

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 02 OF 2022

BETWEEN: **PROGRESS ENTERPRISES LTD**

APPELLANT

A N D: **FIJIAN COMPETITION & CONSUMER COMMISSION (FCCC)**

RESPONDENT

Counsel: Ms. B. Malimali for Appellant
 Mr. S. Buadromo for Respondent

Date of Hearing: 19th April 2022

Date of Judgment: 02nd September 2022

J U D G M E N T

1. The Fijian Competition and Consumer Commission (The Respondent) charged the Appellant with one count of Selling by Retail Certain Price Controlled Items at an Excessive Price, contrary to Section 52 (a) of the Fijian Competition and Consumer Commission Act 2010 and one count of Fail to Mark Prices on Price Controlled Items, contrary to Section 54 (3) of the Fijian Competition and Consumer Commission Act 2010. The Appellant was

represented by a representative in the Magistrate's Court. The Representative of the Appellant pleaded guilty to the offences on the 19th of November 2020. The learned Magistrate then convicted the Appellant on the 21st of January 2021. The learned Magistrate sentenced the Appellant on the 14th of April 2021. Aggrieved with the said conviction and the sentence, the Appellant filed this appeal on the following grounds, inter alia;

- i) *That the learned Magistrate erred in law and fact when he failed to properly consider the lawful representation of the Company in Court before proceeding to convict and sentence the Appellant.*
 - ii) *That the learned Magistrate erred in law and in fact when it referred to Mr. Sanaila Tabua as the Accused person in its sentencing decision when clearly it was the Appellant Company, Progress Enterprises Ltd that was the Accused in this instance.*
 - iii) *That the learned Magistrate erred in law and in fact when it accepted the guilty plea entered into by Mr. Sanaila Tabua without enquiring about the Mr. Tabua's legal status and his standing as a representative of the Accused Company.*
 - iv) *That the learned trial Magistrate erred in law when he failed to properly address the standing of the representative of the Accused Company as required by law, the failure of which resulted in a judgment which was perverse and amounts to a miscarriage of justice.*
2. The first, third and fourth grounds of appeal are founded on the contention that the learned Magistrate erred in law in taking the plea of the Appellant. Hence, I first draw my attention to these three grounds of appeal.
3. The learned Counsel for the Appellant submitted that the Appellant is an incorporated Company; hence, the applicable provision in the Criminal Procedure Act pertaining to the

plea is section 174 (5). The learned Counsel further submitted that the learned Magistrate failed to follow the procedure stipulated under section 174 (5) of the Criminal Procedure Act in recording the plea of the Appellant, thus making the conviction and subsequent sentence void and wrong in law.

4. Section 174 (5) of the Criminal Procedure Act states that:

“When a corporation is charged with any offence before a Magistrates Court, the corporation may enter in writing by its representative a plea of guilty or not guilty; and if—

- a) the corporation does not appear by its representative; or*
- b) though it does appear it fails to enter any plea,*

the Magistrates Court shall cause a plea of not guilty to be entered.


5. Accordingly, a corporation is required to enter its plea in writing by its Representative. The Representative could not admit or deny the truth of the charge by himself. If the Corporation failed to enter the plea that way, the Magistrate Court should enter a plea of not guilty and proceed to the hearing.
6. A corporation is a distinct legal personality, having its own legal rights, duties and obligations. However, the Corporation could not function independently; hence, it functions through the Directors or Board of Management. The Directors or the Board of Management of the Corporation have the power or the authority to act on behalf of the Corporation. The Managing Director or any person who has the authority to manage the Corporation's affairs have been given the authority to appoint a Representative to represent the Corporation in the proceedings for the purpose of Section 174 of the Criminal Procedure Act. (*vide Section 174 (7) of the Criminal Procedure Act*).

7. It is incumbent on the Magistrate to satisfy that the Accused made an informed decision regarding the plea, having properly comprehended the nature of the charge filed against him. In respect of the Corporation, the Corporation has to decide on the plea, not the Representative. Therefore, the learned Magistrate must satisfy that the Corporation entered its plea having properly understood the nature of the charge. In doing that, the learned Magistrate must satisfy that Corporation had appointed the Representative as required under Section 174 (7) of the Criminal Procedure Act. The learned Magistrate then needs to satisfy that the Corporation had entered its plea in writing through its Representative. If there is no such written plea of the Corporation, the learned Magistrate shall record the plea of not guilty and proceed to the hearing.
8. The record of the proceeding in the Magistrate's Court states that the learned Magistrate had not verified whether the Corporation had appropriately appointed the Representative under Section 174 (7) of the Criminal Procedure Act. The record of the proceedings in the Magistrate's Court further states that the charge was read to the Representative, and he had understood it. The Representative had then pleaded guilty of his free will.
9. Accordingly, it appears that the learned Magistrate had not followed the procedure stated under Section 174 (5) of the Criminal Procedure Act in recording the plea of the Appellant. Wherefore, I find the conviction recorded by the learned Magistrate based on the plea of guilty entered by the Representative is wrong in law. Therefore, I find this is a proper case for the Appellate Court to intervene.
10. Considering the public's interest and the Appellant's interest, I find an order of re-trial would not prejudicially affect the interest of the Appellant.
11. In conclusion, I make the following orders:
 - a) The Appeal is allowed,
 - b) The conviction dated 21st of January 2021 is quashed and the sentence dated 14th of April 2021 is set aside,

c) A re-trial is ordered before another Resident Magistrate.

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




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Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

02nd September 2022

Solicitors.

Pacific Chambers for the Appellant.

Office of the Fijian Competition and Consumer Commission for the Respondent.