

IN THE MAGISTRATE'S COURT AT LABASA
APPELLATE JURISDICTION

Civil Appeal No. 18 of 2016

SCT Claim No. 243 of 2016

BETWEEN : PRAVEEN DAYAL aka RAJNESH DAYAL

APPELLANT

AND : AJENDRA KUMAR

RESPONDENT

For the Appellant : In Person

For the Respondent : In Person

Judgment : 9 March 2018

JUDGMENT

1. The Appellant is appealing the order of the Small Claims Tribunal (*Tribunal*) made on 20 July 2016. The notice of appeal was filed on 2 August 2016, and was within the 14 days required under *section 33(3)* of the *Small Claims Tribunal Act*.
2. According to the claim that was filed at the Tribunal, the Respondent took \$2000.00 loan from the Fiji Development Bank to repair his farm house. On 18 July 2015, he used that \$2,000.00 to purchase the vehicle from the Appellant. The vehicle was not transferred to his name. The Respondent decided to return the vehicle to the Appellant as he was unable to get extra

loan from the Fiji Development Bank. The Appellant agreed for the return of the vehicle and the refund of \$2,000.00. On 25 July 2015, the Respondent returned the vehicle to the Appellant where the Appellant only refunded \$500.00. The Appellant told the Respondent that he will pay the balance of \$1,500.00 slowly on weekly basis. The Appellant never paid any amount resulted in the filing of the claim at the Tribunal.

3. On 5 October 2016, both the Appellant and the Respondent confirmed to the court that they have received the copy record for the Tribunal proceeding. Directions were issued for filing of submission.
4. The Appellant filed his submission on 24 October 2016. The Respondent filed his submission on 11 November 2016. The appeal was set for hearing on 11 January 2017.
5. At the hearing, the Appellant and the Respondent informed the court that they will rely on their submission filed and the court can give it judgment base on their submission.
6. The Appellant in his submission stated that the vehicle no. DA 403 does not belong to him. The Respondent gave \$1,000.00 as deposit to use the said vehicle to take his wife to the hospital. His wife returned \$500.00 to the Respondent who now claims that he paid \$1,500.00. The Respondent's claim that his wife used the money for repairing the house which was never done.
7. The Respondent in his submission stated that the Appellant told him that he is the owner of vehicle number DA 403, so he gave the Appellant \$2000.00. The vehicle was with him for 8 days. On 25 July 2015, the Appellant refunded \$500.00 to him and the Appellant told him that he will return the balance of \$1,500.00 slowly. On 21 September 2015, the same vehicle was sold and transferred to his friend Navin Chand. He took a loan of \$2000.00 to repair his farm and it was done.

8. In the notice of appeal, the Appellant stated the following as his grounds of appeal ; -

I was not present when judgment took place. I forgot the date. I have reasons and evidence to tender to court. I want the case to be re-open so that I prove judgment against myself is not correct.

9. Under section 33(1) of the *Small Claim Tribunal Act*(Act), the order of the Tribunal can only be appealed on the following two grounds ;-

- a. *“the proceeding were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affect the result of the proceeding;*
or
- b. *the tribunal exceeded its jurisdiction.”*

10. The grounds submitted by the Appellant are not very clear. It appears that the Appellant wanted a re-hearing. It appears from the grounds of appeal that the Appellant is challenging the conduct of the proceeding by the referee when he stated that he was not present when the judgment was issued. That will make this appeal to fall under the first ground of appeal under section 33(1) of the *Small Claims Tribunal Act*.

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

“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.”

2. In this case, the Appellant stated that he was not present when the judgment was given. From this statement, I take it that the Appellant is referring to the time the Tribunal had announced its orders.

13. According to the Tribunal proceeding on 30 June 2016 (*copy record, p.29*) both the Appellant and the Respondent appeared before the Tribunal where the matter proceeded for hearing. The hearing was adjourned to 20 July 2016, for the calling of witness. Unfortunately, the Appellant did not appear and the hearing continued and proceeded with the recording of the witness evidence. On the same day the Tribunal announce it order.
14. *Section 24 of the Small Claims Tribunal Act*, gives parties to the proceeding a right of audience before the Tribunal. In this case, the Appellant was given that right on 30 June 2016, and his evidence was recorded on the same day as shown in the copy record (*p.31, 33, 35*). On the adjournment of hearing to 20 July 2016, the Appellant did not appear. The Appellant is fully aware of the continuation of hearing on 20 July 2016, and chose not to appear. No explanation for the non-appearance can be seen from the copy record.
15. In my assessment, the Appellant has been given the opportunity of right of audience but he did not make use of the opportunity for unknown reason and he should put the blame on him for his non-appearance. There was no explanation provided in his submission for the reason of his non-appearance on 20 July 2016.
16. In this judgment, I have considered the copy record, the written submission filed by the parties. I have considered the applicable laws. In my analysis, I am satisfied that the Appellant has been accorded with the right of audience in this case. As such the referee has conducted the proceeding in this case in compliance to section 24 to 29 of the Small Claims Tribunal Act.
17. The grounds of appeal advanced by the Appellant were not supported by his written submission. In assessing the ground of appeal, I find that it have no merits. On that basis, I do not see any justifiable and convincing reason to order a re-hearing.

18. In my judgment, I dismiss the Appellant's appeal and the Order of the Small Claims Tribunal is upheld. I further order the Appellant to pay costs of \$500.00 to the Respondent within 31 days.

28 days to appeal.



C. M. Tuberi
RESIDENT MAGISTRATE