

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

Criminal Appeal No. HAA 63 of 2018
(on appeal from Sigatoka CC304 of
2017)

STATE

V

RAUTO NAIKA KARALO

Mr. S. Babitu for the State

Mr. J. Singh for the Accused

Date of Hearing : 26th November 2018

Date of Judgment : 10th December 2018

JUDGMENT

- 1.] On the 24th August 2018 in the Magistrates Court at Sigatoka, a case of theft charging the respondent was dismissed because of the non appearance of DPP counsel.
- 2.] Counsel was unavailable to appear that day but had instructed a Police prosecutor to appear and apply for a new date on which the DPP counsel could appear.
- 3.] The respondent is a Policeman and for that reason the learned Magistrate refused to allow the Police prosecutor audience,

dismissing the charge pursuant to section 166(2) of the Criminal Procedure Act 2009.

- 4.] In a written ruling on this dismissal the Magistrate referred to the constant appearances of State Counsel up until then, and referred to his need to exercise his discretion judiciously by balancing the interests of both parties.

5.] Discussion:

It must surely be in the public interest that a police officer, accused of stealing over \$13,000 from the Police force be brought to justice by having the evidence fully aired.

- 6.] Before the date in question, on five occasions Police Officers appeared for the prosecution without objection or even comment from the Magistrate. It was on this sixth appearance of a police prosecutor that he was denied audience and the case dismissed. The Magistrate failed to ask the Police prosecutor why he was there, but quickly went on to dismiss the charge. It cannot be a conflict of interest for a Police prosecutor to appear to ask for an adjournment to allow the prosecutor to appear (in terms of Section 166 (2) (b) of the Criminal Procedure Act).
- 7.] This Court is of the view that the decision exercised by the learned Magistrate was precipitous without consideration to the exigencies of the State to uphold the integrity of the Fiji Police Force.
- 8.] This appeal succeeds and the matter returned to the Sigatoka Magistrate's Court for continuation of proceedings. Parties will appear in Sigatoka on Wednesday 12 December 2018 at 9.15 am.

9.] Orders.

1. This appeal succeeds.
2. The order for dismissal is set aside.
3. The case will be called on 12 December 2018 in Sigatoka Magistrates Court.
4. Respondent to be notified of the adjourned hearing date.



P.K. Madigan

Judge

High Court Lautoka