

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CIVIL APPEAL NO. HBA 16 OF 2017

[MC Civil Appeal No. 3 of 2017]

[SCT Claim No. 121 of 2016]

BETWEEN : **KRISHNA SAMI** of Wairuku, Rakiraki, Businessman.

ORIGINAL RESPONDENT/ APPELLANT

AND : **ABHAY CHAND** of Murti Place, Rakiraki, Retired Police Officer.

ORIGINAL CLAIMANT/RESPONDENT

Appearances : Mr V. Kumar for the appellant
Respondent appearing in-person

Date of Hearing : 01 February 2018

Date of Judgment : 27 March 2018

J U D G M E N T

Introduction

[01] This is an appeal against a decision of the Magistrate's Court sitting at Ba. By his decision dated 9 August 2017, the learned Magistrate (*the Magistrate*) dismissed the appeal filed by the appellant against an order of the Small Claims Tribunal (SCT) dated 21 November 2016. The appeal against that decision is coming to this

court with leave being granted to the appellant by the Magistrate in his order dated 11 September 2017, to appeal out of time.

[02] At the appeal hearing, the respondent appeared in person. I then explained his right to be represented by counsel. I also explained his right to apply to Legal Aid Commission, if he cannot afford a private counsel. He then said that he is a retired police officer and he can argue the appeal by himself. The appellant was represented by counsel. Both parties orally argued the appeal. They opted to not file written submissions.

The Decision Below

[03] By his decision of 9 August 2017, the Magistrate upheld the decision of the SCT delivered against the appellant. The SCT ordered that the claimant (the respondent) is entitled to the sum of \$2,700.00 being charges for survey allegedly incurred as a result of the sale and agreement entered into between the parties. At paras 9 and 10 of his decision, the Magistrate found:

“...

09. *I have had the benefit of reading the Copy Records of the proceedings in the Small Claims Tribunal. I also noted that the parties were given equal opportunities to present their case.*

10. *I find that the decision of the Tribunal is not tainted by procedural unfairness. The position of the Appellant is basically he disagreed with the position taken by the Tribunal. I therefore, dismiss this appeal and make no order as to costs.*

...”

Grounds Appeal

[04] Being aggrieved with the Magistrate’s finding and decision, the appellant appeals the decision to this court on the following grounds:

1. *That the Learned Magistrate erred in fact and in law in holding that the Respondent was entitled to balance sum of \$2,000.00 (Two Thousand Dollars) when in fact he had only paid a sum of \$6,000.00 (Six Thousand Dollars) in cash to the Appellant at three different intervals of \$2,000.00 each and not \$12,000.00 as claimed.*

2. *That the Learned Magistrate erred in law and in fact in holding the decision of the Referee in the Rakiraki Small Claims Tribunal in holding that the Respondent is entitled to the sum of \$2,700.00 (Two Thousand Seven Hundred Dollars) being charges for survey when in fact the same was returned to the Respondent on the 16th day of September, 2016. The Respondent acknowledged receiving the sum of \$10,000.00 being full and final settlement.*
3. *That the Learned Magistrate erred in law and in fact in not taking into consideration the acknowledgement of the sum of \$10,000.00 (Ten Thousand Dollars) by the Respondent on the 16th day of September 2016 being the full and final settlement whereby he indemnified the Appellant against all or any further civil claims, liabilities or losses of any kind whatsoever that may directly or indirectly arise in respect of the transactions or matters.*
4. *That the Learned Magistrate erred in law and in fact in not asking the Respondent to provide any evidence \$12,000.00 (Twelve Thousand Dollars) paid to the Appellant being full payment of the purchase price as required under the agreement.*
5. *That the decision was unfair and biased as the Respondent and Referee knew each other. Additionally, I was not given the opportunity to be heard in the Magistrates court. There was an initial agreement and the counter offer with terms and conditions of settlement.*

The Background

[05] The background facts are briefly as follows: on 7 February 2007, Krishna Sami (the appellant), as the vendor and Abhay Chand (the respondent) as the purchaser entered into a Sale and Purchase Agreement for the sale of the land on the Certificate of Title number 32599 described as "Waiqumu and Cakova" being Lot 5 on DP 7587 (part of) at an agreed price of \$12,000.00 (*the agreement*). It was agreed between the parties that the sum of \$12,000.00 to be paid upon execution of the agreement. Upon the execution of the agreement, the respondent defaulted in the payment. He refused to pay the agreed sum at once saying that he will not be able to withdraw the full sum of \$12,000 from his bank account at once. Despite the diverse requests and reminders, the respondent paid a sum of \$6,000.00 at 3 different intervals of \$2,000.00 each time. The appellant requested the respondent

many a time to pay the balance sum of \$6,000.00, but he refused. The agreement had expired in the meantime. The respondent did not ask for extension of the agreement and for expedited subdivision of the land.

- [06] Thereafter, on 16 September 2016, the respondent agreed with the appellant to accept \$10,000.00 being full and final settlement sum in this matter being: \$6,000.00 the refund of monies paid, and \$4,000.00 being Surveyor cost and other incidental thereto (*the subsequent agreement*). The subsequent agreement reads:

"I, ABHAY CHAND of MH Compound hereby acknowledge receipt of the sum of \$10,000.00 via cheque no. 0052 from KRISHNA SAMI of Wairuku, Rakiraki, Fiji, Businessman being full settlement.

AND I indemnify him against all or any further civil claims, liabilities or losses of any kind whatsoever that may directly and indirectly arise in respect of our transactions or matters.

Dated this 16th day of September 2016.

Signed/Abhay Chand Witness signed/Virendra Kumar, Solicitor"

- [07] The appellant accordingly paid \$10,000.00 to the respondent on 16 September 2016, (the day which the subsequent agreement was executed on) as full and final settlement and by accepting the sum (\$10,000.00) the respondent indemnified the appellant against all or any further civil claims, liabilities or losses of any kind whatsoever that may directly and indirectly arise in respect of transactions or matters.

- [08] Despite the indemnification given by the respondent in the subsequent agreement, the respondent lodged a claim in the SCT against the appellant and claimed charges for survey in the sum of \$2,700.00 and another sum of \$2,000.00 being balance of reselling the piece of land. The learned Referee (*the Referee*) made order that:

"That the Respondent, Krishna Sami, to pay the Claimant, Abhay Chand, the sum of \$2,000.00 being the balance of reselling the piece of land known as "Part of Waiqumu and Cakova" Lot 5 on deposited Plan number 7587 in the District of Rakiraki, Ra on September, 2016. In addition is the Survey charges of the land \$2,700.00, SCT filing

fees of \$5.45, bailiff charges of \$25.00 and travelling expenses of \$20.00. All to the total amount of \$4,745.45."

[09] The appellant appealed the SCT's order to the Magistrate's court. The Magistrate dismissed his appeal and confirmed the tribunal's order. The appellant appeals the Magistrate's decision delivered dismissing his appeal to this court.

The Applicable Law

[10] Section 33 (1) of the Small Claims Tribunal Act 1991 (SCTA) provides a right of appeal to an aggrieved party. It states that:

"Appeals

33.-(1) Any party to proceedings before a tribunal may appeal against an order made by the tribunal under section 15(6) or section 31(2) on the grounds that-

(a) the proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings; or

(b) the tribunal exceeded its jurisdiction.

(2) An appeal brought pursuant to subsection (1) shall be made:

(a) if against an order made by a Resident Magistrate exercising the jurisdiction of a tribunal to the High Court; and

(b) in any other case, to the Magistrates Court.

(3) An appeal shall be brought by a party by the filing of a notice of appeal, in Form 6 of Schedule 1, together with the fee prescribed in Schedule 2, in the tribunal within 14 days of the tribunal's order, within 14 days of the tribunal's order.

(4) As soon as practicable after such notice of appeal has been filed, the High Court or the Registrar of that Magistrates Court (as the case may be) shall-

(a) lodge a copy thereof in the tribunal's records relating to the proceedings;

(b) fix the time and place for the hearing of the appeal and shall notify the appellant;

(c) serve a copy of every notice of appeal together with a notice of the time and place for hearing the appeal on every other party to the proceedings before the tribunal, and each such party may appear and be heard.

(5) The filing of a notice of appeal against an order shall operate as a stay of any process for the enforcement of that order, but the High Court or the Magistrates Court may at any time, on the application of a party to the proceedings, order that any process may be resumed or commenced or the process having been resumed or commenced, order that it be further stayed."

[11] Section 35 of the SCTA, dealing with the power of the court on appeal, provides:

"Powers of court on appeal

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 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 Resident Magistrate may give to the tribunal such directions 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 Act and any rules made hereunder, the procedure thereat shall be such as he or she may determine."

[12] Order 37, Rules 18 and 19 of the Magistrates' Court Rules (MCR) says:

"General powers of appellate court

18. The appellate court may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its finding on any question which the

appellate court thinks fit to determine before final judgment in the appeal, and, generally, shall have as full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the appellate court as a court of first instance, and may rehear the whole case, or may remit it to the court below to be reheard, or to be otherwise dealt with as the appellate court directs. [Emphasis provided]

Power of appellate court to give any decision or make any order

19. The appellate court shall have power to give any judgment and make any order that ought to have been made, and to make such further or other orders as the case may require, including any order as to costs. These powers may be exercised by the appellate court, notwithstanding that the appellant may have asked that part of a decision may be reversed or varied, and may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision."

The Issue

[13] The issue before me as a judge exercising the appellate jurisdiction is whether the Magistrate was correct in upholding the decision of the Referee made against the appellant without taking evidence and only considering the written submission filed by the parties.

Appellant's argument

[14] The appellant contends that the respondent has settled the matter for \$10, 000.00 and signed a document before a solicitor. Still, he made a claim of \$4,772.00 to the SCT against the appellant. He further contends that there was no inquiry and the SCT has decided the claim on written submission. Neither party has given evidence. The Referee was procedurally wrong. The order may be set aside and dismiss the respondent's claim.

Respondent's argument

[15] The respondent's only argument was that the Referee was correct in arriving at his decision. He said that he is relying on the judgment of the Referee and the Magistrates Court.

Discussion and Decision

[16] The appellant lodged a claim in the SCT against the appellant claiming a sum of \$4,772.00. The claim arose out of a sale and purchase agreement entered into

between the parties on 27 February 2007. The agreement provided that the appellant was to pay a sum of \$10,000.00 upon execution of the agreement. However, the respondent failed to pay the sum as agreed. He paid only \$6,000.00 in three instalments of \$2,000.00 at different dates. The respondent was slow in making payment of the consideration sum and thus delayed the settlement of agreement. Neither party invoked the default clause, albeit such clause was available in the agreement. The agreement had expired in the meantime. Since the appellant wanted to sell the land to a third party, the appellant approached the respondent and explained his intention to him (respondent). The respondent agreed to accept the sum of \$10,000.00 and indemnify the appellant against all or any further civil claims, liabilities or losses of any kind whatsoever that may directly or indirectly arise in respect of the transactions or matters. The respondent signed the acknowledgement on 16 September 2016 and it was witnessed by a solicitor (see page 12 of the copy record).

- [17] After accepting \$10,000.00 and signing the acknowledgement, the respondent lodged a claim in the SCT on 27 September 2016. The Referee decided the claim in favour of the respondent.

Grounds 1, 2 & 3

- [18] Ground 1 complains that the Learned Magistrate erred in fact and in law in holding that the respondent was entitled to the balance sum of \$2,000.00 when in fact he had only paid a sum of \$6,000.00 in cash to the appellant at three different intervals of \$2,000.00 each and not \$12,000.00 as claimed, Ground 2 that the Learned Magistrate erred in law and in fact in holding the decision of the Referee in the Rakiraki SCT in holding that the respondents is entitled to the sum of \$2,700.00 being charges for survey when in fact the same was returned to the respondent on 16 September 2016. The respondent acknowledged receiving the sum of \$10,000.00 being full and final settlement and Ground 3 that the Learned Magistrate erred in law and in fact in holding the decision of the Referee in the Rakiraki SCT in holding that the respondent is entitled to the sum of \$2,700.00 being charges for survey when in fact the same was returned to the respondent on 16 September 2016. The respondent acknowledged receiving the sum of \$10,000.00 being full and final settlement.
- [19] The Referee's order may be appealed against on two grounds, i.e. (a) the proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings; or (b) the tribunal exceeded its jurisdiction (see s. 33 SCT).

SCT's monetary jurisdiction

- [20] The respondent filed a claim of \$4,772.00 in the SCT. The SCT does have jurisdiction to hear and determine a claim not exceeding \$5,000.00 in value (see s. 8 SCT). The respondent filed a claim within \$5,000.00. Therefore, the question that the SCT exceeded its monetary jurisdiction does not arise in this appeal.

Unfair proceedings

- [21] The question that arises in this appeal is whether the SCT conducted the proceedings in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings.
- [22] In order to understand what happened in the SCT following the claim made by the respondent on 27 September 2016. The matter was first called over before the Referee on 17 October 2016. The SCT's proceedings record (*PR*) of that date reads:

"Date : 17/10/2016 Time: 11.10 am
Before : Referee Clerk: ...
Claimant: Present
Respondent: Present

Respondent understand[s] the Particulars of Claim but he dispute[s] it. Respondent stated he was advised by the lawyer that the claimant is not entitle[d] to claim as he did.

Claimant replied the lawyer gave the cheques for \$10,000.00 (ten thousand dollars) and advised him also that the balance of \$2,000.00 (two thousand dollars) he can claim against the Respondent.

Submission to be produced to clerk on 28/10/2016. Adjourn to 7/11/2016 at 10 am.

Signed/Referee." [Emphasis provided]

- [23] The matter came up before the Referee on 7 November 2016 when the Referee noted that:

"Date : 07/11/2016 Time: 11.00 am
Before : Referee Clerk: ...

Claimant: Present
Respondent: Present

Claimant request[s] approval as he seeks oral submission on 19/10/2016. They [sic] both parties were to hand in the written submissions. He did but the Respondent did not. On 3/11/2016 when he came to the court house he was informed by the clerk that the Respondent had submitted on 1/11/2016.

He request that the Tribunal consider his submission as it was filed in time. Adjourned to 21/11/2016 at 10 am. (decision)

Signed/Referee.”

[24] On 21 November 2016, the Referee made his order as follows:

“ORDER

1. THAT the Respondent; Krishna Sami to pay the Claimant; Abhay Chand the sum of \$2,000.00 (two thousand dollars) being the balance of reselling the piece of land known as “part of Waiqumu and Cakova” Lot 5 on deposited Plan number 7587 in the District of Rakiraki, Ra on September, 2016. In addition is the Survey charges of the land \$2700.00, SCT filing fees of \$5.45, bailiff charges of \$25.00 and travelling expenses of \$20.00. All to the total amount of \$4745.45 (four thousand seven hundred and forty five dollars and forty five cents).
2. THAT Respondent to pay the full amount of \$4,747.45 on or before 30.11.2016.
3. THAT Payments to be made at the Rakiraki Magistrates Court Registry.
4. THAT Failure to comply with this order further Court action will be taken.”

[25] The Referee found that:

“... The Deed specifies that the purchase price was \$12,000.00 (twelve thousand dollars) of which the Claimant had bought the said piece of land.

Between 2008 – 2014 had been paying by instalments the Survey Charges for the paid land, and the road works (Note: receipts attached and marked).

In September 2016 the Respondent sold the same piece of land to a buyer and raised BSP cheque 80644349 dated 15.9.2016 in the sum of \$10,000.00 in the name of the Claimant as refund on the amount previously paid for the land.

The Respondent promised to repay the balance of \$2,000.00 but have been giving excuses and false promises.

The Respondent made his defence submission in which he stated that the Claimant paid \$6,000.00 and has a balance of \$6,000.00 as its (sic) taken too long to settle the mount this being the reason he resold the same piece of land but did not disclose the amount. He signed a cheq (sic) for \$10,000.00 to off-set what was paid by the Claimant.

The Claimant has mentioned that he purchased the piece of land in 2007 and immediately the following year 2008 he started paying by instalments the survey charges.

Tribunal believed the explanations of the Claimant, verbally and in written and his supportive documents. Tribunal do not believe the explanation of the Respondent either verbally or the defence submission." ...

- [26] It seems that the Referee had decided the claim relying only on the written submissions tendered by the parties. The Referee did not receive any other evidence whether orally or in writing. Section 26, SCTA speaks of evidence to be given in the proceedings before the SCT. That section provides that:

"Evidence

26.-(1) Evidence tendered to a tribunal by or on behalf of a party to any proceedings need not be given on oath, but the tribunal may at any stage of the proceedings require that such evidence, or any specific part thereof, be given on oath whether orally or in writing.

(2) A tribunal may, on its own initiative, seek and receive such other evidence and make such other investigations and inquiries as it thinks fit. All evidence and information so received or ascertained shall be disclosed to every party.

(3) A tribunal may receive and take into account any relevant evidence or information, notwithstanding the provisions of the Evidence Act 1944 and whether or not the same would normally be admissible in a Court of Law. [Emphasis provided]

- [27] There were two conflicting statement made by the parties to the tribunal. The claimant (the respondent) stated that he is entitled to recover the expenses incurred by him on account of survey, whereas the respondent (the appellant) denied the claim and stated that the claimant is not entitled to claim such expenses as he had waived any such claim when the claimant accepted \$10,000.00 as full and final settlement in respect of the land involved in the sale and purchase agreement between the parties.

- [28] The Referee did not even enquire how the claimant was entitled to claim survey charges spent in 2007. The appellant stated that he (appellant) was advised by the lawyer that the claimant was not entitled to claim as he did. To which, the respondent replied that the lawyer gave the cheque for \$10,000.00 and advised him (respondent) also that the balance of \$2,000.00 he can claim against.
- [29] The parties had made two conflicting statements to the Referee. The Referee is entitled to take evidence without oath, but he has discretion to require that such evidence, or any specific part thereof, be given on oath whether orally or in writing (see *s.26 (1) SCTA*). The respondent had made statement outside the written document (the acknowledgement of \$10,000.00 as full and final settlement) and had attempted to contradict the contents of the written document. The respondent did not even produced the acknowledgement he signed indemnifying the appellant from all liabilities arising from the sale and purchase agreement. The Referee was not mindful of the acknowledgement both the parties relied upon. He did not even ask the respondent to produce such document for him to consider before he arrive at a decision. The Referee obtained the written submissions from the parties and set down the matter for decision. The Referee ordered submission to be produced to the clerk on 20 October 2016 and adjourned the matter to 10.00am on 07 November 2016. It is not clear why the matter was adjourned to 07 November 2016. Presumably, the Referee might have adjourned the matter to 07 November to check on the submissions. When the matter came up on 07 November, nothing much happened. On that day, this is what happened: the respondent requested approval as he seeks oral submission on 19 October 2016, the Referee noted that both parties were to hand in written submissions, he (claimant) did but the respondent did not, the respondent had submitted on 1 November 2016. The respondent requested the tribunal to consider his submission as it was filed in time. The Referee adjourned the matter to 21 November 2016 (10.00am) for decision.
- [30] There were conflicting claims and statements before the tribunal. The parties were at variant in their respective position. The issue the parties raised was not purely legal. The parties pleaded different facts that needed evidence for their existence. The Referee has discretion pursuant to section 26, SCTA to call any party to give evidence on oath, which the Referee had failed to exercise. In my opinion, the

permission granted to the tribunal by section 26 (1), SCTA to take evidence without oath does not necessarily mean that the tribunal can decide any matter on written submission. On the facts of the case, I am of the opinion that the Referee should have exercised his discretion under section 26 to call for evidence on oath, for there were conflicting facts and statements made to the Referee. Further, the Referee, on his own initiative, could have exercised his discretion under section 26 (2), SCTA to seek and receive evidence and make such other investigations and inquiries as he thinks fit. The Referee failed to exercise this discretion as well.

- [31] The Referee had decided the claim the respondent brought to him without evidence whatsoever and solely considering the submission filed by the parties. The Referee has given no reasons as to why he proceeded to decide the claim only on submissions without receiving evidence. In considering the submissions, the Referee believed the explanations of the respondent (the claimant), verbally and in writing and his supportive documents and he did not believe the explanation of the respondent either verbally or the defence submission. Both parties gave explanation on their written submissions. There was no specific reasons given to believe only the respondent's explanation. The Referee had decided a claim without evidence, investigation and inquiry when such evidence, investigation and inquiry was necessary considering the nature of the conflicting claims the parties asserted to the tribunal. I would, accordingly, find the Referee had conducted the proceedings in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings. I find that the grounds of appeal 1, 2 and 3 have merits.

Grounds 4 and 5

- [32] Both the grounds challenges the decision of the Magistrate that he erred in law and in fact in not asking the respondent to provide any evidence of the \$12,000.00 paid to the appellant being full payment of the purchase price as required under the agreement and that the decision was unfair and biased as the respondent and Referee knew each other. Additionally, the appellant was not given the opportunity to be heard in the Magistrates court. There was an initial agreement and the counter offer with terms and conditions of settlement.

- [33] The Magistrate correctly identified the relevant law and case authority on appeal against the tribunal's decision. However, the Magistrate did not consider each of the grounds of appeal separately. He has considered all the five grounds of appeal together. After citing the relevant law and the case authority, the Magistrate found that the decision of the tribunal is not tainted by the procedural unfairness.
- [34] Unfortunately, the Magistrate had overlooked the fact that the tribunal had decided the respondent's claim without inquiry and without receiving evidence. A careful perusal of the tribunal's copy record would have revealed that the tribunal's decision had been made without receiving evidence. If the Magistrate had known that the tribunal's decision had been made without evidence he would have arrived at a different decision. In my view, the Magistrate had upheld the decision of the tribunal incorrectly. I, sitting as an appellate judge, set aside the Magistrate's decision upholding the tribunal's decision. For the reasons set out above, I now proceed to set aside the tribunal's decision dated 21 November 2016.

Considering the claim

- [35] I now turn to consider the respondent's claim as it was filed before me.
- [36] The appellate court has power to give any judgment and make any order that ought to have been made. For that purpose, the appellate court has full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the appellate court as a court of first instance, and may rehear the whole case, or may remit it to the court below to be reheard, or to be otherwise dealt with as the appellate court directs (see *O.37, r.18 &19, HCR*).
- [37] I think that I should deal with the respondent's claim as it was instituted and prosecuted before me.
- [38] The respondent lodged his claim in the SCT claiming a sum of \$4,772.00. He claimed \$2,772.00 for survey fee that he allegedly spent and \$2,000.00 as balance of consideration sum he paid to the appellant. His claim arose out of the sale and purchase agreement entered between the parties on 27 February 2007. By that agreement, the appellant agreed to sell a piece of land to the respondent for the consideration sum of \$12,000.00. The agreement required that the respondent must pay the sum of \$10,000.00 immediately after execution of the agreement. However,

the respondent failed to comply with the terms of the agreement. He only paid \$6,000.00 at three different times by instalments of \$2,000.00 each. He was an unwilling buyer. He was slow in making payment and in taking action according to the agreement. He did not take any action in respect of the sale and purchase agreement until September 2016. The appellant wanted to sell the land. He found a buyer who was interested in the land. He (appellant) approached the respondent and offered a sum of \$10,000.00 as full and final settlement between the parties. The respondent accepted the offer and signed an acknowledgement on 16 September 2016. It was witnessed by a solicitor. By that acknowledgement, the respondent indemnified the appellant against all or any further civil claims, liabilities or losses of any kind whatsoever that may directly and indirectly arise in respect of the transactions or matters. The respondent had admitted that he signed the acknowledgement and indemnified the appellant from all liabilities arising from the sale and purchase agreement. The respondent is a retired police officer. He understands English very well. One cannot cast a doubt that the respondent was misled by signing the acknowledgement. The respondent knew very well the legal consequence of the document he signed.

- [39] The respondent has filed the claim after accepting \$10,000.00 as full and final settlement and after signing the acknowledgement indemnifying the appellant from all liabilities. The respondent states that the witnessing lawyer advised him that he can claim another \$2,000.00 from the appellant. He called no witnesses to prove this assertion. He had attempted to contradict the written document but produced no evidence. He claimed \$2,000.00 on the basis that he had paid the full consideration sum of \$12,000.00 to the appellant. There was no evidence before the court that he paid the full consideration. The evidence suggests that the respondent only paid \$6,000.00 at three different times by instalments of \$2,000.00 each. His claim of \$2,000.00 was not sufficiently proved.
- [40] Moreover, the respondent should not have brought the claim to the court after accepting \$10,000.00 as full and final settlement and signing the acknowledgement discharging the appellant from all liabilities arising out of the sale and purchase agreement.

[41] For the foregoing reasons, I would dismiss the respondent's claim with the costs of \$750.00, which I have summarily assessed, to be paid within 28 days from the date of this judgment.

Conclusion

[42] For all the reasons set out above, I quash the tribunal's order dated 21 November 2016 and the Magistrate's judgment of 9 August 2017 pronounced affirming the tribunal's order. I would dismiss the respondent's claim lodged in the SCT against the appellant on 27 September 2016. I order the respondent to pay \$750.00 (which is summarily assessed) for the costs of these proceedings, which is to be paid within 28 days from the date of this judgment.

The Result

1. The Small Claims Tribunal's order dated 21 November 2016 and the Magistrate's judgment dated 9 August 2017 pronounced affirming the order of the Small Claims Tribunal be quashed.
2. The respondent's claim made to the Small Claims Tribunal on 27 September 2016 is dismissed.
3. The respondent will pay the summarily assessed costs of \$750.00 to the appellant within 28 days from the date of this judgment.

M. H. Mohamed Ajmeer

.....
27/3/18

M. H. Mohamed Ajmeer

JUDGE

At Lautoka
27 March 2018

