

IN THE COURT OF APPEAL
[On Appeal From The High Court]

CRIMINAL APPEAL NO: AAU119 OF 2022
(High Court Case No: HAM 96 of 2022)

BETWEEN : **KELEPI SALAUCA**
Appellant

AND : **THE STATE**
Respondent

Coram : **Prematilaka, RJA**

Counsel : **Appellant in person**
Mr. A. Singh for the Respondent

Date of Hearing : **28 March 2024**

Date of Ruling : **02 April 2024**

RULING

[1] The appellant had made an application under section 150 of the Criminal Procedure Act 2009 in the High Court seeking cost against the State/DPP on the basis that the State/DPP had unreasonably prolonged HAC 170 of 2019 or unreasonably prosecuted him in HAC 170 of 2019 where he was ultimately discharged upon *nolle prosequi* being entered in terms of section 49 of the Criminal Procedure Act in May 2022.

[2] It appears that the appellant had been originally arraigned in 2017 in the Magistrates Court and transferred to the High Court. When the matter was first called in the High Court in May 2019 he was charged by the DPP with burglary [section 312(1) of the Crimes Act], an offence indictable but summarily triable where he had elected to be tried in the HC.

- [3] The state counsel submits that the decision to enter *nolle prosequi* was taken due to the old age and feeble health of the complainant who was by then not in a position to attend court to testify. According to the state counsel other than giving a description of the appellant she had not positively identified the appellant at the crime scene. The appellant argues that he had written to the DPP informing that he was not arrested at the crime scene as claimed but elsewhere upon which he was charged in HAC 178 of 2020. However, the state counsel maintains that after the appellant's representations, a statement was recorded from the arresting officer who held his position that he arrested the appellant at the crime scene relating to HAC 170 of 2019 and a copy of which was later given to the appellant which the appellant, however, denies. According to him, he was given a copy of the arresting officer's statement in relation to HAC 178 of 2020 and after recording the arresting officer's statement the DPP simply filed *nolle prosequi*. The veracity of these conflicting claims cannot be verified by this court at this stage without the disclosures given to the appellant and complete proceedings in the High Court in HAC 170 of 2019.
- [4] Nevertheless, it is clear that the delay from May 2019 to May 2022 in the HC cannot be exclusively attributed to the State. Both the State and the appellant had, wittingly or unwittingly, contributed to the delay due to many a reason. Thus, upon a consideration of the respondent's written submissions, I agree with the High Court judge's finding that there is no material evidence to suggest that the State had unreasonably prolonged the proceedings against the appellant in the High Court. Therefore, in my view, there is little prospect of the appellant succeeding on the ground that the State/DPP has unreasonably prolonged the matter.
- [5] The respondent has not filed an affidavit in the High Court resisting the appellant's application for cost and the complete record of proceedings in HAC 170 of 2019 is not before this court at this stage. Therefore it is not possible to make any assessment as to whether the DPP had or did not have reasonable grounds for bringing the proceedings in the first place against the appellant. For the same reason, this court cannot make even a tentative finding whether the High Court judge's impugned conclusion that '*having gone through the case record in High Court Criminal Case No. HAC 170 of 2019*' he found that

'there is no material evidence to suggest that the State had no reasonable grounds for bringing these proceedings against the appellant', is justified or not.

- [6] Further, neither the appellant nor the respondent had made any submissions in the High Court on the applicability of section 150(4) (d) of the Criminal Procedure Act to the appellant's application for cost. As a result, the High Court judge had also made no reference to section 150(4) (d). This involves a question of law as well.
- [7] The appellant has a right to challenge the High Court's judge's Ruling on 26 October 2022 dismissing the appellant's application for cost for reasons well explained in **State v Basa** [2021] FJCA 179; AAU084.2011 (29 April 2021). The principles upon which it should be considered whether DPP had or did not have reasonable grounds for bringing the proceedings in the first place against the appellant have been discussed in **Macartney v State** [2010] FJCA 30; AAU00103.2008 (5 July 2010) and ***Basa***. However, as stated in **Radrodro v State** [2021] FJCA 245; AAU015.2020 (14 December 2021) an appeal against dismissal of an application for cost by the High Court could be decided upon only by the full court and not by the single Judge.

- [8] Therefore, I am inclined to allow the appellant's appeal to proceed to the Full Court.

Orders of the Court:

1. The appellant's appeal may proceed to the Full Court.
2. The Registry to prepare appeal records accordingly for the full court hearing.



S. C. Prematilaka

Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL

Solicitors:

Appellant in person

Office of the Director of Public Prosecution for the Respondent