

**IN THE HIGH COURT OF FIJI**

**AT LABASA**

**[APPELLATE JURISDICTION]**

**CRIMINAL APPEAL NO. HAA 007 OF 2025**

**BETWEEN** : **STATE**

**APPELLANT**

**AND** : **GOLD HOLD INVESTMENT PTE LIMITED**

**RESPONDENT**

**Counsel** : **Mr U Lal for the State**  
**Mr A Ram for the Respondent**

**Date of Hearing** : **21<sup>st</sup> of August 2025**

**Date of Judgment** : **6 March 2026**

**JUDGMENT**

**Introduction**

[1] This is an appeal by the State against the ruling of the learned Magistrate Ms Korodrau dated 16 July 2025, in which the Magistrate declined the State's application to transfer Criminal Case No. CF 565 of 2020 to the High Court. Following the dismissal of the transfer application, the substantive matter was struck out on 30 July 2025 for want of jurisdiction.

[2] The appeal raises important questions about the interrelation between the *Offshore Fisheries Management Act 2012* ("the OFMA"), the *Criminal Procedure Act 2009* ("the CPA"), and the jurisdiction of the Magistrates' Court in prosecuting offences under the OFMA.

## **Factual Background**

- [3] On 26 August 2020, the Ministry of Fisheries issued a Fixed Penalty Notice to the respondent for failure to comply with seasonal species restrictions contrary to section 4(1) and 4(2) of the OFMA. The fixed penalty imposed was \$20,000.00, payable within 21 days of service.
- [4] Upon non-payment of the fixed penalty within the stipulated period, proceedings were instituted in the Labasa Magistrates' Court on 17 September 2020.
- [5] The proceedings were then adjourned pending the High Court decision in *Douyou Foods Import and Export Limited v State* [2025] FJHC 147; HAA 21 of 2023 (21 March 2025), which addressed the question of whether the Magistrates' Court had jurisdiction to hear matters arising from breaches under the OFMA.
- [6] In *Douyou*, I held that the Magistrates' Court does not have jurisdiction to deal with offences under the OFMA and that such jurisdiction lies solely with the High Court. At paragraph [31] of that judgment, I stated that the jurisdictional error was incurable.
- [7] Following the delivery of the judgment in *Douyou*, the Office of the Director of Public Prosecutions stepped in to assist the Ministry of Fisheries. The State then made an application before the learned Magistrate to transfer the matter to the High Court, relying on sections 5, 35, 191, and 194(c) of the CPA, section 79(1) of the OFMA, and section 100(3) of the Constitution.
- [8] On 16 July 2025, the learned Magistrate delivered a ruling refusing the State's application. The learned Magistrate held that, although sections 191

and 194 of the CPA could enable transfers of certain matters not triable in the Magistrates' Court, there was specific legislation in place for this case expressly stating narrow time frames pertaining to the Infringement Notices. Relying on the binding decision in *Douyou*, the learned Magistrate concluded that the jurisdictional error could not be cured by a transfer order.

[9] The State now appeals against that ruling on two grounds.

### **Grounds of Appeal**

[10] The State's grounds of appeal are:

1. That the learned Magistrate erred in law and in fact by failing to properly analyze sections 5, 35, 191, and 194(c) of the CPA, section 79(1) of the OFMA and section 100(3) of the Constitution and therefore falling into error of refusing to transfer the matter to be dealt with by the High Court.
2. That the learned Magistrate erred in law and in fact in failing to properly analyze and apply the principles set out in the case of *Douyou Foods Import and Export Limited v State* HAA 21 of 2023.

### **The State's Submissions**

[11] The State submits that there are enabling provisions in other legislation that allow the courts to exercise jurisdiction when ambiguity exists in the current legislation. The State particularly relies on section 194(c) of the CPA, which allows courts to transfer cases for trial or sentencing if the offences charged are triable in the High Court.

[12] The State further submits that section 5(1) of the CPA provides that offences under laws other than the *Crimes Act 2009* will be tried by the court designated by that specific law. The nexus of the State's argument is that under sections 191 and 194(c) of the CPA, the matter should be transferred to the High Court since it can only be tried in that Court following the decision in *Douyou* and as per section 79(1) of the OFMA.

[13] The State also relies on section 100(3) of the Constitution, submitting that the High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law.

[14] In respect of the second ground of appeal, the State submits that the OFMA is silent on how to initiate proceedings in the High Court. The State argues that because the legislation is not clear as to how to initiate proceedings, other enabling provisions can be applied to facilitate the trial in the High Court, and the court should look to provisions in other laws, as permitted by section 5 of the CPA.

### **The Respondent's Submissions**

[15] The respondent submits that whilst section 191 of the CPA gives the Magistrates' Court power to transfer any charges or proceedings to the High Court, by implication, the Magistrates' Court must have jurisdiction over the matter before it can transfer the proceedings to the High Court.

[16] The respondent relies on the decision in *Ram Khelawan v Budh Ram* [13 FLR 196], where Justice Hammett held that once a summons has been issued in the Magistrates' Court in excess of jurisdiction, the only order that may be made is to strike out the cause for want of jurisdiction. The

Magistrate does not have any power either to amend the claim or to transfer the case.

[17] The respondent submits that the High Court itself does not have jurisdiction pursuant to section 98(3) of the OFMA, which requires a signed copy of the Fixed Penalty Notice to be placed before the court specified in the notice not later than 7 days after the date of the notice. Since the prosecution did not comply with this mandatory obligation and did not file the Fixed Penalty Notice in the High Court within 7 days, even the High Court does not have jurisdiction. A transfer to the High Court would therefore serve no purpose.

[18] The respondent further submits that the Magistrate correctly interpreted and applied the principles in *Douyou*, correctly concluding that the jurisdictional error was incurable and could not be remedied by a transfer order.

## **The Law**

### **Jurisdiction of the Magistrates' Court**

[19] The fundamental principle is that courts of limited jurisdiction, such as the Magistrates' Court, can only exercise jurisdiction conferred upon them by statute. The Magistrates' Court has no inherent jurisdiction. It derives its jurisdiction entirely from statute.

[20] Section 5 of the CPA provides:

(1) Any offence under any law other than the *Crimes Act 2009* shall be tried by the court that is vested by that law with jurisdiction to hear the matter.

[21] This provision makes it clear that when dealing with offences under legislation other than the *Crimes Act 2009*, the court with jurisdiction is the court specified in that particular legislation.

### **Jurisdiction under the Offshore Fisheries Management Act**

[22] The OFMA contains specific provisions dealing with the enforcement of offences and the jurisdiction of courts. Section 79(1) of the OFMA states:

Any act or omission in contravention of any of the provisions of this Act, in such places and to such persons to whom this Act applies shall be dealt with and judicial proceedings taken as if such act or omission had taken place in Fiji within the jurisdiction of the High Court.

[23] This provision clearly vests jurisdiction over offences under the OFMA in the High Court, not the Magistrates' Court.

[24] Sections 97 and 98 of the OFMA set out the procedure for enforcement. Section 97 provides that a fisheries officer or authorized officer may issue an Offshore Fisheries Fixed Penalty Notice or institute legal proceedings against a person for any offence committed under the Act. Where a Fixed Penalty Notice is not complied with within 21 days of issuance, the notice is regarded as a summons issued under the CPA.

[25] Section 98(2)(e) requires the Fixed Penalty Notice to notify the person that, in case of default in payment, "the High Court may, if the person is found guilty by the High Court, impose a penalty which is more than the fixed penalty for the offence" (emphasis added).

[26] Section 98(3) requires the authorized officer or fisheries officer who issues a Fixed Penalty Notice to cause a signed copy of that notice to be placed before the court specified in the notice not later than 7 days after the date of the notice.

[27] These provisions, read together and harmoniously, demonstrate a clear legislative intention that proceedings under the OFMA are to be initiated in and dealt with by the High Court, not the Magistrates' Court.

**Decision in *Douyou***

[28] In *Douyou*, I considered in detail the jurisdictional framework under the OFMA. At paragraph [29], I observed that the maximum fine the Magistrates' Court can impose is \$15,000 (see section 7(1) of the CPA), and that the logical construction of section 98(2)(e) of the OFMA is that jurisdiction to impose fines exceeding this amount lies only with the High Court.

[29] At paragraph [31], I held:

In this case, the jurisdictional error is incurable. The Magistrates' Court does not have jurisdiction to deal with the offences under the Offshore Fisheries Management Act. Only the High Court has jurisdiction to convict and sentence for the offences under the Offshore Fisheries Management Act.

[30] This finding was based on a comprehensive analysis of sections 97 and 98 of the OFMA and their interaction with the CPA and the Constitution.

## **Power to Transfer**

- [31] Section 191 of the CPA provides: "A magistrate may transfer any charges or proceedings to the High Court."
- [32] Section 194(c) provides that if an accused person has been charged with an offence triable only in the High Court, the magistrate shall order the transfer of the charges or proceedings to the High Court for sentencing or for trial.
- [33] These provisions undoubtedly confer a power to transfer proceedings from the Magistrates' Court to the High Court. However, they must be read in context and in conjunction with other relevant statutory provisions.
- [34] The critical question is whether the power to transfer can be exercised when the Magistrates' Court never had jurisdiction over the matter in the first place.

## **Analysis**

### **Ground 1: Failure to Properly Analyze Statutory Provisions**

- [35] The State's primary contention is that the learned Magistrate erred by failing to properly analyze sections 5, 35, 191, and 194(c) of the CPA, section 79(1) of the OFMA, and section 100(3) of the Constitution, thereby falling into error in refusing to transfer the matter to the High Court.
- [36] I do not accept this submission. The learned Magistrate's analysis was thorough and legally sound.
- [37] The starting point is section 5(1) of the CPA, which directs that offences under laws other than the *Crimes Act 2009* shall be tried by the court vested

by that law with jurisdiction. The OFMA clearly vests jurisdiction in the High Court through section 79(1), which states that contraventions of the Act "shall be dealt with and judicial proceedings taken as if such act or omission had taken place in Fiji within the jurisdiction of the High Court."

[38] The legislature's intention could not be clearer. The High Court, not the Magistrates' Court, has jurisdiction over OFMA offences.

[39] The State's reliance on sections 191 and 194(c) of the CPA is misplaced. These provisions presuppose that the matter is properly before the Magistrates' Court and that the court has at least initial jurisdiction to deal with the matter before transferring it. Section 194(c) applies where an accused person "has been charged" with an offence triable only in the High Court. This contemplates a situation where charges have been properly laid in the Magistrates' Court in accordance with the CPA and the relevant substantive law.

[40] In the present case, the proceedings were never properly instituted in the Magistrates' Court. The OFMA does not authorize or contemplate the institution of proceedings in the Magistrates' Court. To the contrary, it mandates that proceedings be dealt with in the High Court.

[41] The respondent correctly relies on *Ram Khelawan v Budh Ram* [13 FLR 196]. In that case, Justice Hammett held:

Once a summons has been issued in the Magistrates' Court of the first class in excess of the jurisdiction which is given to the court by the legislature it appears to me that the only order that may be made when the matter is being dealt with by the

Magistrate is for him to strike out the cause for want of jurisdiction. The Magistrate does not appear to have any powers either to amend the claim or to transfer the case.

[42] This principle is well-established. A court cannot cure a lack of jurisdiction by transferring a matter. The power to transfer presupposes the existence of jurisdiction. Where jurisdiction is entirely absent from the outset, the proceedings are void ab initio.

[43] The State's submission that section 35 of the CPA supports its position is also misplaced. Section 35(2) provides that all criminal cases to be heard by the High Court shall be instituted before a Magistrates' Court *in accordance with the CPA* and transferred to the High Court *in accordance with the CPA* if the offence is indictable. This provision applies to offences under the *Crimes Act 2009* and other laws where the initial institution of proceedings in the Magistrates' Court is authorized. It does not override specific provisions in other legislation, such as the OFMA, which vest exclusive jurisdiction in the High Court and prescribe a different procedure for the institution of proceedings.

[44] The State's reliance on section 100(3) of the Constitution is similarly unavailing. While it is true that the High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law, this does not mean that prescribed procedures can be ignored. Section 100(3) itself qualifies the High Court's jurisdiction by reference to "such other original jurisdiction as is conferred on it under this Constitution or any written law." The High Court must still comply with procedural requirements set out in written law, including the OFMA.

[45] Moreover, even if a transfer were ordered, the High Court would face its own jurisdictional difficulty. Section 98(3) of the OFMA requires a signed copy of the Fixed Penalty Notice to be placed before the court specified in the notice not later than 7 days after the date of the notice. This is a mandatory requirement. In the present case, the notice was dated 26 August 2020 but was filed in the Magistrates' Court on 17 September 2020—more than 7 days later—and was never filed in the High Court within the prescribed timeframe.

[46] The respondent correctly submits that this failure to comply with section 98(3) means that even the High Court would lack jurisdiction over the matter if it were transferred. A transfer order would therefore serve no purpose.

[47] The learned Magistrate's reasoning at paragraph [14] of the ruling was correct:

Although section 191 and 194, could enable transfers of certain matters not triable in the Magistrates' Court, there is a specific legislation in place for this case expressly stating the narrow time frames pertaining to the Infringement Notices, and a binding decision of the High Court that instructs this Court that it does not have jurisdiction to hear this case; consequently, this is not a case that could be cured by a transfer order.

[48] Ground 1 of the appeal fails.

## **Ground 2: Failure to Properly Analyze and Apply *Douyou***

[49] The State's second ground alleges that the learned Magistrate erred in failing to properly analyze and apply the principles set out in *Douyou*.

[50] I reject this submission. The learned Magistrate correctly understood and applied *Douyou*.

[51] At paragraph [6] of the ruling, the learned Magistrate quoted paragraph [31] of *Douyou*, noting that the jurisdictional error was "incurable" and that only the High Court has jurisdiction to convict and sentence for offences under the OFMA.

[52] The State submits that *Douyou* establishes that jurisdiction lies with the High Court, and therefore the matter should be transferred to the High Court to give effect to that jurisdictional requirement. However, this submission misunderstands the ratio decidendi of *Douyou*.

[53] The critical finding in *Douyou* was not simply that the High Court has jurisdiction, but that the Magistrates' Court does not have jurisdiction and that the jurisdictional error is *incurable*. An incurable jurisdictional error cannot be remedied by transfer or by any other procedural mechanism. It renders the proceedings void from inception.

[54] In *Douyou*, I noted at paragraph [30] that it was unfortunate that the jurisdictional objection was not raised in the trial court. However, I went on to hold that the failure to raise the objection did not preclude the appeal ground, because jurisdiction is fundamental and cannot be conferred by consent or waiver.

[55] The same principle applies here. The fact that the matter proceeded in the Magistrates' Court for some time before the jurisdictional issue was identified does not mean that jurisdiction can now be conferred retrospectively by a transfer order.

[56] The State's submission that the OFMA is silent on how to initiate proceedings in the High Court is not entirely accurate. Section 98(3) prescribes the procedure: a signed copy of the Fixed Penalty Notice must be placed before "the court specified in the notice" not later than 7 days after the date of the notice. The "court specified in the notice" must be a court with jurisdiction over the offence—in this case, the High Court.

[57] The proper procedure under the OFMA is for the Fixed Penalty Notice to be issued, for the 21-day payment period to expire, and for the notice (which is deemed to be a summons under section 97(2)) to be filed in the High Court within 7 days. If that procedure is not followed, the prosecution is not properly constituted, and no court—neither the Magistrates' Court nor the High Court—has jurisdiction to deal with the matter.

[58] The learned Magistrate correctly analyzed and applied the principles in *Douyou*. Ground 2 of the appeal fails.

### **Broader Considerations**

[59] I acknowledge that the State's position in this case is difficult. Following the decision in *Douyou*, the State recognized that the proceedings had been instituted in the wrong court and sought to rectify the error. The transfer application was a genuine attempt to salvage the prosecution and to ensure that alleged breaches of fisheries legislation are properly dealt with.

[60] However, the fundamental principle that a court cannot cure a want of jurisdiction must be upheld. To do otherwise would undermine the rule of law and the constitutional principle that courts derive their jurisdiction from statute.

[61] The jurisdictional requirements in the OFMA, including the time limits prescribed in section 98, serve important purposes. They provide certainty to accused persons and ensure that prosecutions are instituted expeditiously. Courts cannot dispense with or override these requirements, no matter how inconvenient they may be in particular cases.

[62] The appropriate remedy, if the State considers that the jurisdictional framework under the OFMA is unclear or unworkable, is to seek legislative amendment. It is not for the courts to rewrite legislation or to read into it procedures that the legislature has not prescribed.

[63] It is also relevant to note that, even if I were to allow this appeal and order the transfer of the matter to the High Court, the High Court would be obliged to dismiss the prosecution for want of jurisdiction due to the failure to comply with section 98(3) of the OFMA. The appeal would therefore be futile.

### **Conclusion**

[64] For the foregoing reasons, the learned Magistrate did not err in law or in fact in refusing the State's transfer application. The Magistrates' Court never had jurisdiction over the matter, and the jurisdictional defect was incurable. A transfer order could not remedy the fundamental want of jurisdiction.

[65] The learned Magistrate correctly analyzed and applied sections 5, 35, 191, and 194(c) of the CPA, section 79(1) of the OFMA, section 100(3) of the Constitution, and the principles established in *Douyou*.

[66] Both grounds of appeal fail.

**Orders**

[67] The following orders are made:

1. The appeal is dismissed.
2. The ruling of the learned Magistrate dated 16 July 2025 is affirmed.
3. Each party shall bear its own costs.



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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

**Office of the Director of Public Prosecutions for the State**

**Messrs Gibson & Company for the Respondent**