

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION

Criminal Miscellaneous Matter No. HAM 126/2015

BETWEEN : **ROHIT TRIVEDI**
Applicant

AND : **THE STATE**
Respondent

Counsel: Mr. S. Valenitabua for Applicant
Mr. M. Vosawale for the Respondent

Dates of hearing : 16 & 21 October, 12 November 2015
Date of Ruling : 25 November, 2015

RULING

1. The applicant applies for a Stay of Proceedings in the Magistrates Court (Cr. 1156 of 2009) at Suva in which he is being prosecuted for 8 counts of smuggling of migrants. This case has been proceeding since September 2009.

2. At the end of the prosecution case the applicant made a no case to answer submission which was refused and there was held to be a case for him to answer on all 8 charges.
3. His then solicitors purported to appeal this Ruling to the High Court which Court rejected the appeal on the grounds of lack of jurisdiction, the issues at trial not being determined.
4. The appeal having been dismissed the applicant then applied that there be a trial “*de novo*”, the original Magistrate no longer being in office. This application was too dismissed by the new Magistrate on the 23rd July, 2015.
5. The applicant thereupon filed an application for the (new) Magistrate to recuse himself, he having made a ruling “unfavourable” to the applicant. This application was refused.
6. The applicant then dismissed his counsel (Mr. M. Raza) and instructed Mr. Rajendra Chaudhry.
7. Mr. Chaudhry now having left Fiji, the applicant instructs the present counsel (Mr. Valenitabua) to make the within application for Stay. The basis of the application is that the file is missing from the Registry of the Magistrates Court and that at one time the exhibits were missing. He prays in paragraph 8 of his accompanying affidavit in the following terms:

“8. That subsequent to that ruling, the Magistrate advised counsel that exhibits that were tendered in Court before the previous trial Magistrate are still missing with the Court file. I believe that an assessment of the likely impact of the missing court file and exhibits will show the following:-

(a) The continued conduct or prosecution of this matter by the DPP's office is an abuse of the courts process.

(b) The prejudice caused by the abuse in question will be manifested, perpetuated or aggravated through the conduct of the trial, or its outcome.

(c) No other remedy is reasonably capable of removing that prejudice".

8. Apart from the rule that an affidavit must only be evidence of facts and must not contain opinion or submissions these submissions of the applicant are false and misleading.
9. There is a complete and clear copy of the proceedings before RM Rokoika available and in fact is included within the applicant's own bundle produced in the within proceedings. It is quite apparent that the prosecution's case has finished and a case to answer has been found against the applicant.
10. For him to now claim abuse of process is in itself an abuse of process. The applicant can now give evidence or not and make final submissions to the Court below. He now has the opportunity to tell the new Magistrate presiding whatever he wants to say if he so wishes by way of evidence or final submission. That is his alternative remedy.
11. To make this late application is yet another example of the applicant's vexatious litigation and it is refused.



At Suva

25 November, 2015

A handwritten signature in black ink, appearing to read "P.K. Madigan". The signature is stylized with a large, looped initial "P".

P.K. Madigan

Judge