

IN THE COURT OF APPEAL, FIJI ISLANDS

On Appeal from the High Court of Fiji

Criminal Appeal No. AAU00103 of 2008

BETWEEN: **SIMON JOHN MACARTNEY**

Appellant

A N D: **THE STATE**

Respondent

Coram: Byrne AP
 Madigan JA
 Fernando JA

Hearing: **24th May 2010**

Counsel: G. Reynolds Q.C. with him Ms A. Neelta for the Applicant
 Ms P. Madanavosa for the Respondent

Date of Ruling: **5th July 2010**

R U L I N G

[1] On the 24th May 2010 this Court allowed an appeal by the Applicant, quashed his conviction for murder in the Court below and so acquitted and discharged him. Senior Counsel for the Applicant made an application for costs both in this Court and for the proceedings below

and we called for written submissions on the application from both parties.

- [2] Section 32(1) of the Court of Appeal Act, Cap. 12 quite clearly states that no costs shall be allowed to either side, on the hearing and determination of an appeal in a criminal case. The section makes no distinction between costs on the appeal itself nor for proceedings overturned in the Court below.
- [3] The power to award costs on acquittal or discharge is given to a judge or magistrate by section 150(2) and 150(3) of the Criminal Procedure Decree 2009. The relevant sections state:

Section 150(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 to the accused such reasonable costs as the judge or magistrate determines;

and

Section 150(3) – An order shall not be made under subsection (2) unless the judge or magistrate considers that the prosecutor either had no reasonable grounds for bringing the proceedings or has unreasonably prolonged the matter.”

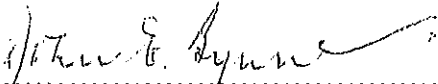
[4] The Supreme Court has said in Southwick v State - **CAV0001 of 2003S** when dealing with an identical provision under Section 158 of the Criminal Procedure Code, Cap. 21 "the words of the section are clear, there is a condition which must be established before the order can be made and that condition must be established by the person seeking the order".

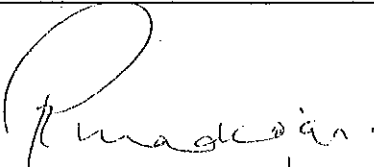
[5] Despite our judgment in the substantive appeal before the Court, there is no indication whatsoever that the State either brought the proceedings unreasonably or unreasonably prolonged proceedings.

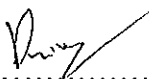
[6] As Shameem J. said in State v Ravuvu - **HAA 65 of 2003S** "no prosecutor can predict whether a court will accept the evidence of any witness, when the statement of the witness appears to be credible. In this case, there was an equal chance of a conviction, as there was of an acquittal".

[7] In the instant case and in the absence of any application by the defence at the time for a stay of proceedings on the basis of unfairness, there was nothing to suggest to the prosecution that the proceedings were unreasonable. In any event the learned trial Judge ruled there to be a case to answer which is every indication that the prosecution was brought on a proper footing.

[8] The application for costs is refused.


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Hon. Justice J.A. Byrne
Acting President of Court of Appeal


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Hon. Justice P.K. Madigan
Judge of Appeal


.....
Hon. Justice P. Fernando
Judge of Appeal

At Suva

5th July 2010.



Solicitors:

Neelta Law
Office of the Director of Public Prosecutions for State