

to Mr Piukala the matter was listed. According to Mrs Tupou it was not.

4. There is a transcript of the proceedings on 11 October which shows that the Respondent gave evidence on oath. At the conclusion of the evidence Mr Piukala addressed the Court. He said:

“The sad part about the respondents and the appellant is that the respondents or ANZ Bank was so careless to make sure they treat their customers the right way ... the [Plaintiff] lost his face and was so embarrassed [because of] the wrong leading that happened and the wrong decision that was given”.

5. The (entire) judgment dated 11 October 2000 reads as follows:

“Claim for \$2000 granted and to be paid to the Plaintiffs within 2 months and the Court costs of \$24 plus lawyer’s fees of \$600 to be paid to Kelepi Piukala.”

6. An attempt to have the judgment set aside was refused. An appeal against the refusal was rejected by the magistrate on 16 February 2011 on the ground that the appeal had not been filed within the 10 days required by Section 75(1). Apparently the magistrate took the view that the requirements of Section 77 had not been satisfied.
7. A second appeal (the present appeal) was filed directly with the Supreme Court on 22 March 2011. The Appellants seek an order that the first appeal be heard and that the action be remitted to the Magistrates’ Court for re-hearing.

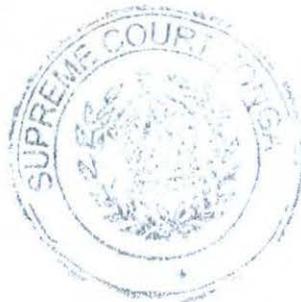
8. Section 81 of the Magistrates' Courts Act reads as follows:

"No decision of a magistrate shall be reversed or varied for any defect in form therein or in any of the proceedings before the magistrate but every appeal shall be decided on its merits only."

9. In my opinion there are two fundamental difficulties about the magistrate's judgment set out in paragraph 5 above. The first is that no reasons are given for the award. Magistrates should remember that "reasons for judgment are a fundamental attribute of the common law". Without reasons this Court cannot know what facts were found by the magistrate or whether he applied the law correctly, or whether there is a question of law involved at all. (see *Bell-Booth v Bell-Booth* [1998] 2 NZLR 2.

10. The second difficulty is that while the whole basis of the Respondents' claim was injury to his feelings, the common law does not recognize such an injury as a cause of action or a ground for awarding damages (see *Addis v Gramophone Company Limited* [1909] AC 488 H.L.)

11. These difficulties are reason alone to set aside the judgment and to remit the action to the Magistrates' Court for re-hearing before a different magistrate.



DATED: 6 July 2011.


M.D. Scott
CHIEF JUSTICE