

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

HBA No. 20 of 2019

(On Appeal from the Magistrate's
Court of Fiji at Suva, Civil Action
No.102 of 2012)

BETWEEN: **EPELI LIGAIRI** of Nabalebale Village, Savusavu currently residing at Flat 90, Milverton Road,
Raiwai, Suva.

APPELLANT

AND: **COURTS (FIJI) LIMITED** a limited liability company having its registered office at 123
Ratu Mara Road, Samabula.

RESPONDENT

BEFORE: Hon. Justice Vishwa Datt Sharma

COUNSELS: No appearance - for the Appellants [Original Defendants]
Mr Nadan A. - for the Respondent [Original Plaintiff]

Date of Hearing: 19th February, 2020

Date of Decision: 30th July, 2020 @ 9.30 am

JUDGMENT

*[Appellant's Appeal and Respondent's Summons for Striking Out Of Appeal pursuant
to Order 37 Rule 1 of the Magistrate's Court Rules 1945]*

INTRODUCTION

- [1] Before this Court are two (2) applications for hearing and determination simultaneously.
- [2] The Appellant (Defendant) filed his grounds of Appeal against the decision of the learned Resident Magistrate delivered on 5th June 2019 on the following grounds:
- (i) The Respondent had failed to act on the report made by the Appellant. Further, the representative of Courts Homecentre failed to enter the house and access the damage done to the property and the items on hire purchase most of which were covered by insurance.
 - (ii) The insurance company was not part of the case as most of the property and items were covered by insurance.
 - (iii) The Magistrate erred in fact as there was no police report presented in Court during the Trial even though the police commissioner SSP Sakiusa Vunivesilevu of Savusavu Police Station personally investigated the report and documented the items damaged two weeks after cyclone Thomas after it was clearly stated by the Respondent.
 - (iv) All the relevant witnesses were unable to testify in Court due to the distance and transportation cost from Savusavu to Suva.
- [3] On the other hand, the Respondent (Plaintiff) filed his Interlocutory Summons and sought for the following Orders:
- (i) That the Appellant's Appeal against the Respondent be struck-out on the grounds that:
 - (a) It is not in compliance with Order 37 Rule 1 of the Magistrates' Court Rules; and
 - (b) It is an abuse of the process of the Court.
- [4] The Respondent's (Plaintiff's) Interlocutory application to strike-out the Appeal was filed on 20th November 2019 on the grounds of non-compliance with Order 37 Rule 1 of the Magistrates' Court Rules 1945.
- [5] The hearing of both applications were adjourned for hearing simultaneously on 19th February 2020. The reason being that the Respondent's (Plaintiff's) application is seeking for striking out of the Appellant's (Defendant's) Appeal.
- [6] The Court had no alternative but to proceed with the hearing since the Court record minutes of 9th December 2019 confirms that the Appellant (Defendant) was present in Court and was aware of the scheduled hearing date of 19th February 2020.
- [7] The Respondent (Plaintiff) furnished Court with his written submissions on both applications.
- [8] However, the Appellant (Defendant) had filed and served his Response in Opposition to the Respondent (Defendant's) striking out application on 2nd December 2019.

FACTS

- [9] In the Magistrates' Court, the Respondent (Plaintiff) filed and served a Writ of Summons against the Appellant (Defendant) and sought for an Order for the release of certain chattels and

equipment as enumerated therein coupled with Judgment in the sum of \$6,636.02, interests and costs respectively.

- [10] The Appellant (Defendant) filed his Statement of Defence on 14th September 2012.
- [11] The matter was heard and subsequently Judgment was entered against the Appellant (Defendant) on 5th June 2019 in the sum of \$6,636.02 coupled with \$1,000 costs and 5% legal interest in terms of Order 32 Rule 8 of the Magistrates' Court Rules 1945.

ANALYSIS and DETERMINATION

- [12] The Respondent's (Plaintiff's) contention is that Order 37 Rule 1 of the Magistrates' Court Rules 1945 applies where the Appellant (Defendant) being required to file and serve a Notice of Intention to Appeal from the final Judgment of the Magistrates' Court has failed to do so.
- [13] The Court shall not hear any such application unless the issue of the filing of the Notice of Intention to Appeal is sorted as that could lead to the striking out of the entire Appeal.
- [14] The Court has no jurisdiction to deal with the application to extend the time for filing of the Notice of Intention to appeal as there is no formal application on record.
- [15] Order 37 Rule 1 of the Magistrates' Court Rules 1945 provides as follows-

"Notice of intention to appeal"

Every appellant shall within 7 days after the day on which the decision appealed against was given, give to the respondent and to the court by which such decision was given (hereinafter in this Order called "the court below") notice in writing of his or her intention to appeal, provided that such notice may be given verbally to the court in the presence of the opposite party immediately after judgment is pronounced."

- [16] The Judgment in the Magistrates' Court Civil cause was determined and delivered on 5th June 2019.
- [17] Pursuant to Order 37 Rule 1 hereinabove, it requires the Appellant (Defendant) to file his Notice of Intention to Appeal the decision of the Magistrates' Court within 7 days timeframe from the date of the Judgment.
- [18] The Notice of Intention to Appeal in this cause was filed on 12th of June 2019 and whereas the grounds of Appeal was filed on 3rd of July 2019 respectively. Hence, the Notice of Intention to appeal was filed within the required timeframe of 7 days although there is no evidence on Court record to substantiate that it was served onto the Respondent (Plaintiff).
- [19] Further, it is noted that there is no oral Notice of Intention to Appeal and/or any application seeking an extension of time on the Court record.
- [20] In the circumstances, the Appeal is accordingly dismissed in limine for non-compliance of Order 37 Rule 1 of the Magistrates' Court Rules 1945.
- [21] However, there are two limbs to any Appeal filed against a judgment and/or decision of the Court; firstly consideration has to be made and determined whether the Appeal has been filed in

compliance of the Rules and secondly, whether there are merits in the Appellant's grounds of Appeal.

- [22] I will now proceed to deal with the grounds of Appeal and ascertain if there are any merits in the Appellant's (Defendant's) grounds of Appeal filed before this Court.
- [23] It should be just and fair that I should peruse the grounds of Appeal and ascertain if they have merits.

GROUND (i)

- [24] The report that the Appellant (Defendant) is mentioning herein was acted upon by the Respondent Company when the Plaintiff's Company staff visited the Appellant (Defendant) house to investigate the allegations that the items were damaged during the cyclone. The reason for the visit made by the Respondent Company was made so that they could have investigated and then the insurance (New India) could have made an assessment on the insurance claim. Unfortunately, when the visit to the Appellant's house was made, it was found locked and therefore the entry was not made possible to carry out the investigation on the damages.
- [25] The learned Resident Magistrate had quite correctly found at paragraph 15 of her Judgment that (since) the Defendant has not taken any photos of the alleged damaged items or allowed the Plaintiff Company to investigate as to whether the items were indeed damaged, the Defendant or Hirer is obliged to adhere to *Clause 5.1 of the Agreement which states that "the customer shall pay Courts Homecentres on demand; (a) all costs of (i) locating the customer or the goods if the account is in default..."*. For the above rationale, I find this ground of Appeal has no merits and accordingly fails.

GROUND (ii)

- [26] If the Appellant (Defendant) thought fit in the circumstances that the insurance company should have been made a party within the Magistrates' Court Civil cause in the within proceedings, then the Appellant (Defendant) was at liberty to make a formal application to join the party to the proceedings accordingly.

It was the Respondent (Plaintiff) who had filed the civil claim against the Appellant (Defendant) and thought fit and proper not to make the insurance company a party to the Magistrates' Court proceedings.

This issue was dealt with appropriately by the learned Resident Magistrate at paragraph 14 of her Judgment whereby the learned Magistrate stated that *"the reason for the visit was made by the Company so that they can investigate and that their insurance (New India) can then make an assessment on the insurance claim"*.

GROUND (iii)

- [27] The Appellant (Defendant) defended the Magistrates' Court claim. He testified in Court and upon the perusal of the Court record, I do not find that he had this issue of the police investigation

report on the cyclone damage. Further, he had the conduct of his own defence case, and it was upon him to call this evidence to substantiate his claim. He rather failed to do so.

[28] Therefore, I find there is no merit and this ground of Appeal also fails.

GROUND (iv)

[29] I reiterate that the Appellant (Defendant) had the conduct of his own case. It was upon the Appellant (Defendant) to call and/or subpoena the witnesses fit in the circumstances to substantiate his case. He failed to do so.


[30] This ground likewise has no merits and accordingly fails.

ORDERS

- (a) The Respondent's [Plaintiff] Interlocutory Summons seeking striking out of the Appellant's [Defendant] Appeal succeeds.
- (b) The Appeal is dismissed and the decision of the learned Resident Magistrate delivered on 5th June 2019 is affirmed.
- (c) The cost of Appeal is summarily assessed at \$500 to be paid within 30 days.
- (d) The SCO High Court Civil Registry to remit the file with all documents intact to the SCO Magistrates' Court Civil Jurisdiction Suva.

DATED at SUVA this 30th DAY of JULY, 2020




VISHWA DATT SHARMA
JUDGE
SUVA

cc. Epeli Ligairi, Suva
Neel Shivam Lawyers, Suva