

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
MISCELLANIOUS JURISDICTION  
CRIMINAL MISCELLANEOUS CASE NO.: HAM 123 OF 2014

BETWEEN: GUSTON FREDRICK KEAN

*Applicant*

AND: STATE

*Respondent*

Counsels: Applicant in person  
Mr. Semi Babitu for the Respondent

Date of Judgment: 31.7.2014

**RULING**

1. This is an application for costs against the State and Police Prosecutions.
2. The applicant was charged before the Lautoka Magistrate Court with count of Burglary contrary to Section 299 of the Penal Code and second count of Larceny in Dwelling House of properties to a value of less than ten dollars contrary to Section 270 of the Penal Code. Date of offence was 22.7.2005.
3. On 13.12.2010 prosecution informed the court that they cannot proceed with the hearing as the complainant has migrated to China. A bench warrant is pending against the complainant. The prosecution sought to withdraw the charges under Section 169 (2) (b) (ii) of the Criminal Procedure Decree.
4. The learned Magistrate granted leave for withdrawal and discharged the applicant under Section 169 (2) (b) (ii) of the Criminal Procedure Decree.
5. Applicant successfully appealed to this Court against the discharge order and he was acquitted of the charges on 29.7.2014.
6. He had filed an application for an order to pay costs/ compensation by the State and /or police prosecution.

7. His grounds are:

- (i) That he was charged by police prosecution on inadmissible evidence,
- (ii) He was denied a fair trial within reasonable time and proceedings became oppressive,
- (iii) He had sleepless nights and weary day lights while this case was pending and hanging above his head

8. The Section 150 of the Criminal Procedure Decree is as follows:

- (1) A Judge or Magistrate may order any person convicted of an offence or discharged without conviction in accordance with law, to pay to a public or private prosecutor such reasonable costs as the Judge or Magistrate determines, in addition to any other penalty imposed.
- (2) A Judge or Magistrate who acquits or discharges a person accused of an offence, may order the prosecutor, whether public or private, to pay to the accused such reasonable costs as the Judge or Magistrate determines.
- (3) An order shall not be made under sub-section (2) unless the Judge or Magistrate considers that the prosecutor either had no reasonable grounds for bringing the proceedings or had unreasonably prolonged the matter.

9. State had filed written submissions.

10. In **State v Ravuvu** [2004] FJHC 105;HAA 0065J.2003S (4 June 2004) Hon. Madam Justice N. Shameem held:

*"In considering a costs application, a court should ask both parties to make submissions, and should specify the ground on which costs are awarded. There are no other grounds on which costs may be awarded (**Graham Southwick v. State** CAV0001 of 2003S) and a ruling on costs should specify whether the prosecution was unreasonably brought, or unreasonably prolonged.*

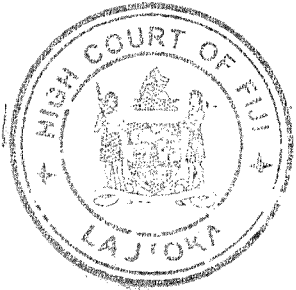
*It is apparent that neither ground applied in this case. If the learned Magistrate had accepted the evidence of PW1, he would have convicted. No prosecutor can predict whether a court will accept the evidence of any witness, when the statement of the witness appears to be credible. In this case, there was an equal chance of a conviction, as there was of an acquittal."*

11. In this case applicant was discharged at the Magistrate Court as the complainant had migrated to China and the prosecution could not execute the bench warrant against the complainant. The applicant had six cases pending at that time. Further the applicant was on bench warrant for this case from 1.8.2006 to 23.7.2007. He was arrested and produced for two more cases on 23.7.2007. Again on 8.3. 2007 a bench warrant was issued. He was produced for this case again on 10.4.2007 from remand. From 7.6.2007-

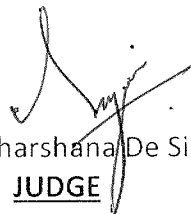
23.11.2007 he was again on bench warrant. The applicant had filed stay application and case was delayed due to that reason from 11.3.2008 to 28.8.2008. This case was first fixed for hearing on 30.6.2010. Application to withdraw the charges was made on 13.12.2013 on the 2<sup>nd</sup> day of hearing.

12. Considering all above, this Court is of the view that the applicant had failed to satisfy this Court that the prosecutor had no reasonable grounds for bringing the proceedings or unreasonably prolonged the matter.

13. Therefore application for costs is refused.



At Lautoka  
31<sup>st</sup> July 2014

  
Sudharshana De Silva  
JUDGE

Solicitors: Applicant in Person  
Office of the Director of Public Prosecution for the Respondent