

IN THE MAGISTRATE'S COURT AT LABASA
APPELLATE JURISDICTION

Civil Appeal No. 18 of 2015
SCT Claim No. 310 of 2015

BETWEEN : **AMINA BI**
APPELLANT

AND : **MOHAMMED SHAMIM**
RESPONDENT

For the Appellant : **Mr Kohli. A**
For the Respondent : **In Person**

Judgment : **21 July 2017**

JUDGMENT

1. The Appellant is appealing the order of the Small Claims Tribunal (*Tribunal*) made on 8 June 2015. The notice of appeal was filed on 10 June 2015, and was on time.
2. The four grounds of appeal listed in the notice of appeal are ; -
 - a. *That the proceedings were conducted by the referee in a manner which was prejudicial to the Appellant and prejudicially affected the result of the proceedings.*
 - b. *That the Referee did not allow any of the Appellant's witnesses to give evidence whereas the Respondent's witnesses were allowed to give their evidence on 8 June 2015.*

3. The following documents were filed for this appeal ;-
 - a. *Grounds of Appeal filed on 2 September 2015.*
 - b. *Reply to Grounds of Appeal filed on 9 October 2015.*
 - c. *Appellant's submission in reply to grounds of appeal filed on 4 December 2015.*
 - d. *Respondent's reply to submission to grounds of appeal filed on 21 December 2015.*
4. The appeal was heard on 25 July 2016.
5. The Counsel for the Appellant submitted that the referee did not conduct the hearing in a fair and proper manner to come to his decision. He referred to page 25 of the copy record on first paragraph of the claimant and submit that the word "could" should be "could not". He referred to the inference of the referee and submits that inference 4 is irrelevant and there is a problem with inference 6 as there is no exhibit or invoice in the copy record. The invoices are quotation and all dated after the hearing as they were dated 4.7.15, 22.6.15, and 16.6.15. They are asking for a rehearing.
6. The Respondent submits there was no transfer as the vehicle is not in a running condition and not road worthy. He used his own battery to start the vehicle and the temperature rose when he took the vehicle from her home to his place. He spent large sum of money in repairing the vehicle and if she can pay him in one amount.
7. In this judgment, I have considered all the documents filed in this appeal and the oral submission made at the hearing.
8. In considering the grounds of appeal filed and the subsequent documents filed by the Appellant in this, I noted that the case of the Appellant is pursued under *section 33(1)(a) of the Small Claim Tribunal Act,(Act)* which state ;-

"the proceeding were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affect the result of the proceeding"

9. The manner in which the referee should conducted the Tribunal proceedings are stated by *Fatiaki. J*, in ***Sheet Metal Plumbing (Fiji) Ltd v Deo*** [1999] FJHC 26 ;-

“As to the manner or procedure required to be followed by the referee in conducting a proceeding under the Decree these are principally to be found in section 24 to 29 (inclusive) under the heading HEARING.”

10. In this case, the Appellant was given his right of audience as he was present on the hearing date and his evidence was recorded as shown in the copy record. There was no argument that what is required in *section 24 to 29* of the *Small Claims Tribunal Act* was not accorded to the Appellant. That shows that the referee has conducted the proceeding in compliance to the requirements of the law.
11. The Appellant argued that her witnesses were not allowed by the referee to give evidence. The copy record (page 25) shows that Appellant called his son as his witness. There was no mention of which witness was not allowed by the referee. I will reject this argument as it without merit.
12. The Appellant shows his disagreement to the referee inference 4 and 6. The referee is entitled to make his inference on what is before him. Any challenge on this inference goes to the merit of the case which is not a permissible ground of appeal as state in the case of ***Sheet Metal*** (*supra*).
13. One of the ground put forward by the Appellant is that the referee was biased in his assessment of the claim. This is goes to the merit of the case and will dismiss this ground.
14. The Appellant raise the issue of invoice referred to by the referee in his inference which was not in the copy record. The issue of invoice and it exhibition into the record of the proceeding is an issue of evidence. Consideration made to the evidence goes to the merit of the case and will dismiss this ground.

15. The grounds of appeal advanced by the Appellant have no merits. On that basis, I do not see any justifiable and convincing reason to order a re-hearing.
16. In my judgment, I dismiss the Appellant's appeal and I order the Appellant to pay costs of \$500.00 to the Respondent within 31 days.

28 days to appeal.



C. M. Tuberi
RESIDENT MAGISTRATE

