

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

Civil Appeal No. 4 of 2023

Magistrates Court Case No. 1 of 22

SCT Claim No. 1145 of 2021

BETWEEN: DEWA NAND

Appellant

AND: ROHIT RITESH SHARMA

Respondent

Representation:

Both in Person

Date of Hearing: 16th November 2023

Judgment

A. Introduction

- [1] On 12th October 2021, the Appellant (Claimant) had filed a claim in the Small Claims Tribunal (SCT) against the Respondent seeking arrears of wages, payment for fuel, LTA booking, phone calls, photocopying and interest for 17 Months all totalling to \$5240.00. He limited his claim to \$5000.00. The claim was served on the Respondent.
- [2] On 23rd November 2021, the Referee ordered following submissions of the Claimant and non-appearance of the Respondent, that the Respondent pay the Claimant a sum of \$4346.00 by 23rd December 2021. On 30th November 2021 the Claimant was served the Orders of the Small Claim Tribunal. The same day the Respondent filed for a re-hearing of the matter. The Referee considered the request and allowed a re-hearing. The Referee later transferred the file to the Magistrate Court for determination.

[3] The Learned Magistrate heard the matter and on 2nd September 2022 she dismissed the claim. The Appellant (Claimant) is now appealing the Learned Magistrates' decision dismissing his claim.

B. The Grounds of Appeal

[4] The grounds of appeal are in a letter form and is difficult to decipher. I note that the Appellant is in person. I would briefly summarise the grounds of appeal from the notice of appeal as follows:

(i) The Magistrate did not ask the Respondent for any evidence.

(ii) No cross-examination was done.

(iii) Matter proceeded in absence of Legal Aid for the Appellant.

C. Determination

[5] It is important that at the outset I set out the powers of the High Court in dealing with an appeal from the Magistrates' Court. In **Aaryan Enterprise v Mehak Unique Fashion [2011] FJHC 727; Civil Appeal 17.2011 (10 November 2011)**, Justice Calanchini (as he then was) stated that "the powers of the High Court sitting as an appellate court from a decision of a Magistrates Court are set out in Order XXXVII Rules 18 and 19. In particular Rule 18 states:

"The appellate court ..., generally, shall have as full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the appellate court as a court of first instance, and may rehear the whole case or may remit to the court below to be reheard, or to be otherwise dealt with as the appellate court directs."

Then Rule 19 goes on to state:

"The appellate court shall have power to give any judgment and make any order that ought to have been made, and to make such further or other orders as the case may require, including any order as to costs. _

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In my judgment the jurisdiction conferred on this Court as an appellate court under Order XXXVII to hear appeals from the Magistrates Court entitles the Court to consider the matter in question as a court of first instance (i.e. afresh) unfettered by the decision of the learned Magistrate and as a result, I am entitled to exercise my own discretion. Under Order XXXVII I am not restricted to reviewing the manner in

which the learned Magistrate exercised her discretion. (See CM Van Stillevoeldt BV –v- EC Caviers Inc [1983] 1 All ER 699.)”

- [6] The Appellant submitted that the Magistrate did not ask the Respondent for any evidence during the proceedings. The claim was initiated by the Appellant. It was incumbent upon him to produce evidence. Apart from his testimony, the Appellant tendered various documents which were scrutinized and evaluated by the Learned Magistrate. It was open to the Learned Magistrate what weight she attached to the documents and the evidence. It is not for a Judicial Officer to ask a party to produce certain document or documents. It is upon the party to introduce a particular document that he or she relies upon or seeks the Court to consider. From the Court records in Page 163, I note that the Respondent gave evidence. He was sworn on Holy Ramayan. He had provided his bank statements. These were all evaluated and determined by the Learned Magistrate.
- [7] Both the parties were not represented by Lawyers. Dealing with unrepresented persons in any matter is difficult. Some self-represented litigants pose a special problem for judicial officers because they are not keenly aware of courtroom procedures and the rules of evidence. Our court system is an adversarial system. In our system, the Court has a substantially passive role and relies on the parties to present all material that will be relevant or necessary to enable the Court to make its decision. A self-represented litigant is not a qualified legal practitioner and usually does not have the expertise to provide the assistance to the Court that a lawyer would. In the adversarial system, this lack of assistance from parties hinders the court in discharging its function. For the most part the Learned Magistrate tried to extract as much information from the parties to determine the matter. She was impartial.
- [8] From Page 172 of the records I note that the Learned Magistrate asked the Appellant following the giving of evidence by the Respondent for his questions. The Learned Magistrate was at that stage in simple words asking the Appellant to cross-examine the Respondent. The Learned Magistrate gave both the Appellant and the Respondent ample time to produce the documents to support their case. She also gave them time to produce the evidence or call witnesses, if they were not present on a particular day.
- [9] On the issue of legal representation, the Appellant on 28th June 2022 had informed the Learned Magistrate that he would represent himself. During the hearing of the matter the Appellant raised the issue of Legal Aid and them having some of his documents. The Learned Magistrate got an Officer from Legal Aid to verify things and stood down the matter until 2.30pm. When the matter reconvened the Court was informed that Legal Aid was refused and the documents were returned to the Appellant. Page 187 of the records shows that the Learned Magistrate gave the Appellant an opportunity if he wanted to furnish those documents to Court.

[10] Credibility of the parties was an issue before the Learned Magistrate. It was the word of the Appellant against that of the Respondent. The Appellant in his claim stated that \$4271.00 was for his unpaid wages. In Court he told the Learned Magistrate that he had received all his wages. The Learned Magistrate found the Respondent to be consistent, while she found the Appellant to be inconsistent. She found that the Appellant changed his version. An example is that for the Wages he informed the Learned Magistrate it was for other workers. The Learned Magistrate found that the Appellant kept changing his position and the claim that he filed was not supported by the evidence he gave. I do not find any error on the part of the Learned Magistrate in her determination and her findings in the matter.

[11] I do not find any merit in the appeal. The Appeal is dismissed.

D. The Court Orders as follows:

(a) The Appeal is dismissed.

(b) No orders as to costs.



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Chaitanya Lakshman

Acting Puisne Judge

14th December 2023