made on such terms as to the court seem just."

Mr. Maharaj who was the counsel for the defendants was present on other occasions except on 25th May, 1983 when the case was fixed for hearing. The reason why Mr. Maharaj was not present on 25th May, 1983 was that he was transferred to another department. The Magistrate took this into account when refusing the application for adjournment.

However, the defence filed shows the liability was accepted to a certain extent but the quantum of the damage is very much in issue.

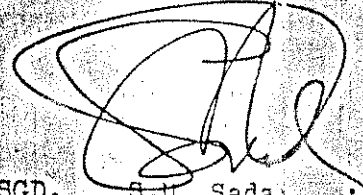
I regret the action will have to be remitted to the Magistrate's Court for rehearing before another Magistrate.

The appeal is allowed. Judgment of the Magistrate is

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set aside and the action remitted to the Magistrate's
Court for rehearing.

There will be no order as to costs.



SGD.

S.H. Sada

ACTING PUISNE JUDGE

Lautoka.
27.6.84.