

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL MISC NO: HAR 001 OF 2025

BETWEEN : STATE

AND : WAISEA NAITINI

Date of Hearing : 1 July 2025

Date of Ruling : 1 July 2025

**Counsel : Ms Y Sautu for the State
Mr T Varinava for the Accused**

RULING

- [1] I called for the Magistrates' Court file to examine the regularity of the criminal proceedings against the Accused before the Magistrates' Court at Suva, after it was highlighted in the media that the Magistrate was promoting reconciliation in a charge of criminal trespass involving the Prime Minister's official residence.
- [2] The power to review the regularity of the proceedings of the Magistrates' Court is governed by section 260(1) of the Criminal Procedure Act. The High Court has the power to examine any criminal proceedings before a Magistrates' Court for the purpose of satisfying itself as to:
- (a) The correctness, legality or propriety of any finding, sentence or order recorded or passed; and
 - (b) The regularity of any proceedings of any Magistrates' Court.

- [3] Upon receipt of the Court Records, the Office of the Director of Public Prosecutions and the Legal Aid Commission were served with notice to assist the Court in the review proceedings.
- [4] Mr Varinava appeared as the duty solicitor during the hearing, and he confirmed that although the Accused had waived his right to counsel in the Magistrates' Court, he now wished to engage a Legal Aid lawyer to represent him.
- [5] The Accused was formally charged with Criminal Trespass contrary to section 387(1) (c) of the Crimes Act.
- [6] The Accused pleaded guilty to the charge on his first appearance in the Magistrates' Court on 23 June 2025. The record of the proceedings show that the Accused waived his right to counsel and pleaded guilty to the charge. The learned Magistrate made the following record:
- Plea: Guilty
Facts per charge
Nil previous conviction
Guilty as charged
1st offender
Mitigation – 30 years old single, farmer.
\$100 what I get from selling my produce.
30.6.25- Remanded in custody.
- [7] When the case was called on 30 June 2025, the learned Magistrate instead of passing sentence, decided to promote reconciliation between the Accused and the complainant. The record of the proceedings of that day shows:

30 JUNE 2025

Prosecutor: Present

Accused 1: Present

Court Clerks:

Before sentence is passed consider of accused to reconcile with complainant.

Nil relationship

Adjourned to the 7.7.25 for the Investigating Officer to get a statement from the complainant before sentence is passed.

Further remanded in custody.

[8] There are irregularities in the proceedings before the Magistrates' Court that are of concern.

[9] It is well-settled law that when an unrepresented accused pleads guilty to a charge, the court must exercise the greatest care before accepting the plea by ensuring that it is made freely and voluntarily, is unambiguous, and is supported by facts admitted by the accused in addition to the charge. No inquiry was made into the voluntariness of the guilty plea by the learned Magistrate.

[10] In R v Michael Iro (1966) 12 FLR 104, the Court of Appeal said:

In our view there is a duty cast on the trial judge in cases where the accused person is unrepresented to exercise the greatest vigilance with the object of ensuring that before a plea of guilty is accepted the accused person should fully comprehend exactly what that plea of guilty involves. As was said by Lord Reading, CJ in R -v- Golathan (1915) 84 LKJ 758, at 759:

It is a well-known principle that a man is not to be taken to have admitted that he has committed an offence

unless he pleads guilty in plain unambiguous and unmistakable terms.

[11] Further, in *State v Isaia Saukova* Appeal No. HAA013 of 2000L, Gates J (as he was then) said:

It is essential that a Magistrate be satisfied that an accused is admitting facts which amount to all of the legal elements that go to prove the charge in question. Where the Accused is represented by counsel, the Magistrates task is easier. Where the accused is unrepresented a more onerous burden is cast on the court. But the Magistrate should ensure that the Accused is not simply pleading guilty out of a feeling of remorse for being involved in a result as opposed to causing a result.

[12] In this case, the learned Magistrate accepted the guilty plea on the basis of the 'facts per charge' without any additional facts being tendered by the prosecution to support the charge.

[13] In *Gounder v The State* [2002] FJHC 139; HAA0057J.2002S (26 July 2002), Shameem J held that the procedure of using 'facts as per charge' to accept a guilty plea to be irregular. Shameem J said:

In this case, the prosecution did not outline any facts at all. The words as per charge tell me nothing of the facts of the case.The record shows that the facts of the case were not outlined, and the Appellant had no opportunity to dispute them. An agreement to the facts as charged cannot be a substitute for the requirement under section 206 of the Criminal Procedure Code, to the accused by the court, and that the accused's admission of the truth of the charge, be recorded.

[14] I endorse the above comments. In this case, there was a clear dereliction of duty by the learned Magistrate in failing to call for the facts in support of the charge prior to accepting the Accused's admission of the truth of the charge.

[15] Furthermore, had the learned Magistrate exercised diligence in examining the correctness of the charge, he would have found the charge to be duplicitous. The charge contains elements taken from two separate provisions of the Crimes Act and merged into one charge.

[16] The Statement of Offence of the charge reads:

Criminal Trespass: Contrary to Section 387(1)(c) of the Crimes Act 2009.

[17] The Particulars of the Offence reads:

Waisea Naitini on the 21st day of June 2025 at Suva in the Central division at Sitiveni Rabuka's compound, you unlawfully entered the compound of Sitiveni Rabuka after being warned not to come thereon.

[18] Section 387 of the Crimes Act states:

(1) A person commits a summary offence if he or she-

(a) enters into or upon property in the possession of another with intent to commit an offence or to intimidate or annoy any person lawfully in possession of such property;

- (b) Having lawfully entered into or upon such property unlawfully remains there with intent to intimidate, insult or annoy any such person or with intent to commit any offence; or
- (c) Unlawfully persists in coming or remaining upon such property after being warned not to come thereon or to depart from the property

[19] For an accused to be guilty of criminal trespass pursuant to subsection (c), the charge must allege that the accused unlawfully persisted in coming or remaining upon a property after being warned not to come thereon or to depart from the property. The charge in its current form does not allege an offence contrary to subsection (c). The charge alleges the element of 'unlawfully entered' the property as per subsection (a) and then merged that element 'after being warned not to come' from subsection (c) to form the allegation. The true nature of the allegation is confusing.

[20] Every accused has the right to be clearly informed of the charge he or she must answer before a guilty plea is entered. If the charge is defective, then there is a real risk of a miscarriage of justice occurring where the accused pleads guilty without knowing the true nature of the allegation and there are no facts tendered to support the charge.

[21] As Gates CJ said in *Fiji Independent Commission Against Corruption v Rabuka* [2018] FJHC 1071; HAA57.2018 (12 November 2018) at [107]:

It is an essential of criminal law and procedure for an Accused person to be informed of the charge against him or her [section 14(2)(b) Constitution]. There must be no confusion in the charge.

- [22] Given the charge in its current form has defect (elements merged from two separate provisions of the Crimes Act), the guilty plea by the Accused is not a true reflection of his guilt.
- [23] Furthermore, without the facts, it is difficult to ascertain how the learned Magistrate came to the determination that the charge in this case is 'substantially of a personal or private nature and not aggravated in degree' in order to promote reconciliation between the complainant and the Accused pursuant to section 154(1) of the Criminal Procedure Act.
- [24] Review is allowed. The Accused's guilty plea is vacated and the order for the promotion of reconciliation made by the learned Magistrate is set aside.
- [25] The learned Magistrate is to enter a not guilty plea and proceed to trial in the event the Director of Public Prosecutions decides to continue with the prosecution.
- [26] Given the Accused is charged with a summary offence, he is released on bail with standard terms and conditions set out in the Bail Form.




.....
Hon Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused