

IN THE HIGH COURT OF FIJI
AT SUVA
ANTI-CORRUPTION DIVISION

CRIMINAL CASE NO. HACDM 011 of 2022S

SALOTE VUIBURETA RADRODRO

vs.

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

Counsels: **Mr. Aslam R, Mr. Hickes D with** - **for Prosecution**
 Mr. Work J and Mr. Nand A.

Mr. Valenitabua S. - **for Applicant**

Date of Hearing: 28/06/22

Date of the Ruling: 29/06/2022

RULING

INTRODUCTION

1. In the substantive matter against the Defendant **Salote Vuibureta Radrodoro**, HACD/07/2022S, she is charged in this Court by the Fiji Independent Commission Against Corruption (FICAC) on two counts, as follows:
 - i) **Tendering False Information to a Public Servant**, an offence contrary to **Section 201 (a)** of the **Crimes Act of 2009**; and
 - ii) **Obtaining Financial Advantage**, an offence contrary to **Section 326 (1)** of the Crimes Act of 2009.
2. By this application Defense claims by filing charges for tendering false information against the accused under **Section 201(a)** of the **Crimes Act 2009** it is a blatantly deceptive endeavour by FICAC to avoid the statute of bar of action for filing action under **Section 180(a), (b) and (c)**, where under **Section 187** of the same **Crimes Act 2009** action is out of time, thus this is an abuse of process.
3. Therefore, Defense pray to this Court to permanently stay this proceedings.

DEFENCE POSITION

4. It is claimed that in this matter the prosecution should have filed action under **Section 180** of the **Crimes Act of 2009**, since the alleged false information had been submitted by the accused by a Statutory Declaration. Therefore Defense claims by filing action under **Section 201(a)** prosecution has abused authority.
5. In support of this application, Defense submits that in the case of *Mahendra Pal Chaudhary v State HAM 0034 of 2011 Hon. Justice Goundar* has held that the prosecution has abused authority in that case by filing action under the penal code, where the offence alleged was a tax fraud.
6. In this background, Defense claims that similarly in this matter by filing action under the **Crimes Act of 2009**, where the false information has been submitted by the accused in Statutory Declaration, prosecution has abused authority by not filing action under **Section 180 (b)** of the **Crimes Act 2009**.

PROSECUTION CASE

7. In objecting to this application prosecution claims that action had been filed under **Section 201(a)**, due to the unavailability of any alternative, since under the statutory provisions of **Section 180** of the **Crimes Act 2009**, only when information is provided by a person in pursuant to an Act (Statute) action could be filed under **Section 180** of the **Crimes Act of 2009**, not otherwise. Since the MPDF has been submitted by the accused not in pursuant to an Act (Statute), the only option available for the prosecution was to file action against the accused was under **section 201(a)** of the **Crimes Act 2009**.

ANALYSIS OF THE APPLICABLE LAW

8. This court perceives that **Section 180** of the **Crimes Act 2009** stipulates as follows:

“180. Any person commits a summary offence if he or she knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular and the statement is made—

- (a) in a statutory declaration; or*
- (b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return or other document which he is authorised or required to make, attest or verify by any Act for the time being in force; or*
- (c) in any oral declaration or oral answer which he is required to make by, under or in pursuance of any Act for the time being in force. “*

9. As clearly stipulated by subsections **(b)** and **(c)** of this Section, action can only be filed if an accused has submitted false information in pursuant to a requirement stipulated in an Act (Statute).

10. In this matter, the accused has submitted the MPDF as an administrative requirement requested by the Acting Secretary General to the Parliament and not pursuant to the Act (Statute).
11. Therefore, in this matter the prosecution had no possibility to file action under **Section 180** of the **Crimes Act 2009** against the Accused and the only available path was to file action under **Section 201(a) of the Crimes Act 2009**.
12. Referring to the Judgment pronounced by **Hon. Justice Goundar**, it is clear that my brother Judge had made that finding since the prosecution had was required to file action under the **Income Tax Act 2015** in that matter, which the prosecution had failed to do and as a fall back option prosecution had filed action under the **Crimes Act of 2009**. Therefore, **Justice Goundar** has clearly seen the abuse of authority in that matter by the prosecution.
13. However, in this matter, such circumstances do not exist and the prosecution had taken the proper course of action.
14. On this premise, this Court contends that this application is without merit, therefore dismisses this application. Further, since this is the 4th application filed by the Defense counsel to delay the commencement of this trial in this matter, this Court is compelled to believe that this action also had been filed for no other reason but to delay this trial amounting to abuse of legal process in this country, where unwarranted delay in the legal process can amount to a denial of justice in our Common Law legal tradition
15. This trial has been delayed by 3 days because of this action and this Court clearly sees that this was abuse of process. Thus, acting under **Section 150 (4) (d)** of the **Criminal procedure Act of 2009**, a cost of \$500 is imposed against the Defense.
16. Defence can Appeal to the Fiji Court of Appeal as per the applicable law.



A handwritten signature in blue ink, appearing to read 'Thushara Kumaraage', written over a horizontal line.

Hon. Justice Dr. Thushara Kumaraage

At Suva

29th June 2022

- cc: 1. *Fiji Independent Commission Against Corruption*
2. *Valenitabua & Associates*