

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

Civil Case No. 6 of 2022

BETWEEN : **Fiji National University** a corporate body established under the Fiji National University Act of Fiji.

Plaintiff

AND : **Monika Shobhna Lal** of 9 Cakau Street, Waiyavi, Lautoka. Generic Lab Technician.

Defendant

Before : **The Resident Magistrate: Mr. Jeremaia N. Lewaravu**
Date of Hearing : 16th of May, 2022
Date of Judgement : 05th of July, 2022

Appearance

Mr. Prasad of FNU Legal Services for the Plaintiff
Mr. Nair of Nilesh Sharma Lawyers for the Defendant

Judgement

Introduction

1. The Defendant (herein referred to as the 'Applicant') filed and served a Motion along with a supporting Affidavit dated 12th March, 2021 seeking a transfer of the current proceedings to the Employment Tribunal. The Plaintiff (herein referred to as the 'Respondent') is opposing the application that in turn filed and served an Affidavit in Opposition dated 21st February, 2022.
2. Needless to say that the world wide COVID 19 pandemic has contributed to the delay in the Hearing of the Motion.

The Law

3. Section 32 of the Magistrates Court Act & Rules, Cap 14 of Fiji provides:

'..... a Magistrate may, of his own motion, or on an application of any person concerned or matter which in the opinion of such Magistrate ought for any reason to be transferred from his Court to another Magistrate Court'.

4. The parties herein are not disputing the power of the Court to transfer proceedings, rather, the Respondent is opposing the transfer to the Employment Tribunal.

The Issue

5. The central issue is whether the current proceedings ought to be transferred to the Employment Tribunal?

The Hearing

6. The Applicant submits that even though the Magistrates Court is empowered to deal with contractual matters, under Section 16(1), (b) of the Magistrate Court Act, the Legislature has established a specialised Court to deal with Employment matters under the Employment Relations Act 2007. The Applicant further submits that the subject matter of the dispute herein emanated from an employment contract as such the matter should be transferred to the Employment Court.
7. The Applicant referred the Court to section 221 of the Employment Relations Act 2007 that set out the jurisdiction of the Employment Court. The Applicant specifically referred to section 221(g) of the relevant Act that provides that the Tribunal has jurisdiction to:

'adjudicate on actions for breach of an employment contract'.
8. The Applicant is relying on the case authority of Sharma v Carpenters Fiji Ltd [2014] FJHC 603. The Applicant submits that should the Court deny the current application for transfer to the Employment Court then in the alternative, the Applicant seek that the matter be transferred to the Suva Magistrates Court as both parties are based in Suva.
9. On the other hand, the Respondent is opposing the application for transfer stating that the dispute between the parties is not based on an employment contract. The substantive case against the Applicant is based on recovery of debt under a Bond Agreement.

10. The Respondent further submits that the Bond Agreement is a separate agreement from the employment contract as such the Employment Court is not the proper Court to deal with such matters. The Respondent also submits that section 16(1) of the Magistrates Act empowers this Court the power to deal with contractual issues. The matter should therefore remain in this Court.
11. The Respondent is relying on the case of Kasabias Limited v Wanninayake [2019] FJHC 653. This is a case based on recovery of monies that was taken unlawfully as such the Court refused to transfer proceedings to the Employment Court. The Respondent further submits that the application for transfer is misconceived and wrong in law. The Respondent pray that the application for transfer be dismissed and the matter proceed to a Hearing in this Court.


Legal Matrix

12. I will now consider the Employment Relations Act 2007.
13. The Applicant proposes a transfer to the Employment Court given the monetary jurisdiction of the Court. I disagree. The proper Court to deal with this matter in the first instance is the Employment Tribunal.
14. Section 202 is relevant as it establish the Employment Relations Tribunal. Section 210 highlights the functions of the Tribunal while section 211 provides for the jurisdiction of the Tribunal. It states that the Tribunal has jurisdiction –
 - a) to adjudicate on all actions under this Act for the recovery of wages
 - b) to adjudicate on all actions involving entitlements
 - c) to adjudicate on a question connected with the construction of an employment contract.
15. In the case of Sharma v Morris Headstrom Ltd [2009] FJHC 263, the Court held that:
'There can be no doubt that where the claim is wholly 'founded on' the employment relations between the party, the Employment Court and the Tribunal have exclusive jurisdiction'.

16. The relevant question is whether the cause of action by the Respondent is founded under the employment relations between the parties?
17. I have considered the Statement of Claim filed by the Respondent herein. It is clear that the basis of the Claim is to seek a recovery of the education allowance paid to the Applicant from 21st November, 2017 to 4th May, 2020. In that regard, the case of Kasabias Limited v Wanninayake [2019] FJHC 653 is distinguished. The case herein deals with lawful entitlements as oppose to monies obtained unlawfully.
18. The question is whether the Training Bond Agreement was part of the Applicant's entitlement as an employee of the Respondent at the relevant time. In saying this, I note that the Applicant was employed by the Respondent as a Generic Lab Technician in 2017. In that capacity, she applied and was granted full time study leave that subsequently prompted the parties to enter into a Training Bond Agreement. Whether this is relevant under the circumstances is a matter for the Employment Tribunal to decide. Be that as it may, I do not think that the Respondent and the Applicant would have entered into a Training Bond Agreement unless the parties had an employer and employee relationship. I therefore hold that the Training Bond Agreement is connected to the Applicant's employment with the Respondent.
19. Having arrived at the finding above, the question is specifically why transfer these proceedings to the Employment Tribunal? The observations of Asquith LJ in the case of Wilkinson v Barking Corporation [1948] 1 All ER 564 is apt. He observed at page 567 that:
- 'It is undoubtedly good law that, where a statute creates a right and in plain language gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to this remedy or this tribunal and not to other'.*
20. He further stated that:
- 'No act of the parties can create in the Courts a jurisdiction which Parliament has said shall vest, not in the Courts, but exclusively in some other body, and a party cannot submit to, so as to make effective, a jurisdiction which does not exist – which is perhaps another way of saying the same thing'.*

21. The legal principle highlighted above has been adopted and applied in the Fiji Jurisdiction and most recently in the case of Kilowen Fiji Ltd v Director of Lands [2017] FJCA 101.
22. In the matter herein, it is clear that what the legal issues raised is within the purview of the Employment Tribunal under Section 211(d), (e) and (h) of Employment Relations Act 2007. In applying the legal principle in Wilkinson (supra), the Respondent in seeking a remedy for recovery of debt, must as a rule resort to the remedy as no act of the parties can create a jurisdiction which Parliament has said shall vest in the Employment Tribunal. In the words of Asquith LJ '**a party seeking to enforce the right must resort to this remedy or tribunal**'. In light of the foregoing, I find that the primary jurisdiction to adjudicate on matters relating to the recovery of wages lie with the Employment Tribunal.
23. The full orders of the Court is as follows:
- a. The matter is hereby transferred to the Employment Tribunal.
 - b. The Registry is to facilitate the same within 21 days.
 - c. Each party to bear on cost.
 - d. Appeal within 28 days.

As Ordered,


Jeremaia N. Lewaravu
Resident Magistrate
05th July, 2022

