

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
APPEAL JURISDICTION**

Small Claims Tribunal File No. 160 – 17
Appeal Case No: 04 - 2017

JOHNY AIYAPPAN GOUNDAR

-v-

NARDEO KUMAR

For the Appellant : In person
For the Respondent : In person

Date of Appeal Hearing : 16th day of October 2018

Date of Judgment : 2nd day of November, 2018

JUDGMENT

Background

1. 1. The Appellant is dissatisfied with the decision of the referee who decided their case when it was in the Small Claims Tribunal [SCT].
1. 2. The Appellant was the Claimant when the case was before the tribunal.
1. 3. The Respondent in this appeal was the Defendant when the case was before the tribunal.
1. 4. After hearing the parties, the Referee gave his finding on the 27th of September 2017 dismissing the Appellant/Claimant's claim.
1. 5. The Appellant had sought \$2,625.45 against the Respondent. The backdrop of the claim arose from the unsuccessful sale of the Appellant's Nissan car registration number CG 673 to the Respondent/Defendant.
1. 6. The Appellant wanted to sell the van to the Respondent/Defendant for \$3,800 but after the Respondent/Defendant had the vehicle test driven, the parties agreed to reduce the sale price to \$2,500.
1. 7. The parties perfected their agreement in writing and this was signed by both parties before a Justice of the Peace.
1. 8. A mechanic Mr Manoj Kumar who knew both the parties assisted in test driving the vehicle and was instrumental in having the sale price reduced. He was of the opinion that the initial sale price was too high as there was mechanical and painting work that needed to be done to the vehicle.
1. 9. The vehicle was then taken by Mr Kumar to be repaired or refurbished.
1. 10. The cost of repairs was \$1,500.

1. 11. The van according to Mr Kumar was repaired and remained at his garage but neither the Appellant nor the Respondent came to pick the vehicle for passing. Mr Kumar says that it has remained at his garage for so long that now it 'cannot be driven'.
1. 12. The Respondent/Defendant's position when the case was before the Referee was that the Appellant/Claimant had instructed the mechanic Mr Kumar to take and repair the vehicle, then the vehicle was to be passed and then the Respondent/Defendant will pay for the \$2,500 agreed by them and which is in their written agreement.
1. 13. The Referee dismissed the claim being dissatisfied that it was made out.
1. 14. The Appellant being aggrieved with the decision appeals raising bias, that the Referee did not have an open mind and was irrational. He is essentially arguing that the Referee was unfair.
1. 15. The parties did not file any written submission before the appeal hearing was held.
1. 16. The parties made oral submissions during the appeal hearing.
1. 17. The Appellant disputes that he told the mechanic to take and repair the van.
1. 18. The court raised with the Appellant that it is reflected in page 5 and 6 of the record that Mr Kumar the mechanic said that it was the he or the Appellant who told him to take the vehicle. Mr Kumar was a witness for the Appellant/Claimant when the Referee dealt with the hearing in the SCT.
1. 19. During the appeal hearing before this court, the Appellant denied he told the mechanic to do that.
1. 20. The parties maintain that the purchase price of the vehicle was \$2,500.
1. 21. The Appellant said that the van was in a good condition. This was before the van was taken for repairs.

Law

1. 22. The Appellant's appeal is within the 14 day appeal period required pursuant to section 33 (3) of the **Small Claims Tribunal Act 1991**. The appeal is within time.
1. 23. Section 33 (1) of the same Act allows an appeal against a referee's decision if:
 - a. (a) The proceedings were conducted by the Referee in an unfair manner to the Appellant and prejudicially affected the result of the proceedings;

or

- a. (b) The tribunal exceeded its jurisdiction.
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- 1. 24. Section 35 (1) of the same Act prescribes the following powers on appeal. The Magistrate on appeal may:
 - a. (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;
 - a. (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 the tribunal;
 - a. (c) quash the order and transfer the proceedings to a Magistrates' Court for hearing;
- or
- a. (d) dismiss the appeal.

DISCUSSION

- 1. 25. I am satisfied that it was the Appellant who told Mr Kumar to take the van and repair it. This is reflected in the court record and was information provided by the Mr Kumar the Appellant's own witness.
- 1. 26. At no time during the hearing before the Referee did the Appellant dispute that it wasn't him who directed the mechanic to take the vehicle for repairs.
- 1. 27. Having the van repaired and paid for and passed by the Appellant before it was purchased at the agreed price of \$2,500 was only to the benefit of the Respondent.
- 1. 28. I don't find any reason to suggest that the Respondent would have agreed to pay for the repairs and passing the vehicle as this would have ballooned the amount he had to pay for the vehicle.
- 1. 29. The Respondent only wanted to pay \$2,500 which I accept and which the Referee would have accepted too was only for the purchase of the vehicle and nothing else.

1. 30. It was the Appellant who gave instructions to the mechanic to repair the vehicle and it is he who has to pay the costs of repairs.

1. 31. The Appellant did not pay for the cost of the repairs and did not have the vehicle passed. If only he completed these only then would the Respondent be liable to pay the \$2,500 purchase price or account for not purchasing the vehicle if the Appellant had completed his part.

1. 32. I don't have any reason to disagree with the finding of the Referee.

Conclusion

1. 33. For the reasons mentioned, the Appeal is unsuccessful and is dismissed.

1. 34. The parties have 28 days to file an appeal against my decision if they wish.

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Lisiate T.V. Fotofili
Resident Magistrate

At Tavua this 2nd day of November, 2018.