

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL MISC NO. HAM 055 OF 2025

BETWEEN : **STATE**

AND : **JOSAIA VOREQE BAINIMARAMA**
SITIVENI QILIHO

Counsel : **Ms L Tabuakuro for the State**
Ms G Fatima for both the Accused

Date of Judgment : **9 May 2025**

RULING

**[On Jurisdiction of the Magistrates' Court to Transfer
Proceedings for Legal Opinion]**

- [1] The first Accused is charged with one count of Unwarranted Demands Made by a Public Official, and the second Accused is charged with two counts of Abuse of Office. These are indictable offences but are triable summarily in the Magistrates' Court at the election of the accused persons.
- [2] At arraignment, both Accused elected to be tried in the Magistrates' Court. The case was initially assigned to Resident Magistrate Savou, based in Suva.
- [3] During a pre-trial conference, the presiding Magistrate raised a concern regarding the apparent inconsistency between the definition of "employed in the civil service" in the Crimes Act and "public official" under the Constitution. This issue arose because the charges allege that the first Accused acted as a public official, while the second Accused was said to have acted in his capacity

as a civil servant. Thus, the elements of the offences require proof of each Accused's respective official status at the time of the alleged offences.

- [4] The State did not consider the definitional inconsistency sufficient to justify withdrawal of the charges. Counsel for the State submitted that the alleged criminal conduct is defined by the Crimes Act, and not the Constitution, and that any interpretation must be made within that statutory context.
- [5] The Accused persons, however, argue that the constitutional definition of "public official" excludes them from criminal liability under the charges.
- [6] On 3 April 2025, counsel for the Accused filed a Summons for an Order in the Magistrates' Court, seeking clarification of this definitional issue.
- [7] On 22 April 2025, Resident Magistrate Somaratne heard the application. He had been assigned the case following the transfer of Magistrate Savou to Nasinu.
- [8] Although the State initially objected, it later consented to the transfer of the case to the High Court for an opinion on whether the definition of "employed in the civil service" under the Crimes Act conflicts with the constitutional definition of "public official."
- [9] The Magistrate, in a brief ruling, transferred the case to the High Court. However, the transfer order issued under section 191 of the Criminal Procedure Act (CPA) reads:

"IN ACCORDANCE WITH section 191 of the Criminal Procedure Act, I hereby transfer the arraignment of the above-named Accused persons to the High Court in respect of the attached charge sheet."

- [10] This order is inconsistent with the Magistrate's ruling. Both Accused had already been arraigned and had pleaded not guilty. They also elected trial in the Magistrates' Court. The true purpose of the transfer was to obtain the High Court's opinion on a legal issue related to the elements of the offences, not to conduct the trial.
- [11] Given the procedural irregularity, I invited written submissions from the parties regarding the jurisdiction of the Magistrates' Court to transfer a case solely for an opinion on a trial issue.

Legal Framework and Analysis

- [12] Section 191 of the CPA allows a Magistrate to transfer any charges or proceedings to the High Court. However, this must be interpreted within the broader framework of the CPA.
- [13] Section 188 of the CPA governs the transfer of summary cases to the High Court. It allows a Magistrate to transfer a case for trial if it appears that the case ought to be tried in the High Court. An application may also be made by the prosecutor before trial to request such transfer.
- [14] In *State v Singh*, Crim Case No. 329 of 2016 (31 July 2017), Rajasinghe J held that while section 191 confers transfer powers, such discretion must be exercised in accordance with the provisions of the CPA.
- [15] The Supreme Court in *Tasova v DPP* [2022] FJSC 43; CAV0012.2019 (26 September 2022), held that section 188 gives Magistrates unfettered discretion to transfer any case to the High Court, but only for trial purposes, regardless of whether the offence is indictable, summary, or otherwise unassigned.

- [16] In the present case, the transfer was not for trial, but for an opinion on a legal issue concerning elements of the offences. There is no statutory basis for such a referral.

Constitutional Provisions Considered

- [17] The Magistrate also referred to section 44(5) and section 100(4) of the Constitution in justifying the transfer.
- [18] Section 44(5) allows a subordinate court to refer a matter to the High Court only where there is a question concerning a contravention of the Bill of Rights. No such contravention has been alleged here.
- [19] Section 100(4) grants the High Court original jurisdiction in matters involving the interpretation of the Constitution. However, it does not confer power on subordinate courts to refer non-Bill-of-Rights matters. It merely enables the High Court to adjudicate such questions when they properly arise before it.
- [20] Therefore, neither provision supports the referral made by the learned Magistrate.

Trial Issue, Not Pre-Trial Issue

- [21] The interpretation of the phrases "public official" and "civil servant" relates to the elements of the offences, which are to be determined at trial. The Accused bear no burden to prove these elements—the prosecution must establish them beyond a reasonable doubt.
- [22] There is well-established jurisprudence against fragmenting criminal trials through interlocutory questions. As held in *Singh v DPP* [2003] FJHC 221; HAM0043D.2003S (18 November 2003), such premature applications disrupt the integrity of criminal trials and may undermine judicial economy.

- [23] The Accused may raise these arguments at the no-case-to-answer stage, or during the presentation of their defence, should the prosecution fail to establish the essential elements of the charges.

Conclusion and Orders

- [24] The Magistrates' Court had no jurisdiction to transfer this case to the High Court solely for the purpose of seeking a legal opinion on an element of the charged offences.
- [25] The transfer order made under section 191 of the CPA is therefore null and void for want of jurisdiction.
- [26] Accordingly, the transfer order is quashed, and the case is remitted to the Magistrates' Court for trial as scheduled on 2 June 2025.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Patel & Sharma Lawyers for both the Accused