

IN THE MAGISTRATES COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Miscellaneous No: 01 / 2023

In a matter of Appeal of the Small Claims matter by Serupepeli Seruvatu under section 35 of the Small Claims Tribunal.

BETWEEN: PETER SAVONA of Lami, Suva.

APPLICANT

AND: SERUPEPELI SERUVATU of Samabula, Suva.

RESPONDENT

For the Appellant: Ms. Ratu, F. (Legal Aid Commission)

For the Respondent: In person

RULING

Introduction

1. Applicant filed Notice of Motion together with an Affidavit in support on 14-09-2023.
2. In the said Notice of Motion, the applicant sought the following orders
 - i) Leave be granted to appeal SCT Clam 508 / 2022 ruling out of time,
 - ii) Stay the JDS proceedings and all other enforcement proceedings,
 - iii) Such further and/or other orders as deemed necessary by this Honorable Court
3. It was further mentioned in the said notice of motion that the said application is made pursuant to section 35 of the Small Claims Tribunal Act and Order III Rule 08 of the Magistrates Court Rules 1945.

Background

4. In his Affidavit the applicant has stated *inter alia* as follows:
 - a) Respondent and he entered into a verbal agreement to sell his 14-foot fiberglass boat for \$4,600.00 to the respondent,
 - b) from 02-02-2021 till June 2021 he had received \$ 2,750 from the respondent as per the aforesaid agreement,

- c) but since, July 2021, the respondent had not made the instalment payments, as agreed despite his reminders,
- d) therefore, he sold the boat to a third party,
- e) on 28-02-2022 he became aware that respondent had instituted proceedings against him in the Small Claims Tribunal, but he received incomplete Form 01 with insufficient information regarding the matter,
- f) in April 2022, he received an Order from Small Claims Tribunal,
- g) that he did not file an appeal or re hearing application because he was advised by a court officer to write a letter to the Chief Registrar, and he thought that it was sufficient as an appeal or re hearing of SCT order.

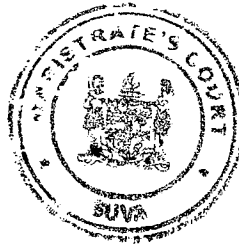
Analysis and Findings

5. Applicant in the Notice of Motion of this application has stated that he is filing this application in pursuant to section 35 of the Small Claims Tribunal Act 1991 ("SCT Act") and Order III Rule 08 of the Magistrates Court Rules.
6. Section 35 of the SCT Act provides the powers of the court in appeals. It reads as:
"35.-(1) On the hearing of the appeal a Judge or Resident Magistrate may:
(a) quash the order of the Tribunal and order a rehearing of the claim in the Tribunal on such terms as he or she thinks fit;
(b) if the appeal is heard by a Resident Magistrate quash the order and invoke his authority under section 4 to exercise the jurisdiction of a Tribunal;
(c) quash the order and transfer the proceedings to a Magistrates' Court for hearing; or
(d) dismiss the appeal.
(2) In ordering a rehearing under subsection (1) (a), the Judge or the Resident Magistrate may give the Tribunal such direction as he or she thinks fit as to the conduct of the rehearing.
(3) An appeal under this section shall be heard by a Judge or Resident Magistrate in chambers and, subject to this Decree and any rules made hereunder, the procedure thereat shall be such as he may determine. "
7. In order to take a decision on an appeal of a SCT order, there has to be an appeal pending before this court. However, the applicant above-named, as admitted in his affidavit, has not filed any appeal against the order of the SCT in Claim No. 508/2022 delivered in April 2022. Applicant further admitted that he had filed this application approximately after 01 year and 02 months.
8. Applicant further explain his reason for not filing an appeal or for request for re-hearing. According to him, he had received some advice from " a Court Officer", then he had written a letter to the Chief Registrar. And he believed that it would be sufficient as an appeal. This shows his ignorance and not obtaining proper legal advice from a competent legal practitioner.

9. Also, as admitted in his affidavit, after receiving "incomplete" notice on the claim made to the SCT by the respondent, the applicant has not taken any effort to verify the same from the registry of the SCT; which would be a reasonable, vigilant and sensible person's reaction.
10. The maximum of *ignorantia legis neminem excusat* ("ignorance of law excuses no one") is a legal principle that is recognized in our law. It means that a person who is unaware of a law may not escape liability for violating that law merely by being unaware of its content.
11. Therefore, either the ignorance on the part of the applicant above named or his unawareness of the relevant legal procedure has prevented him filing an appeal against the order of the SCT in claim No. 508/2022. Which is, in my view, is incurable.
12. Also, the applicant has highlighted the *casus omissus* section of the Magistrates Court Rules and that has no bearing to this application since this matter comes under the purview of Small Claims Tribunal Act.
13. Considering the above, I hold that there are no merit in this application and the same shall be dismissed *in limine*.

Orders of the court

14. This Court thus orders:
 - a) Application of the applicant is dismissed,
 - b) I make no order as cost.




Lakshitha Jayawardhana
Resident Magistrate

At Suva, on this 17th day of January 2024