

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**APPELLATE JURISDICTION**

**CIVIL NO. HBA 29 of 2008**

**BETWEEN** : Ravindra Nath Sukul

**APPELLANT**

**AND** : Sharda Nand Prasad

**RESPONDENT**

**COUNSEL** : Appellant in Person  
: Mr Sunil Kumar for the Respondent

**Date of Judgment** : 6 December 2013

**JUDGMENT**

1. The Appellant filed an appeal against the interlocutory decision made by the learned Magistrate of Nausori Magistrate Court on 19 December 2008 on the following grounds:

[i] *“That the learned Magistrate erred in law without allowing the Appellant a right to be heard or without allowing him to present his argument in that she ordered that:*

*(a) That the Defendant be allowed to enter his premises*

*(b) That the Fiji Police and the Fiji Military Forces be ordered to assist the Defendant in accessing his business premises*

*(c) That the Plaintiff be ordered to pay cost on Solicitor client basis*

*And thereby had a miscarriage of justice.*

*[ii] That the learned Magistrate erred in Law when she failed to disqualify herself from presiding over the said matter.*

*And upon such further and other grounds as the Appellant may be advise in due course after perusing the Copy of the Court Record.”*

2. Upon perusal of the case record, it is observed that the substantive matter in the Magistrate court was listed on a inter parties motion dated 23 December 2008 filed by the Plaintiff and the following orders were made on 7 January 2009:

*“Upon reading the inter-parte Notice of Motion dated 23 December 2008;*

*Upon reading the affidavit of Ravindra Nath Sukul dated 6 January 2009 in support of Notice of Motion;*

*Upon hearing Mr A.K.Singh of counsel for the Plaintiff Mr Sunil Kumar of counsel for the Defendant;*

*It is ordered by consent that:*

- (a) The Plaintiff to move in today;*
- (b) The Plaintiff pays rent for January 2009 and \$4000.00 (4 months’ rent) to court to hold on trust for the Defendant.*
- (c) The Plaintiff to occupy the Defendant’s designated premises from today to the end of March 2009 and thereafter to vacate the same;*
- (d) Both parties to conduct the above in a professional and friendly manner;*
- (e) All proceeding in the Magistrate Court are stayed until further order.”*

3. Counsel for the Respondent submits that the Appellant's Appeal is doomed to fail as per the orders made by the learned Magistrate on 7 January 2009.
4. The Appellant in his submissions asserted that the affidavits filed by the Respondent in the Magistrates court cannot be accepted as the Commissioner for Oaths was not holding the office at the time of attestation and some documents are alleged to be forged. He has further stated the staff in the court registry failed to accept his documents as the Respondent is a friend of a court clerk.
5. At the hearing before me, Appellant submitted that some of the documents which supports his case are still with his previous lawyer and unable to annex to his affidavit. He made several allegations against the learned Magistrate for failure to give him a proper hearing.
6. It is to be noted that case was transferred to the learned Magistrate after the previous learned Magistrate recused himself to hear the case. Although the Appellant is appearing in this appeal in person, he was represented by Mr A.K.Singh in the Magistrate court.
7. It is further noted that when the Appellant was represented by A.K.Singh lawyers and the Written Submission filed by the same lawyer in this appeal the initial stages, clearly stated that the present appeal is academic as on 7 January 2009 the matter in the Magistrate court was called where both the parties appeared and the learned Magistrate settled the matter by consent and submitted that all appeals will be discontinued.
8. However, it is noted that both parties filed their Written Submissions at several stages in this appeal and inter alia argued on the two grounds of appeal, *i.e* the learned Magistrate erred in law without allowing the Appellant a right to be heard or without allowing him to present his arguments and that the learned

Magistrate erred in law when she failed to disqualify herself from the presiding over the said matter, respectively.

9. The Appellant made several allegations against the learned Magistrate, court staff, Commissioner for Oaths who has attested the affidavits, counsel for the Respondent etc. in his submissions. The Appellant having agreed to settle the matter before the learned Magistrate, now submits several documents to support his claim before the Magistrate court. The appeal is confined only to two grounds and this court in the exercise of Appellant jurisdiction must be confined only to the grounds of appeal and not the allegation of the Appellant made against several people and the request for an inquiry into same.
10. It is important to state that this court is unable to make a determination on the grounds of appeal after both parties agreed to settle the matter in the Magistrate court. The court has no jurisdiction to make rulings on defaults by either party, in complying the settlement order even if there was any.
11. In relation to the new documents tendered by the Appellant to support certain factual positions, I conclude that no exceptional circumstances adduced in this appeal for the court to consider any new evidence. Hence I am not inclined to consider any of them in this appeal.
12. I further conclude that the Appellant's present appeal is against the interlocutory decision of learned Magistrate and therefore the Appellant cannot invoke the Appellant jurisdiction of this court unless leave is obtained.
13. In my view the Appellant's appeal is necessarily fatal on the premise of direct appeal to High Court.

**Final Orders**

1. The appeal is dismissed and the Respondent is entitled to costs which are fixed summarily in the sum of \$1,000.00 within 28 days.
2. Orders accordingly.

Susantha N Balapatabendi

**JUDGE**