

IN THE HIGH COURT OF FIJI AT SUVA
APPELATE JURISDICTION

HBA No. 13 of 2017

BETWEEN : AUSTRALIA & NEW ZEALAND BANKING GROUP
LIMITED

Appellant

AND : SESANIA TAUKEVE

Respondent

Coram : The Hon. Mr Justice David Alfred

Counsel : Ms U. Kunatuba

Dates of Hearing : 22 August 2017

Date of Judgment : 23 August 2017

JUDGMENT

1. This is a matter where the monetary amount involved may be of little moment but the juridical issue here is of greater moment. It concerns the respective jurisdictions of the Small Claims Tribunal (Tribunal) and the Magistrates' Court (Court).

2. The Appellant, a Bank has filed an appeal against the Court's striking out of its claim against the Respondent on the grounds that the Court could not hear the instant claim which is for the sum of \$2,924.58 and interest (the sum).

3. The Appellant has filed 4 grounds of appeal as follows :
 - (1) The Magistrate erred in striking out the Plaintiff's action on the ground the Court had no jurisdiction to determine claims below \$5,000 which should be filed in and determined by the Tribunal.
 - (2) The Magistrate erred in failing to hold the Court and the Tribunal shared a concurrent jurisdiction and a litigant was entitled to elect whether their claim is filed in the Tribunal or in the Court.
 - (3) The Magistrate erred in finding the Court would be in breach of s.3 (3) and s.8 of the Small Claims Tribunal Decree 1991 (Decree) (as amended) by hearing claims below \$5,000 when s.16 (1)(b) of the Magistrates Courts Act (Act) empowers the Court to hear claims below \$50,000.
 - (4) The Magistrate erred in concluding that the Court had a minimum jurisdiction when as a creature of statute there was no statutory provision prescribing a minimum jurisdiction of the Court.

4. When the hearing of the appeal came up before me yesterday the Respondent was absent as it appears she had migrated to Australia.

5. Counsel for the Respondent submitted. She said her main ground of appeal was the Magistrate erred in ruling that a claim which was less than \$5,000 could not be heard in the Court. She then referred to the relevant sections of the Decree, the Act and the Small Claims Tribunal Decree (Amendment) Promulgation 2007 (Promulgation). She said she is unable to show which of the High Court Rules provides that the High Court's minimum jurisdiction is \$50,000.

6. She also said the long title of the Decree is "A Decree to establish Small Claims Tribunals in Fiji to provide prompt and inexpensive relief to claimants." So she submitted the Decree does not talk anything about respondents.
7. Counsel continued she had no authority to back up her submission that if the Court was not to hear cases where the claim was less than \$5,000 then the amendment in the Magistrate's Court Act (Amendment) Promulgation 2007 which increased the Court's jurisdiction to \$50,000 would have stated its minimum threshold is \$5,000.
8. Finally Counsel said she had no High Court authority for her proposition that the jurisdiction of the Tribunal and the Court overlapped.
9. At the conclusion of the arguments I informed I would take time for consideration and would deliver my judgment the next day. Accordingly, I now deliver my decision.
10. This is a matter which lent itself to an expeditious resolution if only the Magistrate had carefully perused the provisions of s.23 (1) of the Decree.
11. This provides that if proceedings within the jurisdiction of a Tribunal have been commenced in a Magistrate's Court the Magistrate may on the application of either party or of his own motion, order the proceedings to be transferred to the Tribunal.
12. So here, where the only party present (the Appellant) would obviously not apply for such transfer, the Magistrate should have done so instead of striking out the matter.

13. Consequently the matter has come before me. At the outset, I state the only issue that appears to require my decision is whether a claim that falls within the jurisdiction of the Tribunal can be filed in the Magistrate's Court.
14. I shall also say straight away that I shall give short shrift to Counsel's outlandish argument that the Decree pays no regard to respondents and is apparently only concerned about dispensing justice to claimants. For this is exactly what the tenor of her argument is.
15. The intention of the Lawmaker in setting up the Tribunal is clearly expressed in s.8(1) of the Decree that it "shall have jurisdiction in respect of any claim which does not exceed \$5000 in value".
16. The word "shall" is, in the context of the Decree, to be construed as mandatory and not directory. In other words the intendment of the law, the intention of the Lawmaker is that it is compulsory or obligatory (Oxford Advanced Dictionary of Current English) that the Tribunal has the "jurisdiction" i.e. power to entertain an action (Osborn's Concise Law Dictionary) where the claim is less than \$5,000.
17. The context of the jurisdiction of the Tribunal can be discerned from the following sections of the Decree. s.15 (1) states the Tribunal's primary function is to attempt to bring the parties to an agreed settlement while sub-s (4) requires it to determine the dispute according to the substantial merits and justice of the case but shall not be bound to give effect to strict legal rights or obligations or forms or technicalities.

Thus easier access to justice for the people of Fiji in a litigant friendly environment is being provided.

18. Again s.23(1), which I have alluded to, provides that if proceedings within the jurisdiction of a Tribunal have been commenced in a Magistrate's Court the magistrate may order the proceedings to be transferred to the Tribunal. The word "may" is defined in the Oxford Dictionary as being used to express purpose – purpose being the appropriate forum shall be where the matter is adjudicated upon.
19. Finally there is s.3 of the Promulgation that any civil case already instituted in the Magistrate's Court at the commencement of this Promulgation and with respect to which jurisdiction is now vested in the Tribunal may with the consent of the parties be remitted to the Tribunal for hearing.
20. This Court does not countenance the practice of forum shopping.
21. At the end of the day disregarding the red herrings strewn across the path of this Court, I am of opinion that it is the intention of the Lawmaker that claims like the instant one which are under \$5,000 in value are to be filed in and determined by the Tribunal.
22. Accordingly the appeal is dismissed with no order as to costs.

Delivered at Suva this 23rd day of August 2017.



David Alfred

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David Alfred

JUDGE

High Court of Fiji