

IN THE MAGISTRATE'S COURT AT LABASA
CIVIL JURISDICTION

Civil Action No. 17 of 2013

BETWEEN : BAHADUR ALI HUSSAIN

PLAINTIFF

AND : NAVIN PRASAD

FIRST DEFENDANT

AND : POWER PLANT & EQUIPMENTS LIMITED

SECOND DEFENDANT

For the Plaintiff : Mr Prasad. S

For the Defendants : Ms Vucukula. N

Judgment : 16 February 2018.

JUDGMENT

1. The Plaintiff filed writ of summons on 24 January 2013, wherein he claim \$5,500.00 from the Defendants, together with interest of 5% per annum and interest not to exceed \$3000.00, with cost of the action not exceeding \$2,000.00. The claim is restricted within the jurisdiction of this court which is \$50,000.00.
2. The statement of defence and counter-claim for both the Defendants was filed on 22 November 2013.
3. The reply to the Defendants statement of defence and defence to counter claim was filed on 24 January 2014.
4. The reply to defence to counter claim was filed on 16 May 2014.

5. The case was fixed for hearing on 15 June 2016. On the hearing date, the Counsel for the Defendants informed the court that she is not ready for the hearing as the First Defendant is not present. However, on the consent of the Counsel for the Defendant's the case proceeded for the Plaintiff to formally prove his claim. The Plaintiff is the only witness.
6. According to the Plaintiff's pleadings, the Plaintiff is a businessman trading as Hussains Hire Service. The Defendants hire his vehicle and machines for the total costs of \$5,500.00. As a result the Defendants gave cheque No. 458 of 2 July 2008. The said cheque was returned by the bank as money cannot be drawn.
7. The Defendants in their defence admitted to the hiring of the Plaintiff's vehicles and machines for \$5,500.00 and the issuing of the cheque. In their defence they stated that this debt was included in \$70,000.00 transacting for the purchase of the Plaintiff vehicles and machines. That is the reason for their instruction to the bank to stop the payment of the cheque of \$5,500.00 to the Plaintiff.
8. The plaintiff in his reply to defence and defence to counter claim confirmed receipt of the \$70,000.00. The Plaintiff further stated that the issue of the \$5,500.00 cheque was after the payment of the \$70,000.00 and it was VAT exclusive price.
9. The Plaintiff at the hearing tendered the invoice which detail the claim for \$5,500.00. In the invoice it is written that it was paid by cheque No. 458, which is the same cheque which is the subject of this claim. The cheque was tendered as Plaintiff exhibit 2.
10. The Plaintiff stated in his evidence that he has not received the payment of \$5,500.00 and he seek order from the court for this payment.
11. I have considered the Defendants defence and counter-claim but there is no evidence to support what they have stated in their pleadings.

12. In this judgment, I have considered all the pleading filed by both the Plaintiff and the Defendants and the evidence of Plaintiff.
13. The cheque (exhibit 2) shows that it has not been drawn. The Plaintiff stated that he has not received any payment despite of numerous reminder to the Defendants. I will accept this evidence as it was not challenge at the hearing. I will reject the Defendants claim that the \$5,500.00 was included in the \$70,000.00 in absence of any evidence to support their claim.
14. In assessing the evidence, I am satisfied that the Plaintiff has proved his claim on the balance of probabilities.
15. In my judgment, I will allow the Plaintiff's claim and I make the following orders;-
 - a. *Both the Defendants to pay \$5,500.00 to the Plaintiff within 31 days.*
 - b. *Interest of 5% per annum from date of the filling of action to the date of judgment.*
 - c. *Cost of \$650.00.*

28 days to appeal.



C. M. Tuberi
RESIDENT MAGISTRATE