

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. HAA 27 OF 2020

BETWEEN : **THE STATE**

APPELLANT

A N D : **TAITO NAILUKUYA**

RESPONDENT

Counsel : Mr. R. Chand for the Appellant.
: Mr. S. F. Koya with Ms. J. Takali for the Respondent.

Date of Hearing : 26 August, 2020

Date of Judgment : 31 August, 2020

JUDGMENT

BACKGROUND INFORMATION

1. The respondent was charged in the Magistrate's Court at Nadi for one count of disobedience to lawful order contrary to section 202 of the Crimes Act.
2. It was alleged that on the 29th day of March, 2020 the respondent disobeyed the lawful orders of PC 5075 Fabiano Koiroko in his lawful capacity to prevent people coming out from the prohibited area that is

Lautoka as directed by the Prime Minister of Fiji under the authority of Public Health Act.

3. The brief summary of facts is as follows:

On 29th March 2020, the respondent at the Sabeto checkpoint, Nadi disobeyed the lawful order made by the Prime Minister of Fiji under the authority of Public Health Act that Lautoka was to be under lockdown from 19th March, 2020.

4. The respondent was in Lautoka during the lockdown period and on the 29th, he was seen drinking in Votualevu, Nadi by a concerned citizen through Facebook who reported the matter to the police. An investigation was carried out, the respondent was arrested, caution interviewed and charged.
5. On 1st April, 2020 the respondent in the presence of his counsel pleaded guilty to the charge and thereafter admitted the summary of facts read in court.
6. On 15th April the learned Magistrate acquitted the respondent on the basis that the charge was defective which had been drafted on a non-existent law.
7. The State being aggrieved by the order of acquittal filed a timely appeal as follows:

GROUND ONE

The learned Magistrate erred in law when he held that the charge was both bad in law and defective.

GROUND TWO

The learned Magistrate erred in law when he acquitted the Respondent on the basis that the charge was defective without allowing the Prosecution to make the necessary amendments to the charge pursuant to section 182(1) of the Criminal Procedure Act 2009.

8. The state counsel argued that the incorrect particulars of the charge did not make the charge bad in law and defective. The respondent had admitted that he had breached the lockdown restriction and there cannot be any doubt that he did not know about the charge filed against him. As a result the respondent was not embarrassed or prejudiced in his defence.
9. There is no doubt that the particulars of the charge contained drafting errors as to who was authorized under the law to give the orders that needed to be followed by the respondent.

LAW

10. Section 69(1) (c) of the Public Health Act gives the Minister of Health statutory powers to do what the Minister may deem necessary for the protection of public health. On 27th March, 2020 there were some amendments made to the Public Health Act.
11. The Permanent Secretary for Health and Medical Services had ordered in accordance with section 69(3) of the Public Health Act 1935 for the protection of public health that any person in the greater Lautoka area must not leave Lautoka with effect from 20th March, 2020 unless authorized by the Permanent Secretary for Health and Medical Services.

12. In view of the above, the particulars of the offence mentioned in the charge are a consequence of inaccurate drafting, however, it does not make the charge bad in law. The charge refers to the correct section of the law under which the respondent was charged and there was no issue taken by the respondent or his counsel regarding the particulars of the charge at the time his plea was taken. The learned Magistrate erred when he stated that the charge had been drafted on a non-existent law which was not the case. The respondent had been correctly charged under section 202 of the Crimes Act for disobedience to lawful order.
13. The correct drafting of the particulars of the charge should have been “*Permanent Secretary for Health and Medical Services*” instead of PC 5075 Fabiano and “*Minister of Health and Medical Services*” instead of Prime Minister.
14. In view of the above, it is clear to me that the irregularity is in the form of the particulars of the charge which is only a mere irregularity. The next question is whether the respondent was embarrassed or prejudiced by the inaccurate drafting of the particulars of the offence.
15. The issue of defective charge was dealt with by the Supreme Court in *Penisoni Saukelea vs. The State, Crime Section no. CAV 0030 of 2018* at paragraph 36 of the judgment as follows:

“The main consideration in situations similar to this where there is some infelicity or inaccuracy of drafting is whether the accused knew what charge or allegation he or she had to meet: Koroiwuki v The State, CAV 7 of 2017. Secondly it was important that the accused and his counsel were not embarrassed or prejudiced in the way the defence case was to be conducted: Skipper v Reginam Cr. App. No. 70 of 1978, 29th March, 1979 [1979] FJCA 6...”

16. Here the respondent admitted the summary of facts read which clearly satisfied the elements of the offence committed there is nothing in the copy record to suggest that the respondent was embarrassed or prejudiced by the inaccurate particulars of the charge. The respondent was represented by counsel who did not take any issue of the particulars as it was filed and served.
17. Furthermore, the defence counsel in his mitigation had stated the respondent expressed extreme remorse for what he had done which was out of character.
18. In my judgment the inaccurate particulars were a mere irregularity in form and not in respect of substance which did not nullify the entire charge. The omission in drafting the particulars of the charge also did not cause any prejudice to the respondent who was fully aware of the case against him and the allegation he had to meet which he had admitted in an unequivocal plea.
19. The appeal by the state is allowed as meritorious. Having allowed the first ground of appeal there is no need for me to consider the second ground of appeal.
20. The learned Magistrate erred when he acquitted the respondent based on a mere irregularity of the particulars of the charge. The order of acquittal cannot be allowed to stand.

ORDERS

- 1) The appeal is allowed.

- 2) The order of acquittal by the Magistrate's Court at Nadi in criminal case no. 543 of 2020 is quashed and set aside.
- 3) The respondent is bailed in the sum of \$1,000.00 on his own recognizance with the usual terms and conditions of bail to appear in the Magistrate's Court at Nadi.
- 4) This matter is adjourned to 14th September, 2020 for mention in the Magistrate's Court at Nadi before another Resident Magistrate.
- 5) For expediency the prosecution is at liberty to file and serve the amended charge within 14 days from today.
- 6) 30 days to appeal to the Court of Appeal.



**Sunil Sharma
Judge**

At Lautoka

31 August, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Messrs Siddiq Koya Lawyers, Nadi for the Respondent.