IN THE HIGH COURT OF FIJI

[WESTERN DIVISION] AT LAUTOKA

Civil Appeal No. 22 of 2013
[From Nadi Magistrate's Court Civil Action Number 149 of 2011]

BETWEEN: **REENA KRISHNA NAIDU** of Nadi.

APPELLANT

AND : **DOMINION INSURANCE LIMITETD** a limited liability company having its regi tered office at Level 2, 231 Waimanu Road, Suva.

RESPONDENT

Appearances: Mr Singh R for Plaintiff
Mr Narayan A for Defendant

Date of Hearing: **30th October, 2014**

Date of Judgment: **5th December, 2014**

JUDGMENT

1. Introduction and Background

1.1 This is an appeal from the decision of the then Resident Magistrate of the Nadi Magistrate Court on 20th August, 2013 wherein the Learned Magistrate ordered costs against the Appellants (Plaintiff therein) in terms of the Notice of Assessment of costs filed on 30th July, 2013.

1.2 The following orders were made by the Learned Magistrate by the judgment delivered on 29th January, 2013 in Civil Action No. 149 of 2011.

"26. In my opinion the Plaintiff has brought this action without probable ground hence the Defendant is entitled to full indemnity costs as a successful party.

27. I therefore struck out and dismiss the Plaintiffs claim with costs to be agreed, if not assessed/taxed and payable to the Defendant".

1.3 Pursuant to the said orders, the Defendant filed (the Respondent in this Appeal) a Notice of Assessment of costs on a Solicitor/Client basis on 30th July, 2013 as no agreement or response was received from the Plaintiff.

1.4 On the 1st call day 20th August, 2013 the Learned Counsel for the Plaintiff moved for a hearing of the assessment of costs which the Learned Magistrate refused on the ground that there was no response filed by the Plaintiff to the Notice of Assessment of costs.

1.5 The Plaintiff/Appellant in the present application is now appealing the costs order of the Learned Magistrate dated 20th August, 2013 on the following grounds:

1. **THAT** the Learned Magistrate erred in law and in fact in awarding costs on the Notice of Assessment of cost filed by the Respondent.

2. **THAT** the Learned Magistrate erred in law and in fact when it refused and did not hear the parties on the Notice of Assessment of costs.

3. **THAT** the Learned Magistrate erred in law and in fact when it failed to assess the costs as required.

4. **THAT** the Learned Magistrate erred in law and in fact when it refused an application by the Plaintiff for a hearing of the Assessment of costs.

5. **THAT** the Learned Magistrate erred in law and in fact when it failed to hear or did allow the Plaintiff to be heard on the assessment of costs filed by the Respondent.

1.6 When this matter was taken up for hearing on 30th October, 2014 both parties

agreed for the appeal to be heard by way of re-hearing requiring the court to reassess the costs that were awarded by the learned Magistrate.

1.7 The parties filed their written submissions in support and in response respectively on the issue of re-assessment.

2. **Analysis and Determinations**

2.1 The Appellant in her written submissions has re-assessed the costs in the sum of $2,418.40. There are two grounds relied on by the Appellant to substantiate that the costs should be re-assessed to a sum of $2,418.40.

Those are:

(i) That no invoice or evidence of payment has been submitted by the Defendant to substantiate the sum of $9,457.25.

(ii) That the Court in absence of such evidence of payment has to rely on the scale of costs provided in Magistrate Court (Amendments) Rules 2002.

2.2 The Appellant cites ***Nair –v –Prasad [2013] FJHC 89 HBC 331, 2010(6 March 2013)*** in support of the contention that the invoices or evidence is necessary to assess indemnity costs.

2.3 In the said case the Court had previously ordered the Defendant to file evidence of invoice and payment before the Court would assess the costs being sought. In the earlier decision of ***Nair – v – Prasad [2011] FJHC 522; Civil Action 331.2010(14 September 2011)*** orders pronounced were as follows:

(a) The Plaintiffs Writ of Summons is struck off;

(b) The Defendants are awarded indemnity costs;

(c) Indemnity costs to be determined by the Court;

(d) The amount of the indemnity cost to be determined after submissions of actual costs of the Defendant to Court.

2.4 Hence the above decision cannot be taken as an authority to support the contention that evidence of invoice and payment is necessary to assess indemnity costs. It is clear from the said Judgment that the Court has specifically ordered such evidence to be filed prior to assessment of costs.

However in Civil Action No. 149 of 2011, the learned Magistrate has not ordered invoice or evidence to be provided prior to the assessment of costs. He has only ordered the costs to be agreed, if not assessed/taxed.

2.5 In the outcome I find that the Appellant has failed to establish that there is a requirement under the law that evidence of payment or an invoice is to be submitted prior to assessment of costs on indemnity basis.

2.6 The Appellant has re-assessed the costs relying on the scale of costs provided in the Magistrate Court (Amendment) Rules 2002. However, as stated in the written submission of the Respondent I find that costs given in Appendix C of Order 1 Rule 5 is of limited applicability. The headnote to the appendix states that the itemized costs therein are awarded ***"where the sum recovered or the value of property recovered or, in Landlord and Tenant cases, the annual value of the land or the rent amounts to:"***

From the said headnote it is clear that these costs are for land related matters. Therefore, I agree with the argument of the learned Counsel for the Respondent that the said scale of costs given in "Appendix" cannot be applied in re-assessing the indemnity costs in this matter.

2.7 In ***Baily –v – IBC Vechicles [1998] All ER 570 at 575 Henry LJ*** said:

> ***".....RSC Order 62 Rule 29(7) (c)(iii) requires the Solicitor who brings proceedings for taxation to sign the bill of costs. In so signing he certifies that the contents of the bill are correct. That signature is no empty formality .....***
> ***The signature of the bill of costs under the rules is effectively the certificate by an officer of the Court that the receiving party's Solicitors are not seeking to recover in relation to any item more than they have agreed to charge their client under a contentious business agreement.***
> ***The Court can (and should unless there is evidence to the contrary) assume that his signature to the bill of costs shows that the indemnity principle has not been offended....."***

Further in his Judgment he said:

> ***"For the avoidance of doubt I also agree that the taxing officer may and should seek further information where some features of the case raises suspicions that the whole truth may not have been told. And the other side of the presumption of trust afforded to the signature of an officer of the***

Court must be that breach of trust should be treated as a most disciplinary offence"

2.8 It is clear from the above authority that the signature of the Solicitor to the bill of costs is sufficient to enable the Court to be satisfied that the indemnity principle has been followed in preparing it. Therefore, it is my view that unless I have a doubt as to whether costs were reasonably incurred there is no need for me to call for any invoices or evidence to substantiate the bill of costs.

2.9 However as the parties agreed for this Court to re-assess the costs after re-hearing I have carefully gone through the bill of costs attached to the Nadi Magistrate Court Civil Action No. 149 of 2011. In perusing the same I find that the itemized costs Nos.1 to 56 are reasonable and that there is no reason for me to have a doubt on the amounts stated therein. Furthermore the Appellant does not disclose what item(s) of the bill of costs have been "unreasonable" or "unreasonably incurred".

3.0 The Respondent by its written submissions claim interest in the sum of 4% per annum on the judgment sum from 20th August, 2013 till date of payment under section 17 of the Imperial Judgment Act 1838 which is kept in force by virtue of Section 22(1) of the High Court Act [Cap 13].

3.1 In regard to interest on a judgment sum Section 4(1) of the Law Reform (Miscellaneous Provisions) (Death and Interest) (Amendment) Decree 2011 provides as follows:

> *4(1) "Every Judgment Debt shall carry interest at the rate of four cents per centum per annum from time of entering of the Judgment. Until the same shall be satisfied, and such interest may be levied under a Writ of Execution on such Judgment".*

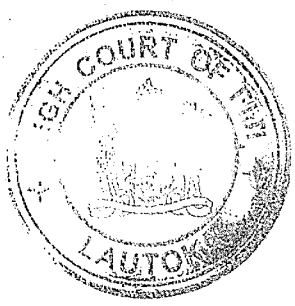
3.2 In the light of the above provisions I hold that the Respondent is entitled to interest in the sum of 4% per annum on the Judgment sum of $9,457.25 from 20th August 2013 till the date of payment.

3. **Final Orders**

(i) Costs award of $9,457.25 to be paid by the Appellant to the Respondents solicitors Trust Account within 21 days of this Judgment.

(ii) The Appellant to pay interest in the sum of 4% per annum on the Judgment sum of $9,457.25 from 20th August, 2013 till date of payment of the Judgment sum.

(iii) The Appellant to pay the Respondent costs summarily assessed in a sum of $750 within 21 days of this Judgment.



Lal S. Abeygunaratne
Judge

At Lautoka
5th December 2014