

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 77 of 2014

STATE

V

TOMASI YABAKIONO

Counsels: Ms. A. Vavadakua for State
Mr. A. Paka (L.A.C.) for Accused

Date of Application : 4 May 2016
Date of Ruling : 4 May 2016

RULING

- [1] Counsel for the Accused makes application to strike out the 1st, 4th and 5th counts on the Information which are all counts of Indecently Annoying a Person contrary to s.213(1)(a) of the Crimes Decree 2009.
- [2] He submits that the offences in question are summary offences and should be tried in the Magistrates Court. In addition he submits that the three offences being correctly in the

Magistrates Court are time barred under s.187 of the Criminal Procedure Decree.

[3] Section 187 reads:

“s.187---(1) This section applies to all offences the maximum punishment for which does not exceed imprisonment for 12 months or a fine of 10 penalty units unless a longer time is allowed by any law for the laying of any charge for an offence under that law.

(2) No offence shall be triable by a Magistrates Court, unless the charge or complaint relating to it is laid within 12 months from the time when the matter of the charge or complaint arose.

(3) The Court shall order the dismissal of any proceedings which are in breach of this section. “.

[4] Counsel's application is twofold:

- (i) That the summary offences should not have been transferred to the High Court.
- (ii) That they should be struck off the information because they are time barred.

[5] The application is misconceived on both counts.

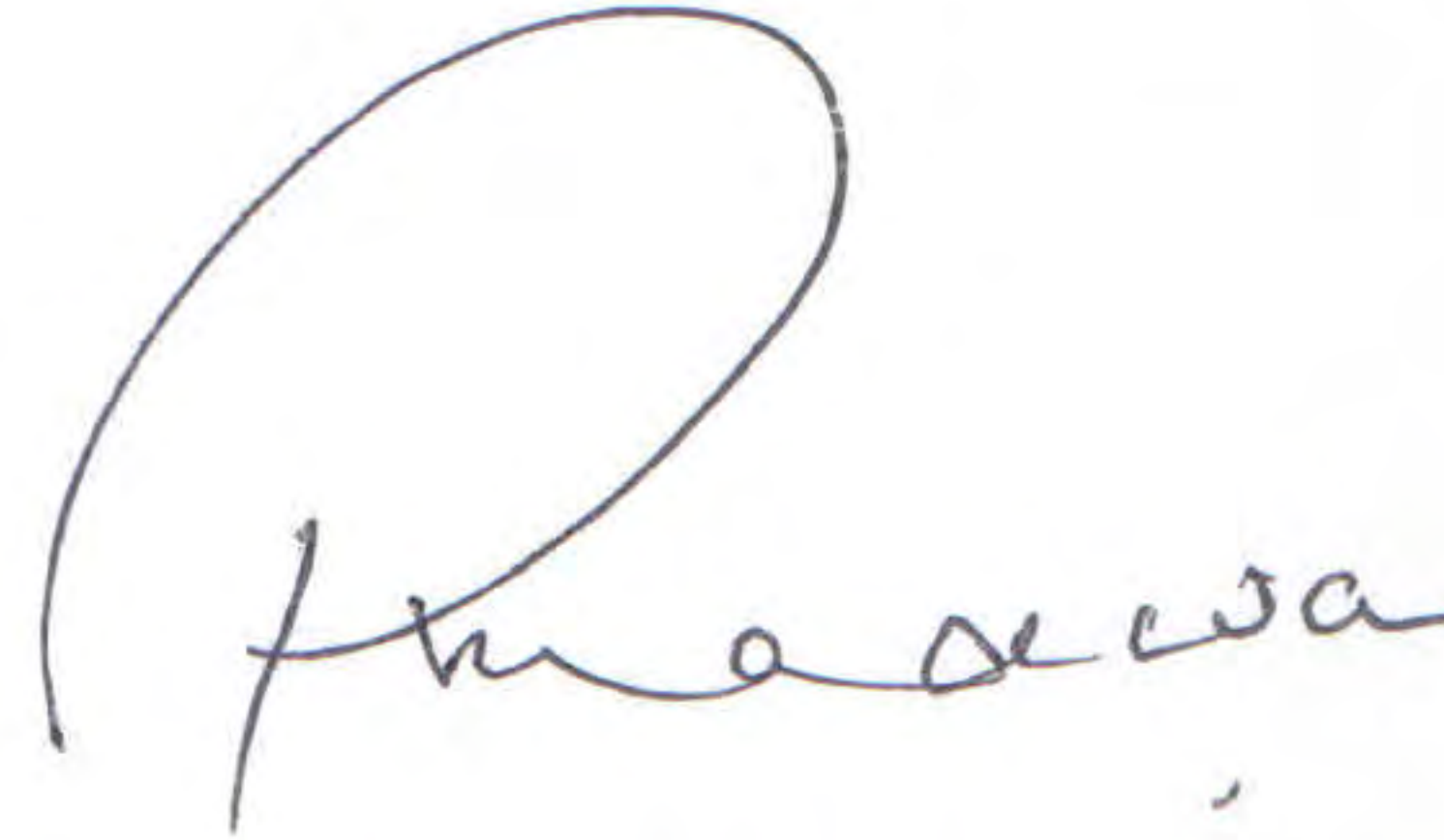
Jurisdiction

[6] The High Court has original jurisdiction to try any matter that comes before it. That must of course include summary offences which are closely connected to one or more indictable offences. That connection will be way of a foundation of the same facts or a part of a series of offences of the same or a similar nature. (See section 59 of the Criminal Procedure Decree).

[7] In the absence of prejudice to the accused in his defence to the charges the Magistrate was correct in his order to transfer all of these charges to the High Court.

Time Barred

- [8] Mr. Paka is correct in that were these indecently annoying counts being tried in the Magistrates Court they would have been time barred, but he misreads s.187(2). That proscription applies only to offences **being tried** in the Magistrates Court.
- [9] Obviously section 187 has no application whatsoever to these offences **being tried** in the High Court.
- [10] The application is refused.



P. K. Madigan
Judge



At Labasa
4 May 2016