

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**APPELLATE JURISDICTION**

**CRIMINAL APPEAL CASE NO. HAA 39 OF 2019**

**BETWEEN:**            **SHAINAAZ MOHAMMED**

**APPELLANT**

**A N D:**                **THE STATE**

**RESPONDENT**

**Counsel:**              Mr. G. O'Driscoll for Appellant  
                              Ms. J. Prasad for Respondent

**Date of Hearing:**      05<sup>th</sup> December 2019

**Date of Ruling:**     11<sup>th</sup> May 2020

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**RULING**  
**[On Cost]**

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1. The Appellant filed this Petition of Appeal against the ruling of *voir dire* delivered by the Learned Magistrate sitting in Magistrate's Court No. 2 of Suva on the following grounds, inter alia;
  - i) *That the Learned Magistrate erred in law and in fact in incorrect principals pertaining to rights of the accused when holding that the caution interview was admissible.*
  - ii) *That the Learned Magistrate failed to take into consideration that the accused persons was not given the rights to silence when she was caution interviewed.*

- iii) *That the Learned Magistrate erred in failing to take into consideration that the caution interview was not contemporaneously signed by the Appellant when it was produced on a Laptop/Personal Computer and later printed out.*
  - iv) *That the Learned Magistrate misapplied the test for admissibility of caution interview when holding the same to be admissible.*
  - v) *That the Appellant reserves the right to alter or add further grounds of appeal on availability of the copy record.*
2. Upon being served with the summons, the Respondent appeared in Court on the 7th of November 2019. The Appellant appeared on that day, but her counsel did not. The Respondent submitted that the Court has no jurisdiction to hear this appeal pursuant to Section 246 of the Criminal Procedure Act. I accordingly directed the parties to file their respective written submissions on the issue of jurisdiction. The matter was then adjourned till 5th of December 2019 for the hearing on the issue of jurisdiction. On the 5th of December 2019, neither the Appellant nor her counsel appeared in Court. Hence, the matter was adjourned until 7th of February 2020.
3. On the 7th of February 2020, Mr. O'Driscoll appeared on the instruction of the counsel for the Appellant. Mr. O'Driscoll made an application to withdraw the appeal. The learned counsel for the Respondent made an application for the costs against the counsel for the Appellant on the ground of filing a frivolous and vexatious appeal. Mr. O'Driscoll then sought time to file written submissions as he had no proper instruction on this issue. I accordingly directed the parties to file written submissions. However, the Appellant did not file any written submissions. The Respondent filed written submissions. Having pursued the Petition of Appeal, the record of the proceedings in the Magistrates' Court, and the written submissions of the Respondent, I now proceed to pronounce my ruling as follows.

4. Section 255 of the Criminal Procedure Act allows the Appellant to discontinue the appeal at any time before the date of hearing. Section 255 states that:

- i) An appellant may by giving notice in writing to the Chief Registrar discontinue the appeal at any time before the date of hearing.*
- ii) Upon the giving of a notice under subsection (1) no further steps shall be taken in the appeal, and the Magistrates Court may proceed to enforce the decision appealed from.*
- iii) Nothing in this section shall affect the power of the High Court to make an order for costs upon the discontinuance of an appeal.*
- iv) The Chief Registrar shall send to the Respondent a copy of the notice of discontinuance.*

5. Mr. O'Driscoll informed the Court on the 7<sup>th</sup> of February 2020 that the Appellant wants to discontinue the appeal. The Appellant made this application to discontinue the appeal before the date of the hearing of the appeal. However, pursuant to Section 255 (3) of the Criminal Procedure Act, the Court still has jurisdiction to make an order as to the costs irrespective of the discontinuance of the appeal.

6. The learned Counsel for the Respondent made the application for an order as to the costs under Section 150 (4) (c) of the Criminal Procedure Act. Section 150 of the Criminal Procedure Act states that:

- (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 subsection (2) unless the Judge or Magistrate considers that the prosecutor either had no reasonable grounds for bringing the proceedings or has unreasonably prolonged the matter.*
- (4) *A Judge or Magistrate may make any other order as to costs as may be required in the circumstances to—*
- a) *defray the costs incurred by any party as a result of an adjournment sought by another party;*
  - b) *recompense any party for any costs arising from any conduct by any other party which delays a trial or requires the expenditure of monies as a result of the conduct of that party during a trial;*
  - c) *penalise a lawyer for any improper action during a trial, and in such a case the order may be that if the lawyer pay the costs personally; and*
  - d) *otherwise meet the interests of justice in any case.*

7. Section 254 of the Criminal Procedure Act deals with the fees and cost in respect of the appeals from the Magistrates' Court. Section 254 states that:

- i) *The fees applying to any appeal shall be fixed by regulations made under this Act, but any accused person who was represented at the trial by the Legal Aid Commission shall be exempt from any such fees.*



ii) *The High Court may make such order as to the costs to be paid by either party to an appeal as may seem just.*

8. I shall first determine whether this Court has jurisdiction in this matter to order the cost against the counsel of the Appellant under Section 150 (4) (c) of the Criminal Procedure Act.
9. The principal rule of statutory interpretation is that a statute must be construed as a whole; in doing that, the internal inconsistencies in interpretation of the provisions can be avoided.
10. Sections 150 (4) and 254 of the Criminal Procedure Act deal with the costs incurred by the parties to the proceedings. Hence, both sections are dealing with the same subject. Accordingly, the Court must interpret these two sections harmoniously. This harmonious approach in interpretation allows the Court to consider all the sections of the statute in order to make all the sections work conjointly and continuity. Such an approach in the interpretation of sections 150 and 254 of the Criminal Procedure Act would enable the Criminal Procedure Act to achieve its purpose.
11. N.S. Bindra's Interpretation of Statutes [12th ed. at p.208-209] states that:

*"The Legislature is deemed not to waste its words or to say anything in vain. The presumption is always against superfluity in a statute [...] A construction which would render the provision nugatory ought to be avoided. No word should be regarded as superfluous unless it is not possible to give a proper interpretation to the enactment, or the meaning given is absurd or inequitable [...] No part of a provision of a statute can be ignored by just saying that the legislature enacted the same not knowing what it was saying. We must assume that the legislature deliberately used that expression, and it intended to convey some meaning thereby. Law should be interpreted so as not to make any word redundant, if it is possible*

*to interpret it so as to utilise the meanings of all words used in the legislation.”*

12. Keeping in mind the above-discussed principles in the interpretation of statutes, I now proceed to interpret Section 150 (4) of the Criminal Procedure Act. Part 12 of the Criminal Procedure Act deals with the decisions of criminal cases. Part 12 starts with section 141 and ends with section 165. Moreover, part 12 has divided into seven divisions. Section 150 comes under Division 3 of Part 12, which deals with cost and compensations.
13. According to Section 150 (1) and (2) of the Criminal Procedure Act, the Judge or the Magistrate has jurisdiction to make an order as to the costs only after the determination of the guilt of the accused. Section 154 (4) allows the Court to make an order as to the costs only on the grounds of adjournments sought by one party, any conduct of a party which delays the trial, any conduct of a party during the trial which caused the other party expenditure of money, any improper action by a lawyer during a trial or otherwise meet the interest of justice in any case.
14. Section 150 (4) (d), which states “otherwise meet the interests of justice in any case,” must be interpreted in line with the meaning of Section 150. In order to do that, I would find the assistance of the rule of *Ejusdem Generis*.
15. Gates CJ in **Fiji Independent Commission Against Corruption v Rabuka [2018] FJHC 1071; HAA57.2018 (12 November 2018)** held that:

*“The rule had been stated in this way:*

*“Where in a statute there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified, although this, as a rule of construction, must be applied with caution, subject to the primary rule that statutes are to be construed in accordance with the intention of Parliament. For the ejusdem*

*rule to apply, the specific words must constitute a category, class or genus; if they do constitute such a category, class or genus, then only things which belongs to that category, class or genus fall within the general words."*

16. In view of sections 150 (1) (2) and (3) (a) (b) and (c), the Court has jurisdiction to make orders as to the costs only during or after a trial. Accordingly, those orders as stipulated under Section 150 (1) (2) and (3) (a) (b) and (c) constitute a class or a category. Hence, "otherwise meet the interest of justice in any case," as stated under Section 150 (4) (d), must be interpreted within the same class or the category. Therefore, the jurisdiction of the Court to make any order as to the costs on the ground of interest of justice under Section 150 (4) (d) is limited to during and/or at the conclusion of a trial.
17. Accordingly, it is my considered opinion that a Judge or a Magistrate has jurisdiction to make an order as to the costs under Section 150 (1) (2) and (4) only during and/or at the conclusion of a trial.
18. Black's Law Dictionary (10th Edition) defines the trial as "A formal judicial examination of evidence and determination of legal claims in an adversary proceeding." Black's Law Dictionary defines the hearing as "A judicial session, open to the public held for the purpose of deciding issues of facts or of law, sometimes with witnesses testifying (the court held a hearing on the admissibility of DNA evidence in the murder case)."
19. Section 256 (1) of the Criminal Procedure Act has provided the procedure for the determination of an appeal from the Magistrate's Court, where it states that:

*At the hearing of an appeal, the High Court shall hear—*

- i) *the Appellant or the Appellant's lawyer; and*
- ii) *the Respondent or the Respondent's lawyer (if the Respondent appears); and*

*iii) the Director of Public Prosecutions or the Director's representative (if there is an appearance by or for the Director).*

20. Section 256 (1) has used the word "hearing of an appeal" and not "the trial." Accordingly, the determination of the appeal is not a trial but a hearing. Therefore, the High Court has no jurisdiction under Section 150 (4) (c) of the Criminal Procedure Act to penalize a lawyer for his improper conduct during a hearing of an appeal from the Magistrate's Court.
21. The relevant section for an order as to the costs in a hearing of an appeal from the Magistrates' Court is Section 254 (2) of the Criminal Procedure Act. Section 254 (2) of the Criminal Procedure Act only allows the High Court to make an order as to the costs against the parties to the appeal but not against the lawyer. Hence, it is my opinion that the Court has no jurisdiction in this matter to order as to the costs against the counsel for the Appellant on the ground of filing a frivolous and vexatious appeal.
22. The Respondent made no application for an order as to the costs against the Appellant. Hence, the Court did not invite the Appellant to show cause as to why such an order should not be ordered against her. Therefore, I do not wish to consider an order as to the costs against the Appellant.
23. Accordingly, I allow the application of the Appellant to discontinue this appeal pursuant to Section 255 of the Criminal Procedure Act. Moreover, I refuse the application of the Respondent for an order as to the costs against the counsel for the Appellant.
24. In conclusion, I make the following orders:
  - a) The appeal is discontinued,
  - b) The application for an order as to the cost against the counsel is refused.



25. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to be "R.D.R.T. Rajasinghe".

R.D.R.T. Rajasinghe  
**Judge**

**At Suva**

11<sup>th</sup> May 2020

**Solicitors**

O'Driscoll & Co. for the Appellant.

Office of the Director of Public Prosecutions for the Respondent.