

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION
(APPELLATE JURISDICTION)

Civil Action No. HBA 05 of 2020

Misc. Action No. 03 of 2016

Misc. Action No. 19 of 2016

Misc. Action No. 20 of 2016

BETWEEN: **ROHIT SAGADEWAN** of Benau Road, Korowiri, Businessman

1st APPELLANT

SAKUNTLA WATI of Benau Road, Korowiri, Businesswoman

2nd APPELLANT

AND: **SHABIR AHMED** of Batinikama, Labasa, Businessman

RESPONDENT

BEFORE: **Justice Vishwa Datt Sharma**

COUNSEL: **Mr Sen A.** for the Appellants
Respondent in person

Date of Judgment: **27th October 2022 @ 9.30am.**

JUDGMENT

*[Appeal from Magistrates Court Civil against the Decision of Learned Resident Magistrate
Delivered on 11th September 2020]*

Introduction

[1] Before Court is the Appellant's Appeal against the Decision of the Learned Magistrate delivered on 11th September 2020.

[2] The Grounds of Appeal are as follows:-

- 1) The Learned Magistrate erred in law and in fact in entering a judgment against the appellant for the respondent undertaking repairs of the second defendant's vehicle when the respondent failed to demonstrate, that the appellant had the authority to request for such repairs and further failing to hold that the respondent had powers to undertake repairs on behalf of the second defendant.
- 2) The Learned Magistrate erred in law and in fact in accepting the parts used for the repairs when sufficient material was not put before the court to make such determination.
- 3) The Learned Magistrate erred in law in holding that the appellant was obligated to pay service charges of any amount demanded by the respondent when there was no evidence of any such agreement provided by the respondent.
- 4) The Learned Magistrate erred in holding that the respondent was entitled to charge service cost when such claim was contrary to the Motor vehicle Dealer's Act therefore amounting to illegality.
- 5) The Learned Magistrate failed to analyse the evidence and apply the correct law before making the determination
- 6) The Appellant reserves his right to add or alter the Grounds of Appeal upon receipt of the copy record from the Magistrate Court.
- 7) Your humble Appellant prays:-
 - (i) The findings of the Resident Magistrate be reversed and Judgment be entered for the Appellant and the decision be set aside.
 - (ii) That the Respondent be ordered to pay costs of this appeal.
 - (iii) Such further and/or other relief as this Honourable Court may deem just and expedient.

[3] The Respondent furnished Court with his written submissions whilst the Appellants made oral submissions to the Court.

Background to Court

Before the Magistrates Court

[4] I paraphrase paragraph 1 - 4 inclusive from the Decision of the Learned Resident Magistrate delivered on 11th September 2020 as follows:-

- 1) *The dispute in this matter centres on disputes of funds paid for the repair of vehicle with the registered number of EH 482. The owner of the vehicle is the 2nd Defendant. The Plaintiff also alleged that he had facilitated the import of a vehicle on behalf of the Defendants, the fees for his services were still outstanding.*
- 2) *Apart of this matter, there are three other matter were filed relating to the same actions. MBC 3 of 2016 is an application for interim injunction to restrain the Defendants from removing the vehicle from the Plaintiff's possession.*
- 3) *On 18 may 2016, the vehicle was ordered to have delivered into the possession of the Court and the keys to be handed to the officer in charge of the civil registry on or before 4pm on 18 May 2016.*
- 4) *In MBC 04 of 2016, Ms Shakuntla Wati is the Plaintiff and Shabbir Ahmed is the Defendant. In this matter she sought for the release of the vehicle and damages for the loss of use of the vehicle at a rate of \$80 per day. She sought general damages as well. MBC 04 of 2016 is an interim application for the release of vehicle EH 482 from Mr Ahmed's possession to the Plaintiff. This issue was resolved when the vehicle was ordered to be released into the possession of the Court. Ms Wati the Defendant in this matter filed another action which is MBC 20 of 2016 naming Shabbir Khan as the Defendant. I noted that in this action Counsel for the Defendant in their Statement of Defence has pleaded a Counter Claim against Ms Wati.*

[5] The Learned Resident Magistrate with the parties in the proceedings consented to the consolidation of the matters and the Court heard the impending matters altogether on 23rd March 2019.

[6] The Learned Resident Magistrate made determination upon hearing the oral evidence and arrived at the following final orders:-

"It is hereby ordered that the Defendants pays the sum of \$1000.00 to the Plaintiff. I award 5% post judgment interests. Parties are further ordered to bear their own costs. Cause of action MBC 04 of 2016 and 20 of 2016 are dismissed with no costs."

[7] I will now proceed to deal with the Grounds of Appeal.

[8] It is noted that only the Plaintiff, Shabir Ahmed and the Defendant Rohit Sagadewan gave oral evidence at the Hearing the in Magistrates Court on 23 March 2019. There were no other supporting witnesses called by both parties to this proceedings.

[9] It was the Plaintiff's evidence against the Defendant and vice versa.

Ground 1

[10] The sworn testimony of the Plaintiff (Respondent) Shabir Ahmed at the Magistrate's Court hearing stated that in September 2015, the Defendants [Appellants] Rohit Sagadewan and Shakuntla Wati in fact requested the Plaintiff to have the 2nd Defendant's car registered number EH 482 repaired by the Plaintiff. The Defendant undertook to pay for the repair charge and agreed to pay the Plaintiff 10% commission.

[11] However, the 1st Defendants only gave evidence on behalf of the Defendants. He knew the Plaintiffs since he was doing some dealings with the Plaintiffs. He stated that the Plaintiff bought the car belonging to his wife (2nd Defendant) for a sum of \$10,000. The Plaintiff took the vehicle and got involved in an accident. He had the vehicle repaired. The 2nd Defendant's contention is that the Plaintiff is now claiming for the repair works carried out on the accident vehicle. He never agreed to give the vehicle to the Plaintiff for repairs since he has sufficient funds to buy parts and arrange a garage for repair works to be carried out.

[12] The Learned Resident Magistrate found:-

- (i) Inconsistencies in the 1st Defendant's evidence.
- (ii) The 1st Defendant could afford to repair the vehicle and did not agree to carry out repairs by the Plaintiff, then why did he not seek Court Orders to restrain the Plaintiff from carrying out any repair works. However, he found that yet the 1st Defendant allowed the Plaintiff to carry out repair works.
- (iii) The 1st Defendant described the Plaintiff as a fraud, yet the 1st Defendant continued to deal and conduct the business transaction with the Plaintiff.
- (iv) If the Defendant procured the import of the vehicle without the assistance of the Plaintiff, then he questioned why the Bill of Lading was with the Plaintiff and the Defendant was.
- (v) There were no compelling evidence produced to allow Court to rule in the Defendant's favour.

[13] Upon the perusal of the Plaintiff's and the 1st Defendant's evidence, I find that the Learned Resident Magistrate had arrived at a correct conclusion when he ordered the Defendants to pay the sum of \$10,000 and 5% post judgment interest to the Plaintiff. He further thought fit and proper for both parties to bear their own costs and dismissing civil cases MBC 04 of 2016 and 20 of 2016 respectively without any costs.

[14] This ground therefore fails accordingly.

Ground 2

- [15] According to the Plaintiff e procured the parts required and arranged a garage to carry out the repairs to the vehicle EH 482. Total costs for:-
- | | |
|-----------------------------|----------------|
| - Parts used came to | \$1,326.19 |
| - Repair and labour charges | \$1,990.00 |
| - Other charges | \$ 150.00 |
| - Storage charges | \$1,850.00 and |
| - Service charges | \$ 528.62 |
- [16] For the above repair works carried out together with parts procured were substantiated with evidence of receipts, emails, Bill of Lading and a Proforma Invoice and tendered into evidence as Exhibits accordingly.
- [17] However, the 1st Defendant's contention was that he had sufficient funds to buy the parts and arrange a garage for repairs. He had also bought a new vehicle worth at \$50,000 than how come he cannot afford to repair the damaged vehicle. He also confirmed that the car in question could not start and is in his compound.
- [18] I find that the Plaintiff had substantiated his evidence with receipts, emails, Bill of Lading and a Proforma Invoice whilst the 1st Defendant had failed miserably to support his evidence with any documentary evidence and/or any compelling witness(s) evidence.
- [19] Therefore, for reasons stated herein above, Appellant's Ground 2 also fails.

Ground 3 and 4

- [20] Both these Grounds will be dealt together since both deals with service charges and Motor Vehicle Dealers Act.
- [21] IT is noted that the Plaintiff had pleaded for service charges at 10% of Total costs of \$528.62 particularised at paragraph 5 of the Statement of Claim.
- [22] The Defendant in its Statement of Defence had denied paragraph 5 of the Plaintiff's Statement of Claim.
- [23] However, the Defendants [Appellants] did not challenge the issue of service charges and whether the Plaintiff was entitled to charge service costs contrary to motor Vehicle Dealer's Act when the Plaintiff gave oral evidence at the hearing.
- [24] I uphold the Decision of the Learned Resident Magistrate and dismiss Grounds 3 and 4 of the Appeal accordingly.

Ground 5

- [25] The Learned Resident Magistrate during the hearing proper heard the oral evidence given by the Plaintiff and the 1st Defendant.
- [26] At the hearing, the Plaintiff tendered into evidence Exhibits 1 to 6 inclusive to substantiate his evidence.
- [27] The Learned Resident Magistrate quite cautiously and appropriately analysed the total evidence of the Plaintiff and the 1st Defendant in his determination, giving reasons. He found that the evidence given by the 1st Defendant was inconsistent and contrary. He questioned why the Bill of Lading was in the Plaintiff's possession was if the Defendant had procured the import of vehicles. Further, the Learned Resident Magistrate saw that the Defendant had not produced compelling evidence that would allow this Court to rule in the Defendant's favour.
- [28] Accordingly, for aforesaid Rational, Ground 5 fails.

Costs

- [29] The Appeal proceeded to full argument and hearing with the Plaintiff and 1st Defendant giving oral evidence.
- [30] It is only fair that the Plaintiff (Respondent) is entitled to a summarily assessed cost of \$1,000 to be paid within 14 days of this Judgment.

Orders

- (i) Appeal Ground 1 - 5 inclusive stands dismissed.
- (ii) The Appellants (Defendants) to pay the Respondent (Plaintiff) a summarily assessed cost of \$1,000 within 14 days timeframe.

Dated at Suva this 27th day of October 2022.



cc: *Maqbool & Co., Labasa*
Shabir Ahmed, Labasa


VISHWA DATT SHARMA
JUDGE