

IN THE HIGH COURT OF FIJI AT SUVA
APPELLATE JURISDICTION

Civil Appeal No. HBA 09 of 2017

BETWEEN

SANJAY SINGH VERMA of Raralevu, Nausori.

APPELLANT

AND

MOHAMMED SAHIM T/A SANDULA TRANSPORT of Vinimono, Nausori,
Businessman.

RESPONDENT

Counsel : Appellant in Person.
Respondent is absent and unrepresented.

Date of Hearing : 27th June, 2017

Date of Judgment : 26th July, 2017

JUDGMENT


- [1] The appellant made a claim against the respondent before the Small Claims Tribunal claiming \$5000.00 on the basis that the respondent borrowed \$30,000.00 and \$25,000.00 was paid back.
- [2] The Small Claims Tribunal after hearing the parties made order directing the respondent to pay \$5,000.00 within 14 days. Being aggrieved by the said award of the Small Claims Tribunal the respondent appealed to the Magistrate's Court. The learned Magistrate set aside the order of the Small Claims Tribunal on the ground that the Referee has conducted the hearing in a manner that was unfair to the appellant and prejudicially affected the result of the proceedings and ordered a rehearing before another referee. Being dissatisfied with the decision of the learned Magistrate the appellant preferred the present appeal to the High Court.
- [3] The only ground on which the learned Magistrate set aside the order of the Small Claims Tribunal is that the referee had failed to consider the counter claim of the respondent in arriving at his findings in that the learned Referee has failed to consider the letter dated 30th July, 2015 wherein the respondent has denied owing any money to the appellant and that the appellant owed \$7500.00 to the respondent.
- [4] The above letter was tendered to the Small Claims Tribunal on the day the hearing of the application commenced. In that letter the respondent had referred to an agreement entered into with the appellant on 15th May, 2015. Clause 3 of the said agreement reads as follows;
- That the Purchaser had previously borrowed the sum of \$7500.00 from the Vendor and both parties agree that this contract will supersede any previous contract for borrowing.
- [5] The learned Referee has only considered the admission by the respondent that he owed \$5000.00 to the appellant and failed to consider clause 3 of the agreement between them where the appellant has specifically admitted that he owed \$7500.00 to the respondent. I am therefore of the view that the Learned Referee has failed to consider the respective claims of the parties properly. Accordingly, I hold that the learned Magistrate is correct in setting aside the findings of the learned Referee of the Small Claims Tribunal.

- [6] The appellant also submitted that the learned Magistrate erred in law and in fact by not disqualifying herself from hearing the appeal since she used to be the respondent's counsel whilst being employed at Diven Prasad Lawyers in case No. HBC 338 of 2008.
- [7] The appellant raised this ground for the first time in this court. If he felt that the learned Magistrate would be biased against him he should have brought it to the notice of the learned Magistrate for her to decide whether she should recuse herself from hearing the appeal. It does not reflect from the ruling of the learned Magistrate that she had been biased against the appellant. She did not dismiss the claim of the appellant but referred the matter to another referee for hearing afresh. The rights of the parties are yet to be adjudicated upon.
- [8] For the reasons aforementioned I make the following orders.

ORDERS

1. The appeal of the appellant is dismissed.
2. The appellant is order to pay \$500.00 as costs of this appeal to the respondent.




Lyone Seneviratne

JUDGE

26th July, 2017.