

IN THE MAGISTRATE'S COURT OF FIJI
APPEAL JURISDICTION
WESTERN DIVISION AT LAUTOKA

Civil Appeal No. 8 of 2020

[Small Claims Tribunal No. 1881 of 2019]

BETWEEN: **Sarojini Devi** of Sabeto, Nadi. Unemployed

Appellant

AND: **Hasmukh Patel** of Lot 2, Marlow Street, Suva. Chief Executive Officer

Respondent

Before: Resident Magistrate - Jeremaia N. Lewaravu

Date of Hearing: 15th of February, 2021

Date of Judgment: 24th of March, 2021.

Appearance

In Person - The Appellant

Ms. Fatiaki (for) -The Respondent

Judgment

1. The Appellant lodged a section 33 Notice of Appeal in this Court dated 24th February, 2020. She is seeking to appeal the decision of the Small Claims Tribunal at Lautoka dated 24th of January, 2020 on the ground that she does not agree with the said decision. She has also by implication claim that she was not accorded a fair hearing.
2. The Respondent is opposing the same.

The Law

3. I wish to emphasize at the outset that the law relating to an appeal from a decision/order of the Small Claims Tribunal is well settled in Fiji. Section 33 of the Small Claims Tribunal Decree of 1991 is relevant. It provides in subsection 1 that any party is entitled to lodge an appeal under section 15(6) and section 31(2) on the grounds:

- a. That the proceedings were conducted in an unfair manner that prejudicially affected the outcome of the case and that
 - b. The Tribunal exceeded its Jurisdiction.
4. In addition, there can be no appeal on the merits (see: Sheet Metal and Plumbing (Fiji) Limited v. Deo – HBA 7 of 1999) neither can there be any appeals on an error of law and/or factual error (see. Aaryan Enterprise vs. Mehak Unique Fashion (2011) FJHC 727, Civil Appeal No.17 of 2011).
5. Be that as it may, subsection 3 is significant. It states that an appeal brought by any party must be made and/or filed within 14 days of the decision/order.

The Preliminary Issue

6. The decision of the Small Claims Tribunal was made on the 24th of January, 2020. As such any appeal in this case would have to be lodged by the 7th of February, 2020. I note that the Appellant failed to file the said Notice of Appeal within the 14 days stipulated time frame required under section 33(3) of the relevant legislation. She is therefore out of time.
7. In any event, the Appellant is not appealing as of right. She lost that privilege when she failed to comply with the requirement under section 33(3). She must therefore first convince this Court to exercise its discretionary powers to extend the time of appeal. The relevant question is whether there is any application before the Court to extend the time of appeal.
8. At this stage of the proceedings, I am under no obligation to address the issues raised by the parties at the Hearing. The most important factor for consideration is that the Applicant has failed to invoke the discretionary powers of the Court to extend the time to appeal. I therefore find that there is nothing before the Court requiring adjudication. Similarly, I cannot find any legal basis for maintaining this case in this Court. I therefore decline to proceed any further.
9. The full orders of the Court is as follows:
 - a. The Appeal is dismissed.
 - b. There will be no order as to cost.

c. Appeal within 28 days.



Ordered Accordingly,

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above a horizontal dotted line.

Jeremaia N. Lewaravu [Mr.]

RESIDENT MAGISTRATE

24th of March, 2021.