

THE HIGH COURT OF FIJI AT SUVA

APPELLATE JURISDICTION

CIVIL APPEAL NO. 17/2014

BETWEEN:

UMESH NARAYAN and NANISE NARAYAN

APPELLANTS

MOHAMMED SHIKANDER BUKSH

RESPONDENT

COUNSEL: The first appellant in person  
Mr G. O' Driscoll for the respondent

Date of hearing : 11<sup>th</sup> June,2015

Date of Judgment: 9<sup>th</sup> August,2016

**J U D G M E N T**

1. The appellant appeals from a Ruling of the Magistrates Court on the following grounds:
  - i. *That the learned Resident Magistrate erred in law when he proceeded to hear an application made orally by the Plaintiff/Respondent on the issue of limitation without a proper Notice of Motion being filed.*
  - ii. *That the learned Resident Magistrate erred in law and in fact by making a decision against the Defendant/Appellant without allowing the Defendant/Appellant time to amend his pleading after deciding that limitation period does not apply to this case.*
  - iii. *That the learned Resident Magistrate erred in fact and in law in holding that the proceedings were filed within the limitation period when the Sale and Purchase Agreement had expired on 30<sup>th</sup> March 2004.*
  - iv. *That the learned Resident Magistrate erred in law and in fact in not proceeding to the hearing of the matter on 25<sup>th</sup> March 2014 and granted the Plaintiff/Respondent to file Affidavit in Support without support of an Motion and deciding the matter on Affidavits and Submission alone.*
  - v. *That the learned Resident Magistrate erred in law and in fact in not allowing the Defendant/Appellant to call his witnesses on the day of the hearing, depriving his right to be heard and present his case.*

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*The proceedings in the Magistrates Court*

2. The respondent had filed statement of claim on 11<sup>th</sup> July,2012, in the Magistrates Court claiming a sum of \$ 39,000 paid as “*part-consideration*” to the appellants,(as Vendors) for the purchase of a land. The parties had entered into a Sale and Purchase Agreement on 15<sup>th</sup> December,2003. The sale had not proceeded. The respondent filed a caveat on the title.
3. The appellants, in their statement of defence took up the position that the action was out of time, section 4(1) of the Limitation Act.
4. The respondent, in his reply to defence joined issue with the appellants.
5. On 14<sup>th</sup> March,2014, the appellants filed affidavit further to their statement of defence moving that the action be struck out, as time had lapsed under the Limitation Act.
6. On 25<sup>th</sup> March,2014, the respondent filed affidavit moving that the limitation defence be taken up as a preliminary issue. The documents attached to the affidavit, which are so far as relevant are the following:
  - (a) Copy of the Sale and Purchase Agreement of 15<sup>th</sup> December,2003
  - (b) Copy of an Agreement of deferment of the sale until 30<sup>th</sup> March,2004
  - (c) Copy of caveat registered on 12<sup>th</sup> June,2007
  - (d) Copy of transfer of 26<sup>th</sup> June, 2007 to Li Xiu Yun.
  - (e) Copy of demand of 9<sup>th</sup> July,2009
7. On 16<sup>th</sup> April, 2014, the appellants filed reply.
8. The lower court proceeded to determine whether the action was time barred as a preliminary issue.
9. The Learned Magistrate held that the cause of action arose from the date of breach, when the transfer was effected to Li Xiu Yun on 26<sup>th</sup> June, 2007, and not from the date of the signing of the Sale and Purchase Agreement. The action was within the six year period set out in section 4(1) of the Limitation Act.

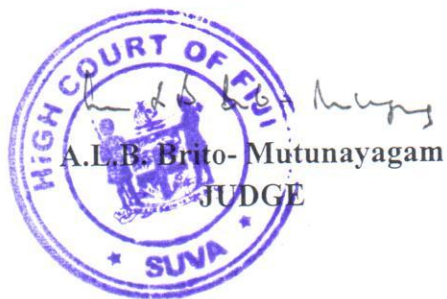
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10. I agree with the reasoning and finding of the Learned Magistrate.
11. Section 4 (1) of the Limitation Act provides that time runs “*from the date on which the cause of action accrued*”.
12. It is trite law that cause of action accrues from the date of breach.
13. In the present case, the breach arose on 26<sup>th</sup> June, 2007, when the title was transferred to Li Xiu Yun. The respondent’s statement of claim was filed within time.
14. In my judgment, ground 3 of the appeal fails.
15. The lower court was correct in proceeding to hear the issue of limitation as a preliminary issue, as taken up in the statement of defence and affidavit filed thereafter by the appellants.
16. Grounds 1, 2, 4 and 5 also fail.

17. **ORDERS**

- (i) The appeal of the appellants is dismissed.
- (ii) The appellants shall pay the respondent costs summarily assessed in a sum of \$ 1000.



9<sup>th</sup> August, 2016