

IN THE MAGISTRATES' COURT OF FIJI
AT LAUTOKA
EXTENDED CRIMINAL JURISDICTION

High Court Criminal Case No. HAC 173 of 2018
Magistrates' Court Criminal Case No. 634 of 2018

STATE

v.

- 1. JOELI TAWATATAU**
- 2. ILIVASI NAVUNICAGI**
- 3. ILIESA VAKABUA**
- 4. VILIAME ROCATIKEDA**

For the State: *Police Constable Lomani of the Police Prosecutions Department*

For the 1st and 3rd Defendants: *Ms. S. Ali, of counsel, of the Legal Aid Commission*

For the 2nd and 4th Defendants: *In Person*

DECISION OF THE RESIDENT MAGISTRATE IN EXTENDED JURISDICTION
ON THE ISSUE OF COSTS

1. Following my decision upholding the pleas in bar pleaded by the Defendants, the first, second and third defendants applied for costs pursuant to section 150 (2) and (3) of the **Criminal Procedure Act 2009** which provides

“150. (1) – A judge or magistrate may order any person convicted of an offence or discharged without conviction in accordance with law, to pay to a

public or private prosecutor such reasonable costs as the judge or magistrate determines, in addition to any other penalty imposed.

(2) A judge or magistrate who acquits or discharges a person accused of an offence, may order the prosecutor, whether public or private, to pay the accused such reasonable costs as the judge or magistrate determines.

(3) An order shall not be made under subsection (2) unless a Magistrate or Judge considers that a prosecutor either had no reasonable grounds for bringing the proceedings or has unreasonably prolonged the proceedings.

(4) A judge or magistrate may make any other order as to costs as may be required in the circumstance to –

(a) defray the costs incurred by any party as a result of an adjournment sought by another party;

(b) recompense any party for any costs arising from any conduct by any other party which delays a trial or requires the expenditure of monies as a result of the conduct of that party during a trial;

(c) penalize a lawyer for any improper action during trial, and in such a case the order may be that the lawyer pay the costs personally; and

(d) otherwise meet the interests of justice in any case.”

2. The relevant provisions are section 150 (2) and (3) of the **Criminal Procedure Act 2009**. I have no hesitation in finding that termination of proceedings by way of a plea in bar is the equivalent of a discharge in the sense that it brings the criminal trial proceedings to an end, in this case permanently.
3. To award costs, I must be satisfied that the prosecutor had no reasonable grounds for bringing the proceedings in the first place *or* that the prosecutor had unreasonably prolonged the defendant’s criminal trial proceedings. In some instances, both may be the case but only one ground need be met for the imposition of costs.
4. In this instant case, I am not so satisfied. The law in this area was not well settled at the time the prosecutions commenced these criminal trial proceedings against you all.

Indeed, there were High Court decisions and a statutory provision within the **Corrections Service Act 2006** that led the State to believe it could proffer these charges against you. It is for the courts to subsequently interpret the law and so that is what this court did after the plea in bar was raised: *see State v. Tawatatau et al – Decision of the Resident Magistrate in Extended Jurisdiction on the Plea in Bar of Autrefois Convict*, Criminal Case No. 634 of 2018 (unreported, 22 October 2020).

5. In addition, the State did not unreasonably prolong the proceedings.
6. The Court maintained strict case management control of the proceedings and advanced the matter as expeditiously as it could in the circumstances.
7. All in all, this is not a fit case for the award of costs.
8. **Any party not satisfied with the decisions of this Court is at liberty to appeal to the Court of Appeal within 30 days.**

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Seini K Puamau
RESIDENT MAGISTRATE

Dated at Lautoka this 21st day of January 2021.