

IN THE HIGH COURT OF FIJI
APPELLATE JURISDICTION

Civil Action HBA No: 29 of 2013

BETWEEN : **FIJI ELECTRICITY AUTHORITY** a body corporate established under the Electricity Act (Cap 180) having its Head Office at 2 Marlow Street, Suva, Fiji.

Appellant

A N D : **ABDUL RAHIMAN** of Kulukulu, Sigatoka in the Republic of Fiji Islands, Unemployed.

Respondent

Counsel : Nilesh Lajendra of Lajendra Law for the Appellant
Mr. Singh of Samusamuvodre Sharma Law for the Respondent
Date of Hearing : 12 September 2014
Date of Ruling : 20 September 2019

R U L I N G

INTRODUCTION

1. The appellant in this case is challenging a decision of the Magistrates Court in Nadi. By the said decision, the Learned Magistrate had reinstated on the cause list a civil action that he had earlier struck out earlier. The reinstatement order in question was handed down on 07 August 2013.

APPELLANT'S ARGUMENT

2. The appellant argues that:

- (a) the Magistrates Court is a creature of statute. As such, its powers are limited to those powers which are conferred upon it by the Magistrates Court Act and Magistrates Court Rules.
- (b) Order XXX Rule 2 of the Rules gives power to the Magistrates Court to strike out a claim and order costs in favour of the defendant where, on an occasion when a civil cause on the cause list is called, the plaintiff does not appear.
- (c) the Court, of course, where a plaintiff does not appear, may decide not to strike out the claim, if the Court sees good reason not to strike it out³.
- (d) the power to relist is set in Order XXX Rule 6.
- (e) that power to relist only exists in relation to a cause which had been struck out on account of a Plaintiff's non-appearance.
- (f) in other words, where a cause was struck out for some other reason other than for the non-appearance of the plaintiff, then the power to relist under Order XXX Rule 6 does not apply i.e. the Magistrates Court does not have power to relist on the cause list. To "restore" the cause in such a case, the proper avenue is to appeal the striking out order to the High Court.

PROCEEDINGS IN THE COURT BELOW

3. The learned Magistrate had struck out the plaintiff's claim on 16 April 2013. The entries in the court records for that day are as follows:

16/04/2013

Plaintiff : Not present

Defendant : Mr Prasad for F.E.A

Matter struck out with \$300 costs to be paid in 14 days.

4. Later on the same day, the Order was sealed. Notably, the sealed Order records a slightly different scenario as follows:

IT IS THIS DAY ORDERED:

- i. There being no compliance by the plaintiff.*

ii. This matter is struck out with costs of \$300 to be paid with 14 days.

DISCUSSION

5. The appellant’s case rests on the sealed order. According to the sealed order, the cause was struck out due to “there being no compliance by the plaintiff”. The plaintiff, in fact, had failed to comply with various interlocutory orders on various occasions leading up to the date of striking out. These are all recorded in the Learned Magistrate’s minutes, and which I tabulate below:

DATE	ORDER
20/11/2012	PTC between parties and minutes to be filed in 14 days. Adjourned to 11/12/2012 for mention to fix a hearing date.
11/12/2012	14 days for PTC minutes to be available and filed. Adjourned to 29/01/2013 for mention to fix a hearing date.
29/01/2013	Unless the plaintiff counsel formalize PTC and send to Defendant in 14 days and minutes filed by end of February 2013. Costs of \$300 will be imposed. Adjourned to 05/03/2013 for mention.
05/03/2013	Plaintiff: Not Present Defendant: Mr Prasad for F.E.A Costs of \$300 against the Plaintiff to be paid in 21 days. Adjourned to 26/03/2013 for mention.
26/03/2013	Plaintiff: Tabia Defendant: Mr. Prasad <u>Order:</u> 1. If costs is not paid in 14 days, the matter will be struck out. 2. PTC to be filed in 14 days. Adjourned to 16/04/2013.
16/04/2013	Plaintiff: Not Present Defendant: Mr Prasad for F.E.A Matter struck out with \$300 costs to be paid in 14 days.

6. In contrast, as I have said above, the Learned Magistrate’s minutes do not say that the cause was struck out due to the plaintiff’s failure to comply.

7. His minutes merely record the plaintiff's non-appearance followed by a notation that the matter was struck out.

DOES THE MAGISTRATE'S COURT HAVE POWER TO STRIKE OUT A CLAIM?

8. I start with the observation that the Magistrates Court is a creature of statute and can only exercise jurisdiction conferred upon it by statute. This point was recently reiterated by Mr. Justice Nanyakarra in Naisau v Commissioner of Police [2019] FJHC 510; HBA04.2018 (31 May 2019).
9. Mr. Justice Kumar in Singh v Fiji Sugar Corporation [2014] FJHC 755; HBA2.2009 held that there is no provision in the Magistrates' Court Rules that gives the Magistrates power to strike out any pleading and adjourn the matters for formal proof when a party failed to appear on a mention date.
10. In Ram Khelawan v Budh Ram is authority that the Magistrates court can strike out a claim for want of jurisdiction, where the cause of action is outside the limitation period (Beyer v Maharaj [2016] FJHC 101; Civil Action 216.2015 (15 February 2016)).
11. Can the Magistrates Court strike out a claim for non-compliance with an interlocutory Order?
12. The short answer to the above is "No".
13. It follows that, if I were then to accept the appellant counsel's contention that the Learned Magistrate did strike out the matter on account of the plaintiff's

non-compliance with the interlocutory orders, and which contention, as I have said, is based on the sealed order, then it would follow that the Learned Magistrate had acted outside his jurisdiction in the first place in striking out the cause on that ground, in which case, it would then be incumbent upon the plaintiff/respondent to appeal the striking out order, as the Learned Magistrate would have no jurisdiction to reinstate or relist the cause.

14. On the other hand, if I were to accept the Learned Magistrate's Ruling on its face, and proceed on the basis that he had struck out the cause on account of the plaintiff's non-appearance, then the Learned Magistrate would have acted well within his jurisdiction under Order XXX of the Magistrates Court Rules in striking out the cause, and it would have been open to the plaintiff/respondent, later, to apply to relist the cause under Order XXX Rule 6.
15. Which of these two should I accept?
16. A sealed order must reflect any order pronounced in Court. If the Order pronounced is expressed in a written judgement or ruling, then of course, the sealed order must reflect those written orders.
17. In this case, the relevant ruling, it would appear, was made orally from the bench on an ordinary call over date.
18. The records show that the plaintiff had been defaulting in compliance with previous orders. The orders were to do with Pre-Trial Conference Minutes. However, the Learned Magistrate had been granting the Plaintiff an extension.

19. On 26 March 2013, the Court records show:

Plaintiff: Tabia

Defendant: Mr. Prasad

Order:

1. *If costs is not paid in 14 days, the matter will be struck out.*

2. *PTC to be filed in 14 days.*

Adjourned to 16/04/2013.

20. On 16 April 2013, the Learned Magistrate recorded the absence of the plaintiff (and counsel) and then struck out the cause with \$300 costs to the defendant. Could he have struck out the cause because of the absence of the plaintiff? The answer is probably!

21. Could he have struck out the cause because of the plaintiff's non-compliance? The answer is probably!

22. It is more probable that the Learned Magistrate had struck out the cause because of non-appearance for the following reasons.

23. Firstly, because his minutes record that the plaintiff was absent. There is nothing recorded about the failure of compliance.

24. Secondly, and following from the above, I would say, that his records is to be preferred over the sealed Order. It is the primary reference point upon which a sealed order should be based.

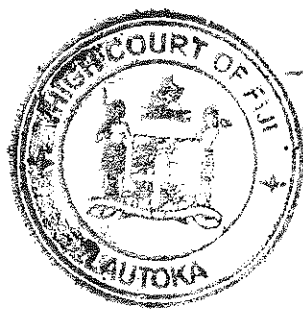
25. Thirdly, in the circumstances of this case, where either of the two options is probable, I would prefer the option which presumes that the Learned

Magistrate did exercise his power to strike out within what the Magistrates Court Rules would allow him i.e. that he did so on account of the Plaintiff's non-appearance on 16 April 2013.

26. Fourthly, the Learned Magistrate, in his written Ruling on the application to reinstate (pages 167 to 175 of the Copy Records), approached the application for relisting on the basis that he had struck out the cause on account of the plaintiff's counsel's non-appearance in court on 16 April 2013.

CONCLUSION

27. Appeal dismissed. The relevant Magistrates court file is to be returned forthwith to the Magistrates Court in Nadi where the matter is to take its normal course.
28. Costs in favour of the Respondent/Defendant which I summarily assess at \$1,000 (one thousand dollars only).




Anare Tuilevuka
JUDGE
Lautoka