

**IN THE HIGH COURT OF FIJI**  
**APPELLATE JURISDICTION**

Appeal No HBA 25 of 2017

**BETWEEN** : SUKHENDRA SWAMY

**APPELLANT**

**AND** : DHAN PAL GOUNDAR

**RESPONDENT**

**Coram** : The Hon. Mr Justice David Alfred

**Counsel** : Mr S. Kumar for the Appellant

Date of Hearing : 12 April 2018

Date of Judgment : 16 August 2018

**JUDGMENT**

1. This is the Appellant's Appeal against the judgment of the learned Resident Magistrate on 31 October 2017 dismissing his appeal against the decision of the Small Claims Tribunal (SCT) dated 8 May 2017.
2. The Grounds of Appeal are as follows:
  - (1) The learned Magistrate erred in law and in fact by failing to apply the proper principles of law relating to the granting of leave to appeal out of time.
  - (2) The learned Magistrate failed in his duty to consider that at the time of the hearing the Applicant was bedridden.
  - (3) The learned Magistrate erred in law and in fact in disallowing the application for leave to appeal out of time when the (decision) was entered in the absence of the Appellant and there was a denial of natural justice.
  - (4) The learned Magistrate erred in law and in fact in dismissing the appeal when the application was for leave to appeal.
  - (5) The learned Magistrate failed in law and in fact to comply with the Small Claims Tribunal Decree 1991.
  - (6) The learned Magistrate's decision is unreasonable.
3. The hearing commenced with the Appellant's Counsel making his submission. He said the SCT decision was made on 8 May 2017. According to the hospital report the Appellant was discharged on 12 April 2017. Counsel said he was present at the appeal but the Magistrate did not record his name. He asked for the appeal to be allowed and the matter remitted to another magistrate to hear the application for leave to appeal out of time from the SCT decision.
4. The Respondent, who appeared in person, said he had nothing to say.

5. At the conclusion of the argument, I said I would take time for consideration. Having done so I shall now deliver my decision.
6. As this is an appeal against the Magistrate's judgment, it is the Magistrates' Court Record that I must now turn to. The Record shows both Appellant and Respondent were present before the Magistrate on 20 July, 9 October and finally on 31 October 2017 when his judgment was delivered.
7. The Magistrate's judgment shows he has clearly perused the record before him and carefully considered the matter before he delivered his judgment. Therein he has stated the SCT had fixed the matter for rehearing when again the Appellant failed to appear. The Magistrate did not accept the Appellant's explanation for his absence at the original hearing noting he had been discharged from hospital on 5 April 2017 while the SCT order was made thereafter on 8 May 2017. The Magistrate further noted the Appellant gave no explanation for his failure to lodge an appeal in time against the SCT order. Finally the Magistrate having considered the Appellant's defence found that it was not a valid defence.
8. Having considered the oral and written submissions of Counsel for the Appellant and the Magistrate's judgment I find there are no merits in this Appeal. I shall therefore dismiss this Appeal and affirm the Magistrate's judgment. In the circumstances of this matter I shall make no order as to the costs of this Appeal only.

Delivered at Suva this 16<sup>th</sup> day of August 2018.



David Alfred  
JUDGE  
High Court of Fiji