

IN THE HIGH COURT OF SUVA  
CIVIL JURISDICTION

CIVIL APPEAL NO. 004 OF 2014

BETWEEN:           BABITA KUMAR VERA  
                          RARALEVU ROAD  
                          NAUSORI

APPELLANT

AND :                 SAILOSI BOLAVUCU  
                          SAVU VILLAGE  
                          TAILEVU

RESPONDENT

COUNSELS:         Mr. K Singh for Appellant  
                          No Appearance from the Respondent

Hearing Date:       28<sup>th</sup> August, 2015  
Ruling Date:         18<sup>th</sup> September, 2015

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INTRODUCTION

- [1] This is an appeal from the ruling of the Chief Magistrate allowing extension of time to appeal against the decision of the Referee. The said decision of the Small Claim Tribunal (SCT) was obtained in the absence of the Respondent. The claim before SCT was struck off initially due to non appearance of the claimant and when it was reinstated, it was done without notice to the Respondent. The Notice of the reinstatement was not communicated to the Respondent, hence he was unaware of the decision of the SCT, but became aware of it when Judgment Debtor Summons (JDS) was served to him. The Respondent made an application for extension of time for appeal against the decision of the Referee to the learned Magistrate and it was allowed. This is an appeal from that order of the Magistrate.

**Analysis:**

- [2] In terms of the Section 36(1) of the Magistrates' Court Act (Cap 14), an appeal shall lie to the High Court from all judgments, decisions or order made in its appellate jurisdiction.
- [3] The ruling of the Chief Magistrate dated 27<sup>th</sup> March, 2013 relate to a civil appeal from a decision of Referee. At the hearing both the counsel and the Appellant examined the record of the court below. The Respondent had indicated to the court below that he was not informed of the reinstatement of the matter which was struck off by the referee. The striking off of the matter before the referee happened due to non appearance of the claimant. The referee had reinstated the matter and without notifying the Respondent had granted the claim.

**The Appeal Grounds are as follows:**

- [1] The Learned Magistrate erred in law and fact by holding that the Respondent was not aware of the order against him in the SCT.
- [2] Learned Magistrate erred in law and fact by holding that the delay of 1 year and 5 months is not a considerable delay.
- [3] The learned Magistrate erred in law and in fact in not considering that after service of the JDS onto the Respondent, the Respondent failed to file an appeal within 14 days after service of the summons.
- [4] Learned Magistrate erred in law and in fact by only considering that reasons of delay of the Respondents.
- [5] Learned Magistrate erred in law and in fact by not considering that the Appellate gave adequate notice to the Respondent upon service of the order from the SCT.
- [6] Learned Magistrate erred in law and in fact by stating that evidence at the SCT was not tested as the Respondent was not present on the day of the ruling at the SCT.
- [7] Learned Magistrate erred in law and in fact in granting leave out of time in favor of the Respondent.

- [4] At the oral hearing the learned counsel did not submit any case law or statutory provision in support of any of the appeal grounds stated.
- [5] There is no evidence before me that the Respondent was aware of the order of the SCT before the service of JDS. The delay in service of JDS cannot be held against the Respondent. The Respondent did not file an appeal within 14 days from the service of JDS, but there is no such requirement in SCT Decree. The 14 day period is applicable when a party is fully aware of the proceedings and the decision, but when a person is suddenly served with JDS the same time period cannot be applied. When a party to the proceeding is served with a decision at the conclusion of hearing and if not satisfied with that 14 day time period is applicable. The same cannot be applied to non party who only come to know about the decision in subsequent JDS. The Respondent had come to court within reasonable time period after the first mention of the JDS in the Magistrate's court. In the circumstances I cannot see any reason to interfere with the decision of the learned Magistrate. The appeal is dismissed and I would not order any cost.

[6] **FINAL ORDERS:**

- [a] **The Appeal is dismissed.**
- [b] **No costs.**

Dated at Suva this 21<sup>st</sup> day of **September**, 2015.



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*Deepthi Amaratunga*  
Justice Deepthi Amaratunga  
High Court, Suva