

IN THE ANTI CORRUPTION DIVISION OF THE MAGISTRATE'S COURT AT SUVA

Criminal File No: MACD 50/2021 SUV

BETWEEN : FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

Prosecution

AND : PRITAM SINGH

Accused No.2

Appearances

For the State : Mr. Sharma

For 2nd Accused : Mr. Rattan (*Capital Legal*)

Date of Ruling : 8th October 2021

RULING

1. This is a matter where the entire proceedings were undertaken before Resident Magistrate Ms. Prakash. She had adjudged that the accused was guilty of the offending as charged.
2. Whilst the matter was pending sentence, Resident Magistrate Ms Prakash was then re-assigned to the Family Court wherein Resident Mr. Daurewa inherited the file. In his tenure over the file mitigation was presented as well as sentencing submissions.
3. In the midst of his (Resident Magistrate Mr. Daurewa) directions during the sentencing discourse learned counsel for the 2nd Accused had sought verbally in court on 18th February 2021 that Prosecution be held in contempt on the basis that the directions given by the learned Resident Magistrate on 18th November 2020 were contravened by Prosecution.
4. The learned Resident Magistrate Mr. Daurewa was appraised by Prosecution of the *High Court Amendment Act 2021* which was enacted and came into force via Gazette on 12th February 2021.
5. Consequentially, the *High Court Amendment Act 2021* introduced the Anti-Corruption Division of the Magistrates Court, wherein via Section 61M all pending proceedings were to be transferred to the Magistrate Court responsible for the Division.

6. As a result Resident Magistrate Mr. Daurewa seized to have jurisdiction over this matter pursuant to Section 61M of the *High Court Amendment Act 2021*.
7. When the matter came before this court, learned Defence counsel formally sought that the court consider the actions of Prosecution as an act of contempt.
8. They have relied on Section 194 (1)(m) of the *Crimes Act 2009* which is regurgitated herein as follows:

“194.—(1) A person commits a summary offence against this section if he or she—
...
(m)commits any other act of intentional disrespect to any judicial proceeding, or to any person before whom such proceeding is being had or taken.”
9. The alleged act of contempt was failure to obey directions as given by my predecessor on 7th December 2020.
10. Garnering from the notes of the court, Prosecution was granted an opportunity to respond to material submitted by the learned Defence counsel.
11. It is the submission of learned Defence counsel that no other issues were to be responded to, except the materials they submitted.
12. By reason of Prosecution making submissions beyond the purview of my predecessor’s directions that should be deemed as contempt.
13. Lord Justice Salmon observed as follows in *Morris v Crown Office* [1970] 2 QB 114, 129:

‘The sole purpose of proceedings for contempt is to give our courts the power effectively to protect the right of the public by ensuring that the administration of justice shall not be obstructed or prevented’
14. The empowerment in Fiji comes via Section 194 of the *Crimes Act 2009* and it must be stressed that the manner in which Section 194 is worded has given the judicial officer the onerous task of determining whether an act/conduct as defined under paragraphs (a) to (m) of Section 194 has occurred.

15. This court stresses that it is for the judicial officer to decide on whether an act/conduct constitutes a conduct deemed as contempt in order for the judicial officer to then activate Section 194(2) which is the offence creating provision.
16. In this regard, for this matter the most appropriate judicial officer to make this determination was my predecessor.
17. A perusal of the court's notes on 18th February 2021 shows that learned Defence Counsel had raised the issue of contempt before my predecessor however my predecessor was unable to address the same due to being seized of jurisdiction as a result of Section 61M of the *High Court Amendment Act 2021*.
18. Be that as it may this court views the conduct as a 'complaint' at best. This is stated because litigation experience has shown that at times court directions are not complied with by counsel. The usual recourse by a judicial officer is at best a verbal reprimand or at worst there is pecuniary penalty. It is very rare to consider contempt.
19. However, if this court were to deem the conduct of prosecution as 'contempt' then this court shall by the same measure deem the failure by learned Defence counsel to file submissions as directed by 28th April 2021 as contempt.
20. Let us call a 'spade a spade' and in this regard the actions of the learned Prosecutor can only be categorized as a failure to obey directions and nothing more.
21. At the end of day the Court will still have the opportunity to consider the submissions filed by Prosecution and make necessary conclusions on the applicability of the contents of their submissions.
22. In this regard this court finds no basis to grant the application from Defence and the motion is dismissed accordingly.
23. The court so orders.


JEREMIA N.L SAVOU
Resident Magistrate

