

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

Civil Action No. HBM 35 of 2016

**BETWEEN** : **MANASA RATUBULI**

**Plaintiff**

**AND** : **JAMES NAND**

**Defendant**

## **R U L I N G**

### **INTRODUCTION**

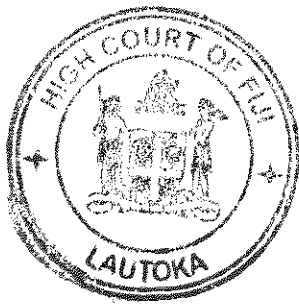
1. Before me is a Summons dated 13 December 2016 filed by Manasa Ratubuli. He seeks leave to extend the time to appeal a decision of Resident Magistrate Salakubou Raramasi dated 09 November 2016 in Lautoka Magistrates Court Civil Appeal No. 16 of 2016 and that execution of the judgement/order be stayed.
2. Ratubuli's Summons is filed pursuant to Order 20 Rule 3 and Order 28 of the High Court Rules 1988 and also to the inherent jurisdiction of this Court.
3. The application is opposed.

### **BACKGROUND**

4. The Learned Magistrate, on 09 November 2016, had ruled against an appeal by Ratubuli against an appeal by Ratubuli against a decision of the Small Claims Tribunal dated 17 December 2015.
5. Ratubuli's appeal of the SCT decision was based on some allegations he had made that the SCT had been biased in:

- (i) failing to consider a criminal charge pending against James Nand regarding a boat which Nand had sold to Ratubuli and which boat Ratubuli says Nand had stolen.
  - (ii) only considering the evidence of Nand.
  - (iii) dismissing Ratubuli counter-claim without hearing it.
6. The Learned Magistrate had stated by reviewing the proceedings before the SCT and the respective contentions of the parties. He then considered S.33(i) of the SCT Decree 1991 which provides for a Right of appeal but which limits that right to two grounds only namely (i) that the referee conducted the proceedings in a manner unfair and which prejudicially affected the result of the proceedings OR that the tribunal exceeded its jurisdiction.
  7. The Learned Magistrate then noted that the claim was for a sum of \$2,735.75 pertaining to an allegation of an unsettled debt by Ratubuli over the boat he purchased from Nand. Thus he observed, was within the SCT jurisdiction.
  8. The issue, as the Learned Magistrate noted, was whether the Referee conducted the proceedings in a manner unfair to Ratubuli and which prejudicially affected the result of the proceedings.
  9. The Learned Magistrate then observed that Ratubuli's counter-claim had been dismissed by the SCT. He observed that the Referee had provided every opportunity to the parties to present their respective cases and found that the Referee had conducted the proceedings in a manner that was procedurally fair. He then dismissed the appeal.
  10. I have reviewed the SCT proceedings and I would agree with the Learned Magistrates observation and conclusion regarding the same.
  11. Before me, Ratubuli said that the SCT did hear him but the Magistrate Court had not heard him.

12. From what Ratubuli told me in Court, he is alleging that the boat in question was stolen by a named person who then sold it to Nand.
13. Nand had then sold it to Ratubuli.
14. Ratubuli had refused to pay Nand because the boat, he says, was stolen by the man who then sold it to Nand.
15. Ratubuli confirmed in Court that the boat was still with him.
16. I discuss the above only to highlight that even on the merits, Ratubuli has no defence. Nand was a *bona fide* purchaser for value and there was no charge laid against the man who allegedly sold the boat to Nand.
17. The Learned Magistrate was correct. I will not even discuss the principles of stay. Application refused. Costs to Nand which I summarily assess at \$300.00.



Anare Tuilevuka  
**Judge**  
LAUTOKA

13 July 2017