IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CRIMINAL APPEAL NO. AAU 0064 of 2018
[In the High Court of Suva Case No. HAA 119 of 2017]

BETWEEN	:	**CARPENTERS FIJI LIMITED (trading as MH HYPERMARKET)**
		Appellant
AND	:	**FIJIAN COMPETITION AND CONSUMER COMMISSION (formally known as Fiji Commerce Commission**
		Respondent
Coram	:	**Prematilaka, JA**
Counsel	:	**Mr. E. Narayan for the Appellant**
	:	**Ms. C. Choy for the Respondent**
Date of Hearing	:	**12 October 2020**
Date of Ruling	:	**16 October 2020**

RULING

[1] The appellant had been arraigned in the Magistrates' Court of Lautoka on one count of Offering for Sale Certain Non-Price Control Items at a price different to the Price Being Displayed on the Shelves, contrary to Section 77(1) (g), (2) and Section 129(3) of the Commerce Commission Decree No. 49 of 2010.The particulars of the offence were as follows.

Statement of Offence*Offering for Sale Certain Non-Price Control Items at a price different to the Price Being Displayed on the Shelve, contrary to Section 77(1) (g), (2) and Section 129(3) of the Commerce Commission Decree No. 49 Decree of 2010.*

Particulars of Offence

***Carpenters** Fiji Ltd T/A MH Hypermarket did on the 24th day of December, 2014 at Lautoka in the Western Division being a trader was offering for sale certain non-price control items at a price different to the price being displayed on the shelve, namely 5 pkts of 100g of Suhana Meat Masala at $4.19 per pkts instead of 3.99 per pkt the price displayed on the shelve and approximately 55 bars of 80g of Giv Beauty soap at $0.89 per bar instead of $0.69 per bar the price displayed on the shelve.*

[2] By virtue of the Commerce Commission (Budget Amendment) Act 2017 the name of the Fiji Commerce Commission had been changed to Fijian Competition and Consumer Commission and also its substantive legislation is known as Fijian Competition and Consumer Commission Act, 2010.

[3] The trial against the appellant proceeded in the absence of the appellant and at the end of the trial the learned Magistrate in his judgment delivered on 15 August 2017 had found the appellant guilty as charged, convicted and imposed a fine of $20,000.00 as the sentence on 12 September 2017.

[4] Being aggrieved by the conviction and sentence, the appellant had appealed against conviction and sentence out of time to the High Court and the High Court had granted enlargement of time to appeal out of time and accordingly the appellant had prosecuted its appeal in the High Court. The High Court had delivered the judgment on 22 June 2018 dismissing the appellant's appeal.

[5] Thereafter, the appellant had filed a timely appeal against the High Court judgment on 12 July 2018 and its written submissions had been tendered on 06 August 2019. The respondent had filed its written submissions on 01 November 2019.

[6] By way of a preliminary observation I must mention that the appellant's notice of appeal had been filed under section 21 of the Court of Appeal Act. Section 21 permits an appeal against conviction, sentence, and acquittal on a trial held before the High Court and an order refusing bail pending trial by the High Court. The right of appeal against a decision made by the High Court in its appellate jurisdiction is given in section 22 of the Court of Appeal Act. Therefore, the notice of appeal is defective to that extent and the appellant had not duly invoked the jurisdiction of this court according to law as far as the current proceedings are concerned. Thus, the appellant's

'appeal' is liable to be dismissed on that account alone in terms of section 35(2) of the Court of Appeal Act.

[7] Nevertheless, I shall not make any order in that regard at this stage as the respondent had not taken it up as a preliminary objection to be dealt with by this court and it was not addressed by counsel at the leave to appeal hearing. However, due to its attention not having been drawn to section 22, the appellant may not have been mindful that in a second tier appeal under section 22 conviction could be canvassed on a ground of appeal involving a question of law only and a sentence could be canvassed only if it was unlawful or passed in consequence of an error of law or if the High Court had passed a custodial sentence in substitution for a non-custodial sentence.

[8] Subject and in addition to section 22 of the Court of Appeal Act, the test for leave to appeal against both conviction and sentence is **'reasonable prospect of success'** (see **Caucau v State** AAU0029 of 2016: 4 October 2018 [2018] FJCA 171, **Navuki v State** AAU0038 of 2016: 4 October 2018 [2018] FJCA 172 and **State v Vakarau** AAU0052 of 2017:4 October 2018 [2018] FJCA 173, **Sadrugu v The State** Criminal Appeal No. AAU 0057 of 2015: 06 June 2019 [2019] FJCA87 and **Waqasaqa v State** [2019] FJCA 144; AAU83.2015 (12 July 2019) in order to distinguish arguable grounds [see **Chand v State** [2008] FJCA 53; AAU0035 of 2007 (19 September 2008), **Chaudry v State** [2014] FJCA 106; AAU10 of 2014 and **Naisua v State** [2013] FJCA 14; CAV 10 of 2013 (20 November 2013)] from non-arguable grounds

[9] Further guidelines to be followed for leave to appeal when a sentence is challenged in appeal are also well settled (vide **Naisua v State** CAV0010 of 2013: 20 November 2013 [2013] FJSC 14; **House v The King** [1936] HCA 40; (1936) 55 CLR 499, **Kim Nam Bae v The State** Criminal Appeal No.AAU0015 and **Chirk King Yam v The State** Criminal Appeal No.AAU0095 of 2011). The test for leave to appeal is not whether the sentence is wrong in law but whether the grounds of appeal against sentence are arguable points under the four principles of ***Kim Nam Bae's*** case. **For a ground of appeal timely preferred against sentence to be considered arguable there must be a reasonable prospect of its success in appeal.** The aforesaid guidelines are as follows.

(i) Acted upon a wrong principle;
(ii) Allowed extraneous or irrelevant matters to guide or affect him;
(iii) Mistook the facts;
(iv) Failed to take into account some relevant consideration.

[10] Grounds of appeal urged on behalf of the appellant are:

*(1) **THAT** the Learned Judge erred in law when it accepted that the Summons served on the 9th of February 2017 at MH Hypermarket, Lautoka was the principal place of business when in fact the principal place of business and or the registered address of the Appellant was Argo Street, Walu Bay, Suva, at the time of the service;*

*(2) **THAT** the Learned Judge erred in law in holding that the formal proof was lawfully conducted on the 11th July 2017 when in fact the personal appearance of the Appellant had not been dispensed with under Section 83 of the Criminal Procedure Act 2009;*

*(3) **THAT** the Learned Judge erred in law in holding that the formal proof and the sentence in PP Case No. 4 of 2017 was lawfully conducted whilst the matter had been already dealt with in Lautoka Magistrate's Court Action No.7 of 2015 which was dismissed for want of prosecution on 30th January 2017;*

*(4) **THAT** the Learned Judge erred in law in holding that the penalty of $20,000.00 was lawfully sentenced, when the maximum penalty a Magistrate can impose after a matter is formally proved is 10 penalty units if the Accused does not appear at the time and place appointed by the Summons under Section 167 of the Criminal Procedure Act 2009;*

*(5) **THAT** the Learned Judge erred in law in holding that the Respondent has proved the charge in accordance with Section 77(1)(g) of the Commerce Commission Act 2010 that the Appellant was 'making a representation concerning that a price advantage of goods or services exist if it does not' when it did not;*

*(6) **THAT** the Learned Judge erred in law in holding that the Magistrate could hear the matter and the evidence produced in Court by the Respondent when in fact the same was irregularly obtained as there was no search warrant tendered as evidence and as required under Section 126(3) of the Commerce Commission Act 2010;*

*(7) **THAT** the Learned Judge erred in law in holding that the Magistrate could peruse and accept the evidence produced in Court by the Respondent when as per Section 119(6) of the Commerce Commission Act 2010 any*

incriminating information furnished against the Appellant should not be admissible in any Court or Tribunal other than the Small Claims Tribunal;

***(8) THAT** the Learned Judge erred in law in holding that the Magistrate could take into consideration previous convictions of the Appellant in paragraph 8 of the Sentence when in fact the Respondent did not give notice to the Appellant of not less than 7 days prior to the conviction as required under Section 84(4)(a)(b) of the Criminal Procedure Act 2009.*

***(9) THAT** the Learned Judge erred in law in holding that the Magistrate could impose a harsh and excessive sentence against the Appellant without hearing the matter on merits and according ample opportunity to the Appellant to present its case to the Honourable Court.*

01st ground of appeal

[11] The appellant argues that there had not been proper service of summons on the appellant as summons had been delivered to Asha Chand, the Shop Manager for MH Hypermart, Lautoka whereas the principal place of business and/or the registered address of the appellant was Agro Street, Walu Bay, Suva. The appellant states that it was not a proper service of summons in terms of section 156(1)(b) of the Commerce Commission Act 2010 which reads as follows.

> *'(1) where under this [Act] a document or a notice may be, or is required to be, given to a person, the document or notice may be given*
>
> *(b)……*
>
> *(ii) by leaving it at the registered office of the body corporate or at the place or principal place of business of the body corporate in Fiji with a person apparently employed there.'*

[12] The High Court judge had rejected the appellant's argument in the following paragraphs.

> *'15. The situation in the instant appeal is different since the Shop Manager who was an employee of the appellant was served at the principal place of business. <u>There is no dispute that MH Hypermarket operates from Naviti Street, Lautoka which is the principal place of business for MH Hypermarket</u>. Furthermore, before the service of the Summons the prosecution witness had sighted the certificate of registration of this supermarket.*

> *'20. <u>There was no need to serve the registered office of the appellant since MH Hypermarket operated from Naviti Street, Lautoka which was the principal place of the appellant's business and the service of the Summons was effected on an employee of the appellant.</u>'*

[13] I find that when section 156(1)(b)(ii) has used the words '*.... at the place or principal place of business...*' it includes not only the principal place of business but the place of business which in this case is MH Hypermart, Lautoka. Thus, summons could be left with a person employed at the registered office of the body corporate or at the place of business or the principal place of business.

[14] In any event, in paragraph 39 of the written submissions the appellant has admitted that summons dated 09 February 2017 was served on the appellant but due to an erroneous oversight it had been overlooked and necessary representations were not made on the material day in court.

[15] Therefore, there is no question of law, or a reasonable prospect of success of this ground in appeal.

02nd ground of appeal

[16] The appellant challenges the trail in its absence on 11 July 2017 without dispensing personal appearance under section 83 of the Criminal Procedure Code.

[17] The High Court judge had dealt with this argument as follows.

> *25. Section 83 of the Criminal Procedure Act does not apply since the learned Magistrate had not dispensed with the personal attendance of the appellant which had not pleaded guilty in writing or had made an appearance by a lawyer. Section 171 of the Criminal Procedure Act was applicable since the learned Magistrate was satisfied that the appellant had been served but had failed to appear in court.*
>
> *26. Section 171 (1) of the Criminal Procedure Act states:*
>
> > *"(1) If at the time or place to which the hearing or further hearing is adjourned —*

(a) the accused person does not appear before the court which has made the order of adjournment, the court may (unless the accused person is charged with an indictable offence) proceed with the hearing or further hearing as if the accused were present; and

(b) if the complainant does not appear the court may dismiss the charge with or without costs."

27. In view of the above provision of the law, the learned Magistrate had given a formal proof date which was a hearing date. There was no appearance made on behalf of the appellant so the court proceeded with the formal proof. The discretion to proceed in the absence of the appellant was properly exercised.

28. The learned Magistrate exercised his discretion judicially under section 171 of the Criminal Procedure Act hence the issuance of a bench warrant for the non-appearance of the appellant never arose. Once a date is assigned by a court and proper service had been effected it is the responsibility of that accused to oblige."

[18] I am in agreement with the High Court judge that the Magistrate had properly acted under section 171(1)(a) of the Criminal Procedure Act, 2009 in proceeding to trial without the appellant. In fact, the Magistrate had not commenced trial proceedings immediately on 02 May 2017 but had adjourned the case to 11 July 2017 and the appellant which admittedly had notice of the mater could still have appeared on that day and be heard.

[19] This is not a question of law and it has no reasonable prospect of success in appeal.

03rd ground of appeal

[20] The appellant argues that it had been charged for the same offence in Lautoka Magistrates court case No. 07 of 2015 which was dismissed for want of prosecution on 30 January 2017 and therefore, should not have been arraigned once again in case No. 4 of 2017. It is common ground that on 30 January 2017 case No. 07 of 2015 had been listed for mention to fix a hearing date but due to the non-appearance of the prosecutor the appellant had been discharged.

[21] The High Court judge had considered this issue in the judgment as follows.

> *'32. This submission by counsel is misconceived, the appellant was discharged due to non-appearance of the Prosecutor by no means it meant that the matter had been finalised on merits. The doctrine of res judicata did not apply since the appellant had not been convicted or acquitted. The appellant was discharged hence there was no bar or estoppel against the respondent from recharging the appellant.'*

[22] It appears that section 166 and 171 of the criminal Procedure Act, 2009 are relevant here. They are similar to section 198 and 203 of the Criminal Procedure Code. Section 198 (now section 166) applies only to the first call and thereafter it is section 203 (now section 171) that applies [vide **State -v- Semisi Wainiqolo** CA HAA00117 of 1997]. Both parties agree that case No. 07 of 2015 had been listed on 30 January 2017 for mention to fix a hearing date and not for hearing or further hearing and therefore the Magistrate should not have dismissed the charge in terms of section 166 on 30 January 2017. He may not have dismissed the charge even under section 171. The Magistrate should have fixed the hearing of the matter to a suitable date and if the complainant is absent on the date of hearing, then he could have made an appropriate order according to law except an order of acquittal. Thus, the earlier dismissal of the charge was null and void and had no effect in law.

[23] Even assuming that 30 January 2017 is a date of hearing or further hearing the discretion to dismiss a charge must be exercised judicially. The effect of a dismissal under section 198 and 203 of the Criminal Procedure Code permits a prosecutor to lay a fresh charge or complaint (vide Shameem J in **Deo v Jattan** [2002] FJHC 180; HAA0077J.2002S (11 November 2002)]. The appellant has not shown that the offence with which he was charged for the second time had time limitations or time barred.

[24] Therefore, it is clear that the respondent had the right to charge the appellant afresh in case No. 4 of 2017 as the appellant had not been and could not have been acquitted earlier. This ground of appeal has no reasonable prospect of success. No question of law is involved either.

04th ground of appeal

[25] The appellant challenges the sentence of $20,000.00 imposed by the Magistrate on the basis that section 167 of the Criminal Procedure Code only permits a maximum of $1000.00 as a fine.

[26] The High Court judge had stated as follows regarding this ground of appeal.

> *37. 'Section 167 of the Criminal Procedure Act only applies to offences where the punishment does not exceed 12 months imprisonment and/or a fine of 10 penalty units which is $1,000.00 in the absence of the accused and where the personal attendance of the accused had not been dispensed with. The appellant was charged and convicted under the Fijian Competition and Consumer Commission Act which prescribes the punishment under section 129(3) of the Fijian Competition and Consumer Commission Act as follows:*
>
> > *"The maximum penalty of an offence under a provision of this [Act] committed by a body corporate is a fine that is five times the fine provided for in the provision or , as the case may be a fine that is five times the fine provided for in sub section (1)"*
>
> *38. Section 129(1) mentions a fine not exceeding $10,000.00 the appellant being a body corporate the maximum fine was not to exceed $50,000.00. The learned Magistrate imposed a fine of $20,000.00.*
>
> *39. In the current situation section 167 of the Criminal Procedure Act did not apply, the Fijian Competition and Consumer Commission Act was applicable as a specific legislation which overrides the Criminal Procedure Act being a legislation of general application.*
>
> *40. The learned Magistrate had correctly sentenced the appellant in accordance with section 129 of the Fijian Competition and Consumer Commission Act and there is no error made by the learned Magistrate.*

[27] I am in agreement with the above reasoning of the High Court judge and see no reason to disturb his conclusion.

[28] The rule of interpretation expressed in the words *Generalia specialibus non derogant* – where there is a conflict between general and specific provisions/clauses, the specific provisions prevail, would apply in the present case and it should be the Fijian Competition and Consumer Commission Act that should apply and not the Criminal Procedure Act, particularly when it comes to the sentence.

[29] Therefore, the sentence is well within the prescribed limits of under section 129(1) and (3) of the Fijian Competition and Consumer Commission Act and neither unlawful nor passed in consequence of an error of law.

05th ground of appeal

[30] The appellant contends that the charge under section 77(1)(g) of the Commission Act 2010 had not been proved. Section 77(1)(g) and 77(2) of the Fijian Competition and Consumer Commission Act state:

> *(1). A person shall not, in trade or commerce, in connection with the supply or possible supply of goods and services or in connection with the promotion by any means of the supply or use of goods or services-*
>
> > *(g) make a representation concerning that a price advantage of goods or services exists if it does not.*
>
> *(2). A person who contravenes this section shall be guilty of an offence."*

[31] The appellant's argument is that the respondent had not proved that the appellant was *'making a representation concerning that a price advantage of goods or services exist if it does not'*. The High Court judge had met this argument in the following manner.

> *47. "The counsel for the appellant submitted that it was not proved that the appellant had offered for sale those items in question at a different price. This court disagrees. There was evidence before the court that the displayed prices were different from the price that was offered for sale at the check-out.*
>
> *48. The representation was made at the shelve indicating a price advantage which did not in reality exist because at the check-out a higher price was programmed. There is no need for a customer to be a complainant or for a receipt to be produced to substantiate the price difference.*
>
> *49. The authorised officer representing the respondent saw the difference in pricing which was immediately brought to the attention of the Manager of the Supermarket who admitted the error. The offence is a strict liability offending where the intention of the trader does not matter. The fact that the trader was involved in overwriting the price at the check-out was sufficient to establish the fact that the price mentioned at the shelve was different from the price at the check-out.*

50. The prosecution had proven all the elements of the offence beyond reasonable by the evidence of Nilesh Prasad and the exhibits tendered.

[32] I have examined the cautioned interview of the Manager, Krishnell Ravinesh Reddy and find that he had clearly admitted that the displayed price was the actual price but the system was not picking that price due to some technical problems with the system. It appears that the system was picking the higher price. His further admissions that the lower prices were displayed from 15 December 2014 (masala 100g) and 12 December 2014 (bath soap) respectively for the two products and he later changed the displayed prices to match the system prices as the system was still not picking the right price even by 30 December 2014 (date of the cautioned interview) shows that before he made the adjustments the price differences had in fact prevailed at the time of the inspection by the inspectors of FCC on 24 December 2014. Thus, it is clear from the exhibits, the evidence of Nilesh Prasad (the price control inspector) and the cautioned interview of the manager that the appellant had made representations to the customers by way of the displayed prices on the shelves (masala 100g) and the pack (bath soap) that those products were being sold at prices lower than the price the system was charging from customers. Thus, the representation was concerned with a price advantage when in effect the customers did not have it. Thus, the ingredients under section 77(1)(g) of the Commerce Commission Act 2010 have been satisfied.

[33] There is no question of law or any reasonable prospect of success as far as this ground of appeal is concerned.

06th ground of appeal

[34] The appellant argues that the evidence against it had been collected irregularly in violation of section 126 (3) of the Commerce Commission Act in that the prosecution had not obtained such evidence pursuant to a search warrant.

[35] Section 126 (3) states:

"(3) A Resident Magistrate who is satisfied upon the information of an officer of the Commission that there is reasonable cause to suspect that any place has been or is being or is likely to be used in connection with a contravention of this [Act] or for the keeping of records relating to a contravention of this [Act]

or for the keeping of records relating to a contravention of this [Act] may issue his search warrant directing the officer of the Commission to enter the place specified in the search warrant for the purpose of his exercising therein the powers conferred on an inspector by this [Act]."

[36] The High Court judge had dealt with this objection as follows.

> *53. The prosecution witness Nilesh Prasad under the Fijian Competition and Consumer Commission Act was authorised to carry out routine inspections amongst other duties.*
>
> *54. When the witness entered the Supermarket in question he introduced himself to the Manager of the Supermarket who had allowed the witness to carry out his lawful duties. After breaches were noted an inspection form was completed (prosecution exhibit no. 1) which was acknowledged by the Manager of the Supermarket. The items in question were photographed (prosecution exhibit no.2).*
>
> *55. Section 126 of the Fijian Competition and Consumer Commission Act gives the officers of the Fijian Competition and Consumer Commission powers to enter any premises he knows or reasonably suspects to be used in contravention of the Act. Here it was a routine inspection which was within the parameters of the Act. The issuance of a search warrant under section 126(3) is not a mandatory requirement*

[37] It is clear that section 126(3) applies to a situation completely different to a routine inspection undertaken by an officer of the Commerce Commission as authorised by Commerce Commission Act 2010. Section 126(3) connotes a scenario where already a suspicion exists on the part of such an officer that a particular place had been used in the past or currently being used or likely to be used in the future for activities set out in the section contravening the provisions of the Act.

[38] It is a fundamental misconception that an officer of the Commerce Commission cannot enter a supermarket such as MH Hypermarket for a random inspection without a search warrant. The High Court judge had correctly remarked that

> *'57. Here the officer representing the respondent had obtained permission from the Manager. No items were seized only pictures were taken.*
>
> *58. There is no error by the learned Magistrate in hearing the evidence of the prosecution witness who had correctly tendered the photograph of the*

items offered for sale which was lawfully obtained. There was no need for the respondent to obtain a search warrant in the circumstances of the case'

[39] Therefore, there is no question of law involved here at all; nor is there a reasonable prospect of success in appeal.

07th ground of appal

[40] The appellant joins issue with the prosecution having used the cautioned interview of the manager, Krishnell Ravinesh Reddy as part of the evidence against the appellant on the basis of section 119(6) of the Commerce Commission Act. Section 119 (1) and (6) are as follows.

> *" (1) In relation to any matter relevant to the operation or enforcement of this [Act], an officer of the Commission may require a person (either by oral or written requisition) to furnish -*
>
> *(a) any information;*
>
> *(b) any records or a copy thereof.*
>
> .....
>
> *'(6) If in response to a requisition authorized by paragraph (a) of subsection (1), a person furnishes information that would tend to incriminate him in any offence, other than an offence defined in paragraph (b) of subsection (4), the information furnished shall not be admissible in evidence against him in proceedings in any court or tribunal other than the Small Claims Tribunal.*
>
> .....

[41] The High Court judge had expressed his view on this argument in the following words.

> *'61. The incriminating information before the court was the caution interview of the Manager employed by the appellant who voluntarily and on his own freewill gave his interview to the officer of the respondent. Section 119 (6) of the Fijian Competition and Consumer Commission Act provides protection to the person who furnishes information that would tend to incriminate him in any offence, other than an offence defined under section 119 (4) (b).*

62. In this case section 119 (6) of the Act was not breached since the response of the Manager in the caution interview was not related to a requisition request under section 119. In any event the appellant had been charged under section 77 of the Fijian Competition and Consumer Commission Act and not under section 119.

[42] In addition, there is a clear distinction of legal status between the appellant which is a body corporate and the manager of MH Hypermarket who is a natural person in terms of criminal liability for the offence preferred by the Fijian Competition and Consumer Commission. The cautioned interview of the manager, Krishnell Ravinesh Reddy was not used against him but against the appellant. Krishnell Ravinesh Reddy and the appellant were not one and the same person but different legal entities. Therefore, the prohibition in section 119(6) would not apply to the cautioned interview of the manager.

[43] There is no question law arising from this ground of appeal and in any event there is no reasonable prospect of success either.

08th ground of appal

[44] The appellant argues that the learned Magistrate erred in taking into consideration 19 previous convictions against the appellant without noticing it in terms of section 84(4)(a)(b) (sic) of the Criminal Procedure Act, 2009.

[45] The appellant had, however, not challenged those previous convictions in the High Court or now before this court. Section 83(4) (a) and (b) are as follows

"(4) Where a magistrate-

(a) convicts an accused person; and

(b) it is proved to the satisfaction of the court that not less than 7days prior to the conviction a notice was served on the person in the prescribed form and manner specifying any alleged previous conviction of the accused of an offence proposed to be brought to the notice of the court in the event of his conviction of the offence charged; and

(c) the accused is not present in person before the court the court may take account of any such previous conviction so specified as if the accused had appeared and admitted it."

[46] On a perusal of the sentencing order it does not appear that the Magistrate had imposed a fine of FJD 20,000.00 necessarily because of those previous convictions. According to paragraph 08 he had considered the facts of the case and the previous convictions. The appellant had been charged and convicted under the Fijian Competition and Consumer Commission Act and the punishment is prescribed under section 129(3) of the Fijian Competition and Consumer Commission Act which is as follows:

"The maximum penalty of an offence under a provision of this [Act] committed by a body corporate is a fine that is five times the fine provided for in the provision or , as the case may be a fine that is five times the fine provided for in sub section (1)"

[47] Section 129(1) permits a fine not exceeding $10,000.00 but the appellant being a body corporate the maximum fine is not exceeding $50,000.00. The learned Magistrate had imposed a fine of $20,000.00. Therefore, even assuming that the Magistrate had not complied with section 83(4) of the Criminal Procedure Act, that alone is not a reason to quash the ultimate sentence. The Magistrate could have imposed the same fine even without those previous convictions.

[48] It is the ultimate sentence that is of importance, rather than each step in the reasoning process leading to it. When a sentence is reviewed on appeal, again it is the ultimate sentence rather than each step in the reasoning process that must be considered (vide **Koroicakau v The State** [2006] FJSC 5; CAV0006U.2005S (4 May 2006). In determining whether the sentencing discretion has miscarried the appellate courts do not rely upon the same methodology used by the sentencing judge. The approach taken by them is to assess whether in all the circumstances of the case the sentence is one that could reasonably be imposed by a sentencing judge or, in other words, that the sentence imposed lies within the permissible range (**Sharma v State** [2015] FJCA 178; AAU48.2011 (3 December 2015).

[49] Thus, the sentence imposed is well within the permissible range and no sentencing error had been demonstrated by the appellant.

[50] In any event, the appellant's sentence cannot be challenged in this court under section 22 of the Court of Appeal Act as it is neither unlawful nor passed in consequence of an error of law.

09th ground of appeal

[51] The appellant argues that the fine is harsh and excessive. However, he had not demonstrated with examples of punishments in similar cases that a fine of $20,000/- should be considered as harsh and excessive. The appellant's argument based on section 167 of the Criminal Procedure Code had been dealt with under the fourth ground of appeal and needs no repetition.

[52] The sentence is neither unlawful nor passed in consequence of an error of law and therefore, cannot be challenged under section 22 of the Court of Appeal Act.

Order

1. Leave to appeal against conviction and sentence is refused.

COURT OF APPEAL FIJI

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Hon. Mr. Justice C. Prematilaka
JUSTICE OF APPEAL