

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

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. HBA 13 OF 2019

BETWEEN : **MOHAMMED RAFIQ KHAN** of Ravouvou Street, Lautoka.

APPELLANT

AND : **MOHAMMED MUNIF SHAH** of Lovu, Lautoka.

RESPONDENT

Appearances : **Appellant in person**
Mr Timoci Varinava for the respondent

Hearing : **Friday, 24th January, 2020.**

Judgment : **Friday, 19th June, 2020.**

J U D G M E N T

- (01) The respondent lodged a claim in the Small Claims Tribunal (SCT) claiming a sum of \$1,000.00 from the appellant being the balance sum of \$2,000.00 which he gave to the appellant since the appellant promised to arrange New Zealand Visa and Passport to the respondent and his family to go to New Zealand. The respondent alleged that the representation made by the appellant was false and the appellant had converted the money to his own use and benefit.
- (02) On 30th October, 2018, the SCT Referee made an order that the appellant pay the respondent the balance sum of \$1,000.00.
- (03) The appellant being aggrieved by the decision of the SCT Referee, filed his Notice of Appeal in the Magistrate's Court at Lautoka.
- (04) On 08th May, 2019, the learned Magistrate dismissed the appeal since the appellant has not satisfied grounds set out in Section 33(1) of the Small Claims Tribunal Act, 1991.

- (05) On 14th May, 2019 the appellant filed Notice of Intention to Appeal against the decision of the learned Magistrate.
- (06) The grounds of appeal filed on 05th June, 2019 were stated as being;
- (i) *The Learned Magistrate did not have access to Appellant's submission because due to negligence on part of the court clerk, who failed to put the said submission in the court file.*
 - (ii) *The learned Magistrate erred in law and fact when he failed to recognize that the Small Claims Tribunal claim number 676/18 was outside the ambits of Limitation Act.*
 - (iii) *The Learned Magistrate erred in law and fact when he failed to recognize that The Small Claims Tribunal ruled against the decision of the Magistrates Court.*
 - (iv) *The Learned Magistrate erred in law and fact when he failed to recognize that the doctrine of Res judicata is applicable to the claim, SCT 676/18.*

Ground – 01

- (07) *The Learned Magistrate did not have access to Appellant's submissions because due to negligence on part of the court clerk, who failed to put the said submission in the court file.*

In paragraph six (06) of the judgment of the learned Magistrate, it is stated that “Court considered the appeal grounds and the submissions by the parties along with SCT Proceedings”.

Therefore, ground one of the appeal has no merits and is dismissed.

Ground - 02, 03 and 04

- (08) (ii) *The learned Magistrate erred in law and fact when he failed to recognize that The Small Claims Tribunal claim number 676/18 was outside the ambits of Limitation Act.*
- (iii) *The Learned Magistrate erred in law and fact when he failed to recognize that The Small Claims Tribunal ruled against the decision of the Magistrates Court.*
- (iv) *The Learned Magistrate erred in law and fact when he failed to recognize that the doctrine of Res judicata is applicable to the claim, SCT 676/18.*

(09) Section 33(1) of the Small Claims Tribunal Act, 1991 provides that any party to proceedings before a Tribunal may appeal against an order made by the Tribunal under section 15(6) or section 31(2) on the grounds that:

- (a) the proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings; or
- (b) the Tribunal exceeded its jurisdiction.

Under section 33(1) of the Small Claims Tribunal Act, 1991, an appeal could be made only on the grounds stated therein.

(10) The non-legalistic nature of a Tribunal proceeding is exemplified by the requirement in Section 15(4) of the Decree that:

“The Tribunal shall determine the dispute according to the substantial merits and justice of the case and in doing so.....shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.”

Greig J in Hertz New Zealand Ltd v Disputes Tribunal¹ said in rejecting the appeal in that case, at p.151:

“...there is no appeal on the merits even if there is a clear and fundamental error of law in the conclusion of the Tribunal.”

Quite plainly, the second, third and fourth grounds of appeal are misconceived as they seek to question the ‘merits’ of the referee’s decision without pointing to any ‘procedural unfairness’, prejudicially affecting the result. Besides, they purport to be predicated on the legal principle of ‘res judicata and the technicality of limitation’. There is certainly no right of appeal neither in respect of any error of law nor in respect of any factual error. The procedure to be adopted is clearly one of review and not one of re-hearing. Under the grounds of appeal relied upon, the appellant is required to identify some unfairness in the manner (form) of the hearing before the tribunal and not simply the result. There is no right of appeal on the merits even when there may be a clear error of law in the tribunal’s decision. The appellant failed to properly appreciate the function and nature of a non-legally qualified referee exercising what in effect is an equity and good conscience jurisdiction.

(11) I therefore see no reason to interfere with the finding of the learned Magistrate that the appellant does not have a right of appeal against the findings of the referee on the merits.

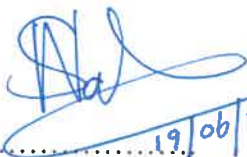
¹ (1994) 8 PRNZ

- (12) Since there was no allegation that the proceedings were conducted by the Referee in a manner which was unfair to him and prejudicially affected the result of the proceedings or the Tribunal had exceeded its jurisdiction, the learned Magistrate is correct in dismissing the appeal.

ORDERS:

1. The appeal is dismissed.
2. The parties to bear their own costs of the appeal.




19/06/2020
Jude Nanayakkara
[Judge]

At Lautoka
Friday, 19th June, 2020