IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
APPELLATE JURISDICTION

Civil Appeal No. HBA NO. 15 OF 2017

[MC Lautoka – Civil Case No. 25 of 2016]

BETWEEN	:	**BINESH CHAND** of Vuda Point, Lautoka, Manager.
		APPELLANT
		(Original Defendant)
A N D	:	**FAMOUS PACIFIC SHIPPING**, a limited liability company having its registered office at 82 Harris Road, Suva.
		RESPONDENT
		(Original Plaintiff)

Appearance	:	Mr. J. Reddy for the Defendant – Appellant
	:	Ms. Devi for the Plaintiff – Respondent
Date of Hearing	:	19th January 2018
Date of Ruling	:	25th July 2018

JUDGMENT

A. INTRODUCTION:

1. This is an appeal arising out of the Ruling of the Magistrate's Court of Lautoka, in the Civil Action No. 25 of 2016. By the impugned ruling pronounced on 04th October 2017, the Learned Magistrate ordered the Defendant- Appellant (Appellant) to pay unto the Plaintiff- Respondent (Respondent) a sum of $ 32,000.00 as damages and $ 1000, 00 being the cost summarily assessed.

2. At the hearing of the appeal, the learned Counsel for the Respondent raised preliminary objection on the Appellant's failure to file Notice of the Intention of Appeal (NIA) as required by Order XXXVII Rule 1 of the Magistrate's Court Act. The learned Counsel for both the parties in addition to the oral submissions, tendered separate written submissions on preliminary objection and substantive matter.

3. Having heard both the Counsel at the commencement of the hearing, this Court instantly overruled the preliminary objection and heard the appeal .The Court reserved the written ruling and reason for same on preliminary objection to be delivered with this judgment.

A. BACKGROUND

4. The Respondent is a Freight Forwarding Company, where the Appellant worked from 2007 and became the Sales Manager in charge of Respondent's Lautoka Branch, having signed a Contract of Service on 3rd of August 2013 (Ex- 2), which included terms, among others, not to disclose, divulge or use the trade secrets and information of the Respondent Company, such as shipping line rates, billing information, client details etc. unto or for the benefit of the business competitors during his stay with the Respondent and for a period of 12 months after his resignation from the Respondent Company.

5. The Appellant resigned from the Respondent Company on 16th March 2016 and joined a competitor Company, namely, "Cosmos Logistics Pte Limited". He handed over the office Key and the Mobile phone of the Company after, allegedly, deleting all the confidential information such as client contact details, which were claimed to be crucial to run the Respondent's day to day business. The Appellant also had returned the iPad of the Company on 22nd March 2016 having, allegedly, deleted all the trade secrets and information, after a Police Complaint was lodged with regard to the iPad, two Cabinets and a Bar Freezer, allegedly, taken away by the Appellant.

6. The main allegations against the Appellant in the Statement of Claim (S.C) before the learned Magistrate were, that the Appellant;

   a. Deleted all the confidential information from the Mobile Phone and the IPad .

   b. Set up the Lautoka Branch of competitor Company, namely, "Cosmos Logistics" using the confidential information that he had gained while employed with the Respondent.

   c. Failed to account for the Bar Freezer and two Cabinets, which were under his care.

   d. Contacted the Respondent's numerous clients, while in employment and after the resignation, in order to solicit them towards the Competitor Company, as a result of which the Respondent suffered immense loss and damages.

7. The learned Magistrate, after hearing the evidence of 4 witnesses for and on behalf of the Respondent Company and that of the Appellant, delivered the impugned ruling on 4th October 2017, granting to the Respondent $ 32,000.00 as damages with summarily assessed cost of $1,000.00.

8. It is against the above judgment; the Appellant filed the Notice of Intention to Appeal (NOIA) cum the Grounds of Appeal on 30th October 2017. Though, the Grounds of appeal was well within the stipulated time period of 30 days, the NOIA, which should have been filed on or before

11th October 2017 , was delayed by 19 days. It was on this delay the aforesaid Preliminary objection was taken up.

B. THE GROUNDS OF APPEAL

9. The Appellant has raised 13 grounds of appeal, which are reproduced below.

1. *That the Learned Trial Magistrate erred and/or misdirected himself in law and in fact in arriving at a figure of $30,000.00 in damages without having proper evidence adduced showing such a loss.*

2. *That the Learned Trial Magistrate erred in law and in fact when he did not consider the fact that the Appellant was only an employee of the Cosmos Logistics and all transaction happened between the company and its customers and the Appellant in no way gained from any transaction carried out between his employer and its customers.*

3. *That the Learned Trial Magistrate erred in law and in fact in holding that the loss suffered by the Respondent was due to the Appellant's breach which were not clearly articulated to show what the actual breaches were by the Appellant.*

4. *The Learned Trial Magistrate erred in law and in fact in not considering that the Appellant was merely an employee in the other company and had no control over the Plaintiff's client who later engaged his current employer Cosmos Logistics.*

5. *The Learned Trial Magistrate erred in law and in fact when he accepted that the bar freezer and the two cabinets at the Plaintiff's company was the same as the one later found at Cosmos Logistics Office.*

6. *The Learned Trial Magistrate erred in law and in fact when he accepted that the value of the freezer and the two cabinets amounted to $2,000.00 without any supporting evidence.*

7. *The Learned Trial Magistrate erred in law and in fact when he accepted the evidence of the witness, Nafiz Haroon, that his company initially engaged the Respondent Company, however failed to uphold that when he was issued with an invoice from the Appellant's current employer Cosmos Logistics, he could have easily refused to pay Cosmos Logistics.*

8. *That the Learned Trial Magistrate erred in law and in fact when he failed to analyze that the payments made by Nafiz Haroon's company was made to Cosmos Logistics and not to the Appellant in his personal capacity.*

9. *That the Learned Trial Magistrate erred in law and in fact in that he did not consider the fact that the clients of the Respondent Company did not in any way engage the Appellant in his personal capacity to do their work but engaged his current employer Cosmos Logistics and that the Appellant was bound to work on instructions given by this employer.*

10. *That the Learned Trial Magistrate erred in law and in fact when he failed to consider the fact that the Appellant had not gained anything from the transaction carried out between Mr. Haroon and his employer Cosmos Logistics.*

11. *That the Learned Trial Magistrate erred in law and in fact when he failed to consider the fact that there was no law or agreement stopping the clients of the Respondent Company in*

securing the services of the Appellant's current employer Cosmos Logistics either during the tenure of the Appellant or even after his resignation.

12. *That the Learned Trial Magistrate erred in law and in fact when he did not allow the Appellant's application for adjournment when it was made known to the Court that the Appellant's Solicitor Aman Ravindra Singh was engaged in another trial being the sedition case that was before the Lautoka High Court thus prejudicing the Appellant's interest to have his matter conducted by his choice of lawyer.*

13. *That the Learned Trial Magistrate erred in law and in fact when he failed to consider the fact that the lawyer who conducted the hearing for the Appellant was not the lawyer that he had engaged thus causing prejudice to the Appellant.*

C. THE ISSUES BEFORE THE MAGISTRATE & AT APPEAL

10. The pivotal issues that begged adjudication before the learned Magistrate were, whether the Appellant breached the term/s of the Employment Contract by soliciting numerous clients of the Respondent Company away from the business with it? If it was breached so, whether it caused loss and damages to the Respondent? Whether the Appellant when he resigned took away two cabinets and a Bar Freezer? And if loss and damages were caused by the above acts, what was the quantum of it? Through the aforesaid grounds of appeal, this Court has been called upon to examine the propriety of the findings of the learned Magistrate.

D. THE SUBMISSIONS

11. **The Appellant's submissions.**

a. The learned Counsel for the Appellant (Appellant's Counsel), apart from addressing the Court by way of written and oral submissions on the preliminary objection, made oral and written submissions on the substantive matter as well.

b. The Appellant's Counsel, while drawing my attention to Order XXXVII Rule 1 and 4 of the Magistrate's Court Act, which deal with the NOIA and Grounds of Appeal respectively, cited the decisions in **(1)** *Crest Chicken Limited v Central Enterprise (2005) FJHC 87, HBBA 13J (19th April 2005),* **(2)** *Katafano V Brown [2016] FJHC 19; HBC135.2014 (14 January 2016) (3) Isikeli Maravu Tuituku & Anor. v Isikeli Tuituki & Ors . Family Court of appeal No. 1 of 2014(7th December 2014) by Wati-J,* and **(4)**Jan's Rental Cars (Fiji) Ltd v Nand [2016] FJHC 73, in support of his contention with regard to the preliminary objection raised by the Respondent's Counsel.

c. On the substantial matter, the Appellant's Counsel submitted, among other things , that the Respondent failed to prove any losses by concrete evidence supported by documents, the learned Magistrate failed to consider the fact that the Appellant's employer Cosmos Logistics is a Company on its own and is entitled to its customers wherever they come from, the Respondent cannot claim exclusive ownership or rights to any customers, the Appellant had no control over the customers, who came to the Cosmos Logistics, No evidence was adduced to show that the Appellant carried out personal transactions, No

evidence adduced to show that the Respondent's customers went to Cosmos Logistics at the influence or instigation of the Appellant, No evidence adduced to show that the Appellant gained from the transaction in his personal capacity , No evidence adduced on the ownership and the value of the Freezer and Cabinets and nothing is contained in the employment contract to suggest that the clients of the Respondents can or cannot go to the place of the Appellant's present employment and seek their services. The Counsel cited few case authorities on the above points as well.

12. **Respondent's Submissions.**

a. The learned Counsel for the Respondent (Respondent's Counsel), among other things, submitted that the Appellant filed the NOIA after expiry of due date for same, he has not filed an application for the stay of the execution or for the leave of the Court to extend or enlarge the time to file his NOIA, however, there is no provision in the Rules to extend the time for filing of NOIA, and the Order XXXVII Rule (1) is mandatory to be followed by the Appellant.

b. Counsel also relied on the decision in **(1)** *Crest Chicken Ltd v Central Enterprises Ltd [2005] FJHC 87* , **(2)** *Taylor v Waikohu County Council [1922] NZLR and* **(3)** *Reddy v Lata [1994] FJHC 153.*

E. DISCUSSION

13. **My written reasons for overruling the preliminary objection are as follows.**

a. The Appellant's forceful submission on this preliminary objection appears in pages 2,3 and 4 of his written submission. with special reference to Order XXXVII Rules (1) and (4) of the Magistrate's Court Act and some decided authorities touching the subject.

b. According to the Appellant, it is stated that his counsel, who appeared on the date of delivery of the impugned ruling, verbally informed the learned Magistrate and the Respondent's Counsel about the intention to appeal. But such a verbal notice is not to be found recorded in the file. It is also submitted that the registry accepted the NOIA though 7 days period had lapsed and there are exceptions whereby the court's inherent jurisdiction can be exercised to accept it outside the statutory 7 days period.

c. Perusal of the Rule (1) and (4) of the Order XXXVII of the M.C. Act reveals that while the legislature has not made any provision for the extension of time for the NOIA outside 7 days period, same has been made available in respect of ground of appeal granting power to the Court bellow and the Appellate Court.

d. Under rule (1) of Order XXXVII Act, the absence of any provision to result detrimental consequences on account of the Appellant's failure to give NIA is conspicuous. This shows that the legislature has not intended to penalize the Appellant or to snatch his right of appeal over his mere failure to verbally inform or in filing it within 7 days.

e. When the legislature has given the power to both the Courts under rule (4) to extend the time for grounds of appeal, which is a major step in prosecution of an appeal, it cannot be construed, in case of NOIA, that it has intended to completely shut down the appellant, who may have valid ground/s of appeal, which has the high probability of success. There is no Rule to stipulate that the grounds of appeal filed, within or out of prescribed time period, should be dismissed on the account of the absence of a timely NOIA.

f. No prejudice has been caused to the Respondent due to the absence of the timely notice of intention to appeal and it has had the liberty of moving for execution when the Appellant has not obtained a stay for same. Moreover, I observe that, by accepting the belated NOIA in this case, the lower Court has impliedly extended the time for it, filed along with the timely grounds of appeal.

g. The Rule (4) under Order XXXVII stipulates that on the appellant's failure to file the grounds of appeal within the prescribed time, he shall be deemed to have abandoned the appeal, **unless the Court bellow or the appellate Court shall see fit to extend the time.** This rule will not directly come into play here as the ground of appeal is filed within the time frame. The question is whether the Appellant can take refuge under this rule for his failure to give timely NOIA.

h. The Respondent's Counsel heavily relied on the decision in ***Crest Chicken v Central enterprises Ltd [2005] FJHC 87*** in which Order XXXVII Rule (1) was strictly followed. In Crest Chicken case the learned Judge stated as follows;

> ***"This is a mandatory rule and it does not give the Magistrate power to extend the time. Even if he had, no application was made by the appellant for extension for it was already late in filing or giving notice of intention to appeal within the seven days after judgment was pronounced.***
>
> ***Had the legislature intended it could have specifically provided for application to extend time. It did not do so in Or. 37 R.1 but Or.37 R.4 which provides as follows, gave the Magistrate's Court power to extend the time to file grounds of appeal.***
>
> ***On the appellant failing to file the grounds of appeal within the prescribed time, he shall be deemed to have abandoned the appeal, unless the Court below or the appellate Court shall see fit to extend the time" (emphasis mine)***

i. With all due respect, I observe in the above judgment, that no attention has been focused on the absence of a provision soon after Rule 1 of Order XXXVII giving the resulting consequences of the failure to verbally notify or file the NOIA in 7 days.

j. I am inclined to follow the decision of Hon. K.Kumar –J in ***Katafano v Brown [2016] FJHC 19,*** where His Lordship relied on Sect. 39 of the Magistrate's Court Act, which reads as follows.

"Notwithstanding anything hereinbefore contained, the High court may entertain any appeal from the Magistrate's Court, on any terms which it thinks just." (Emphasis mine)

k. Hon. Kamal Kumar –j, after careful review of the rules and authorities on this issue arrived at the following decision.

> *"(i)Section 39 of the Magistrates Court Act does not give this Court discretion to extend time for filing of notice of intention to appeal or grounds of appeal but gives this Court power to deal with the appeal before the Court on terms it thinks just even though appellant has not complied with rules in respect to Civil Appeal (ss38 and 39 of Magistrates Court Act);*
>
> *(ii)This Court and Magistrates Court has jurisdiction/discretion to extend time for filing of notice of intention to appeal and grounds of appeal under Order 3 Rule 9 of the Magistrates Court t Rules, even if Application to enlarge time is made after prescribed time has expired".*

l. The above view is supported by Madam Wati-J in ***Isikeli Maravu Tuituku & Anor. V. Isikeli Tuituki & Ors. Family Court Appeal No. 1 of 2014(7tyh December 2014)***

m. Having arrived at the above view, the Court made a declaration that the appellant has the right to apply to the Magistrate' s Court or High Court to extend time for filing of NOIA and grounds of appeal, even if the time for filing of NOIA has expired.

n. In ***Jan's Rental Cars (FIJI)Ltd v Nand [2016] FJHC 73*** the Court once again reiterated its view on section 39 of the Magistrate's Court Act to read as follows;

> *"my view on section 39 is that it does not give power to Magistrate Court or High Court to extend time for filing of notice of intention to appeal or grounds of appeal, but gives the High Court a discretion to "entertain any appeal from Magistrate's court, on any terms which it thinks just" when the appellant has failed to comply with the rules of Magistrate's court in relation to civil appeal".*

o. See ***also Lami Town Council v Native Land Trust Board [2016] FJHC 238; Civil Appeal 9.2015 (31 March 2016)***

p. The main factors that demand consideration, when the court is called upon to decide whether the extension of time should be granted or not, are 1) **Length of delay,** 2) **Reason for Delay**, 3) **Merits of the appeal** & 4) **Prejudice to the Respondent.** The delay in filing the NOIA is only 19 days. The registry at the Magistrate's Court had accepted the belated NOIA without refusing it. Even if it is refused, there is no specific provision to file application for extension of time. The grounds of appeal are well within the time. The 1st, 5th & 6th grounds of appeal appear to be convincing and have the chance of success. No prejudice has been caused to the Respondent as it was at liberty to move for execution despite the delay.

q. The above stated decisions and my observations amply fortify my decision to overrule the preliminary objection raised by the Counsel for the Respondent at the commencement of the substantial hearings.

14. **My decision on the substantive matter under the aforesaid grounds of appeal.**

a. Out of the aforesaid 13 grounds of appeal adduced on behalf of the Appellant, it is to be observed that, no single ground is found, which questions the propriety of learned Magistrate's finding that the Appellant has breached the contract of employment, admittedly, entered by and between the parties. This amounts to a tacit admission on the part of the appellant that he concedes the correctness of the learned Magistrate's decision that the Contract of employment was breached by him.

b. Careful perusal of the impugned judgment, amply demonstrates that the learned Magistrate has arrived at the correct finding after analyzing both the oral and documentary evidence advanced by the Respondent that the Appellant has breached the contract of Employment while in the service with the Respondent and after leaving the Respondent and joining the Cosmos Logistics.

c. The clause 12:1 of the Contract of Service specifically prohibits the Appellant from disclosing any confidential information, while the clause 15 prohibits him from engaging in directly or indirectly or assisting any same business or similar to the Respondent Company's business. The Respondent through its witness PW-1 namely, ASHNIL ASHISH CHAND and PW-2 HAFIZ HAROON and through the exhibits marked as 3 (e-mails) and exhibits 4(emails and invoices) have clearly demonstrated that the Appellant while in service and after leaving the Respondent Company, solicited the business clients of the Respondent Company and made them to do business with the Cosmos Logistics, where the Appellant joined after leaving the Respondent Company.

d. This is further substantiated by the unequivocal admissions made by the Appellant under the cross examination by the Counsel for the Respondent in pages 28, 32 to 36 of the proceedings dated 12th April 2017.

Q. ..... You had these information. Is this Correct?
A. **Correct.**
Q. And these are confidential information. Would you agree with me?
A. **Correct.**
Q. And significant aspect of the business depends on the rates that you offer, is that correct?
A. **Correct (Page 28)**

Q. Yet you liaised with Tappoos and M. Iqbal Investments is that correct?
A. **Correct** (Page 32)
Q. Mr. Chand you facilitated a consignment for M. Iqbal Investment Ltd for the sum of $ 58.740.01 through Cosmos Logistics, is that correct?
A. Yes, after I joined Cosmos.
Q. And you had initially liaised with M. Iqbal Investment Ltd through Famous Pacific Shipping Ltd with the same consignment, is that correct?
A. **Correct (Page -33).**
Q. When you resigned from the Famous Pacific shipping Ltd you immediately joined Cosmos Logistics, is that correct?
A. **Correct.**

Q. Tappoos was one of Famous Pacific Shipping's clients, is that correct?
A. **Correct.**
Q. you liaised with them while you were working for famous pacific shipping ltd?
A. **Correct.**
Q. You facilitated a Shipment for them for sum of $ 1328. 92?
A. **Correct.**
Q. Did you give them the impression that they were being served by Famous Pacific Shipping Ltd?
A. **No. (Page 35)**
Q. Mr. Chand, I put it to you that you used the confidential information from Famous Pacific Shipping Ltd to do business with Cosmos Logistics Ltd?
Court. What is the answer?
A. That information definitely has to be relayed to me, yes.
Q. So your answer is yes?
A. **Yes. (Page-36)** – (Emphasis by me)

e. In the light of the above answers, it is clear that the relevant clauses of the Contract of service have been blatantly violated by the Appellant and the learned Magistrate's finding on this is not blameworthy.

f. The propriety of the contract of Service was not subjected to adjudication before the learned Magistrate. If the Appellant intended, it could have been done before a different forum and there was no evidence to that effect.

g. In my view, out of the 13 grounds of Appeal, the only grounds that warrant consideration and have some prospects of success are grounds 1, which is on the propriety of the amount of damages and grounds 5& 6, which revolve around the propriety of the decision, arrived at by the Magistrate concerning the Bar Freezer and two Cabinets.

h. When analyzing the totality of the oral and documentary evidence led on the alleged damages, as raised in the 1st ground of appeal, I am compelled to raise the question whether the learned Magistrate was correct in arriving at a sum of $ 30,000.00 as damages suffered by the Respondent being the loss of profit on account of the appellant's breach of contract.

i. The total amount of loss of sale, suffered by the Respondent and proved by the evidence led before the learned Magistrate, supported by documents, on account of the Appellant's breach of contract, was limited to $ 50, 328.92. This amount was made up by adding up the sale amount for the importation of the Excavator for M/s. M. Iqbal Investments, which would have brought the sale of $ 49,000.00 as evidenced by e-mail exhibit marked -3 and another sale amount of $ 1,328.92 from "Tappoos" as evidenced by the Tax invoice and email marked exhibit - 4. These two sales were finally attended to by Cosmos Logistics as admitted by the Appellant and proved by the Respondent by evidence.

j. The learned Magistrate seems to have been influenced by the evidence of PW-1, that the Respondent lost sales amounting to about $ 75,000.00 and about $20,000.00 as profit out of it , while the Respondent had , in fact, proved as the loss of Sale only $ 50, 328. 92 and proceeded to decide the loss of profit as $ 30,000.00, when no evidence had been led to prove that the Respondent lost $20,000.00 or anything more than that as profit.

k. The learned Magistrate, in paragraph 19 of his Judgment, having accepted the unsupported evidence on the amount of alleged lost profit of $20,000.00, has proceeded to add further $ 10,000.00 to the alleged loss of profit on the ground that the ***"Plaintiff has come to know***

only about a couple of incidents where the Defendant has solicited away clients", which is a mere speculation.

l. Loss of sale for $ 75,000.00 has not been proved. The learned Magistrate's assessment of the loss of profit as $ 30,000.00 is without sufficient evidence and basis. For the proved loss of sale of $ 50,328.92, the assessed loss of profit as $30,000.00 is excessive and unreasonable, where the profit margin exceeds over 50% of the total sale amount.

m. Having considered all the arguments placed before me by both the Counsel, together with the evidence led before the learned Magistrate on the question of the loss of sale and profit, allegedly, incurred by the Respondent and being mindful of the admitted competition in this field, I decide that the Respondent is entitled for a sum of $ 7,500.00 being the loss of profit against the total sale amount of $50,328.92 that was deprived by breach of contract by the Appellant. Accordingly, the first ground of appeal becomes partly successful and the damage awarded by the learned magistrate is reduced as above.

n. The next grounds of appeal that warrant consideration are grounds 5 and 6 , which pertain to the decision of the learned Magistrate on the Respondent's claim for Bar Freezer and two cabinets. It is to be noted that PW-1 and PW-4, who gave evidence on behalf of the Respondent Company, have not adduced any documentary evidence to prove the ownership or value of these items. What the PW-4, SHERIN LATA, in her evidence in chief has stated is that the Bar Freezer and two Cabinets were at Respondent's Company (Famous Pacific Shipping) when she joined the Company and she was made to understand that those items belonged to the Company. The PW-1 in his examination in chief does not specifically state that it was purchased by or belonged to the Respondent Company. Under cross examination PW-4 admits that when she joined the Respondent Company, the Appellant had already been working there and she does not know who purchased those items.

o. The PW-3 Police Officer in his evidence confirms the fact that a complaint was made by the Respondent Company with regard to the stealing of iPad, Bar Freezer and two Cabinets. However, the outcome of the investigation and evidence on the ownership or value of the Bar Freezer and Cabinets have not come forth. The returning of the ipad by the appellant has been admitted in the evidence of PW-1, PW-3 & PW-4.

p. The Appellant in his examination in chief and under cross examination, has taken up a stern position that these items were not taken away by him, he would have returned them had he taken them away, these items do not belong to him and it belongs to one PRAVIN DUTT, on being purchased with his own money when he was a Director of the Famous Pacific Shipping (Respondent) and PRAVIN DUTT presently is a Director of Cosmos Logistics, where the Appellant works now.

q. In the absence of any tangible evidence as to the ownership by purchasing or otherwise and on the value of those items, the learned Magistrate has proceeded to decide that the Appellant should pay $2,000.00 to the Respondent on account these goods . This decision, in my view, according to what transpired above cannot stand as a valid one. Accordingly, I decide that the decision of the learned Magistrate to pay $2,000.00 should also be set aside.

r. As far as remaining grounds of appeal are concerned, it is my considered view that those grounds are not found to be having anything to do with or involve the main issues that begged adjudication and are devoid of merits. Accordingly, grounds of appeal Nos.2, 3, 4, and 7 to 13 are hereby disregarded.

F. CONCLUSION

15. The learned Magistrate has correctly arrived at the finding that the Appellant, while engaged in the employment with the Respondent and after resigning therefrom, acted in breach of clause 12:1 and 15 of the Contract of Employment dated 3rd August 2013 signed with the Respondent and this decision does not warrant the intervention of this Court.

    The total damage assessed by the learned Magistrate in a sum of $ 32,000.00 as lost profit, payable to the Respondent is excessive and not supported by sufficient evidence as highlighted and argued under the 1st ground of appeal. The lost profit should be reduced to fall in line with the lost sale proved by the Respondent.

    The decision arrived at by the learned Magistrate pertaining to the Bar Freezer and two Cabinets is erroneous, not supported by sufficient evidence as to the ownership and value of same as alluded and argued under grounds of appeal Nos. 5 and 6. The justice demands the setting aside of this part of the impugned judgment together with the damages of $2,000.00 awarded on it.

G. FINAL OUTCOME

a. Appeal is partly allowed.

b. The decision of the learned Magistrate that the Appellant breached the Contract of Employment is affirmed.

c. The damage of $30,000.00 ordered by the learned Magistrate, on account of loss of profit suffered by the Respondent, is reduced to $7,500.00.

d. The award of $ 2,000.00 to the Respondent on the Appellant's alleged failure to account for the Bar Freezer and two Cabinets is hereby set aside.

e. The award of costs in favour of the Respondent in a sum of $1,000.00 payable by the Appellant remains intact.

f. The Appellant shall be entitled for $500.00 being the summarily assed cost in this forum.

g. Copy of this judgment, along with the Original Case Record, shall be dispatched to the Registrar of Magistrate's Court Lautoka, forthwith.

HIGH COURT OF FIJI LAUTOKA

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A.M.Mohammed Mackie
Judge

At Lautoka
25th July, 2018