

**IN THE MAGISTRATES COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION**

Criminal Case No. 578 of 2013

STATE

-v-

MOHAMMED SHAMSOOD

For the State: Constable A. Lal

Counsel for the Accused: Ms. Raj of Kohli & Singh

RULING ON COSTS

1. Pursuant to section 150 (4) (a) of the **Criminal Procedure Act 2009**, I am empowered to make costs orders to defray the costs incurred by any party as a result of an adjournment sought by another party. In addition, pursuant to section 150 (4) (d) of the **Criminal Procedure Act 2009** I may make an order as to costs as may be required in the circumstances to otherwise meet the interests of justice in any case.
2. On 28 May 2018, the matter was fixed for trial. On that day at 12.15pm, Ms. Rao as counsel for the Director of Public Prosecutions and Mr. Kohli as counsel for the Accused appeared in Court. Counsel informed the Court that the proceedings were civil in nature and as such, they applied jointly to have the trial vacated to permit the Director of Public Prosecutions time to consider the charges with a view to withdrawing it.
3. The matter was then adjourned to 6 August 2018. Ms. Vavadakua informed the Court that counsel in carriage of the matter was currently undertaking the advice on the Charge. She sought an adjournment on behalf of the State to permit counsel time to complete the analysis and by necessary implication, time for the Director to make a decision on the Charge.

4. The matter was then adjourned over 12 October 2018 and 3 December 2018. On 3 December 2018, Sergeant Bacau appearing on instructions of counsel for the Director of Public Prosecutions indicated that the State needed further time. As will become apparent, no decision on the Charge had been reached.
5. On 18 December 2018, no one appeared for the State. Ms. Raj for the Accused notified the Court that she had received no word from the Office of the Director of Public Prosecutions in relation to the Charges. The matter was adjourned to 6 May 2019. On this day Ms. Vavadakua appeared as counsel for the Director of Public Prosecutions. She informed the Court that the file has been sent to the Suva Office of the Director of Public Prosecutions. She sought 14 days for the Director's decision.
6. The matter was adjourned to 22 May 2019 for the Director's position on the Charge. On 22 May 2019, the Court sat without rising from 8.30am to 1.00pm. At 10.05am, this case was called. Constable Lal entered an appearance for the State. He had to be pressed into admitting that he had no instructions from counsel for the Director.
7. The court orderly called out for the "Office of the DPP" three times. No one appeared. I asked my clerks if counsel for the Director had sent word through the Registry or in person to have the matter stood down to a particular time. She had not.
8. Ms. Raj informed me of her firm's fee scale for mentions. The Defendant informed me that he had incurred a \$20.00 transportation cost each time he came to Court.
9. In **Harvey v McDonald** [2001] UKPC 18; [2001] 2 AC 678; [2002] 1 NZLR 1; [2001] 2 WLR 1749 at [50] (PC), the Privy Council held that it would be a breach of duty to the Court to engage in conduct:

"...which leads to an otherwise avoidable step in the proceedings or the prolongation of a hearing by gross repetition or extreme slowness in the presentation of evidence or argument."
10. There is an ethical duty to ensure that proceedings are not unduly delayed. Either the Director's counsel found herself unable to complete the analysis in the 11 odd months between 28 May 2018 and today, or the file has become lost in transit between

counsel's desk and the Director's office or in transit back with the Director's decision on the Charge.

11. Whatever the cause, the Accused has had to appear on no less than 5 occasions and each appearance has been a wasted one.

12. I award costs in the sum of \$1, 500.00 assessed summarily against the Office of the Director of Public Prosecutions. This sum must be paid to the Magistrates' Court Registry here in Labasa by or before 24 June 2019.

13. This amount will be paid to the Defendant to defray him the costs of each adjournment pursuant to section 150 (4) (a) of the **Criminal Procedure Act 2009** and section 150 (d) of the **Criminal Procedure Act 2009**. This is what the interests of justice demands.

14. Today, I adjourned the matter to 23 September 2019 for mention to fix a hearing date. We must cross the finishing line. The Accused person has a right to a fair trial within reasonable time and a near 12 month delay in these circumstances can hardly be said to be fair or reasonable.

15. I cannot do anything about the laxity that has led to this pass. That burden is fortunately not mine to bear. However, I can ensure that the Defendant is not additionally burdened by the costs of the delay caused here through no fault of his own.

16. **28 days to appeal.**




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Seini K Puamau
Resident Magistrate

Dated at Labasa this 22nd day of May 2019