

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Civil Appeal No. 12 of 2013

BETWEEN : MOHAMMED ALI

APPELLANT

AND : NOLEEN KUMAR

RESPONDENT

BEFORE : Justice G. Deepthi Amaratunga

COUNSEL : In Person for the Appellant
In Person for the Respondent

Date of Hearing : 21st October 2013

Date of Judgment : 22nd October 2013

Judgment

1. This is an appeal from the Ruling of learned Resident Magistrate Chaitanya Lakshman relating to dismissal of appeal from the determination of Small Claims Tribunal. The Appellant had lodged a notice of intention to appeal, but failed to file grounds of appeal. Instead the Appellant had filed an affidavit of facts relating to evidence of the issues before the Small Claim Tribunal, not addressing grounds of appeal. The non compliance is fatal and this appeal should be dismissed *in limine* as there are no grounds of appeal and the Appellant is deemed abandoned the appeal.

2. Order XXXVII of the Magistrate's Court Rules deals with the Civil Appeals and under part III the Grounds of Appeal is dealt and rule 4 specifically deals with the effect of failure to file grounds of appeal, and states that it should be deemed that the appeal is abandoned. In this instance though the Appellant had filed purported grounds of appeal, it is nothing but an affidavit of facts of the dispute, without addressing any grounds of appeal against the Resident Magistrate's ruling. This affidavit cannot be considered as grounds of appeal, hence there are no grounds of appeal submitted to court.
3. Without prejudice to the above finding, even on the merits this appeal should be dismissed. The Appellant had been granted the opportunity of disputing the claim. He had admitted the receipt of money from the claimant for intended work. There is no dispute as to the amount of money he received. By consent an independent assessor was engaged to assess the work he had done. This assessment was done by a qualified engineer, and two quotations were obtained for the materials used for the work. The Appellant was given an opportunity to submit the receipts of the materials that he had allegedly provided, by the referee but he had stated that he had lost them.
4. At the hearing of the appeal the Appellant stated, the referee did not ask for receipts. But when I pointed out that he was given time to submit the receipts, the Appellant changed his version and stated that receipts were given to the Respondent when the goods were delivered. These are evidence, which I cannot consider at this stage since this is an appeal from the ruling of the Resident Magistrate.
5. The grounds of appeal from the determination of referee are set out in Section 33(1)(a) and (b) of the **Small Claim Tribunal Decree 1991** and states as follows

'33.-(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**' (emphasis is added)

6. The tribunal has not exceeded its jurisdiction as the claim is below the statutory limit. The Referee had obtained an assistance of a qualified engineer with the consent of the parties, and had also obtained two quotations from reputed hardware stores. The referee had also granted time for the appellant to submit receipts, which he failed to do. So, the determination of referee cannot be considered as unfair or prejudicial. The proceedings before the referee cannot be considered as unfair or biased. The procedure is clearly laid down in the Sections 24- 29 of the **Small Claim Tribunal Decree 1991**.

7. According to Scott J in *Maan Chand v Waliman Khan* 2000 1 FLR 50, the small claims report should be accepted at face value by the Appellate Courts. The learned Resident Magistrate had affirmed the determination since the Appellant failed to satisfy the grounds contained in Section 33(1)(a) and (b). The Appellant at the hearing stated that he had provided timber to the amount paid to him, but these are evidence which I cannot deal in this appeal. The grounds of appeal from a Small Claim Tribunal are narrow and this was done with a purpose in mind. I cannot less agree with the reasoning of the learned Resident Magistrate, and this appeal should be dismissed.

CONCLUSION

8. First, this appeal should be deemed abandoned since the appellant had failed to file grounds of appeal. Without prejudice to that, I cannot see reason as to set aside the decision of the Resident Magistrate, who had found that Appellant had failed to meet the threshold set out in Section 33(1)(a) and (b). I affirm the ruling of the learned Resident Magistrate and the appeal is dismissed.

FINAL ORDERS

- a. The Appeal is dismissed.

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Justice Deepthi Amaratunga
High Court, Suva