

FIJI HIGH COURT

AT LAUTOKA

Revisional Jurisdiction

Revisional Case No. HAR 001/2016

Criminal Case No. 168/2010

NADI TOWN COUNCIL

V

JAI NARAYAN (Accused)

Date of Hearing: 13th April, 2017

Date of Judgment: 15th May, 2017

Counsel: Mr. Anil J. Singh for Nadi City Council
Mr. Mark Anthony for Jai Narayan

JUDGMENT ON REVISION

1. This is a referral for a review made by the Chief Justice pursuant to Section 260 (2) of the Criminal Procedure Act.

2. Above named accused was charged with the following offences in the Magistrates Court at Nadi.

Statement of Offence

Using the land comprised at Lot 10, DP 2679, Saunaka, Queens Road, Nadi in a manner prohibited under Section 27 (1) (a) (b) and (5) (6) of Town Planning Act, Cap 139.

The Nadi Town Council a body corporate duly constituted under the provisions of Local Government Act, Cap 125 makes complaint to the undersigned Magistrate that Jai Narayan F/N Shiu Narayan of Lot 10, DP 2679, Saunaka, Queens Road, Nadi violated the provision of Section 5 and 18 of the Business Licensing Act, Cap 204 in that the said Jai Narayan F/N Shiu Narayan of Lot 10, DP 2679, Saunaka, Queens Road on or about the 11th day of February, 2010 engaged in business without a valid business licence.

Particulars of Offence

- i. **JAI NARAYAN** F/N Shiu Narayan being the occupier of the land comprised at Lot 10 DP 2679, Saunaka, Queens Road, Nadi within the Nadi Town Council Boundary in the Western Division did on the 11th day of February 2010 used the land prohibited under Section 27 (1) (a) (b) and (5) (6) of Town Planning Act, Cap 139. The said land is zoned Residential 'B' but is used for General Industrial Purposes namely as a Car Wash.

- ii. **JAI NARAYAN** F/N Shiu Narayan of Lot 10, DP 2679, Saunaka, Queens Road, Nadi on or about the 11th day of February, 2010 at Nadi in the Western Division engaged in a business of Car Wash which is a designated business under the provision of the Business Licensing Act, Cap 204 without a valid licence being issued by the **Nadi Town Council** the Licensing Authority in respect of the place in which such business was carried on.
3. Proceedings were instituted by the Nadi Town Council (Complainant). Accused pleaded not guilty to the charges and, after a full defended hearing, learned Magistrate Mr. Ajmeer (as he then was) found the accused guilty on both counts and pronounced the judgement on 9th March 2012 convicting the accused.
4. The Court adjourned the matter for mitigation and sentence.
5. On 14th May, 2012, the matter was mentioned before learned Magistrate Mr. Smuela Qica and was furthered adjourned for mitigation and sentence.
6. When the matter was mentioned before Mr. Qica on 28th May, 2012, the Complainant was not present in Court. The Court discharged accused on the basis that *'no reasonable excuse from Nadi Town Council as to the absence'*

The Law on Revision

7. The theoretical basis of judicial review of decisions of a lower court comes from the doctrine of *ultra vires*. The doctrine, based on upholding the rule of law, allows the courts to examine judicial decisions of a lower court to ensure

that they are lawful and are within the scope of the power under which they were made. If decisions are made outside, or without power, the court can hold them to be *ultra vires* and thus illegal.

8. Revisionary power is given to the High Court by section 260 of the Criminal Procedure Act [formerly section 323 of the Criminal Procedure Code]. Section 260 follows the spirit of the supervisory jurisdiction in civil and criminal proceedings given to the High Court by section 6(3) of the Administration of Justice Decree 2009, which was formerly provided by section 120(6) of the 1997 Constitution. *State v Batiratu* [2012] FJHC 864; HAR001.2012 (13 February 2012)

9. The section 260 of the Criminal Procedure Act states:

(1) The High Court may call for and examine the record of any criminal proceedings before any Magistrates Court for the purpose of satisfying itself as to —

(a) the correctness, legality or propriety of any finding, sentence or order recorded or passed; and

(b) the regularity of any proceedings of any Magistrates Court.

(2) The High Court shall take action under sub-section (1) upon the receipt of a report under the hand of the Chief Justice which requests that such action be taken. (emphasis added)

10. A power of revision is provided by Section 262(1) for the High Court in the case of any order other than an order of acquittal, to alter or reverse such order.

11. Besides the discretionary power of the court to hear parties on a revision [section 263] no order can be made to the prejudice of an Accused person unless he or she has had an opportunity of being heard either personally or by a lawyer in his or her defence [section 262(2)].

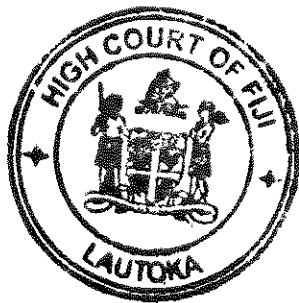
Discussion


12. When the matter was referred to this Court by the Chief Justice, the parties were noticed to appear. They came to Court on notice and were represented by Counsel. Parties were given an opportunity to file submissions on the correctness or otherwise of the Ruling of the learned Magistrate. They agreed to have the matter disposed of by way of written submissions. However, only the Complainant filed submissions.
13. The Counsel for Complainant submits that the Nadi Town Council was completely unaware that the case had been transferred from Magistrates Court No.1 (where the case was heard) to Magistrates Court No. 2 (where the impugned order was made) and the dismissal order made by the Magistrate sitting in Court No 2 was irregular.
14. It is clear that the Complainant's presence is not required to record a sentence. Even if the Complainant had failed to appear in Court on the date assigned for sentencing, the learned Magistrate could have passed the sentence in the presence of the accused. The learned magistrate did not have power to discharge the accused after a conviction had been recorded. He should have relisted the matter in Court No.1 for sentencing. If the Magistrate who recorded the conviction was no longer available, he should have proceeded to sentencing, having considered mitigating submission filed by the accused.

15. The learned Magistrate acted *ultra vires* his powers when he discharged the accused on the premise that Complainant was not present in Court.

Order

16. Accordingly, I make following orders:
- i. The Order made on 28th May, 2012 by the learned Magistrate at Nadi discharging the accused is revised and set aside.
 - ii. The learned Magistrate sitting in Court No. 1 of the Nadi Magistrates Court at present is directed, after giving the accused an opportunity of being heard in mitigation, to record the sentence.
 - iii. The Deputy Registrar is directed to forward the Judgment and case record to the Nadi Magistrates Court forthwith.
 - iv. The accused is ordered to appear in the Magistrates Court No. 1 at Nadi on 29th May 2017.




Aruna Aluthge
Judge

At Lautoka

15th May, 2017

Solicitors: Anil J. Singh lawyers for Nadi Town Council
A. C. Lawyers for Accused