

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

MACD Case No . 60 /2021 SUV

BETWEEN : Fiji Independent Commission Against Corruption
Prosecution/Applicant

AND : Mohammed Lateef Imam
Accused No.1/Respondent No.1

AND : Rakesh Prasad
Accused No.2 /Respondent No.2

AND : Simeli Savutini
Accused No.3 /Respondent No.3

Appearances

For the Prosecution/Applicant : Mr. S. Savumiramira (*FICAC*)

For Accused No.1/Respondent No.1 : Mr. J. Reddy
(Jiten Reddy Lawyers)

For Accused No.2 & 3/Respondent No.2 & 3 : Mr. Kumar
(Tirath Sharma Lawyers)

Date of Ruling : 25th January 2023 @ 2.15pm

RULING

1. In this matter Prosecution has chosen to lay seven (7) charges.
2. A summary of the charges against all the accused persons are listed herein as follows:
 - a. Accused No.1: Three (3) counts for the offence of ***Corrupt Transactions with Agents*** pursuant to Section 9(2) (b) of the **Prevention of Bribery Act No.12 of 2007**;
 - b. Accused No.2: Two (2) counts for the offence of ***Corrupt Transactions with Agents*** pursuant to

Section 9(2) (b) of the Prevention of Bribery Act No.12 of 2007;

c. Accused No.3: Two (2) counts for the offence of **Corrupt Transactions with Agents** pursuant to Section 9(2) (b) of the Prevention of Bribery Act No.12 of 2007;

3. Prosecution has filed an application¹ against all the accused persons seeking that this matter be transferred to the High Court. The application is filed² pursuant to Section 188 and Section 191 of the **Criminal Procedure Act 2009**.

Basis for Application

4. Garnering from the Affidavit filed in support of the Motion filed against all accused persons, the basis of the Application is three-fold, which is;
- i. The nature and seriousness of the case (*the volume of disclosures and expected length of a trial requires a court with a lesser volume of work to adjudicate on the matter*);
 - ii. The novel legal issue to be decided on and applied in Fiji (*the term 'transactions with agents' was the novel issue*); and
 - iii. The public interest factor (*Given the respective positions held by all accused persons*).
5. It was Prosecution's submission in light of the above grounds that the Anti-Corruption Division of the High Court was the most appropriate court as a result.
6. Counsels for the accused persons disagreed with the reasoning given by Prosecution stating the following:

¹ Notice of Motion and Affidavit issued on 19th February 2021.

² As highlighted in the Notice of Motion

- I. That the incumbent court is the most appropriate court to handle such matters, even if there was a novel issue to be determined;
- II. The public interest factor is the same for all charged offences and should not be distinguished;
- III. That the charged offences were summary offences and were offences that should to be tried by the Magistrate's Court.

Jurisdiction -Nature of Charged Offences

7. All the accused persons are charged under the **Prevention of Bribery Act 2007**.
8. It follows that all offences under the above stated Act does not specifically point out whether the offence is classified as an Indictable offence, Indictable offence triable summarily or summary offence. As such pursuant to Section 5(2) of the **Criminal Procedure Act 2009**, the Magistrates Court retains jurisdiction.
9. This is why learned counsels for all accused persons have submitted that this settles the issue because as a summary offence the law mandates the matter be tried solely in the Magistrates Court and the allowance of the application would render the incumbent court's actions as **ultra vires**.
10. In the recent Supreme Court decision in **Tasova v Office of the Director of Public Prosecutions [2022] FJSC 43; CAV0012.2019 (26 September 2022)**,

it was clarified as follows in terms of Section 5(2) of the Criminal Procedure Act 2009:

"39. ...

d. **Offence for which no Court is prescribed (s5(2) of CPA):** The Magistrate has jurisdiction to hear cases. However if it appears to the Magistrate that proceedings ought to be transferred to High Court or application is made by prosecutor for transfer of case to High Court then the Magistrate may in exercise of his or her discretion transfer the proceedings to the High Court."

11. The effect of such view is that the entrenched position by the accused persons that 'it is the Magistrates court and nowhere else', cannot be sustained given the clear and unambiguous wordings of the statute and the interpretation via Tasova (supra).
12. As a result this court is empowered by statute to consider Section 188 and 191 of the **Criminal Procedure Act 2009** and decide thereafter whether it is proper in the circumstances to transfer this matter.

Transfer - Yes or No

13. Answering in the affirmative or otherwise requires this court to consider the three fold issues raised by Prosecution and which were vehemently objected to by the accused persons counsels.
14. They are:
 - i. The nature and seriousness of the case;
 - ii. The novel legal issue to be decided on and applied in Fiji; and
 - iii. The public interest factor.
15. In terms of the first two categories, trying to garner information in order to make a finding on whether the offences as charged are serious and that the issues to

be decided are novel in nature cannot be comprehensively adjudicated upon via Affidavits or written submissions.

16. These are matters which can only be determined upon a perusal of the disclosure and during trial. Leaving aside the issue of trial considering that these matter/s are at pre-trial stage, this court does not have the benefit of disclosures.
17. At the Magistrate Court level, only the charge is placed in the court file and does not include the disclosures, as opposed to the High Court where the charge (Information) and the disclosures are placed in the court file.
18. Therefore considering the first two issues is a difficult proposition in this court, as opposed to a High Court because determining those questions at this stage of the proceedings in this court's view can only be achieved if the disclosures are considered.
19. Unfortunately, this court does not have the benefit of the same and resultantly there being insufficient information to substantiate Prosecution's claim on the first two issues, that is, *the nature and seriousness of the case and the novel legal issue to be decided on and applied in Fiji*, shall render that those grounds cannot be accepted as means to substantiate the activation of Section 191 of the **Criminal Procedure Act 2009**.
20. The third and final ground relied upon is the *public interest factor*.

21. In ***Fiji Independent Commission Against Corruption (FICAC) v Buadromo*** [2021] FJHC 187; HACDA003.201S (23 March 2021), *Wimalasena J's* appeal Judgment whilst adjudicating as an Anti-Corruption Judge of the High Court and considering whether or not to order a re-trial stated at paragraph 48 the following, "48. Offences relating to corruption have a bigger **public interest** value compared to other offences..."
22. Given the above-stated quote and noting that the accused persons are charged by FICAC in the Anti-Corruption court, qualifies the third ground relied upon by Prosecution in terms of the application because the charges are offences related to allegations of corruption.
23. As such accepting that the offences being charges related to corruption which bear higher degree of public interest as garnered from the ***Buadromo case (supra)*** is sufficient for this court to make a finding pursuant to Section 188 (2) of the ***Criminal Procedure Act 2009*** that these matter is a proper case for transfer.
24. As a result pursuant to Section 191 of the ***Criminal Procedure Act 2009***, this matter is transferred to the High Court with basis on the above-mentioned discussions.
25. All accused persons shall now be required to appear in the Anti-Corruption division of the High Court on 26th February 2023.


JEREMAI N.L SAVOCA
Resident Magistrate

