

**IN THE HIGH COURT OF FIJI AT SUVA**  
**APPELLATE JURISDICTION**

**Civil Appeal No. HBA 13 of 2018**

**BETWEEN**

**SULIASI KUDRUVI T/A TURTLE ISLAND & LENDING SETRVICES** of

Ratu Mara Road, Suva, Businessman.

**APPELLANT**

**AND**

**JOSEPH COVONICEVA** of 10 Alexander Street, Suva, Businessman.

**RESPONDENT**

**Counsel** : Mr G. O'Driscoll for the Appellant  
Ms R. Lal for the Respondent

**Date of Judgment** : 21<sup>st</sup> March, 2019

# JUDGMENT

- [1] The respondent filed action in the Magistrate's Court claiming \$17,900.00 as special damages, general damages for breach of contract and costs.
- [2] The learned Magistrate on 19<sup>th</sup> March, 2014 awarded as damages \$50,000.00 and the appellant. Since then there had been various applications by the appellant but without success.
- [3] The matter before this court is an appeal from the decision of the learned Magistrate refusing the application of the appellant filed on 23<sup>rd</sup> October, 2017. The application before the learned Magistrate was to have the writ of *fiery facias* issued by the respondent, dismissed and to have the vehicle bearing registration No. EM 305 released to the appellant. After hearing the counsel for the parties the learned Magistrate dismissed the application of the appellant with costs of \$300.00.
- [4] The grounds of appeal relied on by the appellant are as follows:
1. The Resident Magistrate erred in law in failing to consider the relevant factors in determining the issue of Res Judicata in relation to the appellant's application to dismiss the writ of *fiery facias* filed on 23<sup>rd</sup> October, 2017.
  2. That the Resident Magistrate erred in law by failing to find that there was no issue of res judicata in relation to the applicant's application to dismiss the writ of *fiery facias* filed on 23<sup>rd</sup> October, 2017 and the appellant's previous application to stay the writ of *fiery facias* filed on 26<sup>th</sup> November, 2016.
  3. That the Resident Magistrate erred in law by failing to find that the appellant's application to stay the writ of *fiery facias* filed on 26<sup>th</sup> November, 2016 was based on the matters occurring before the writ of *fiery facias* was filed and the appellant's application to dismiss the writ of *fiery facias* filed on 23<sup>rd</sup> October, 2017 was based on circumstances arising not only after the writ of *fiery facias* was filed but also after the

hearing of the application to stay the writ of *feri facias*. The basis for each application being completely different times.

4. The Resident Magistrate erred in law in failing to take into consideration the matters arising after the hearing of the application to stay the writ of *feri facias* in determining whether or not there was an issue of res judicata. It would appear that the Resident Magistrate failed to consider the contents of the affidavit in support of the notice of motion to dismiss the writ of *feri facias* sworn by the appellant on 03<sup>rd</sup> October, 2017 and filed on 23<sup>rd</sup> October, 2017 (lodged with Registry on 4<sup>th</sup> October, 2017).

[5] When this matter came up for hearing the parties moved that the judgment be given on written submissions and sought time to file written submissions. The parties were given time till 08<sup>th</sup> March, 2019 to file their respective submissions and also the reply, if any, of the appellant but the parties did not file the submissions.

[6] All the grounds of appeal relied on by the appellant are based on the issue of res judicata. Res judicata means a matter that has already been adjudicated by a competent court cannot be re-agitated between the same parties. In the instant case the appellant's position is that there had been an agreement with the respondent to the effect that the appellant had already paid \$36,5000.00 and the balance was to be paid at the rate of \$1000.00 per month. In this regard the appellant relies on the averments contained in his affidavit filed on 04<sup>th</sup> October, 2017.

[7] The principles of res-judicata have no application to the facts of this case but if the parties have entered into a subsequent agreement they are bound by its terms.

[8] The appellant has attached a copy of the agreement between them but it has not been signed by the parties or their respective solicitors. The question arises for determination whether there should be an agreement in writing for the court to give effect to an understanding between the parties about the settlement of the amount claimed by the respondent.

[9] The appellant also says that he has paid certain amount of money to the respondent and in support of that he has tendered some payment receipts which have not been considered by the learned Magistrate. These receipts show that the appellant,

between 09<sup>th</sup> December, 2016 and 24<sup>th</sup> July, 2017, has paid \$14,000.00 which has been accepted by the respondent.

[10] In every such receipt the respondent has indicated that the payments were part payments of the judgment sum and in the last receipt that is the receipt dated 24<sup>th</sup> July, 2017 it is stated that the entire sum has been paid.


[11] In my view since the parties have acted in compliance with the terms of the oral agreement they cannot thereafter deny having such an agreement. In this case if there was no such understanding between the appellant and the respondent, the respondent could not have accepted anything less than the judgment sum and issued a receipt stating that the entire sum had been paid.

[12] For the reasons given above the court makes the following orders.

#### **ORDERS**

1. The appeal of the appellant is allowed.
2. The order of the learned Magistrate made on 23<sup>rd</sup> October, 2017 is set aside.
3. The writ of Fieri Facias is dismissed.
4. The respondent is order to release the vehicle No. EM 305 to the appellant.
5. The respondent is ordered to pay the appellant \$2000.00 as costs of this appeal.



  
Lyone Seneviratne

**JUDGE**

21<sup>st</sup> March, 2019